

	(P. Walker Tr. 200:8-22)
	(Tab 159) (YouTube created a “taxonomy and automated classification of search query terms and videos” in order to facilitate “ads targeting for monetization”) (GOO001-01644803)
	(Tab 173) (“Keyword / Bucket” listing various terms connected with the Class Plaintiffs) (GOO001-06238828-06239753)
	(Tab 174) (YouTube placed a “very high priority in monetizing YT search pages” using a technological mechanism that will “have a keyword to vertical mapping system to bucket search queries into marketable categories that advertisers can purchase.”) (GOO001-07165570)
	(Tab 179) (“there are certain DMCA limitations which don’t allow us to monetize against certain keywords (e.g., if we find out South Park is heavily searched, we wouldn’t necessarily be able to monetize that keyword in search)"). (G00001-01332719-01332722)
	(Tab 180) (“A new ad tag (e.g. you.results/blacklistterm) will be used so that the frequency of blacklisted terms can be tracked.”) (GOO001-07220441)
	(Tab 181) (“YouTube will take the search query and ping the CAT2 vertical server to return an ad vertical (e.g. ‘nba’ query maps to Sports/Basketball’ vertical”) (GOO001-06510250-06510252)
	(Tab 226) (“Search represents 50% all YT PVs... Represents largest component for monetization this year... Classify search term as content vertical, allows vertical targeting in the search ads... Content verticals vs. keyword targeting since advertisers are looking for branding not direct response... Allows targeting by vertical, demographic, geography, time of day, to some extent keyword targeting if it’s a brand keyword”) (GOO001-00255239-42)
	(Tab 293) (YouTube displays partner videos in the “related videos” section for infringing clips) (C. Hurley Tr. 173:25-174:23)
	(Tab 294) (“Q. What is a ‘vertical’? A. Vertical, once again, is a very specific technical term. In this case, we defined it as a – a category of search queries that have been classified. Q. What is a search query? What do you mean by that? A. A search query is an industry term that, again, there’s a very specific definition, but my definition is a – it’s the string of keywords, one or more keywords that a user enters into a search bar.”) (Liu Tr. 24:3-26:17)

168. None of YouTube's advertising offerings in any way favors videos that may not have been authorized to appear on YouTube over authorized videos. <i>Id.</i> ¶ 11.	<p>Disputed, <i>see</i> CS ¶ 167.</p> <p>Class SUF ¶¶ 16, 36-38.</p>
169. Most of the nation's top 100 advertisers purchase advertising on YouTube. <i>Id.</i> ¶ 4.	<p>Class Plaintiffs dispute any inference that YouTube's ability to sell its audience to "top 100 advertisers" legitimizes its business practices in any way. From the outset, YouTube built up an audience that it knew was drawn to its site by the infringing premium content it offered. <i>See</i> CS ¶¶ 6-7. Having built a lucrative audience through the drawing power of infringing content – including class plaintiffs' content – YouTube is now able to sell this audience to "top... advertisers." In January 2007 YouTube decided not to sell advertisements on video watch pages unless it had specifically licensed the video from the relevant rights owners, because YouTube knew that much of its video inventory was unauthorized. Despite this stated policy, advertisements can still be found on watch pages. Defendants' primarily generate revenue by selling advertisements on its search pages. These advertisements are targeted to infringing content, including class plaintiffs' content.</p> <p><i>See</i> CS ¶ 167.</p> <p>Gitterman Decl. at ¶ 9.</p> <p>(Tab 12) ("for legal reasons [...] all ads/monetization on the watch pages for user generated content will need to come down. This will have a tremendous impact on inventory.") (GOO001-02656593)</p>
170. Large media companies run advertisements on YouTube. <i>Id.</i> ¶ 2.	Class Plaintiffs dispute any inference that YouTube's ability to sell its audience to "large media companies" legitimizes its business practices in any way. <i>See</i> CS ¶¶ 169.
171. Viacom has spent more than one million dollars advertising on YouTube. <i>Id.</i> ¶ 4.	Class plaintiffs dispute that the statement is relevant or material to this action. Class plaintiffs further refer the court to the Counter Statement of Facts submitted by the Viacom plaintiffs in the <i>Viacom</i> action.

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Class Plaintiffs respond below to certain statements and assertions made in Defendants' fact declarations or Memorandum of Law, and not included or referenced in their Rule 56 Statement. The leftmost column continues the paragraph numbering system of the preceding counterstatements, the middle column excerpts statements from defendants' declarations or Memorandum of Law (citing to the relevant paragraph or page number), and the rightmost column cites to evidence controverting the statements.

	Declaration of Chad Hurley	Evidence controverting Declaration of Chad Hurley
172.	3. At first, we envisioned that users would post homemade videos with a dating focus, like hotornot.com, except with users posting videos of themselves instead of pictures. See Ex. 1 hereto, a true and correct copy of a February 22, 2005 email from Jawed to Steve and me.	<i>See CS ¶¶ 6-8.</i>
173.	10. One user who saw our ads wrote us to say how much she appreciated the YouTube service. The user told us that her son-in-law was serving in Iraq, and her daughter was using YouTube to share videos of the couple's baby with him while he was overseas. I thought this was a great example of what YouTube was all about, and the types of videos that we wanted to see on the site. See Ex. 11 hereto, a true and correct copy of a July 18, 2005 email string among me, Steve, and Jawed where I wrote "this is exactly what I'm targeting, people that will add videos (video bloggers, people looking for free video hosting, etc.) so it's not really to generate traffic just good active users." (ellipsis in original).	Class plaintiffs dispute any inference that the goal of Mr. Hurley or his co-founders was "not really to generate traffic." The expressly stated goal of YouTube's founders was to drive "traffic" to their website so they could "sell out quickly." See CS ¶¶ 6-8 (Chen: "we have to keep in mind that we need to attract traffic, how much traffic will we get from personal videos?"). YouTube and Google management had the goal to increase traffic to the YouTube website so as to increase its financial value and profit-making potential. <i>Id.</i> Class SUF ¶ 14.
174.	11. Although we wanted YouTube to offer a wide range of videos and promote free speech, we did not want videos with pornography or unauthorized copyrighted material on the site. See Ex. 12 hereto, a true and	Defendants exercised control over the YouTube website by screening for and removing pornography. However, defendants chose not to remove unauthorized copyrighted material, because they knew that's what users were drawn to the site to see and search for.

	correct copy of a April 28, 2005 email from Steve to Jawed and me ("As long as there's no nudity or copyrighted materials, we should NOT be removing videos because it doesn't meet any personal preferences."). Steve felt that "it would be cool" if we could give users reasons for rejecting their videos; "there are three [reasons] I can think of right now: -duplicate video-inappropriate content-copyrighted material." <i>See</i> Ex. 13 hereto, a true and correct copy of a June 29, 2005 email from Steve to Jawed and me.	<i>See</i> CS ¶¶ 16, 25.
175.	12. In July 2005, Steve and I had an exchange about a popular video site called filecabi.net that was similar to stupidvideos.com and big-boys.com in that they were all focused on hosting silly or prank-oriented videos. In that exchange, I described our vision for what we hoped YouTube would become, and what it in fact did become: "I would really like to build something more valuable and more useful ... actually build something that people will talk about and changes the way people use video on the internet." Steve replied: "another thing, still a fundamental difference between us and most of those other sites. we do have a community and it's ALL user generated content." <i>See</i> Ex. 14 hereto, true and correct copy of an email string between me and Steve dated July 29, 2005 (ellipsis in original).	<i>See</i> CS ¶¶ 6-7.
176.	13. In August 2005, we put together a presentation outline for Sequoia Capital, a prominent venture capital firm that expressed interest in funding our company. In that presentation outline, we described our "Company	Class plaintiffs dispute any inference that YouTube did not promote the presence of unauthorized premium content on its site or communicate that strategy, i.e., to attract and capitalize on infringing premium content, to potential investors, including Sequoia Capital.

	Purpose" as follows: <i>"To become the primary outlet of user-generated video content on the Internet, and to allow anyone to upload, share, and browse this content."</i> See Ex. 15 hereto, a true and correct copy of the Sequoia Capital presentation outline dated August 21,2005 (emphasis in original).	CS ¶¶ 6-7.
177.	14. That same month, when my brother Brent Hurley signed on as an employee of YouTube, he sent us an email describing the site as he found it at the time: "I think the 'slices of life' content our users provide is so unique. YouTube is reality TV at its best and most pure form. The database of content already collected amazes me." See Ex. 16, a true and correct copy of an email string among Brent Hurley, me, and other YouTube employees dated August 7,2005.	Class plaintiffs dispute any inference that YouTube's financial value was not driven by the presence of premium entertainment content on the website, and that YouTube did not encourage or depend on its users uploading and viewing infringing premium content. YouTube repeatedly acknowledged that amateur personal videos did not drive traffic or value. <i>See CS ¶¶ 6-7, 16, 22, 58.</i>
178.	15. As the YouTube site began to get more uploads in the summer of 2005, we started to come across situations where we encountered videos uploaded by users that were potentially unauthorized. For example, in one instance, I saw a video that looked like a network television show. Steve, Jawed and I are not lawyers. As a small start-up working out of my garage during early and mid-2005, we did not have lawyers to advise us on copyright issues. But we viewed the posting of potentially unauthorized material as a problem, and we agreed that we wanted to put a stop to it. See Ex. 17 hereto, a true and correct copy of a June 26, 2005 email thread among Steve, Jawed and me.	Disputed. Mr. Hurley and his co-founders were sophisticated entrepreneurs who expressly acknowledged the value of infringing premium content and depended on that content so they could increase traffic to their website and "sell out quickly." CS ¶¶ 6-7, Class SUF ¶ 10.
179.	16. As a founder with a significant stake in the company, the last thing I wanted was for it be seen as or to	Disputed. YouTube (including Mr. Hurley) promoted the presence of unauthorized premium content on its site and communicated its strategy

	<p>become a haven for infringing or illegal content. The options we envisioned for YouTube were the standard evolutionary paths for a startup: an initial public offering, or acquisition by another company. We all believed that those options would not be available to us if our business was based or dependent upon illegitimate activities.</p>	<p>to potential investors, including Sequoia Capital and TriplePoint. YouTube's objective was to create the perception they were addressing content owners' concerns, when in fact they knew they were profiting from infringing content.</p> <p><i>See CS ¶¶ 6-7, 9.</i></p>
180.	<p>17. To make sure that is not how the site developed, when we started seeing an uptick in the number of videos uploaded to the site, we adopted a screening process to remove videos that we guessed were unauthorized copyrighted content, and told users that such content was unwelcome. <i>See attached hereto, true and correct copies of emails among Steve, Jawed, and me in July and August 2005: Ex. 18 ("[I] just unapproved and rejected the britney toxic music video."); Ex. 19 ("this guy has a ton of music videos that need to be removed."); Ex. 20 (noting that user uploaded clips from a Hong Kong movie and concluding "I think we should reject all that [stuff]."); Ex. 21 (adding videos for review because "this is blatant copyrighted stuff"). As I put it in response to an inquiry from a user about why a video was rejected: "Yes, I believe this was a music video, right? So, it was rejected because it was copyrighted material. We are trying to build a community of real user-generated content and moving forward we are going to be more proactive about screening videos upfront." See Ex. 22 hereto, a true and correct copy of an email I wrote dated July 3, 2005.</i></p>	<p>Disputed to the extent Mr. Hurley claims that they did not want their website to show infringing material. <i>See CS ¶¶ 6-7.</i> In fact, YouTube's founders could identify infringing content on their website site, but suggested removing it only "in varying degrees" so as to create "the perception" of addressing the concerns of content owners while at the same time not reducing traffic to the site. Later, YouTube selectively screened and removed infringing material, but only on behalf of favored content owners and built various tracking and monetization systems that identified infringing content but chose not to use those systems to remove it.</p> <p><i>See CS ¶¶ 16, 94-96.</i></p>
181.	<p>19. In the meantime, we were devising strategies to encourage users</p>	<p>Class plaintiffs dispute any inference that YouTube did not knowingly depend on the</p>

	<p>to post authorized material. For example, in the upload process, we added spaces for users to provide the date and place at which they recorded the video they were uploading. We intended that to signal to users that the site was constructed for personal videos that they themselves had recorded. See Ex. 23 hereto, a true and correct copy of a June 26, 2005 email string among Jawed, Steve, Mike Solomon and me.</p>	<p>presence of infringing premium content to increase its financial value and profit-making potential. Mr. Hurley provides no evidence that they required users to "provide the date and place at which they recorded the video." The founders in fact decided to allow and encourage videos that were not "personal videos" in order to maintain or increase their traffic.</p> <p><i>See CS ¶¶ 6-7. Hurley ¶¶ 3-5</i></p>
182.	<p>22. As shown by a description of YouTube that I drafted in October 2005, our plan for the site continued to center on personal, user-generated video clips. It had nothing to do with encouraging or capitalizing on copyright infringement: YouTube is a new service that allows people to easily upload, tag, and share personal video clips. Digital cameras with video recording capability are quickly becoming a commodity consumer technology. As people continue to record more video clips, YouTube will fill the need of quickly distributing their content worldwide. See Ex. 27 hereto, a true and correct copy of an October 26, 2005 email that I sent to my brother, which encloses this description.</p>	<p>Disputed. From the start of YouTube to this day, Defendants knew that premium entertainment content was what drove the financial value of the site.</p> <p><i>See CS ¶¶ 6-7, 16, 25.</i></p>
183.	<p>24. During this period of rapid growth, we continued to go out of our way to respect the copyrights of content owners. For example, when a "Saturday Night Live" skit entitled "Lazy Sunday" was uploaded to YouTube in December 2005 and drew an enormous amount of views from users, I reached out to NBC to determine whether the video was authorized to be on YouTube. <i>See</i> E~. 30 hereto, a true and correct copy of the email that I sent to NBC.</p>	<p>Class plaintiffs dispute that defendants went "out of [their] way to respect the copyrights of content owners." YouTube could readily identify the content on its website but only did so when it served its business interests.</p> <p><i>See CS ¶ 63-66, 94-96.</i></p>

184.	25. Although I contacted NBC on December 28, 2005, YouTube did not hear back about NBC's position regarding the video until February 3, 2006, when I received a letter from NBC thanking us for opening a dialogue and asking that YouTube remove the Lazy Sunday video from our website. <i>See Ex. 31</i> hereto, a true and correct copy of NBC's response to me.	Class plaintiffs dispute any inference that YouTube was genuinely concerned with protecting content owners' rights. YouTube contacted NBC because they wanted to make money off of NBC's premium videos, "thousands" of which were on the YouTube website without authorization. YouTube offered content identification tools to NBC that it did not offer to other content owners because NBC was willing to license its content to YouTube for YouTube to monetize. Despite YouTube's efforts, NBC was highly critical of YouTube's unwillingness to remove from its website the infringing content it knew was being uploaded and viewed and on which it depended (CEO of NBC: "YouTube needs to prove that it will implement its filtering technology across its online platform. It's proven it can do it when it wants to. [...] They have the capability. The question is whether they have the will.")
185.	27. Not only have the volume and range of videos uploaded to YouTube exceeded our expectations, but our community of users has too. YouTube users don't just post videos to YouTube and watch videos on YouTube, they interact with one another <i>through</i> YouTube. They form friendships, ask each other questions, invite responses, find organ donors, participate in contests, rally in support of one another, and challenge each other. Our users have used YouTube to create a new model for how individuals, companies, organizations and governments communicate. Its development has been both astonishing and humbling, and it has come without us ever seeking to grow the site or earn revenue from any unauthorized use of copyrighted material.	Disputed, see CS ¶¶ 6-7. Class plaintiffs object to this conclusory statement, for which Mr. Hurley provides no basis as to how users "interact with one another <i>through</i> YouTube." Communications by and between users show that YouTube knew they were using the website to infringe.

	Declaration of David King	Evidence controverting Declaration of David King
186.	6. At the time that YouTube licensed Audible Magic's technology, Audible Magic had strong support from the music industry, particularly major record labels such as Warner Music Group and Universal Music Group. It is my understanding that Audible Magic's technology was developed primarily to help those record labels identify their sound recordings on the Internet. Based on my conversations with Audible Magic, I understood that, as of late 2006 and early 2007, virtually all of the reference files that Audible Magic was maintaining in its database were from sound recordings owned by major record labels.	Disputed, except to the extent Audible Magic was already an industry standard and provided infringement mitigating tools that were available even before YouTube was founded., <i>see CS ¶¶ 97-98.</i> Audible Magic had a database of film and television soundtracks by the time YouTube decided to use Audible magic in 2007. YouTube chose not to use that database to identify content on its site. YouTube also chose to use only reference files of those song recordings belonging to labels who agreed to license their content to YouTube. Mr. King admits in ¶ 10 of his declaration that television and sports league record holders used Audible Magic to identify their content.
187.	9. Rights holders using Audible Magic on YouTube were free to apply whatever usage policy they wished in the event of a match. YouTube's policy was to make CYC (including Audible Magic) open to all rights holders who wanted to use it, regardless of whether the rights holder was doing so in order to block its content from appearing on YouTube or to claim videos for the purpose of monetization.	<i>See CS ¶¶ 94-96.</i> YouTube offered CYC only to content owners who agreed to license their content to YouTube, and demanded that those rights owners use the tool to "claim" content, not block it.
188.	10. There were multiple rights holders that used Audible Magic solely to block videos. [REDACTED] [REDACTED] [REDACTED] [REDACTED] But most rights holders who used CYC chose	Mr. King's statement is controverted by extensive contemporaneous evidence showing that it was defendants' policy to allow content owners to use CYC only if they licensed their content to YouTube. <i>See CS ¶¶ 94-96.</i> Defendants' documents also show that they demanded that content owners use the CYC system to "claim" content, not remove it. <i>Id.</i> Mr. King also presents no evidence concerning whether these four entities in fact did license their content to

	<p>instead to embrace the promotional opportunities that YouTube provided by allowing the videos they claimed to appear or remain on the service.</p>	<p>YouTube, the dates that they signed up to use CYC, and, if they did use it “solely to block videos” as Mr. King claims, how frequently or for how long they were allowed to use the system. One of the entities, [REDACTED] [REDACTED] has an official branded YouTube channel with videos that have been up on the site for over 3 years. Therefore, it has not been “solely” blocking its videos for at least that amount of time. [REDACTED] sued YouTube for copyright infringement in France (Mr. King presents no evidence concerning whether they were offered CYC in response to litigation pressure). [REDACTED] was offered access to CYC as part of a broad potential “business arrangement” with both Google and YouTube.</p> <p>(Tab 275) ([REDACTED] term sheet) (Tab 302) (“[REDACTED] sues YouTube”: report, April 16, 2008)</p> <p>(Tab 304) (Screenshot from www.youtube.com – [REDACTED] channel)</p>
189.	<p>11. Although the audio-based content-identification technology that Audible Magic provided was useful, particularly in helping the owners of sound recordings identify their content, it had certain limitations in reliably matching against certain kinds of <i>video-based</i> content. For example, most television programs and motion pictures include embedded music that is owned by someone other than the entity that owns the TV program or motion picture itself. Particularly because YouTube had entered into carefully negotiated agreements with most of the major record labels to allow their sound recordings to appear on YouTube, using audio-based content identification to identify television programs and movies was likely to</p>	<p>Disputed. YouTube had long recognized the need to deal with conflicting claims to the same content and had mechanisms in place to deal with such claims on behalf of favored content partners.</p> <p><i>See</i> CS ¶¶ 94-96.</p>

	<p>lead to conflicting claims for the same piece of content. For example, the television show "CSI" uses the song "Who Are You" by The Who in its opening credits. An audio-based content identification system will not reliably be able to distinguish a video clip of the opening credits of CSI from a music video of "Who Are You" (or clip from a movie using the same song). Based on our experience with Audible Magic, we found that audio-only matching for video content resulted in confusion and inaccuracy.</p>	
190.	<p>12. In addition, many audio-visual works have a variable soundtrack, which can minimize the utility of audio-based content identification. Sporting events, for example, are often broadcast in different languages and with different commentators. And the background "stadium sounds" for many different sporting events (things like crowd noise and whistles, for example) are often quite similar and difficult to distinguish from each other. Audio-based content identification technology therefore would often be unreliable for identifying such works.</p>	<p>Mr. King's opinion regarding the technical capabilities "audio-based content identification technology" is inadmissible opinion evidence. Moreover, Mr. King fails to address a variety of other technologies that were extant and available to YouTube, but which YouTube, for various reasons including its desire to develop a proprietary technology that it could own and control, ignored. <i>See CS ¶¶ 6, 16.</i> Class plaintiffs also dispute any inference that YouTube did not already have, and use, tools that could and did identify class plaintiffs' infringing content.</p> <p><i>See CS ¶¶ 94-96.</i></p>
191.	<p>13. For these reasons, it was my belief (and the belief expressed to me by others on my team) that the most effective and reliable content identification technology for a video website like ours would be <i>video-based</i> content identification (sometimes called "video fingerprinting"). Video-based content identification works much like audio fingerprinting, with the important difference that the former uses the <i>video</i> channel of the probe file in identifying potential matches. By</p>	<p>Class plaintiffs dispute any inference that YouTube did not already have, and use, tools that could and did identify class plaintiffs' infringing content.</p> <p><i>See CS ¶ 95.</i></p>

	looking at the video channel, rather than just the audio channel, video-based content identification solves some of the key problems with using audio fingerprinting to try to identify audio-visual content such as television shows and movies.	
192.	14. From the very start of my tenure at Google, I saw video-based content identification as a meaningful new way for YouTube to further help rights holders find videos on YouTube that might contain their content. I also viewed the development of video-based content identification as an exciting technical challenge that would lead the way for other user-generated content websites, none of which had implemented such technology. Accordingly, in January 2007, almost immediately after I began working at Google, I made the decision that YouTube should build a video-based content identification tool to supplement (and ultimately supplant) our use of Audible Magic. It was expressed to me that the decision to build that technology—which we came to call "Video ID"—had the full support and encouragement of Google and YouTube management, including Eric Schmidt (the CEO of Google) and Chad Hurley (the CEO of YouTube).	Defendants decided to build their own video fingerprinting system and ignored available third party systems in order to develop their own tool that could exploit. <i>See CS ¶¶ 6, 97-100.</i>
193.	16. There were several reasons why YouTube decided to develop its own content-identification technology, as opposed to relying on technology from an external vendor. <i>First</i> , at that time there was no commercially available video-based content identification technology for use on websites like YouTube. Although	<i>See CS ¶ 97.</i>

	<p>there were a few companies that were testing early versions of such technology, none of them had a product that had actually been commercially deployed on any website. Nor were we confident that any of these third-party vendors was or would soon be in a position to offer video-based content identification technology that could reliably and efficiently operate on a site that handles the volume of video uploads to YouTube. As of early 2007, YouTube's scale of operations dwarfed that of any other video website, and that scale posed a significant technical and operational challenge to any content identification system. There was nothing available on the market, or even on the horizon, that seemed up to that challenge. <i>Second</i>, as I mentioned above, before its acquisition of YouTube, Google had already done significant work on video-identification technology, which we believed could be adapted to YouTube's needs without requiring us to build a product from scratch. That led us to believe that we could develop our own video-based content identification system more quickly and effectively than could any third party. <i>Third</i>, by building the technology ourselves, we could design it specifically to run on YouTube's systems.</p>	
	<p>Declaration of Zahavah Levine</p>	<p>Evidence Controverting Declaration of Zahavah Levine</p>
194.	<p>3. In February 2006, I was contacted by Chris Maxcy at YouTube and asked to consider joining the company as its first in-house lawyer and its general</p>	<p>Disputed to the extent, Ms. Levine's statement contradicts communications among Hurley, Chen and Botha acknowledging their website's dependence on infringing content to fuel their desire</p>

	<p>counsel. Given my existing working relationships with some of the largest copyright holders in the world, I naturally inquired about YouTube's views regarding copyright protection during the interview process. The company's founders Chad Hurley and Steve Chen, and a board member, Roelof Botha, explained YouTube's philosophy on this issue. They each strongly impressed upon me that neither they nor YouTube had any interest in growing the company or profiting by virtue of the presence of materials on the service that infringed others' copyrights. Each assured me that I would be given substantial resources and broad discretion to enable the company and copyright holders to combat the unauthorized uploading of videos to the YouTube service, and that they supported those efforts.</p>	<p>for more traffic. CS ¶¶ 6-7. Ms. Levine was intimately familiar with the rights involved in exploitation of music on the Internet.</p>
195.	<p>4. Since joining YouTube in March 2006, I have spent the considerable majority of my time - thousands upon thousand of hours - working with the company's executives, engineers, business development teams, product designers and staff as well as countless partners and users to minimize the incidence of unauthorized copyrighted material on the service, while ensuring that YouTube remained a vibrant platform for users around the world to share their own videos. During my tenure, YouTube and its parent company Google, have invested many millions of dollars on technologies and teams of employees directed to that end.</p>	<p>Disputed to the extent YouTube has encouraged and depended on infringing content for its growth.</p> <p><i>See</i> CS ¶¶ 6-7.</p>

196.	<p>10. YouTube also dedicates an area of the "Help" section of its website to providing users and content owners alike with information about copyright issues and YouTube's approach regarding copyrighted material. A true and correct copy of this "Help" page http://www.google.com/support/youtube/bin/topic.py?topic=10554 is attached hereto as Exhibit 8.</p>	<p>Class plaintiffs dispute any inference that defendants thought that the "Help" section of the website prevented its users from uploading and viewing infringing material.</p>
197.	<p>13. YouTube has also sought to assist copyright owners in preventing infringement on the site by complying with the requirements and procedures of 17 U.S.C. §512 of the Digital Millennium Copyright Act ("DMCA").</p>	<p>Defendants fail to comply with the requirements of 17 U.S.C. §512. See class plaintiff's accompanying memorandum of law.</p>
198.	<p>14. YouTube has designated an agent pursuant to the requirements of the DMCA, and has provided that agent's contact information to the Copyright Office. YouTube's agent is available to receive notifications of alleged copyright infringement on the site, and can be contacted at: DMCA Complaints, YouTube, Inc., 901 Cherry Ave., Second Floor, San Bruno, CA 94066, Fax: (650) 872-8513, Email: copyright@youtube.com.</p>	<p>YouTube has not always had a DMCA agent registered with the copyright office.</p> <p><i>See CS ¶ 61.</i></p>
199.	<p>17. Our goal is to make it very easy for copyright owners to inform us of alleged copyright infringement on our site. In addition to processing DMCA notices received by postal mail, email or fax, YouTube has developed an online form that walks content owners step-by-step through the process of sending us a DMCA notice. A true and correct copy of the</p>	<p>Disputed, <i>see CS ¶ 64-65.</i></p>

	form is attached hereto as Exhibit 10 and is accessible at http://www.youtube.com/copyright_complaint_form .	
200.	<p>28. YouTube tracks notices and issues strikes to users in automated fashion. While "three strikes" describes the basic rule in place, YouTube's policy allows us to take account of circumstances in determining which of our users are actually "repeat infringers" whose accounts should be terminated. For example, where a user formally contests a claim of infringement using the counter-notice process set forth in Section 512(g) of the DMCA, that claim is not counted as a strike against the user. Further, from experience, YouTube has learned that some of its users are unfamiliar with copyright law, and are surprised when a content owner takes issue with a video they have uploaded. To help educate these users and to give them an opportunity to correct their behavior before suffering the loss of their account, YouTube assesses a single strike per notice, including in circumstances where a DMCA notice identifies more than one allegedly infringing video from the same user. After receiving notice and an explanation that a strike has been assessed, users routinely inform us that they have modified their behavior.</p>	<p>Class plaintiffs dispute Ms. Levine's characterization of YouTube's users' familiarity with copyright law. YouTube and its users know that they are infringing content. <i>See CS ¶ 6-7.</i> Class Plaintiffs also dispute Ms. Levine's characterization of what should qualify as a "repeat infringer" since a user that has uploaded hundreds of pirated copies is not considered a "repeat infringer" by YouTube.</p> <p><i>See CS ¶¶ 77.</i></p>
201.	<p>29. YouTube has also found it necessary on occasion to afford additional protections to users who are potential targets of improper or mistaken DMCA notices. For example, in the midst of the 2008 presidential race, we received a letter from Senator McCain's campaign (a</p>	<p>Class plaintiffs dispute any inference that the takedown notices referred to in the quote from Senator McCain's campaign were "overreaching." Ms. Levine presents no admissible evidence that any YouTube user has ever been a "target" of improper DMCA notices.</p>

	<p>copy of which is attached as Exhibit 13) complaining about a rash of improper DMCA notices:</p> <p>By providing a platform for political candidates and the American public to post, view, share, discuss, comment on, mash-up, re-mix, and argue over campaign-related videos, YouTube has played a prominent and overwhelmingly positive role in the 2008 election.</p> <p>* * *</p> <p>We write, however, to alert you to a problem that has already chilled this free and uninhibited discourse ... overreaching copyright claims have resulted in the removal of non-infringing campaign videos from YouTube, thus silencing political speech. Numerous times during the course of the campaign, our advertisements or web videos have been the subject of DMCA takedown notices regarding uses that are clearly privileged under the fair use doctrine. . . . Despite the complete lack of merit in these copyright claims, YouTube has removed our videos immediately upon receipt of takedown notices. This is both unfortunate and</p>	
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	unnecessary.	
	Declaration of Chris Moye	Evidence Controvering Declaration of Chris Moye
202.	2. During my tenure at YouTube, I watched the site become enormously popular in a very short period of time. As YouTube's popularity grew, content owners increasingly began to express interest in partnering with YouTube to make their content available through the YouTube service. In late 2005 and early 2006, YouTube was inundated with requests from a wide variety of companies for partnership agreements. But at that time YouTube was still a small and relatively new company with only ten employees, and we did not have the capacity to negotiate deals with all of these companies as quickly as the requests came in.	YouTube specifically targeted major media companies and sports leagues because it knew that users came to its website to view the premium entertainment content owned by those entities. YouTube tried to force these companies to make deals by offering to give them content identification tools to control the proliferation of infringements of their works on YouTube on the condition that they license their content to YouTube, like some of the class plaintiffs, were simply dismissed because of their small market share. <i>See</i> CS ¶¶ 43, 94-96.
	Declaration of Suzanne Reider	Evidence Controvering Declaration of Suzanne Reider
203.	3. YouTube's precise advertising opportunities have changed somewhat over the years to keep pace with the dynamic nature of Internet advertising. In general, however, there have been three primary advertising products that YouTube has made available to advertisers during my time at the company. <i>First</i> , we sell an advertisement on the YouTube homepage	Disputed, <i>see</i> CS ¶ 160, 164, 167. Until January 2007, YouTube displayed advertisements on all watch pages, including watch pages showing videos that infringe class plaintiffs' content. YouTube still displays advertisements on videos that infringe class plaintiffs' content. For example, YouTube shows tennis advertisements next to videos that show unauthorized footage of French Open matches. YouTube also displays advertisements for sound recordings on watch pages, even when it has not licensed the

	<p>(www.youtube.com), which we call the "homepage ad." This ad, which can take several different creative forms, is sold to a single advertiser for a 24-hour period. <i>Second</i>, YouTube allows advertisers to purchase advertising on the pages of the YouTube website where the results of users' search queries are displayed. We refer to these pages as "search-results pages." <i>Third</i>, YouTube allows advertising to be displayed on pages where users can watch videos that have been uploaded or affirmatively claimed by one of YouTube's many "content partners" (content owners who have entered into written agreements with YouTube beyond the terms of service to allow their content to appear on YouTube and have advertising displayed against it). We call these pages "partner-watch pages."</p>	<p>publishing rights to the sound recording or the rights to the video content. <i>See</i> CS ¶¶ 169.</p>
204.	<p>9. As for the advertising that appears on partner-watch pages, such advertising will only appear when YouTube has entered into a written agreement with a content partner, and the content partner has affirmatively indicated that it wants advertisements to run in conjunction with videos that the partner has posted or claimed. YouTube is frequently introducing new advertising concepts on partner watch pages, working in close collaboration with content partners and advertisers. As one of many such examples, last year, at the request of a content partner (Universal Music Group), American Express sponsored the live-streaming on YouTube of a concert that Alicia Keys gave to benefit her AIDS foundation.</p>	<p>Disputed, <i>see</i> CS ¶ 203.</p>
205.	<p>10. There was a period prior to January 2007 when YouTube allowed ads be displayed on video-watch</p>	<p>Disputed, because at that time YouTube knew that the popularity of its site was being driven by the presence of infringing premium content. <i>See</i></p>

	<p>pages more broadly. But we had no reason to believe that any given watch page where an advertisement might have appeared was displaying a video that was not properly authorized to be on YouTube. During that period, moreover, YouTube would have received the same rates for watch-page ads regardless of what videos those ads appeared next to.</p>	<p>CP ¶¶ 6, 16. YouTube still displays advertisements on the watch pages of infringing videos.</p> <p>Gitterman Decl. Ex. 15-16.</p>
	<p>Declaration of Michael Schaefer</p>	<p>Evidence Controverting Declaration of Michael Schaefer</p>
206.	<p>2. Almost immediately upon starting work at YouTube, I became aware of companies using YouTube for marketing purposes. For example, in January 2006, I viewed a clip on YouTube that Nike had uploaded for promotional purposes to the account "Nikesoccer" featuring the soccer player Ronaldinho. I discussed this clip with other employees at YouTube, including the founders, and there was a general awareness at the company that this type of corporate marketing was taking place on YouTube. Indeed, at one point in its history, the Nike Ronaldinho clip was the most watched video on YouTube. I learned later that Nike had also uploaded the exact same clip to YouTube using the account "JoeB" to make it appear as if that version of the clip had been uploaded to YouTube by an ordinary user unaffiliated with Nike. See http://www.youtube.com/watch?v=K_NwLn85I75Y. I also learned from press accounts in the fall of 2006 that Nike acknowledged that the company posts videos to websites like YouTube using usernames unconnected with the company to appeal to younger audiences.</p>	<p>Class plaintiffs dispute any inference that YouTube was not aware that Nike authorized the video referenced in this statement, or that any other companies were uploading authorized videos for promotional purposes without YouTube's express knowledge. In fact, YouTube met with Nike about the video referenced in this statement. Class Plaintiffs also dispute the materiality of this statement. Defendants present no evidence that any class plaintiff uploaded or authorized the upload of any of their works so as "to make it appear as if that version of the clip had been uploaded to YouTube by an ordinary user."</p> <p>(Tab 205) (Botha Tr. 106-07)</p>

207.	<p>3. During my employment at YouTube, I experienced many instances in which YouTube became aware of the presence of content on the service that looked like it was professionally produced, but did not know whether the rights holder had uploaded that content or was allowing that content to remain on YouTube for promotional reasons. The appearance on YouTube of a short, satirical music video called "Lazy Sunday" in December 2005 and early 2006 illustrates this point. I had intimate knowledge of the "Lazy Sunday" video because I was responsible for the website of the comedy group, The Lonely Island, whose members created it. I knew that the video had aired on NBC's Saturday Night Live, but when I first saw it on YouTube, on December 18, 2005, I did not know whether NBC was allowing user uploaded versions of Lazy Sunday to remain on YouTube for promotional purposes. Based on my involvement with The Lonely Island and conversations with a member there, I believed that the writers and producers of Saturday Night Live thought that the presence of "Lazy Sunday" on Internet video websites like YouTube was providing marketing benefits for the show.</p>	<p>Class plaintiffs dispute this statement because Mr. Schaffer's "belief" about what "the writers and producers of Saturday Night Live thought" is immaterial and inadmissible. In fact, NBC requested that the "Lazy Sunday" clip, as well as "thousands" of other clips, be removed from the YouTube website.</p> <p>Declaration of Chad Hurley Hurley, Ex. 31 (Letter from NBC Universal to Chad Hurley, February 3, 2006).</p>
208.	<p>6. Given my extensive experience reviewing videos on the YouTube website during the course of my employment, it was and is my belief that these instances where YouTube learned about promotional uses by major media companies were only the tip of the iceberg of the overall marketing taking place on YouTube. In many cases, I strongly suspected</p>	<p>Defendants present no evidence that "these instances where YouTube learned about promotional uses" ever involved a class plaintiff. Defendants also present no admissible evidence to support the claim that "these instances" "were only the tip of the iceberg." Mr. Schaffer provides no basis for this professed "belief," no basis for his "belief" that "major content owners were acquiescing to their content appearing on YouTube," and no reasons why he "strongly</p>

	<p>that content that appeared to be professionally produced had in fact been uploaded by the rights holder or with the rights holder's permission for marketing purposes. In other cases, I believed that major content owners were acquiescing to their content appearing on YouTube because of the promotional benefit that those clips provided. That belief was informed, in part, by the routine practice of major media companies selectively removing some of their content from YouTube, while apparently letting other content remain active.</p>	<p>suspect[s]" that content "had in fact been uploaded by the rights holder." Mr. Schaffer provides no quantification of such instances, and does not explain how he knew such instances even occurred. Mr. Schaffer also provides no basis for his claim that it was "the routine practice of major media companies [to] selectively remove[e] some of their content from YouTube, while apparently letting other content remain active." In fact, because YouTube denied its content identification tools to content owners, content owners were unable to identify all of the infringing instances of their content on YouTube.</p> <p><i>See CS ¶ 94-96.</i></p>
209.	<p>9. This pattern of self-inflicted infringement claims repeated itself often and was well known to the YouTube employees working in the SQUAD department. If lawyers from major media companies were making mistakes about the allegedly infringing status of clips on YouTube despite their superior knowledge of the content at issue and the corporate policies of their clients, it seemed inconceivable to us that YouTube employees could make reliable determinations about the authorization status of clips on YouTube merely because they appeared to be professionally produced.</p>	<p>Class plaintiffs dispute the materiality of this statement. Defendants present no evidence that class plaintiffs engaged in a "pattern of self-inflicted infringement claims."</p>
210.	<p>12. We conducted this spot checking because we had every interest in working with rights owners and no interest in hosting unauthorized content. However, proactive review was problematic for several reasons. First, it did not scale given the increasingly large number of videos being uploaded to YouTube at the time. Second, we quickly learned that proactive removal of content was not</p>	<p>Disputed, <i>see CS ¶¶ 16, 94-96.</i></p>

	<p>very effective. We sometimes removed content that was not, in fact, owned by the media companies on whose behalf we were conducting proactive monitoring.</p>	
211.	<p>13. Our proactive review and removal of content related to American Idol stands out as having led to a number of false positives. We then faced complaints from upset users whose content had been removed without cause. On another occasion in August 2006, YouTube received a DMCA take-down notice from Lucasfilm that contained a request to remove a specific video along with a vaguely-worded statement asking YouTube generally to remove content related to Star Wars movies. In response, we engaged in the proactive review and removal of 1029 videos. We then heard back from Lucasfilm that some of the content we removed had been authorized, as the company generally permits its fans to "remix" and create mash-ups of its content. Lucasfilm asked that we restore all of the videos that we had proactively removed on its behalf and tell our users that the removals had taken place based on a "misunderstanding" instead of because of Lucasfilms' take-down notice. We complied with that request. Attached hereto as Exhibits 2, 3 are true and correct copies of email messages between representatives from Lucasfilm and me reflecting this incident. These experiences taught us that the rights holders themselves were in a much better position to make determinations about the authorization status of videos appearing on YouTube, and we strived to offer them tools that would assist them in doing so.</p>	<p>Rights holders are not "in a much better position" to remove their content from the YouTube website, because unlike YouTube itself, they have no way of preventing the content from being shown on the web site in the first place, and YouTube has denied them the content identification tools that would in fact allow them to identify and remove or block their content from the site. <i>See</i> CS ¶¶ 16, 33, 94-96. In fact, YouTube counted on these obstacles as a means to keep infringing content on the site for as long as possible. <i>See</i> CS ¶¶ 6, 25.</p>

Declaration of Plaintiff Walk		Evidence Contained in Declaration of Plaintiff Walk
		EVIDENCE CONTAINED IN DECLARATION OF PLAINTIFF WALK
212.	2. YouTube is a site where users are able to upload and broadcast videos about themselves: their ideas, their talents, their message. YouTube's name intentionally reflects that goal by emphasizing "you" - <i>i.e.</i> , your own, original videos. Its longtime slogan, "Broadcast Yourself," is still prominently featured on the service and reinforces that message.	Disputed, <i>see</i> CS ¶ 6-7.
213.	3. The videos available for viewing on YouTube are uploaded by YouTube's millions of users, who range from the families posting their home movies to the largest movie and television studios posting clips for promotional purposes.	Class plaintiffs dispute any inference that YouTube does not control what gets uploaded and viewed on its website. <i>See</i> CS ¶ 16.
214.	4. These hundreds of millions of videos that users have posted to YouTube are staggeringly diverse. They are in every language imaginable, covering virtually every facet of the human experience. They come in from all around the globe, and even from outer space. Some are created using sophisticated video technology; others are created using crude cell phone video cameras. While some of those videos are submitted by the numerous media companies, large and small, that have negotiated licensing deals with YouTube, many more are submitted by ordinary people.	Class plaintiffs dispute any inference that YouTube does not control what gets uploaded and viewed on its website. <i>See</i> CS ¶ 16. Class plaintiffs also dispute any inference that YouTube's financial value does not derive from the presence of the premium entertainment content on their site, most of which is unlicensed. <i>See</i> CS ¶ 160, 164, 167.
215.	5. I have set forth in this declaration a sampling of the kinds of videos that can be found on YouTube. But any attempt to capture the full scope of the kinds of videos available on YouTube in words necessarily fails. It	Disputed. Defendants present no evidence that the cherry-picked selection of videos attached to Mr. Walk's declaration is in any way a meaningful or relevant "sample," let alone a statistically appropriate one. Mr. Walk also provides no basis for, or any evidence supporting, his claim that

	<p>is much like trying to describe the human experience. And for every remarkable example we actually know about, there are invariably thousands more like it that are available through our service.</p>	<p>"there are invariably thousands more like it that are available through our service."</p>
216.	<p>13. In addition to posting lectures, many colleges and universities are also using YouTube to connect with prospective students. For example, Yale University recently uploaded an admissions video titled, "That's Why I Chose Yale", a musical spoof of the popular "High School Musical" movies. <i>See</i> http://www.youtube.com/watch?v=tGn3-RW8Ajk. Likewise, prospective students are using YouTube videos to supplement their college applications. Tufts University has even added an option to its application process inviting students to post a short video about themselves to YouTube. Attached as Exhibit 2 is an article that appeared on NewYorkTimes.com on February 23, 2010, titled <i>To Impress, Tufts Prospects Turn to YouTube</i>. <i>See also</i> http://www.youtube.com/watch?v=SJGJMoYcM8yY (example of student admissions video submission to Tufts).</p>	<p>Disputed. Other than the cherry-picked videos referenced in his declaration, Mr. Walk provides no evidence that other similar videos have been uploaded to YouTube, no evidence that, even if there are more such videos, they represent more than a minuscule proportion of the videos on YouTube, and no evidence of the proportion of traffic that such videos drive to YouTube.</p>
217.	<p>14. YouTube users have also invented yet another way to educate the YouTube community: by posting a treasure trove of "how-to" videos that provide other users with instructions on how to accomplish just about anything, from baking a chocolate cake, to fixing a leaky faucet, to traveling on a budget, to creating your own website. <i>See, e.g.</i> http://www.youtube.com/watch?v=7jRE3xRm8Vk (How to Travel Cheaply); http://www.youtube.com/watch?v=Ph</p>	<p>Disputed. Other than the cherry-picked videos referenced in his declaration, Mr. Walk provides no evidence that other similar videos have been uploaded to YouTube, no evidence that, even if there are more such videos, they represent more than a minuscule proportion of the videos on YouTube, and no evidence of the proportion of traffic that such videos drive to YouTube.</p>

	<p>jw9dzHU-O (How to Fix a Leaky Faucet); http://www.youtube.com/watch?v=mstLaSQFhrc (How to Make Chocolate Cake); http://www.youtube.com/watch?v=pTHc5wB-u8w (How to Create Your Own Website).</p>	
218.	<p>15. Perhaps one of the most exciting outgrowths of this "how to" phenomenon is the YouTube Reporters' Center, a channel on YouTube dedicated to citizens interested in reporting the news and events happening around them. The YouTube Reporters' Center features how-to videos from some of the industry's most respected journalists and media experts, including Katie Couric of the CBS Evening News, Bob Woodward of the Washington Post, Scott Simon of NPR, and Tavis Smiley of PBS. <i>See</i> http://www.youtube.com/user/reporterscenter (YouTube Reporters' Center Channel).</p>	<p>Disputed. Other than the cherry-picked videos referenced in his declaration, Mr. Walk provides no evidence that other similar videos have been uploaded to YouTube, no evidence that, even if there are more such videos, they represent more than a minuscule proportion of the videos on YouTube, and no evidence of the proportion of traffic that such videos drive to YouTube.</p>

219.	<p>17. Major movie and television studios, sports leagues, news organizations and other companies have also embraced the YouTube service. These organizations use YouTube for a myriad of purposes, including:</p> <p>Advertising - both overtly and covertly - by companies like Ray Ban, American Express and E*Trade....</p>	Class plaintiffs dispute that any of the videos referenced by Mr. Walk were uploaded "covertly." All of the videos cite or provide links to their sponsors in the titles or descriptions of the videos. Additionally, defendants present no evidence that YouTube did not know these videos were authorized to be uploaded by their owners.
220.	18. Celebrities from media moguls to musicians to athletes have used YouTube to promote both themselves and the causes they believe in.... .	Class plaintiffs dispute the materiality of this statement. Class plaintiffs dispute any inference that YouTube did not know these videos were authorized. All of the cited videos are on official YouTube branded "channels."
221.	20. With all of the transformative, professional, informational and educational uses of YouTube, many videos feature ordinary users simply sharing pieces of their lives from the mundane to the extraordinary, from the silly to the profound. With each of these videos, whether they are viewed 50 times or 50 million times, YouTube users have the opportunity to share their talents, ideas and creativity and to connect with the global community. Some of the videos posted by YouTube's users include.... .	Disputed. Other than the cherry-picked videos referenced in his declaration, Mr. Walk provides no evidence that other similar videos have been uploaded to YouTube, no evidence that, even if there are more such videos, they represent more than a minuscule proportion of the videos on YouTube, and no evidence of the proportion of traffic that such videos drive to YouTube.
	Declaration of Roelof Botha	Exhibit C (Covering Declaration of Roelof Botha)
222.	3. Based on my initial experiences	YouTube promoted the presence of unauthorized

	<p>with the YouTube service and the way that the service described itself to users, it was my understanding that the service was designed and intended for this sort of sharing of “user-generated content.” At the time, services that facilitated the sharing of other forms of user-generated content were already well known and successful. For example, services like Flickr, Shutterfly and Webshots and a host of others allowed users to easily share photographs with one another. Services like Blogger allowed ordinary users to express their views in writing on any topic and publish those thoughts to the world. I saw YouTube as a next step in the evolution of user-generated content services, one that would allow ordinary users to express themselves to the world through the medium of video. I felt that the growth potential for such a platform was enormous given the rapid spread of personal video cameras and the growing availability of broadband Internet connectivity to ordinary consumers.</p>	<p>premium content on its site to Mr. Botha. See CS ¶ 6-7, 9. In an email to Mr. Botha, YouTube drew similarities between itself and the website Flickr, stating that “copyrighted and inappropriate content will find its way onto the site... The actual removal of this content will be in varying degrees... That way, the <i>perception</i> is that we are concerned about this type of material and we’re actively monitoring it. [But the] actual removal of this content will be in varying degrees.” (emphasis added) (Tab 63)</p>
223.	<p>5. In at least two separate meetings in or about August or September 2005, the YouTube founders described their vision of the service to me and certain Sequoia partners. In those meetings, the founders emphasized that their aim was to develop a platform to be used for the sharing of user-generated content online. Attached hereto as Exhibit 1 is a true and correct copy of the presentation that the YouTube founders presented to me and certain partners at Sequoia regarding their vision for the service in September 2005. In describing the company’s purpose, the founders stated: “The</p>	<p>founders’ goal was to increase traffic as fast as possible in order to “sell out quickly.” CS ¶ 6. The founders and Mr. Botha knew that their traffic depended on infringing professionally-produced content. Sequoia itself expressed concern, prior to its investment, that the site might not “ever gain a significant audience, gain significant traffic or traction, given the focus on user-generated videos” (Botha dep. at 32). In April 2006, Chad Hurley emailed an article to Mr. Botha noting that according to the articles author, a survey of YouTube’s most popular videos were 90% copyright protected professionally produced content (Tab 192). In June 2006, Botha wrote that it was “it was critical to provider consumers with... professionally-produced content on the YouTube</p>

	<p>company's goal is to become the primary outlet of user generated video content on the Internet, and to allow anyone to upload, share, and browse this content." Their presentation to us went on to explain the reasons why they believed a service like YouTube was then poised for significant growth: "Digital video recording technology is for the first time cheap enough to massproduce and integrate into existing consumer products, such as digital photo cameras and cell phones, giving anyone the ability to create video content anytime, anywhere. As a result, user-generated video content will explode."</p>	<p>platform" Tab 286 (Bates SC 009405); Tab 282 (Lamond Tr. at 107:21-109:2; 111:11-112:20). In fact, YouTube deliberately gained its audience through premium entertainment content on its site, not "user-generated video." <i>See</i> CS ¶ 223.</p>
224.	<p>6. At no time during our pre-investment meetings with the YouTube founders did any of the founders express any interest in profiting from the sharing of unauthorized copyrighted material through the service or in having the service grow by virtue of the presence of such content. Indeed, the founders did not merely say that user-generated content was their focus, they offered that focus as the rationale for Sequoia to expect the company to grow, and as a means of differentiating YouTube from other online video services in existence at the time.</p>	<p>Disputed, <i>see</i> CS ¶ 223. Class plaintiffs also dispute this statement because Mr. Botha refused to testify at his deposition concerning a pre-investment meeting where copyright issues were discussed. Accordingly, Mr. Botha cannot now testify to statements that were made during pre-investment meetings about copyrighted material on the site.</p>
225.	<p>7. Following our meetings with the YouTube founders, I prepared an investment memorandum for the Sequoia partnership summarizing what the founders had communicated to us in our meetings and providing a recommendation that Sequoia invest in YouTube. A true and correct copy of the investment memorandum I prepared is attached hereto as Exhibit 2. I led off my memorandum by</p>	<p>Disputed, <i>see</i> CS ¶ ... Mr. Botha highlighted in other memoranda the "critical" need for YouTube to show "professionally-produced content." The fact that YouTube depended on large amounts of unauthorized premium content on the YouTube site was also communicated to Mr. Botha. <i>See</i> CS ¶¶ 6-7.</p>

	<p>recounting the company's objective of becoming the "primary outlet of user generated video content on the Internet" and throughout the memorandum I highlighted statements from the founders about how such original user content was the engine that would drive the service.</p>	
226.	<p>8. Following my recommendation, Sequoia offered and YouTube accepted an investment in the company in the fourth quarter of 2005. Attached hereto as Exhibit 3 is a true and correct copy of the press release YouTube subsequently issued announcing Sequoia's investment. In that release, on behalf of Sequoia, I reiterated our vision of the YouTube service which mirrored that expressed to me repeatedly by the company's founders: "We are very excited to be involved with YouTube at a time when consumers are poised to benefit from all the consumer electronics available. The demand for user-generated content continues to grow exponentially." "We've already seen user-generated content blossom in text through blogging, in photographs through services like Flickr and Shutterfly, and in audio through podcasting. YouTube is pioneering the next wave to become Internet's premier video service."</p>	<p>Class plaintiffs dispute that the quoted prepared statement "reiterated our vision of the YouTube service" or "mirrored that expressed to me repeatedly by the company's founders."</p> <p><i>See CS ¶¶ 6-7.</i></p>
227.	<p>10. After Sequoia's initial investment, YouTube experienced extraordinary and rapid growth. As I had witnessed firsthand, the service made it simple for the average person to upload a video they wanted others to see. The service was just as intuitive and accessible for potential audiences. Within just a few months,</p>	<p>Class disputed dispute any inference that YouTube was a "destination" for users looking for user-generated content. YouTube was primarily a destination for users looking for premium entertainment content.</p> <p><i>See CS ¶¶ 25.</i></p>

	as online video consumption soared, YouTube became the online destination of choice for anyone looking to share their videos, and correspondingly, the online destination of choice for those interested in watching those videos.	
228.	13. YouTube did not know who held the copyright in the Lazy Sunday clip, who had uploaded it to YouTube, whether that person had advance approval from the copyright holder to upload it, whether the copyright holder subsequently approved of the presence of the clip on YouTube even if the copyright holder had not done so in advance, or even whether such approval was required. But in light of the attention the clip had garnered, the company's CEO, Chad Hurley, wrote to NBC Universal asking whether NBC was aware of the clip and whether NBC wanted it to remain on the service or wanted YouTube to immediately remove it. For five weeks, YouTube heard nothing at all from NBC, and with NBC's knowledge, the Lazy Sunday video remained accessible on the YouTube service, continuing to generate large numbers of user views as well as national press attention.	Mr. Botha and YouTube did know who owned the rights to the "Lazy Sunday" clip. As Mr. Botha testified at his deposition, YouTube "notified the owners of that show" – NBC – that the clip was on their site. Soon after NBC formally demanded that it be taken down, along with "thousands" of other clips. YouTube later offered content identification tools to NBC in exchange for NBC licensing its content to YouTube and agreeing to use those tools to "claim" and not "block" its content from the site. (Tab 205)(Botha Tr. 153) See CS ¶ 94-96
229.	14. The Nike and Lazy Sunday experiences and many others like them helped shape my thinking about how YouTube should handle the presence on the service of potentially unauthorized copyrighted materials. Throughout my tenure on YouTube's board, this was one of the principal issues the company grappled with. From the start, YouTube recognized that in an environment in which users could upload content of their choosing to the service, some users	YouTube had the ability to determine what content on its website was infringing and what was not. In fact, YouTube exercised that ability, but only on behalf of favored content owners. Mr. Botha presents no evidence for his conclusion that YouTube did not have such an ability. The "policy measures" outline by Mr. Botha were ones that YouTube (and Mr. Botha) knew were ineffective, or were only offered to favored content partners. See CS ¶¶ 16, 33, 94-96.

	<p>would disregard the company's prohibitions and desires and upload material to the service that they did not have the right to share. The company recognized, however, that it had no practical ability to make determinations regarding whether each of the tens of thousands of clips being uploaded to the service every day had been uploaded or approved by the copyright holder or was otherwise authorized by law. Accordingly, the company discussed and supported a host of innovations and policy measures aimed at reducing the incidence of unauthorized copyrighted material on the service. These included, among many others: (1) the institution of a ten minute time limit for the length of videos that could be uploaded to the service to prevent users from uploading full-length television episodes or films; (2) development of an easy-to-use interface through which content owners could identify what they claimed to be their content on the service and request that YouTube remove it at the touch of a button; and (3) fingerprinting technology that would block any user from uploading to the service a file that had previously been removed from the service based on allegations of copyright infringement. Later, the company selected and implemented a more robust, audio fingerprinting technology to assist content owners in locating videos on the service and allow them to determine whether they wanted those videos to remain.</p>	
230.	15. During my association with the company, management and the board worked hard to strike the appropriate balance between preserving the ability of users to express themselves	Disputed, <i>see</i> CS ¶¶ 16, 33, 25, 160, 164, 167.

	<p>freely through the YouTube service while at the same time enabling content owners to detect and address what they perceived to be the unauthorized use of their material. At no time, however, based on my observations and participation in the strategic and policy decisions the company made, did the company desire to profit from unauthorized copyrighted material on the service or to have the service used as a platform for the sharing of unauthorized copyrighted content.</p>	
231.	<p>16. I felt very strongly as a member of YouTube's board of directors that, legal issues aside, the company should not encourage, and that it should explicitly discourage, the sharing of unauthorized copyrighted material. I believed that the presence of such content on the service undermined YouTube's business objectives by alienating copyright holders, including major media companies, with whom YouTube had reached or wanted to reach advertising and content syndication deals. Moreover, from my perspective as a major investor in the company, I believed that if the company did not demonstrate its respect for copyright law, the service would be unattractive as an acquisition target and/or unable to sell its stock to the public. For these and related reasons, throughout my association with YouTube, the company actively cooperated with copyright holders to reduce the incidence of unauthorized copyrighted material on the service</p>	<p>To become a lucrative acquisition target, YouTube knew that it needed to increase traffic and attract a huge audience, and it knew that its traffic depended on the unauthorized premium content that its users came to the site to see. <i>See</i> CS ¶ 25. And despite Google's view that YouTube's "business model was completely sustained by pirated content," Google decided it was an acceptable risk given the value of the huge audience YouTube had created based on that content.</p> <p><i>See</i> CS ¶ 29.</p>
	Declaration of Michael Solomon	Evidence Contravening Declaration of Michael Solomon

232.	<p>4. When a user uploads a video, the user also provides a title of his own making for the video and chooses "tags," or keywords, that the user believes describe the video. For instance, a surfing video might be tagged with "surfing," "water," and "waves," and be titled "Sarah's 30th Birthday." Like the title the user provides for the video, the choice of tags is completely up to the user. Similarly, the user selects a category from the broad selection of categories presented by the YouTube system that the user believes fits the uploaded video. The selection of category is entirely within the user's discretion.</p>	<p>Defendants use these different metadata fields [REDACTED] to [REDACTED] to control what gets watched on the site. All of these fields are indexed in YouTube's search algorithm, which uses them to match future user queries to produce the most relevant results. YouTube also runs its own "advanced text search" tools to identify content using these indexed metadata fields. In addition, videos uploaded by content partners are marked as partner videos by YouTube.</p> <p>(Tab 288) (Kacholia Tr. at 57:1-58:14; 180:16-181:17)</p> <p><i>See CS ¶ 94.</i></p>
Michael H. Rubin Declaration		Evidence controverting Michael H. Rubin Declaration
233.	<p>4. Attached hereto as Exhibit 69 is a table that I prepared identifying a selection of documents produced in discovery by the parties and third parties showing instances in which various companies sent to YouTube takedown notices for videos they had uploaded or authorized to appear on the YouTube site, including cases that resulted in the suspension or termination of their YouTube accounts. True and correct copies of the documents identified in that table are attached hereto as Exhibits 70-83. The information contained in the table is drawn from the underlying exhibits.</p>	<p>Class plaintiffs dispute any inference that there were more than an insignificant number of "instances in which various companies sent to YouTube takedown notices for videos they had uploaded or authorized to appear on the YouTube site." Defendants here cite to 14 purported examples of such instances, but admit that 4.7 million videos were removed from the YouTube website pursuant to takedown notices alone. Declaration of Zahavah Levine, ¶ 26. These only account for the works or infringements for which Defendants received a formal notice from the copyright claimant, not all the other videos that it knew were infringing, even in the absence of such a notice.</p> <p><i>See CS ¶¶ 33, 94-96.</i></p>
234.	<p>8. Viacom employee Michael Housley submitted a declaration in the Viacom action in early 2008 attesting to the time-consuming, multi-step, multireview process that Viacom used to identify its Clips in Suit. A true and correct copy of the February 28, 2008</p>	<p>Class plaintiffs dispute that the statement is relevant or material to this action. Class plaintiffs further refer the court to the Counter Statement of Facts submitted by the Viacom plaintiffs in the <i>Viacom</i> action.</p>

	Declaration of Michael Housley is attached hereto as Exhibit 118.	
235.	<p>17. In response to YouTube's Request for Production No. 140, which sought "one copy of each video file used in connection with the promotion or marketing of any work in suit," Viacom agreed to produce the requested files with two exceptions: they would not produce (i) promo videos shorter than 30 seconds or (ii) multiple versions of promo videos where the only difference was the "call to action." Attached hereto as Exhibit 130 is a true and correct copy of Viacom's Amended Responses and Objections to YouTube's Fourth Set of Requests for Production. Viacom ultimately produced a number of DVDs that they told me contain promo videos. I reviewed many of the promo videos on those DVDs and compared them to certain of the Viacom Clips in Suit. Based on this analysis, I have determined that many of Viacom's Clips in Suit are indistinguishable from the promo videos it produced. Attached hereto as Exhibit 131 is a chart showing a sample of more than one hundred Clips in Suit that appear indistinguishable from promo videos that Viacom produced. Exhibits 132A through 176B constitute the promo videos identified on Exhibit 131, while Exhibits 177A to 310B constitute the Clips in Suit identified on Exhibit 131. The "A" version is the original file format and the "B" version is a copy of the same file converted to the MPEG file format. For the promo videos, the Version A files were produced by Viacom in this action; for the matching YouTube videos, the Version A files are versions of the "Flash" (or ".flv")</p>	<p>Class plaintiffs dispute that the "analysis" purportedly conducted by Mr. Rubin is relevant or material to this action. Class plaintiffs further refer the court to the Counter Statement of Facts submitted by the Viacom plaintiffs in the <i>Viacom</i> action.</p>

	files, as stored on YouTube's servers (see Declaration of Michael Solomon, submitted concurrently, at ¶ 12, which explains the manner in which those videos were obtained from YouTube's servers).	
236.	18. I have reviewed documents and testimony that cumulatively reference thousands of clips authorized by Viacom to be posted on YouTube. This includes, <i>inter alia</i> , whitelists provided by Viacom to BayTSP; DMCA counter notices from Viacom and its marketing agents sent to YouTube after Viacom mistakenly took down its own authorized videos; reports from Viacom's marketing agents, such as ICED Media, Fanscape, and Wiredset, detailing their uploads to YouTube; email correspondence among members of Viacom's various marketing departments; and the accounts on the YouTube website of the usernames that Viacom admitted in response to Requests for Admission were used by Viacom for its authorized uploads.	Mr. Rubin fails to cite any of the "documents and testimony" that he purportedly "reviewed," and Class plaintiffs dispute that Mr. Rubin's "review" of unspecified material is admissible evidence or relevant or material to this action. Class plaintiffs further refer the court to the Counter Statement of Facts submitted by the Viacom plaintiffs in the <i>Viacom</i> action.
	Certain Statements in Defendants' Memorandum of Law	Evidence Coming Governing Certain Statements in Defendants' Memorandum of Law
237.	Def. Mem. at p. 5: Although it only scratches the surface, a short video called "This Is YouTube," which can be found at http://www.youtube.com/watch?v=ojqWcILOxk and is also attached to this brief, provides a useful introduction to the array of creative and inspiring material found on YouTube. <i>See</i> Schapiro Ex. 2.	This video was self-servingly created and uploaded by YouTube to the YouTube website on March 4, 2010, the day before defendants' summary judgment motions were due. Class plaintiffs dispute any inference that this cherry-picked video is representative of the content on YouTube, or that it is representative of the content that primarily draws viewers to the YouTube website. (Tab 276) (Screenshot from www.youtube.com - "This is YouTube")

238.	Def. Mem. at pp. 37 and n.12: The melodies and lyrics of many of the putative class plaintiffs' musical compositions—and the video footage that plaintiff Tur has put at issue likewise would not be readily recognizable to YouTube.	With respect to the titles of works cited by defendants, class plaintiffs dispute any inference that YouTube was without information to identify the videos on its website that infringed those works, and note that, in addition to the video and audio content, the titles, descriptions and other metadata associated with the videos make plain that the videos were likely infringing of class plaintiffs' premium copyrighted content (for example, by identifying the song and the artist or composer). The metadata for YouTube videos that infringe the works cited by defendants is attached as Gitterman Decl., Ex. 1.
239.	Def. Mem. at pp. 38 and n.13: Plaintiffs cannot seriously contend that it would have been apparent to any reasonable service provider "from a brief and casual viewing" of short clips from works like these that they misappropriated plaintiffs' copyrighted content.	With respect to the videos cited by defendants, containing certain of class plaintiffs' "clips in suit," class plaintiffs dispute any inference that YouTube was without information or reason to believe that these were what they appeared to be, and note that, in addition to the video and audio content, the titles, descriptions and other metadata associated with the videos made plain that they were likely infringing of class plaintiffs' premium copyrighted content (for example, by identifying the song and the artist or composer, or the sports match being played). The metadata for the videos cited by defendants are attached as Gitterman Decl., Ex. 2. Class plaintiffs also note that defendants misdescribe Schapiro Ex. Ex. 193A/193B (Def. Mem. n. 13). In fact, as the description for the video makes plain, the video contains the song "I'm confessin'" performed by Lizz Wright. The publishing rights to that song are owned by plaintiff Bourne Company. <i>Id.</i> at 2, cell D5.
Additional Statement of Material Facts		
	Class plaintiffs' additional material facts	Evidence
240.	More than two years after YouTube's launch, music represented the majority of playback queries, all of	<i>See</i> CS ¶ 25. <i>See also</i> Statement 241, below.

	which were for established and well-known music stars. In May 2007, music was the most-searched category on YouTube.	
241.	Legal use of music involves two distinct copyrights, one in the sound recording and a second in the underlying musical composition. Music publisher authorization to use the underlying musical composition embodied in a song is required in virtually every scenario where music content is posted to the site. YouTube was aware of the need to obtain publisher licenses for all music content posted on the site, including by individual users, and that such publisher licenses might be required from multiple publishers for a single sound recording.	<p><i>See Tabs 66, 72, 157, 170, 194, 200, 206, 270, 311, 317-322.</i></p> <p><i>See also, Class SUR ¶ 24.</i></p> <p>(Tab 320) (King Tr. 6:25-7:2) (King started in January 2007)</p> <p>(Tab 317) (GOO001-01401528)</p> <p>(Tab 318) (“For music content, we need the following information before we can consider our license complete: Sound recording license from label. Composition licenses from publishers totalling 100%) (GOO001-01517877-78)</p> <p>(Tab 199) (“we have been delaying sharing the CYC tool with music partners until the publisher deals are in place. However does it makes sense to share the tool with UPAG and EMI label with the understanding that they can only claim official label produced videos where they already have the rights.”)</p>
242.	David King proposed building content management tools that would allow copyright owners to have insight into what was happening with their content on YouTube, however YouTube recognized the potential for conflicting directives from record labels and music publishers, and did not want to remove videos from the site in the event the owner of a sound recording claimed user-generated content, but did not have music publisher authorization.	<p>(Tab 157) (GOO001-01179621)</p> <p>(Tab 72) (GOO001-01905261)</p>
243.	YouTube delayed offering use of its content management tools until it had	<p><i>See Statement 241 above.</i></p> <p><i>See also, (Tab 161) (EMI Music Marketing -</i></p>

deals in place with large music publishers. During 2007, YouTube entered into licensing relationships with publishers EMI Entertainment World, Inc., Sony/ATV, and Universal Music Publishing. These publisher licensing deals required the music publisher to enter into agreements allowing the record label to pass through licensing rights from the publisher to YouTube for content produced by the record label. The publisher licensing deals also authorized YouTube to use such publisher's compositions when included in user-generated content.	Schedule 2: providing for "audio fingerprinting" and "text-based searches in the User-inputted metadata"); SonyATV (GOO001-09684819-850) (Tab 170) (2(a): providing for "a content identification and filtering solution at least as good as the industry standard solution" including "[a]udio fingerprinting" and "text-based searches") (Tab 322) (GOO001-09595431) (Tab 323) GOO001-09595472) (Tab 321 (GOO001-09684720) (UMPG Agreement)
---	--

Dated: New York, New York
April 30, 2010

Respectfully submitted,

Charles S. Sims

Charles S. Sims
William M. Hart
Noah Siskind Gitterman
Elizabeth Anne Figueira
PROSKAUER ROSE LLP
1585 Broadway
New York, NY 10036
Telephone: (212) 969-3000
Email: csims@proskauer.com
-and-

Max W. Berger
John C. Browne
BERNSTEIN LITOWITZ BERGER &
GROSSMANN LLP
1285 Avenue of the Americas
New York, NY 10019
Telephone: (212) 554-1400
Email: mwb@blbglaw.com
*Attorneys For The Football Association
Premier League Limited, Bourne Co., Murbo
Music Publishing, Inc., Cherry Lane Music
Publishing Company, Inc., Robert Tur d/b/a
Los Angeles News Service, X-Ray Dog Music,
Inc., and Fédération Française de Tennis and
Proposed Class Counsel For The Prospective
Class*

Louis M. Solomon
Hal S. Shaftel
Cadwalader, Wickersham & Taft LLP
One World Financial Center
New York, NY 10281
Email: louis.solomon@cwt.com
*Attorneys For The Football Association
Premier League Limited*

Daniel Girard
Aaron Sheanin
Christina Connolly Sharp
GIRARD GIBBS LLP

Facsimile: (212) 719-4677
-and-
Jeffrey L. Graubart
LAW OFFICES OF JEFFREY L.
GRAUBART
350 West Colorado Boulevard, Suite 200
Pasadena, California 91105-1855
Telephone: (626) 304-2800
Facsimile: (626) 304-2807
-and-
Steve D'Onofrio
5335 Wisconsin Avenue, N.W. Suite 950
Washington, D.C. 20015
Telephone: (202) 686-2872
Facsimile: (202) 686-2875
*Attorneys for The Music Force Media Group
LLC, The Music Force LLC, and Sin-Drome
Records, Ltd.*

TO:

Andrew H. Schapiro, Esq.
A. John P. Mancini, Esq.
Matthew D. Ingber, Esq.
MAYER BROWN LLP
1675 Broadway
New York, NY 10019-5820
Telephone (212) 506 2500
Facsimile (212) 262 1910

David H. Kramer, Esq.
Michael H Rubin, Esq.
Bart E. Volkmer, Esq.
WILSON SONSINI GOODRICH & ROSATI
650 Page Mill Road
Palo Alto, CA 94304
Telephone (650) 493 9300
Facsimile (650) 493-6811

Attorneys for Defendants

A-468

LEFT BLANK INTENTIONALLY

To: "ellerson@google.com" <ellerson@google.com>
From: "veedub@google.com" <veedub@google.com>
Cc:
Bcc:
Received Date: 2007-08-09 07:42:22 GMT
Subject: Re: Categories 2.0 Product Review Slidedeck

Hi Alex,

This is AWESOME - thanks so much for sharing!! Really highlights the need for us to get more premium content onto the site. But you already knew that :)

Is there any way we can get this data on an ongoing basis? (or anything I can do to help on this front?)

Some questions to help me better understand this data...

1. Do the Search query #'s include Google Search + YT Search, or just YT Search? Would be interesting to see how many of those views are coming from G-Search, esp. as we start down the path of automating Vertical-targeted YT-video embeds in Google Search results (Sara and I talked with Philip about this today).
2. What's SRP? Did a search and found "Suggested Retail Price" :)
3. Does this mean [REDACTED] playback are for Signed / Major Label Musicians?

- If so, then [REDACTED]
Top 100 Content Searches (searches that resulted in a playback) are for premium content?
 - I'm guessing the vast majority of what was watched was actually NOT uploaded by the copyright holder, is that your guess too?
- 4. Was there nothing other than TV in what was played back / searched for under Entertainment?

One last Q: Please remind me again of when you might be in SBO next so we can be sure to meet then.

Thank you!
V :)

On 8/8/07, Alex Ellerson <ellerson@google.com> wrote:

>
> Great stuff, Virginia! Be sure to let us know how we can assist.
>
> I thought you might also be interested to see some query analysis that I did a month or so ago. The data below is with respect to the Top 100 queries. I've sensed also looked at slices of queries at about the 3000 mark, and 9000 mark to see if these percentages hold down the query stream, and they continue to hold at roughly the same percentages.
>
> I think this data is intriguing as it does more than determine whether or not a query is for "music," or "entertainment"; it also indicates whether a music query or ent. query is for *premium* content specifically in those respective categories (and to accomplish that assessment really requires human review).

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>
> Just fyi.
>
> I analyzed two categories of query stream data: First, "playback queries "
> (i.e., queries for those playbacks that were referred from search); and
> second, "search queries" (i.e., queries that generated SRPs, but not
> necessarily playbacks).
>

> Of the Top 100 Playback Queries:

>
>
>
>
>
>
>
>
>
>

> Of Music, [REDACTED] were well-known stars, albeit not always stars in the US
> market. Of music:

>
>
>

> Of "Premium" content queries:

>
>
>
>
>
>

> Of the Top 100 "Search" Queries:

>
>
>
>
>

>
>
>
>
>

> Of "Premium" content queries:

>
>
>
>
>

> On 8/7/07, Virginia Wang <veedub@youtube.com> wrote:

>
> Hi all,

> >
> > Here's the deck presented to Chad in today's Product Review. Overall
> > seemed to go ok though (as we all know) there is a ton of work yet to be
> > done. Notes are below.
> >
> > Community Editors (CMs) - Will review this with you in tomorrow's Weekly
> > Categories Check-in Meeting.
> >
> > BD/PSO - Slide 10 is the mock for v23 (not final yet, but is closer to
> > it than the one we looked at yesterday). Will send a separate email with a
> > wireframe layout of what we're hoping for come Q1 2008.
> >
> > Eng - There's a lot on here, but of course you'll have a chance to scope
> > and sanity check what's buildable before any firm launch commitments are
> > made.
> >
> > Please shout if you have questions!
> >
> > Thanks,
> > V :)
> >
> >
> >
> > ----- Forwarded message -----
> > From: Virginia Wang <veedub@youtube.com>
> > Date: Aug 7, 2007 3:47 PM
> > Subject: Categories 2.0 Product Review Slidedeck
> > To: Chad Hurley <chad@youtube.com>, Hunter Walk <hunter@google.com>,
> > Maryrose Dunton <maryrose@youtube.com>, Karen Seto <kseto@youtube.com>,
> > Sakina Arsiwala <sakina@google.com>, Shashi Seth <shashis@google.com>,
> > erik klein <erik@youtube.com>, Glenn Brown <gbrown@google.com>, Mia
> > Quagliarello <mquagliarello@google.com>, Zahavah Levine <
> > zahavah@google.com>
> > Cc: maxcy@google.com, Kevin Yen <kyen@youtube.com>
> >
> > Thanks to those who could make it! Thanks especially to Karen Seto for
> > taking notes (below).
> >
> > Please let me know if you have questions. Will be setting up that
> > follow-up meeting soon to discuss the current lists of Categories and
> > Subcategories.
> >
> > V :)
> >
> >
> > *Product Review: Categories - 8/7
> > speaker: veedub
> > attendees: chad, mrd, hunter, zahavah, mia, klein, glenn, shashi,
> > karen; sakina
> >
> > *decisions made/open issues: *
> >
> > 1. rename games & gadgets (to "science & technology") - make more
> > general so we can expand
> > 2. before we rollout, have signoff for each of the category names
> > 3. p.8 -- q1: take voting out (don't want digg style)
> > 4. trusted users process via: natural clustering ("tastemakers"),
> > viewcounts, or

> > 5. switching category names is very difficult
> > 1. hard-cut categories from other categories
> > 6. category name changes doable - and localized
> > 7. categories are very hidden from users
> > 8. chat: if there's ability to search by age, potentially
> > problematic - keep in mind
> > 9. think about how to integrate channels, groups into categories?
> > 1. last tab: categories that combines all 3: music
> > channels, music groups OR
> > 2. allow for cross-pollination... OR
> > 3. bring back home tab
> > 4. no concept of "music.youtube.com" ?
> > 10. go through discussion points: p. 11
> > 11. int'l (e.g. hongkong, russia): ppl like to browse more than
> > type
> > 12. v23 - first rollout, will go through product review process
> > 13. explore ebay, itunes setup -- their cate/sub-categories (file
> > view), is there a way to get the holistic picture for us?
> >
> >
> >
> >
>
>
> --
> If you received this communication by mistake, please don't forward it to
> anyone else (it may contain confidential or privileged information), please
> erase all copies of it, including all attachments, and please let the sender
> know it went to the wrong person. Thanks.

--
V :)

Virginia Wang
Product Manager, YouTube
veedub@youtube.com
[REDACTED] direct

To: "Ali" <aliza@youtube.com>
From: "Chris Maxcy" <maxcy@google.com>
Cc: "Kevin Yen" <kyen@google.com>, "Kelsey LeBeau" <klebeau@google.com>
Bcc:
Received Date: 2007-08-14 05:37:31 GMT
Subject: Re: Warner Music - search results

Thanks Ali,

Any chance we could get the product team to mock up the 'crowd source' concept as well as how the one box will look? Just showing this to partners (and to the SPM/D's).

On 8/13/07, Ali <aliiza@yahoo.com> wrote:

> fyl...
>
> Chris I mentioned this convo to you earlier today...
>
> ----- Forwarded message -----
> From: Ali <aliza@youtube.com>
> Date: Aug 13, 2007 4:39 PM
> Subject: Re: Warner Music - search results
> To: Rami Bitar <rami@google.com>
> Cc: shashis@google.com, Matthew Liu <matthew@youtube.com>
>
> Thanks Rami.
>
> Shashi, I know the google search product is never to change our sea
> algorithms to favor partner content - I would never suggest this nor w
> Warner expect it.
>
> My point is --

- > when a user types in a set of keywords "Artist name+ song", shouldn't the official content show up first ahead of pirated versions?
- >
- > in what instance can we justify showing a copyrighted version above the official one?

- > a call would be helpful regardless of how useful we think it would be – I
- > guarantees from a relationship management standpoint, they will greatly value any background we can give

>
> On 8/13/07, Rami Bitar <rami@google.com> wrote:
>
>>> Just so I can explain my thinking here: we should never be in the
> business of changing our search algorithms to favor content based on who the
> owner is.

>> Agreed, our current plan is to use

>> We also plan to launch a partner one box that will trigger a channel

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> > result when a query highly matches a channel (ie, "BBC") -- but this won't
> > be release until v24 (October 31) at best.
>
> > > But they have requested we set up a call with their engineers and a
> > few folks from our product team so they can find out anything else they can
> > be doing to better the search experience so their video results show up at
> > the top when say someone types in "madonna like a prayer"
>
> > Sure thing -- we should include David Stoutamire who is the Tech Lead in
> > Mountain View on search quality. My only hesitation is that they have
> > strict policies against discussing ranking (even at a high-level) with
> > anyone at Google much less outside of Google, so I'm not sure how useful the
> > discussion will be.
>
> > David might still be on vacation but I'll start a thread (and CC you) to
> > setup a time for this call.
>
> > Best,
>
> > Rami
>
>
> > On 8/9/07, Shashi Seth <shashis@google.com> wrote:
> >
> > > Just so I can explain my thinking here: we should never be in the
> > > business of changing our search algorithms to favor content based on who the
> > > owner is. In search the same requests come to us from NY Times and Wall
> > > Street Journal - who claim that their content should always be placed higher
> > > than anybody else.
> > >
> > > The onebox achieves this by keeping the search results the same
> > > because our algorithm picked it based on ranking/relevance, etc. - yet lets
> > > the user know that the onebox simply points out where the "original" content
> > > lives.
> > >
> > > Shashi
> >
> > > On 8/9/07, Shashi Seth <shashis@google.com> wrote:
> > >
> > > > I will let Rami reply to this, but in my opinion the only way we can
> > > do this through a "onebox" which shows "original" content first when an
> > > exact (or very high confidence) match happens. I think this is on Rami's
> > > roadmap - but not sure when.
> > >
> > > Shashi
> > >
> > > > On 8/9/07, Ali <aliza@youtube.com> wrote:
> > > >
> > > > Hey Rami, Shashi,
> > > >
> > > > Warner Music has been asking for some time now, for further
> > > > clarity around our YT search results. As you can imagine, they are a bit
> > > > frustrated with copyrighted versions of their videos showing up first in
> > > > search results. I know this is not an easy fix and part of a much larger
> > > > effort we continue to work on. But they have requested we set up a call
> > > > with their engineers and a few folks from our product team so they can find
> > > > out anything else they can be doing to better the search experience so their
> > > > video results show up at the top when say someone types in "madonna like a

> > > > prayer"
> > > >
> > > > http://www.youtube.com/results?search_query=madonna+like+a+prayer&search=Search
> > > >
> > > >
> > > > or "the white stripes"
> > > >
> > > > http://www.youtube.com/results?search_query=the+white+stripes&search=Search
> > > >
> > > >
> > > > they seem to come up second, or further down the chain almost
> > > > every time. In these cases, their videos should be showing up first. Are
> > > > you the correct person to involve? They understand we will not be giving
> > > > them a clear solution on this call, but want to better understand our
> > > > product and vision. Let me know who else I should include. Hoping to set
> > > > this up for Monday or Wed of next week.
> > > >
> > > > Thanks,
> > > > Ali
> > > >
> > > >
> > > >
> > >
> > >
> > > --
> > > Shashi Seth
> > >
> > > What Primetime? There is no more Primetime! YouTube users decide
> > > when it is primetime - and that will change the dynamics of TV and Video
> > > advertising.
> > >
> > >
> > >
> > >
> > > --
> > Shashi Seth
> >
> > What Primetime? There is no more Primetime! YouTube users decide when
> > it is primetime - and that will change the dynamics of TV and Video
> > advertising.
> > >
> >
> >
> >
> > --
> > Rami Bitar
> > YouTube-Google
> > [REDACTED]
> > rami@google.com
>
>
>
--

Chris Maxcy
YouTube.com

chris@youtube.com

Figueira Decl. Tab

200

FINGERPRINT 409-671-4399

To: "Dean Yasuda" <dumbunny@google.com>
 From: "klebeau@google.com" <klebeau@google.com>
 Cc: "Yi-Ling 'Su'" <yilingsu@google.com>, "Franck Chastagnol" <franckc@google.com>, "Christopher LaRosa" <clarosa@google.com>
 Bcc:
 Received Date: 2008-03-13 04:12:51 GMT
 Subject: Re: Live: Suspicious number of AM YTB matches for UMG

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Request of Defendants

* Chris

Dean - Please see email below (forgot to copy Chris on the last one)

On Thu, Mar 13, 2008 at 9:11 AM, Kelsey LeBeau <kelsey@youtube.com> wrote:

> Dean -

> So, does this mean that track views are included in the per-play revenue
 > reports that we are providing for UMG? (If so, that is actually a good
 > thing - because we are currently "tracking" UMG videos that we don't have
 > the rights to monetize, but need to pay them on these views - though this
 > is a hack that we would want to fix for other partners)

>
 > Would it be possible to pull a report of the exhibitions of "tracked" UMG
 > videos. We need to decide if we want to change the policy to "Block" but it
 > is difficult where we don't know the revenue impact.

>
 > Thanks;
 >
 > Kelsey
 >
 >

> On Fri, Feb 1, 2008 at 2:31 PM, Dean Yasuda <dumbunny@google.com> wrote:

>
 >> None of the 4 music labels' reports have changed recently.

>
 >> They cannot change until they provide codes to distinguish Track from
 > Revenue Share, and/or additional file generation requests (UMG already gets
 > 8 monthly files, though).

>
 >> --Dean
 >>
 >>

>> On Feb 1, 2008 1:20 PM, Kelsey LeBeau <kelsey@youtube.com> wrote:

>>
 >>> Dean -

>>> are we including Track views in the revenue reports for UMG?

>>>
 >>> UMG started claiming content for which YT has not cleared publishing
 >>> at the very end of December. As a result, we cannot run ads. So, we have
 >>> set the policy for these to Track instead of Monetize. We are evaluating
 >>> whether we need to block these claims until publishing cleared.

>>>
 >>> Thanks,
 >>>
 >>> Kelsey
 >>>

> > >
> > > On Feb 1, 2008 1:11 PM, Yi-Ling Su <yilingsu@google.com> wrote:
> > >
> > > Yah if they were viewed at all for any significant amount of time,
> > > they'll show up there. I guess we can't really do anything about it then.
> > >
> > > thanks dean.
> > > >
> > > >
> > > > On Feb 1, 2008 1:08 PM, Dean Yasuda <dumbunny@google.com> wrote:
> > > >
> > > > If they are in ut_cyc_tracker_rollup_20080131, then they'll come
> > > > out in the monthly reports. The monthly revenue reports have not run yet.
> > > >
> > > > --Dean
> > > >
> > > >
> > > > On Feb 1, 2008 12:23 PM, Yi-Ling Su <yilingsu@google.com> wrote:
> > > >
> > > > > hey dean,
> > > > >
> > > > > there were about a 2 K claims that were created by mistake which
> > > > > i just closed. Will these still show up in the reports for jan?
> > > > >
> > > > > yi-ling
> > > > >
> > > > > ----- Forwarded message -----
> > > > > From: Yi-Ling Su <yilingsu@google.com>
> > > > > Date: Feb 1, 2008 12:22 PM
> > > > > Subject: Re: Live: Suspicious number of AM YTB matches for UMG
> > > > > To: Kelsey LeBeau <kelsey@youtube.com>
> > > > > Cc: Franck Chastagnol <franckc@google.com>, Jianliang Zhao <
> > > > > jlzhao@google.com>, George Salem <gsalem@google.com>, Frey Waid
> > > > > <frey@google.com>
> > > > >
> > > > >
> > > > > These audio fingerprinting claims from audible magic have been
> > > > > closed now. there were 1844 created between 2008-01-30 14:44:32 and
> > > > > 2008-02-01 10:38:44
> > > > >
> > > > >
> > > > > On Feb 1, 2008 10:30 AM, Yi-Ling Su <yilingsu@google.com> wrote:
> > > > >
> > > > > > When you turned on YTB db match, it actually starts generating
> > > > > > audio fingerprints for all claims.
> > > > > >
> > > > > > - Ones where they checked the box AND
> > > > > > - All their uploaded videos/web claimed content
> > > > > >
> > > > > > We don't necessarily have the rights to monetize the audio for
> > > > > > all these cases.
> > > > > >
> > > > > > yi-ling
> > > > > >
> > > > > >
> > > > > > On Feb 1, 2008 10:28 AM, Kelsey LeBeau <kelsey@youtube.com>
> > > > > > wrote:
> > > > > >

>>>>>> In all cases? or only where they checked the box?
>>>>>>
>>>>>>
>>>>>> On Feb 1, 2008 10:09 AM, Franck Chastagnol <
>>>>>> franckc@google.com> wrote:
>>>>>>
>>>>>>> This enabled creation of claim in case the audio of a
>>>>>>> video uploaded by a user would match audio of a music video uploaded by UMG.
>>>>>>>
>>>>>>> The risk is that lots of the music videos uploaded by UMG
>>>>>>> may not have pub rights cleared and therefore
>>>>>>> we would apply a policy Block to all those matches.
>>>>>>> But looking at the data it seems this is not the case and
>>>>>>> most of the matches get a RevShare policy.
>>>>>>>
>>>>>>> I'm confused though since the music videos have ISRC which
>>>>>>> are different from CDs ISRC (they are music video ISRC)
>>>>>>> and I thought these would not be in our publisher rights
>>>>>>> DB.
>>>>>>>
>>>>>>> Yi-ling, in case of a match against YTB, does the code
>>>>>>> check the pub rights are cleared ?
>>>>>>>
>>>>>>> Thanks,
>>>>>>> Franck
>>>>>>>
>>>>>>>
>>>>>>> On Feb 1, 2008 9:33 AM, Kelsey LeBeau <kelsey@youtube.com>
>>>>>>> wrote:
>>>>>>>
>>>>>>> My intention was to enable UMG to generate fingerprints
>>>>>>> from UGC claims when they check the "Claim Matching Video." What did I
>>>>>>> actually do?
>>>>>>>
>>>>>>>
>>>>>>> On Feb 1, 2008 9:21 AM, Jianliang Zhao <
>>>>>>> jlzhao@google.com> wrote:
>>>>>>>
>>>>>>> [+Kelsey]
>>>>>>>
>>>>>>> From the didya_browser, it seems it's Kelsey who made
>>>>>>> a change to UMG account on Jan 29. Kelsey, was it intended to enable AM YTB
>>>>>>> match for UMG?
>>>>>>>
>>>>>>>> 110536580 ADMIN *99348841*
>>>>>>>> CONTENT_OWNER 6 0 ADMIN_CONTENT_OWNER_UPDATE
>>>>>>>> content_owner_id:6 January 29, 2008, 02:12 PM 110536580
>>>>>>>> 10.1.2.31
>>>>>>>
>>>>>>> Thanks,
>>>>>>>
>>>>>>> Jianliang
>>>>>>>
>>>>>>> On Feb 1, 2008 9:10 AM, Jianliang Zhao <
>>>>>>> jlzhao@google.com> wrote:
>>>>>>>
>>>>>>> Someone enabled AudibleMagic YTB DB match for UMG.

--

Kelsey LeBeau
YouTube, Strategic Partner Manager
901 Cherry Avenue
San Bruno, CA 94066
Phone: [REDACTED]
Fax: [REDACTED]

This email may be confidential or privileged. If you received this communication by mistake, please don't forward it to anyone else, please erase all copies and attachments, and please let me know that it went to the wrong person. Thanks.

To: *David King* <dgking@google.com>
From: *Tony Li* <tonyli@google.com>
Cc: *Kyle Harrison* <kgharrison@google.com>, *Shuehan Bishop* <shuehan@google.com>, *Yi-Ling Su* <yilingsu@google.com>, *Kelsey LeBeau* <kelsey@youtube.com>, *Ellen Baldner* <ellen@google.com>
Bcc:
Received Date: 2008-02-16 10:03:37 GMT
Subject: Re: Metadata Catalog Requirements

Reflected here:
https://docs.google.com/a/google.com/Doc?docid=d0rsixid_130f2i73whs&hl=en

On Feb 15, 2008 10:03 AM, David King <dgking@google.com> wrote:

> Thanks for this. A few comments below.
>
> On Thu, Feb 14, 2008 at 10:43 PM, Kyle Harrison <kgharrison@google.com>
> wrote:

>> I wanted to clarify the functionality we discussed today regarding the
>> metadata catalog. Is the following accurate?

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>
>
>
>
>
>
>
>
>
>
>
> > --
> > Kyle Harrison
> > Product Management - YouTube
> > p: [REDACTED]
>
>
>

--
Tony Li
Associate Technology Manager
Google Partner Solutions Organization
tonyli@google.com
+1 [REDACTED]

Page 1 of 4

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Protective Order at
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From: Matthew Liu [mailto:matthew@youtube.com]
Sent: Friday, February 02, 2007 5:10 PM
To: Jim Schrempp
Cc: 'David King'; 'Lou Kvitek'; 'Franck Chastagnol'
Subject: Re: Separate YouTube fingerprint DB

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PE 100-001-9999

Ok. In that case then those remaining fingerprints for the "rest" (hopefully they would define this and not just mean hundreds of thousands of tracks) would be included in the new data set and have policy Block. From a YouTube perspective, we hope UMG never goes there but they very well might. We just don't want to be taking a default policy from P2P or from content that has not yet been cleared but is in the pipeline to be cleared. Right now that is the case because UMG, YT, publishers have not been able to clear the entire library. All teams are working on doing this as we speak.

On Feb 2, 2007, at 3:42 PM, Jim Schrempp wrote:

Hi Matt,
 Great,

So with respect to the idea of a business rule, I want to be really clear between us. Suppose we put this process in place. UMG gives us business rules for 10,000 tracks. Then they tell me, "ok, the YouTube rule for all the rest is 'Block'". How would I respond to that?

Best Regards,
 Jim

Audible Magic Corporation
 [REDACTED]

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 and may contain confidential information and trade secrets
 of Audible Magic. Unauthorized use or disclosure is
 prohibited.

From: Matthew Liu [mailto:matthew@youtube.com]
Sent: Friday, February 02, 2007 3:31 PM
To: Jim Schrempp
Cc: 'David King'; 'Lou Kvitek'; 'Franck Chastagnol'
Subject: Re: Separate YouTube fingerprint DB

Hi Jim,

So as I understand it, you currently have hundreds of thousands of songs
 fingerprinted for each record label. They labels will all have a default policy, in
 many cases blocked (for P2P, YouTube, other services). What we are asking is for
 you to create a separate reference set. This set would only be populated by
 fingerprints where the content partner has explicitly set a policy on an individual
 basis.

4/22/2009

Highly Confidential - Outside Counsel Eyes Only



AM 004638

The rationale here is that UMG would like us to identify videos that have gone through a strict process of rights clearances (explicitly rev. share or take down) and not content where that effort has not been made.

So as UMG clears content, they will explicitly denote the revenue share policy and we will want to include this information in the new data set. There will of course be tracks that cannot be cleared and they will explicitly denote the blocked policy. When we ping your servers to check our unknown fingerprints, this is the data set we would like to access (not the master set with hundreds of thousands).

Regarding WMG, we do not yet want to include them for production. The track policy is a temporary policy that they set (no longer viable) and we will want to them to explicitly denote revenue share or block for individual video items as well. Ideally, we will go along with the same process with them and the other labels. I believe I speak for the entire time when I say we are prepared to take on the small charges if they are required to onboard these partners.

Thanks,
Matt

On Feb 2, 2007, at 3:20 PM, Jim Schrempp wrote:

Hi,

A few questions -

I don't know what this sentence means "Your policy rules engine should not be used to populate this database. "

With the method below, if a content owner said, "the default for YouTube is block all" then we would put all of their fingerprints into the database. Is this correct?

We were/are ready to deploy WMG content, do you want us to put their fingerprints into production too? I think WMG has a default of "track" so this would mean that all the WMG fingerprints would go into the database.

I did say that it would be just the engineering charges to set this up for UMG, assuming that UMG is easy to deal with and the process is smooth.

If other labels join in this process then there might be a similar small charge to bring them on-board, assuming they are ready to go. If a label puts un-due burden on us, then we will have to charge you for this. I'm thinking of a very bad case where the label wants to start fuzzy matching song titles for business rules. If that's the case then it would not be cheap to do (and it would be a bad idea).

Jim

Audible Magic Corporation

[REDACTED]

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-----Original Message-----

From: David King [mailto:dgking@google.com]
Sent: Friday, February 02, 2007 10:46 AM
To: Jim Schrempp; Lou Kvitek
Cc: Franck Chastagnol; Matthew Liu
Subject: Separate YouTube fingerprint DB

Hi Jim,

Thanks for the call this morning. I've talked with a few people here and wanted to confirm our decision. You had suggested that, for the price of the consulting time it would take to set up, you could build up a YouTube specific database of reference fingerprints. This DB will be populated as our content partners deliver explicit track level policies, and will start out entirely empty until data is received. Our copy of the reference DB should only include tracks with policies as communicated by labels. Your policy rules engine should not be used to populate this database.

I will start an email thread with you and our first partner (UMG) right after this. Please provide them direct guidance on how you expect them to communicate the policy information, keeping us on copy of course. I add Lou to the conversation just to add some redundancy in the communication. Lou, can I keep you on copy with UMG?

Please call if you have any questions.

Regards,
David King

cell [REDACTED]

Matthew Liu
Product Manager
[REDACTED] | matthew@youtube.com

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Request of Defendants

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To: "Kelsey LeBeau" <kelsey@youtube.com>
From: "Yi-Ling Su" <yilingsu@google.com>
Cc: "Chris Maxcy" <maxcy@google.com>, "Christopher LaRosa" <clarosa@google.com>, "David G King" <dgking@google.com>
Bcc:
Received Date: 2008-02-29 10:37:12 GMT
Subject: Re: UMG to enable 100% Audio Claims

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On Fri, Feb 29, 2008 at 2:19 PM, Kelsey LeBeau <kelsey@youtube.com> wrote:

> Yi-Ling -
>
> Happy friday! A few quick items:
>

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Sorry, the last update was from Lou saying he was checking on something. I
just sent him an email back asking about status.

yi-ling

> Thanks,
>
> Kelsey
>
>
>
> --
> -----
> Kelsey LeBeau
> YouTube, Strategic Partner Manager
> 901 Cherry Avenue
> San Bruno, CA 94066
> Phon [REDACTED]
> Fax: [REDACTED]
>
>
> This email may be confidential or privileged. If you received this
> communication by mistake, please don't forward it to anyone else, please
> erase all copies and attachments, and please let me know that it went to the
> wrong person. Thanks.

To: "David G King" <dgking@google.com>
From: "Tracy Patrick Chan" <tracyc@youtube.com>
Cc:
Bcc:
Received Date: 2007-10-01 10:53:00 GMT
Subject: CYC & Reporting Question

Hey David -

The BD team is looking to actively get licensing deals from partners without a CYC obligation. If partners do indeed want to licence but not sign up for CYC, will that preclude them from getting the CYC reporting (both web and xml)? To be more precise, can we allow them to get access to the CYC reporting tools, but not the CYC claim tool? The BD team is worried that partners want the reporting of the CYC tool, but if they are not actively signed up for CYC, they could use the CYC tool to find potentially infringing content and sue us. Please let me know (especially if the scenario would require duplicate reporting efforts outside of CYC)!

Thanks,
Tracy

--

Tracy Patrick Chan
Youtube - Reporting & Analysis
Phone: [REDACTED]

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THE FOOTBALL ASSOCIATION)
PREMIER LEAGUE LIMITED AND)
BOURNE CO., ET AL., ON BEHALF)
OF THEMSELVES AND ALL OTHERS)
SIMILARLY SITUATED.,)

Figueira Decl. Tab

7 PLAINTIFFS,)
vs.) 07 CIV. 3582 (LLS)

9 YOUTUBE, INC., YOUTUBE, LLC)
AND GOOGLE, INC.,)

10 DEFENDANTS.

11 _____)
_____)
_____)

12 VIACOM INTERNATIONAL INC.,)
13 COMEDY PARTNERS, COUNTRY MUSIC)
14 TELEVISION, INC., PARAMOUNT)
PICTURES CORPORATION, AND)
BLACK ENTERTAINMENT)
TELEVISION, LLC.)

17 YOUTUBE, INC., YOUTUBE, LLC)
AND GOOGLE, INC.,)

18 DEFENDANTS.)

VIDEOTAPED DEPOSITION OF JIM PATTERSON
FRIDAY, DECEMBER 18, 2009
SAN FRANCISCO, CALIFORNIA

1 to look at the document?

2 A. Yes.

3 Q. Does the e-mail marked as Patterson
4 Exhibit 4 help clarify for you whether Patterson
5 Exhibit 3 is August 1st or January 8th?

6 MS. REES: Objection, lacks foundation.

7 THE WITNESS: It suggests one
8 interpretation of that date or the other.

9 MR. PLATZER: Q. Does the document
10 marked as Patterson Exhibit 4 refresh your
11 recollection as to the timeline as to when YouTube's
12 mobile website launched.

13 A. Yes.

14 Q. What --

15 A. It reflects my understanding but not my
16 direct recollection since I wasn't there.

17 Q. That's fair. What does it -- what
18 understanding does it refresh for you?

19 A. It suggests that we launched our mobile
20 website or version of our mobile website on March --
21 in March -- late March 2007.

22 Q. And at the point in time when YouTube
23 launched its mobile website, was the entire catalog
24 of YouTube videos available through the mobile
25 website?

A. When we launched a very early primitive version of our website, the entire catalog was not available. I'm not sure here when Dwipal is talking about launching the website if he was talking about that early primitive manual version of the website or if he's talking about an automated full-featured full catalog version of the website.

Q. You've used the term manual and automatic to refer to the YouTube website. I'd like to just ask you what you mean by those. Let's start off with manual.

A. Okay.

Q. You talked about a manual version of the website. What do you mean by that term?

A. I believe the history of it -- of our web syndication is that the -- in the very, very early days, we manually selected a small number of videos to syndicate to, for example, Verizon which we talked about. And then I believe the progression from there was we -- instead of delivering those videos to Verizon, we made that same small number of videos available on a web page that could be accessed by a mobile device. And then over time we automated that and made all, or nearly all, of the video catalog available on that web page for mobile

1 devices.

2 Q. Okay. And when you say you made the
3 videos available on the web page for mobile devices,
4 that means you transcoded it into the appropriate
5 format and then posted a copy of the access to the
6 mobile website?

7 A. Once we transcoded the video into a format
8 suitable for --

9 THE COURT REPORTER: I'm sorry. We
10 transcoded --

11 THE WITNESS: The video into a format
12 suitable for delivery to mobile devices.

13 MR. PLATZER: Q. So initially the videos
14 that were transcoded into a format suitable for
15 mobile devices were selected by YouTube employees
16 manually?

17 A. That's my understanding.

18 Q. And at some point in time the process was
19 automated so that the entire catalog was made
20 available in that manner?

21 A. All or nearly all, yes.

22 Q. About when did that switch happen from
23 videos that were selected manually to an automated
24 process?

25 A. I don't know authoritatively, but I

1 believe it was late 2007.

2 Q. You've used the term automated to describe
3 the process that was put into place after the manual
4 selection. Can you explain what you mean by
5 automated?

6 MS. REES: Objection, outside the scope to
7 the extent you're asking for technical details, but
8 again you can answer to your understanding.

9 THE WITNESS: When a partner provides or
10 user provides a video to YouTube, that video needs
11 to be stored by us in a combination of bits, and in
12 order to deliver the YouTube service to make the
13 YouTube service available to a number of different
14 devices and over different Internet connection
15 speeds, we transcode the video into multiple
16 formats. And we do that automatically for each
17 video.

18 Q. Okay. So at some point in time, YouTube
19 began automatically transcoding every video that was
20 uploaded to the YouTube service into a format that
21 was appropriate to be accessed by a wireless device?

22 A. All or nearly all, yes.

23 Q. What about videos that were uploaded by
24 users before YouTube began automatically transcoding
25 all or nearly all uploaded videos into a format that

1 was appropriate for wireless devices? Did YouTube
2 go back and transcode those as well?

7 Q. Just to be clear, I'm not asking about
8 what happens when a user uploads a video.

9 A. Yes.

Q. I'm asking what happened to videos --

11 A. Yes.

12 Q. -- that users had previously uploaded.
13 YouTube went back and transcoded those?

14 A. That is my understanding.

15 Q. Okay. And the users who uploaded those
16 videos didn't prompt YouTube to do that?

17 MS. REES: Objection, calls for
18 speculation, vague.

25 Q. Okay. But that interface, that was

Figueira Decl. Tab
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To: "Franck Chastagnol" <fchastagnol@youtube.com>
From: "Matthew Liu" <matthew@youtube.com>
Cc: "zheng liu" <zliu@youtube.com>, "Yi-Ling Su" <yilingsu@youtube.com>, "Frey Waid" <frey@youtube.com>, "Hong Qu" <hong@youtube.com>
Bcc:
Received Date: 2006-12-18 23:44:00 GMT
Subject: Re: live-v15 product questions.

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Sorry, I meant CYC for music partnership. CBS will probably not be stupid enough to claim their own video in the PVA whereas UMG might claim something that CBS put up with music. It is not a super high priority item.

On Dec 18, 2006, at 3:36 PM, Franck Chastagnol wrote:

> [Ccng hong on this email as if we decide to change the naming of
> the Track policy that will be work for him]
>
> Matt: I'm fine with changing the naming, maybe chat with Richard/
> Mark to see if they have any opinion.
>
> Matt: for question 3, you said you think we should do this as soon
> as we turn CYC on, but CYC is going to be turned on for live-v15...
> can you clarify ? I think we may not have time to build this, so
> unless it is top priority, i would put this as a live-v16 item.
>
> thanks,
> franck

>
> On Dec 18, 2006, at 2:43 PM, Matthew Liu wrote:

>> Right now we are trying to work with a model where there will no
>> longer be an escrow and no retro-active payments. Chris and
>> Zahavah are negotiating hard for this new model. It's a little
>> hard to say what the final business requirements are and we may
>> have to keep the track only option, but hopefully we will not need
>> it.
>>
>> Sorry, I know, that is a wishy-washy answer.

>>
>> On Dec 18, 2006, at 2:38 PM, Zheng Liu wrote:
>>
>>> Hi, Franck and Matt:
>>>

>>> I remember WMG asked for the functionality to retro-pay the track-
>>> only claims, because track-only will be used on the publishing
>>> right uncleared videos. Later this requirement was dropped. But
>>> do you vision that down the road we need to support such feature?
>>> Or track-only should never be used to put the generated revenue
>>> into some escrow account that need to be paid later. Without the
>>> ability to track revenue on video_id base, it is difficult to
>>> implement such feature.

>>>
>>> Zheng
>>>
>>>

>>> On Dec 18, 2006, at 11:16 AM, Franck Chastagnol wrote:

>>>
>>> hi matt,
>>>
>>> could you answer asap the questions listed at
>>> <https://trac.sjl.youtube.com/trac/wiki/UNCLE.LiveV15>
>>>
>>> everybody will be OOO between christmas and new year.
>>> so we have to flesh out everything this week.
>>>
>>> thanks,
>>> franck
>>
>>
>> Matthew Liu
>> Product Manager
>> [REDACTED] matthew@youtube.com
>>
>>
>>
>

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Request of Defendants

To: "yilingsu@google.com" <yilingsu@google.com>, "dgking@google.com"
<dgking@google.com>
From: "dgking@google.com" <dgking@google.com>
Cc:
Bcc:
Received Date: 2007-04-03 23:19:49 GMT
Subject: CYC Music Support

PENDING APPROVAL
Figueira Decl. Tab
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I've shared a document with you called "CYC Music Support":
http://writely.corp.google.com/Doc?id=cd5qwbn4_3cwzv46 It's not an attachment -- it's stored online at Google Docs & Spreadsheets. To open this document, just click the link above. --- A few notes that can point you in the right direction. I'll stop by.

Introduction

The theme for the v.18 release is making CYC work for music partnerships. Labels are running out of patience, and we just added two music publisher deals last week.

Managing Data From Music Publishers

The first step in managing relationships with music publishers is to import their catalog information. This information will come both directly from music publishers, and from record labels. We should allow inputs from as many sources as possible as: more data will empower us to figure out license status, and to prioritize deal flows.

SFTP Drop Box

Extend our drop box capabilities to allow other types of upload besides commercial videos. First priority is upload of metadata files without attached media files. Next priority is support for upload of reference material to build our fingerprint database which should not be published to the live site. Reference material will include both videos and music files.

Partners to Launch

We expect to sign two music publisher deals in the next week, with EMI publishing, and Sony/ATV. I've also had preliminary discussions with BMG publishing but we are still in negotiations. Technical contacts at these publishers:

CWR

All three of the music publishers I've spoken to so far have said they want to communicate their catalog information to us using the CWR standard they already use for messaging to their industry partners. Jeff Smarr from Sony sent us a sample file that we can work from, and the standard is amply documented on the standard's website <http://www.commonworksregistration.com/>. There is a ton of documentation on this site, so I have posted the three documents I was told to focus on. They are available at http://wiki.corp.google.com/twiki/bin/view/Main/YT_Copyright.

Publishers typically post CWR updates to their FTP sites on a monthly basis, and send out notification emails to all their partners who then harvest the files. Their partners typically include the PRO's and record labels. We can probably get some intelligence on how to handle these data imports from the record labels we work with.

Data Matching

We will gather data from as many sources as possible. To take action on this data, we must cumulate all of this information around a single data entity which we can attach to our videos. All of these things come together to create an actionable license. For music content, we need the following information before we can consider our license complete:

Sound recording license from label

Composition licenses from publishers totalling 100%

For music labels, a license can only be considered complete if it includes an ISRC. We should have a partner level setting that can specify select metadata as a requirement before a license can be considered complete.

Catalog View in CYC

Expose partner catalog information in CYC, allowing them to connect to their previously uploaded data instead of expecting them to type in claim metadata whenever they find a UGC video they want to claim.

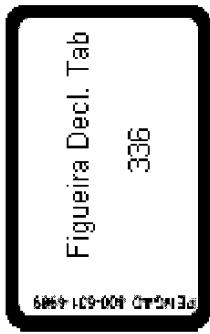
Fingerprint Match Review Queue

Many partners have said they want to review the results of fingerprint matches to decide what policy to take. This would entail porting the match review queue from admin to CYC.

--- Note: please sign in to this document with the same email address I used to invite you. If you want to use a different email address, just reply to this message and let me know

Copyright

David King, Shashi Seth, Franck Chastagnol



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GO0001-02081141

Goals

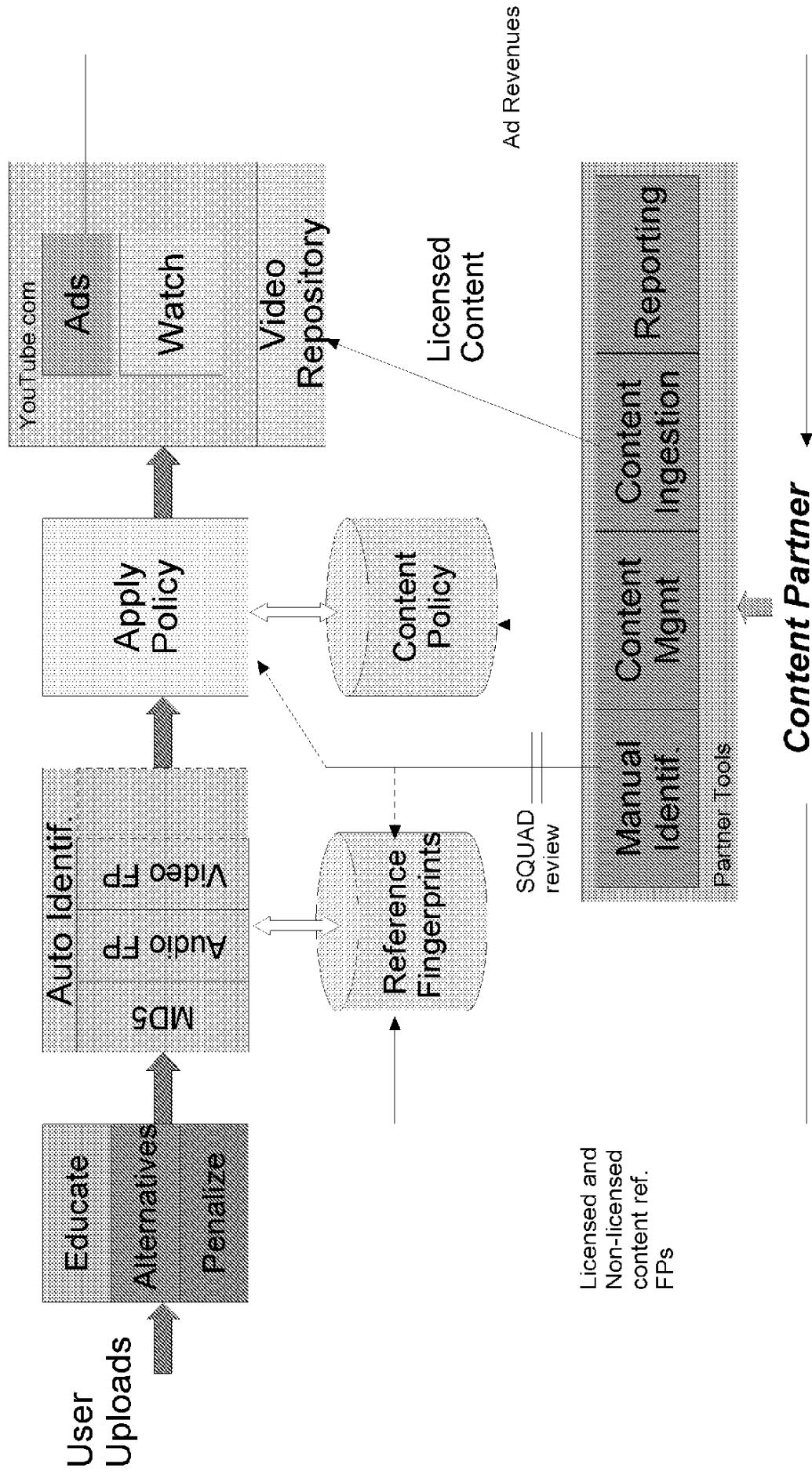
- **Educate**
 - Work with users community, encourage good behavior, offer alternatives
- **Identify**
 - Improve auto-identification of copyrighted materials, apply policy set by content owner
- **Collaborate**
 - Provide tools to partners and non-partners to manage their content
 - Promote partners content
- **Penalize**
 - Repeated infringements from same user

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System Overview – Partner scenario

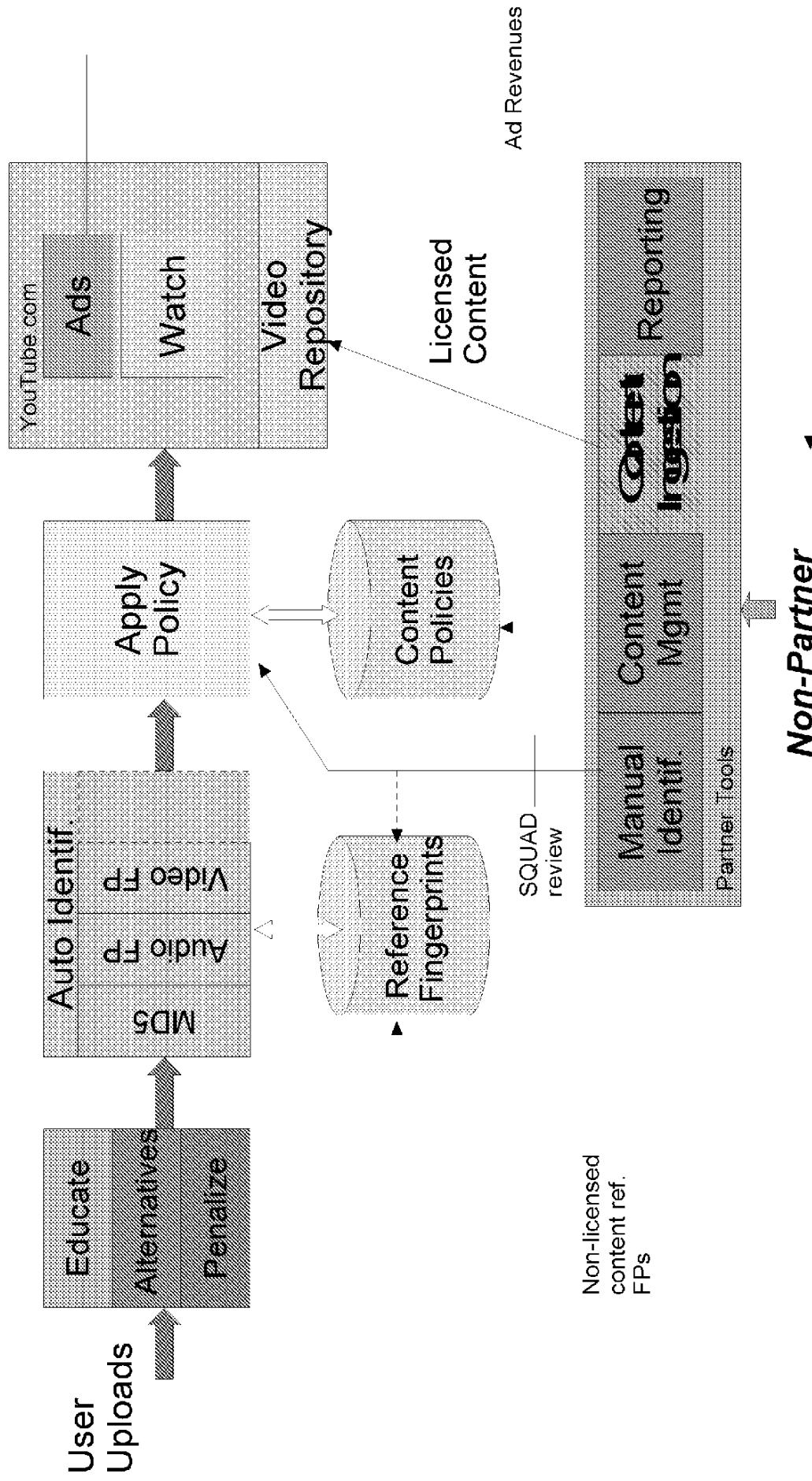
Case 1:07-cv-03582-JS Document 276-17 Filed 05/21/10 Page 3 of 9

A-510



System Overview – Non-partner scenario

Case 1:07-cv-03582-HS Document 276-171 Filed 05/21/10 Page 4 of 9



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600001-02081141.0003

Fingerprinting - Current

- Licensing Audio FP from Audible Magic
 - Large set of Music ref. FP (1.2M from Labels)
 - Identification rate **satisfactory** for Music content
 - Issue with other content types
 - no lookup against entire length of ref FP
 - Working with AM on improving solution
 - partitioning (Music vs Lic. vs UGC)
 - update to lookup algo – may incur extra costs
 - No video fingerprinting

Fingerprinting - Objectives

=> Use Google Video and Audio Video fingerprinting

- Google Video research team implementing
- Integration plans started

=> One of the challenge is to build ref fp set

Content policies

- Music rights are complex
 - 1 Label: owns sound recording
 - N x Publishers: own composition rights
- Music Pub rights not cleared yet
 - Blocking us from turning on audio fp on music content
 - Need deals with 5 major publishers asap
 - And then there will still be hundreds of minor publishers

Timelines

- Copyr
 - Formed a cross-functional team
 - Update to partner tool - opening up to partners
 - Offer alternative: AudioSwap
 - i g yph ot Qar
 - Google video fingerprinting pilot
 - Improve AI/ML audio fp. solution
 - System in place for publisher rights mgmt
 - User rev share pilot: incent to upload genuine user content
- v dh-Qn
 - Google video fingerprinting rollout
 - Google audio fingerprinting pilot
 - Consolidate admin/CYC tools
 - Qetect and penalize repeating infringers
- Start opening up tool to non-partners
 - Eph ot Qn
 - Google audio fingerprinting rollout

Q & A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
THE FOOTBALL ASSOCIATION PREMIER :
LEAGUE LIMITED, BOURNE CO. (together :
with its affiliate MURBO MUSIC PUBLISHING, :
INC.), CHERRY LANE MUSIC PUBLISHING :
COMPANY, INC., CAL IV ENTERTAINMENT :
LLC, ROBERT TUR d/b/a LOS ANGELES :
NEWS SERVICE, NATIONAL MUSIC :
PUBLISHERS' ASSOCIATION, THE :
RODGERS & HAMMERSTEIN :
ORGANIZATION, STAGE THREE MUSIC :
(US), INC., EDWARD B. MARKS MUSIC :
COMPANY, FREDDY BIENSTOCK MUSIC :
COMPANY d/b/a BIENSTOCK PUBLISHING :
COMPANY, ALLEY MUSIC CORPORATION, :
X-RAY DOG MUSIC, INC., FÉDÉRATION :
FRANÇAISE DE TENNIS, THE MUSIC FORCE :
MEDIA GROUP LLC, THE MUSIC FORCE :
LLC, and SIN-DROME RECORDS, LTD. on :
behalf of themselves and all others similarly :
situated, :
Plaintiffs, :
v.
YOUTUBE, INC., YOUTUBE, LLC and :
GOOGLE, INC., :
Defendants.
----- X

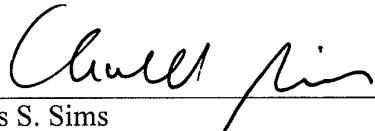
PLEASE TAKE NOTICE THAT plaintiffs The Football Association Premier League
Limited, Bourne Co. (together with its affiliate Murbo Music Publishing, Inc.), Cherry Lane
Music Publishing Company, Inc., Cal IV Entertainment LLC, National Music Publishers'
Association, The Rodgers & Hammerstein Organization, Stage Three Music (US), Inc., Edward
B. Marks Music Company, Freddy Bienstock Music Company d/b/a Bienstock Publishing

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S.D. OF NY
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Company, Alley Music Corporation, X-Ray Dog Music, Inc., Fédération Française De Tennis, The Music Force Media Group LLC, The Music Force LLC, and Sin-Drome Records, Ltd. hereby appeal to the United States Court of Appeals for the Second Circuit from the final judgment entering judgment for defendants and against plaintiffs on all of plaintiffs' claims, dated August 9, 2010 and entered on August 10, 2010, and from each and every part of that judgment and from each order or paper subsumed within that judgment as well as all antecedent interlocutory orders entered in this case, including, but not limited to, the court's opinion and order dated June 23, 2010 granting defendants' motion for summary judgment that they qualify for the protection of 17 U.S.C. § 512(c) against all of plaintiffs' claims for direct and secondary copyright infringement, and denying plaintiffs' motion for partial summary judgment against defendants' defense under 17 U.S.C. § 512(c).

Dated: New York, New York
August 12, 2010

Respectfully submitted,



Charles S. Sims
William M. Hart
Noah Siskind Gitterman
PROSKAUER ROSE LLP
1585 Broadway
New York, NY 10036
Telephone: (212) 969-3000
Email: csims@proskauer.com
-and-
Max W. Berger
John C. Browne
BERNSTEIN LITOWITZ BERGER &
GROSSMANN LLP
1285 Avenue of the Americas
New York, NY 10019
Telephone: (212) 554-1400

Email: johnb@blbglaw.com
*Attorneys For The Football Association
Premier League Limited, Bourne Co., Murbo
Music Publishing, Inc., Cherry Lane Music
Publishing Company, Inc., X-Ray Dog Music,
Inc., and Fédération Française de Tennis and
Proposed Class Counsel For The Prospective
Class*

Louis M. Solomon
Hal S. Shaftel
CADWALADER, WICKERSHAM & TAFT,
LLP
One World Financial Center
New York, NY 10281
Telephone: (212) 504-6680
louis.solomon@cwt.com
*Attorneys For The Football Association
Premier League Limited*

Daniel Girard
Christina Connolly Sharp
GIRARD GIBBS LLP
601 California Street, 14th Floor
San Francisco, CA 94108
-and-
David Garrison
BARRETT JOHNSTON & PARSLEY
217 Second Avenue North
Nashville, TN 37201
-and-
Kevin Doherty
BURR & FORMAN LLP
700 Two American Center
3102 West End Avenue
Nashville, TN 37203
Attorneys for Cal IV Entertainment LLC

Jacqueline C. Charlesworth
James E. Hough
MORRISON & FOERSTER
1290 Avenue of the Americas
New York, New York 10104
Phone (212) 468-8158
Facsimile (212) 468-7900
-and-

David S. Stellings
Annika K. Martin
LIEFF CABRASER HEIMANN &
BERNSTEIN, LLP
250 Hudson Street, 8th Floor
New York, NY 10017-2024
Tel. (212) 355-9500
Fax. (212) 355-9592
Attorneys for the National Music Publishers' Association, Rodgers & Hammerstein Organization, Stage Three Music (US), Inc., Edward B. Marks Music Company, Freddy Bienstock Music Company d/b/a Bienstock Publishing Company, and Alley Music Corporation

Christopher Lovell

Christopher M. McGrath

LOVELL STEWART HALEBIAN LLP

61 Broadway, Suite 501

New York, New York 10110

Telephone: (212) 608-1900

Facsimile: (212) 719-4677

-and-

Jeffrey L. Graubart

LAW OFFICES OF JEFFREY L.

GRAUBART

350 West Colorado Boulevard, Suite 200

Pasadena, California 91105-1855

Telephone: (626) 304-2800

Facsimile: (626) 304-2807

-and-

Steve D'Onofrio

5335 Wisconsin Avenue, N.W. Suite 950

Washington, D.C. 20015

Telephone: (202) 686-2872

Facsimile: (202) 686-2875

Attorneys for The Music Force Media Group LLC, The Music Force LLC, and Sin-Drome Records, Ltd.

TO:

Andrew H. Schapiro, Esq.
A. John P. Mancini, Esq.
Matthew D. Ingber, Esq.
MAYER BROWN LLP
1675 Broadway
New York, NY 10019-5820
Telephone (212) 506 2500
Facsimile (212) 262 1910

David H. Kramer, Esq.
Michael H Rubin, Esq.
Bart E. Volkmer, Esq.
WILSON SONSINI GOODRICH & ROSATI
650 Page Mill Road
Palo Alto, CA 94304
Telephone (650) 493 9300
Facsimile (650) 493-6811

Attorneys for Defendants