

A-101

Online Initiatives | Economic Constructs

We must define how best to value our content online – such that online valuations are roughly consistent with linear valuations

- License fee / title
 - network's average linear license fee / # of unique episodes on that network = avg. fee / title
 - Aggregate monthly license fees to online distributors by simply multiplying avg fee / title by number of titles offered each month
 - Assumes linear license fee is an accurate starting price (many think our nets are underpriced relative to their viewership)
 - Assumes that linear license fees (based on households) should translate to online (where viewership is individual) – might imply a discount (i.e. \$1 on linear gets you 4 viewers – so correspondent online fee should be \$0.25?)
 - Does not account for quality of titles – i.e. a more current or more “evergreen” title would command a higher fee
 - Does not create a good means of valuing short-form content
- Ad sales multiple
 - Concept: bump in CPM you see for online vs. TV eyeball = multiple to linear license fee (don't know if this is actually measurable on a reliable/ consistent basis...)
 - Money spent on linear ads does not generate:
 - Confirmation that ad was seen when run (ff or people leaving room)
 - Quantifiable ROI
 - Targeted messaging – the smallest niche you can hit is the audience you THINK is watching a certain show
 - Potential for impulse activity – user cannot “click” on the spot

made all this up – what do you think?

Online Initiatives | General Deal Terms & C

particulars of each deal will vary, the general terms we pursue consistent across all

	Must-have	
	<ul style="list-style-type: none"> No portability on free content For use only on partner-hosted platforms and solely as distributed on a TCP/IP technical platform No right to sublicense, re-distribute, syndicate, transfer or otherwise use the Licensed Property Universally-associated DRM 	
	<ul style="list-style-type: none"> <2 years 	
	<ul style="list-style-type: none"> MTVN shall have the sole right to sell all advertising inventory in, around or otherwise associated with the Licensed Content Partner shall provide all backend reporting, targeting and serving technology End-users shall not have the ability to skip advertising MTVN can serve any ad format it chooses (e.g., pre-roll) 	
	<ul style="list-style-type: none"> Dedicated placement in any storefronts / unique areas MTVN controls branded areas and UIs Right to link back to MTVN-owned websites Participation in any e-commerce revenues	• |
	<ul style="list-style-type: none"> MTVN may access customer information/ search queries associated with our content Any data necessary to target advertising & user communications 	
	<ul style="list-style-type: none"> All search results shall be based on metadata "Preferred placements" be separate and so-identified Top placement with respect to certain proprietary search terms	• | | |



Distribution Tactics | Download to Own

Economics and content models

- Continue executing “off-the-shelf” deals with all digital retailers – established standard terms (those closed with iTunes, AOL, Amazon) include:
 - 70/30 retail revenue split
 - Branded MTVN sales areas
 - Advertising parameters

I know there are more terms to include here...add away

Content Investment

- Grow catalogue / acquire rights based on a clear content strategy that promotes programming most suited to DTO format
 - Selectively offer full seasons / promotional episodes of current, on-air shows (based on channel promotional priorities)
 - Use DTO as a means of re-packaging / re-monetizing “vintage” library content that has already run its course (e.g. box sets)
 - Develop made-for-download products that demonstrate benefits of owning digital content (e.g. customizable MTVN “lockers” where users can easily store faves, manage playlists, chat with other MTVN enthusiasts, access recommended new buys, etc.)

Process Definitions

- **HOW BEST TO COUCH THE “WHO DOES WHAT” QUESTIONS?**
- Transactional: Online distribution team identifies, executes, and launches DTO p’ships
- Programming & placement: brand teams own creative placement
- Operational: programming teams / NOC must automate transmission of DTO files (digitization, metadata, transport)

Research

- Study consumption patterns surrounding downloaded video content

Optimize

- Add content based on research results and MTVN product performance

Distribution Tactics | Streaming Syndication

- Content Model Goals—will vary by Brand and Franchise:
 - Formalize a flexible content distribution strategy that maximizes traffic and revenue back to MTVN without jeopardizing (a) current affiliate and ad sales businesses (b) brand equity
 - Set contractual precedents for favorable economic exchange & MTVN value generation

	Short-Form Archive	Short-Form Current	Long-Form Archive	Long-Form Current
Amount	Unlimited	Broad	Selective	Selective / promotional
Kind/Shows	<ul style="list-style-type: none"> • No restrictions 	<ul style="list-style-type: none"> • What gets "scattered to the winds"? • What stays on our sites? • Do we have relationships 	<ul style="list-style-type: none"> • Restricted to address other contract provisions (e.g. streaming caps) 	<ul style="list-style-type: none"> • Restricted to address other contract provisions (e.g. streaming caps) AND to mitigate linear cannibalization
Rationale & Risks	<ul style="list-style-type: none"> • No cannibalization of linear programming • Monetizes otherwise "expired" content • Promotion to DVD sales 	<ul style="list-style-type: none"> • Additional outlets/eyeballs for Overdrive-type content • Promotion to linear channel 	<ul style="list-style-type: none"> • Minimal cannibalization of linear programming • Monetizes potentially "expired" content • May pose risk to DVD 	<ul style="list-style-type: none"> • Serve brand marketing and windowing goals
License fee	None	Yes, using wireless model as comp – license monthly packages of content	Yes <ul style="list-style-type: none"> • "Per-rerun" price • DVD comp 	Yes <ul style="list-style-type: none"> • "Per-ep" price • Ad sales multiple
Ad Share	• 70/30	• 70/30 but possibly less if big promo value	• 70/30	• 70/30 but possibly less if big promo value
Ad Formats [e.g. pre-roll, etc.]	<ul style="list-style-type: none"> • Pre-roll • Billboard • Commerce link (e.g. on product placement, DVD, CD sale) • Telescope to additional ad or entertainment content 	<ul style="list-style-type: none"> • Pre-roll • Billboard • Commerce • Telescope 	<ul style="list-style-type: none"> • Pre-roll • Interstitial • Commerce • Telescope 	<ul style="list-style-type: none"> • Pre-roll • Interstitial • Commerce • Telescope

Distribution Tactics I Streaming Syndication

Content Investment

- Counterprogram / differentiate content vs. existing linear
 - Exploit brand programming expertise to make internet screen a complement to (rather than a substitute for) the linear experience
 - Combine long- and short-form programming to build new “lean-back” viewing experiences
- Invest in broad online clearances
- Establish new and additive ad inventory
 - Linear advertising should continue to serve advertisers as mass creation of awareness
 - Online advertising and its associated functionalities enable much tighter targeting and calls to action
- Create content experiences that tie into linear experience (e.g. develop deployable, consumer-appealing ways of integrating online and set-top experiences)

Process Definitions

- **HOW BEST TO COUCH THE “WHO DOES WHAT” QUESTIONS?**
- Transactional: Online distribution team identifies, executes, and launches streaming syndication p’ships
- Programming & placement: brand teams own creative scheduling and content offering
- Operational: programming teams / NOC must automate transmission (digitization, metadata, transport)

Research

- Study consumption patterns and best-performing outlets

Optimize

- Add content based on research results and MTVN product performance

Distribution Tactics | MTVN Sites & Destinations

Economics and content models

- Primarily short-form content (Mix of current and archive)
- CPM-based ad sales: pre-roll video presented to viewer every several clips

Content Investment

- Implement more robust search tools
- Create opportunities for personalization
- Made-for content
- Integration of site experiences to other screens (e.g. STR, mobile)

There must be a strategy doc for these sites somewhere – can we steal it?

Process Definitions

- Brands own programming strategies and integration with other platforms
- Digital distribution team works takes on traffic generation

Research

- Execute multi-platform research: better understand relationship between / usage patterns of sites, linear nets, etc.

Optimize

- Track user flows & demos to drive more effective ad targeting
- Study in-site user clusters to more effectively program high-traffic areas

Distribution Tactics <i>New Audience Aggregation / New Content Experiences</i>	
Economics and content models	<ul style="list-style-type: none">• VARIOUS
Content Investment	<ul style="list-style-type: none">• Initial investment must focus on creating an environment that supports innovation<ul style="list-style-type: none">- Pool of "experimental" funds- Prototyping
Process Definitions	<ul style="list-style-type: none">• Digital distribution team works with existing and potential partners to identify viable opportunities to build out new experiences
Research	
Optimize	

Schapiro Exhibit 168

Subject: First draft update
From: "Cahan, Adam" <EX:/O=VIACOM/OU=MTVUSA/CN=RECIPIENTS/CN=CAHANA>
To: Schwartz, Stefanie; Blair Harrison; Epstein, Josh; Bakish,
Robert; Harrison, Blair - iFilm; Lehman, Nicholas; Patel, Kruti
; West, Denmark; nadastir@yahoo.com
Cc: Date: Sat, 08 Jul 2006 21:02:05 +0000

per stef suggestion - added a MTVN/Viacom upside section.

List of attachments:
YouTube v2.doc

CONFIDENTIAL

MTV NETWORKS and VIACOM

YOUTUBE ACQUISITION RATIONALE

July 7, 2006

➤ KEY TAKEAWAYS:

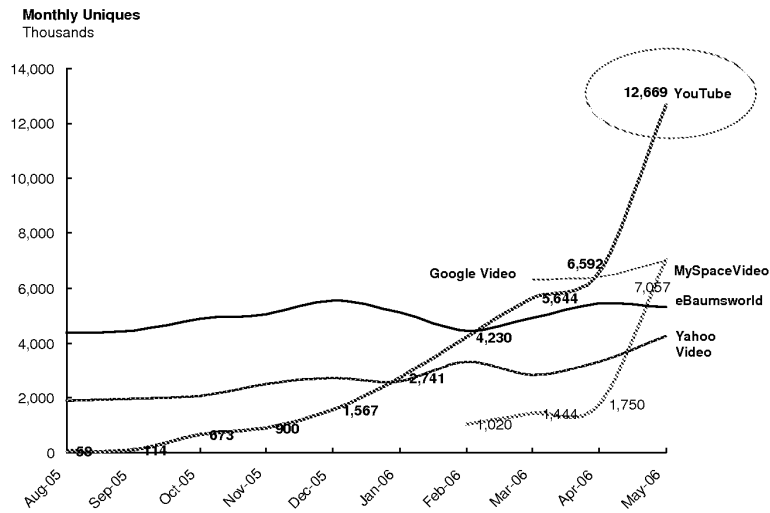
- We believe YouTube would make a **transformative acquisition** for MTV Networks/Viacom (price pending) that would enable our company to tap the leader in viral video audience experiencing explosive growth. With the scale of our video library (MTVN and Paramount/DreamWorks), the depth of our consumer and advertiser relationships, the targeted promotion of our networks, and the direct relevance of our brands we can help **YouTube become the category-killer for online video search, sharing and community.**
- Our **valuation** based on x,y,z, suggests that YouTube value up to **\$yM on base case** with topline \$z, and margin of Y. Upside case...
- In the video category YouTube is a clear leader with **12.7M uniques** (MMX) (20M according to NetRatings) growing 100% month-on-month. In addition relative to the competition it is experiencing **3-5X time spent** with an average of 36 minutes per unique per month (MMX). By NetRatings it has reach #20 online.
- With the nature of many-to-many video sharing, YouTube is tapping a **network effect** that will be challenging to displace – users continue to upload ~60K videos per day (*per YouTube*) and invest in tagging, cataloging and sharing their videos. As more users upload and provide editorial relevance, the site is expanding the breadth and depth of the content offering – with greater audience, the value of “broadcasting yourself” increases.

“YouTube is currently serving 70 million videos per day to six million unique users daily, up from 3 million in December, with more than 60,000 videos being uploaded per day. YouTube is serving more than 200 million page views a day and is ranked the 18th most trafficked site on the Internet, according to Alexa.” –YouTube Site
- From a strategic perspective, we remain concerned that a **combination Fox owned MySpace/YouTube** would represent a consolidated content/distribution model targeting our core demographic’s consumption patterns (*what percentage of time spent online would the combined site have*)
- From an **advertiser** perspective, **film/studio** based advertising is the #1 advertising category across MTVN representing \$517M and 17% of total dollars spent (Film \$403M, HV \$114M). As demonstrated by recent deals (Disney, NBC, Weinstein), this community is particularly prone to migrate dollars quickly where the target audience aggregates. A 10% shift of these dollars online could represent \$50M+ shift for MTVN based on 2005.
- **Monetization** will likely need to remain scaled back in the near-term as YouTube grows and maintains traffic, over time YouTube will be a platform for promotion with premium branded reach display advertising (homepage), targeted advertising (search related), and premium promotion (ie. Sponsored entertainment videos, professional content channels). In addition, we believe with scale, that YouTube will

need to develop and innovate new forms of ROI/ Relevant video advertising – i.e. DR video, bid for placement (homepage trailers based on clickthrough and \$\$). For MTVN it represents a potential promotional vehicle back to television, and an inexpensive source/ filter for User Generated Content and talent sourcing for our networks (i.e., the ultimate payoff of getting yourself on TV). In addition, there is an opportunity over time for ad supported (chaptered, clip based) premium content from both our studio and other content providers – i.e. clip/chaptered Movie of The Week.

- Going forward, YouTube has the potential to transform from an entertainment site/destination to a **video search utility**, harnessing the audience to help it define video relevance –i.e. people are now “youtubing” a video they are looking for.

MEDIA METRIX MONTHLY UNIQUES



Source: Media Metrix

1

Josh/Stef- would like to look at netratings as well – concerned over myspacevideo plus netratings has them at 20M.

➤ STRATEGIC FIT

- As one of the largest owners and producers of **video** in the world, video is a core competence of MTVN/ Viacom and a category online where we believe the multi-platform nature of our advertising will first be established.
- Core **demographic** appeal (*any proof*)
- **Scale** in online reach and video consumption where we require additional exposure as a company
- **Content** source and filter for UGC to television – YouTube on MTVN best of weekly where users can become famous.
- **Talent** source for potential trend-spotting and new talent acquisition
- **Promotional** source for television programming

➤ UPSIDE FROM MTVN/VIACOM

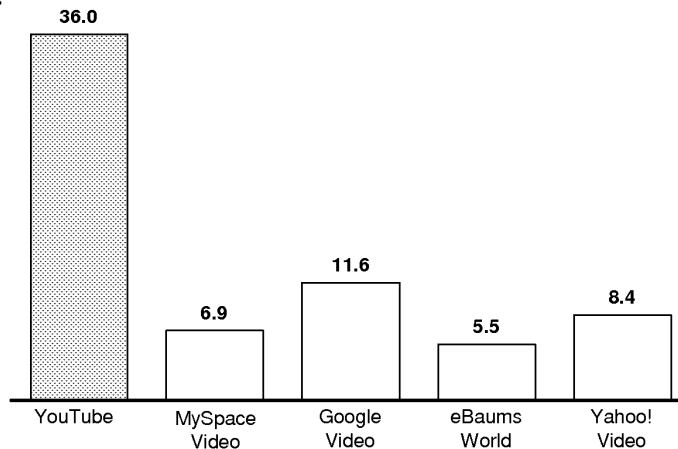
- Audience on TV – MTVN provides an outlet for fame. Ie. Best of appears weekly on relevant MTVN property – Comedy Central/MTV. Reinforces the user participation and why they want to upload their content first at YouTube
- Brands – editorial fit enables us to both source talent and make users famous. The crowd decides, we put it on air – people will push to promote themselves (make me famous) and draw in additional users and content reinforcing the model
- Advertiser relations/ salesforce: leveraging our relationships with film studios and demographically targeted advertising – we can significantly enhance CPM based on multiplatform sales approach.
- Video content – breadth and depth can power YouTube to the next level of relevance
- Promotion – fit with our target audience and demo. We can reinforce and drive traffic/ promotion to YouTube

➤ AUDIENCE

- Key trends: Time Spent

May - Average Time Spent per Unique

Minutes



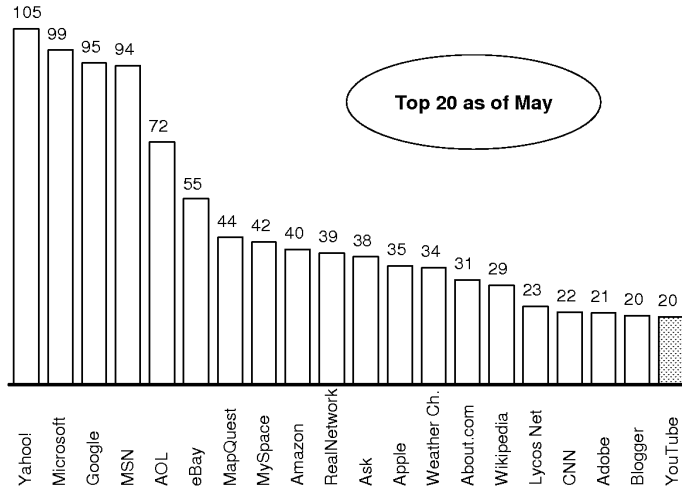
Source: Media Metrix May

3

- Reach

NetRatings Monthly Unique Visitors

Millions



Source: Net Ratings May

4

➤ **ADVERTISERS/ PROMOTIONAL PARTNERS**

- Recent activity includes strategic partnership with NBC for content and promotion, Weinstein launch for Lucky Slevin and Entertainment advertisers including Disney (Pirates of the Carribean)

Advertising example – Pirates Of Caribbean



2

- The film-based entertainment category is a “first-mover” and we have exposure across MTVN at \$517M, 17%

➤ **COMPETITION**

- MySpace
 - A consolidation of YouTube and MySpace would be a significant threat and competitor to MTVN core demographics. The combination would consolidate the value chain from video creation through distribution and enable Fox to become a “must have buy” for our core demographics and users.
 - ~15% of YouTube traffic comes from embedded players according to management. According to Fox, MySpace represents ~70% of that number
 - While MySpace has attempted to shut-down YouTube on 2 occasions they have been unsuccessful to date – with audience revolt.
 - MySpace has also launched myspace video which has shown significant traffic growth but has not seen time spent as YouTube has.
- Other: Google Video, Yahoo Video, Grouper, Revver
 - See risk below

➤ **POTENTIAL OPPORTUNITY/BUSINESS MODEL**

- Two paths of monetization – utility (ie, video search), and entertainment – dependent upon the traction YouTube gains in broader video search (beyond user generated)
 - Display/ reach based advertising: Homepage inventory and display advertising
 - Paid placement – home page auction based sponsored video (i.e. one block where film studios bid for placement of their trailers)
 - Targeted advertising: search based advertising as users seek to find video
- Premium content – over time the use of ad supported premium clips/content in a separate section (i.e., Movie of the week, first looks, releases, film trailers, etc). Lighter embedded video ads (not-preroll)
- Embedded players – identifying a utility based advertising model – ie. Text links, click through promotion, other
- Innovation for targeted advertising – DR video, can we identify a way to discern intent in the video and highlight relevant ads

➤ **POTENTIAL RISKS**

- MySpace
 - potentially shut-down or limit access to embedded YouTube players
 - Further accelerate MySpace video
- Google
 - Recently moved to “immediate upload” similar to YouTube. May seek to go after differentiated content by digitizing libraries of content owners
- Yahoo!
 - Recently launched Y! video with upload features, leveraging social search technology and approach from Flickr’r
- Startups

A-116

- Any aggressive monetization or significant change in overall approach (i.e., corporatization) may result in audience loss
- Fad-driven nature of content
 - Is this simply “America’s Funniest HomeVideos”

➤ COMPANY BACKGROUND:

- Founded February 2005
- Site motto: “Broadcast yourself”
- Features and usage
 - Users can instantly upload, watch, tag and share videos.
 - Getting to comprehensive - search millions of videos uploaded by community members
 - Personalize the experience by subscribing to member videos, saving favorites, and creating playlists. Developing a persona on YouTube
 - Embed YouTube videos on websites using video implants or APIs
 - Users can make their posted videos public or private
 - Ability to watch and share videos from mobile phones or PDAs
- Management:
 - Chad Hurley – CEO & co-founder – prior Paypal
 - Steve Chen – CTO & co-founder – Prior Paypal
 - Sales and bus dev. mostly x-Yahoo! (Chris Maxcy)
- Investors:
 - YouTube announced its first round of funding in November 2005 for \$3.5 million from venture-capital firm Sequoia Capital. In April 2006, YouTube received an additional \$8 million in a second round of funding from Sequoia – investment led by Roelof Botha, former CFO of PayPal

Schapiro Exhibit 171

CONTENT IDENTIFICATION AND MANAGEMENT AGREEMENT			
RIGHTS OWNER FULL LEGAL NAME: Viacom Inc. (and its wholly-owned affiliate entities) (hereinafter the "Rights Owner")	TYPE OF ENTITY: <input checked="" type="checkbox"/> Corporation <input type="checkbox"/> Limited Liability Company <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Other [specify _____]		
COUNTRY (AND STATE IF IN THE UNITED STATES) OF INCORPORATION OR RESIDENCE: New York	TAX IDENTIFICATION NUMBER: N/A		
	BUSINESS CONTACT	TECHNICAL CONTACT	ACCOUNTING CONTACT
Name:	Stanley Pierre-Louis	Alan Bell	
Title:	VP, Associate General Counsel	Executive VP, CTO	
Address:	Viacom, Inc. 1515 Broadway New York, NY 10036	Paramount Pictures Corporation 5555 Melrose Avenue Hollywood, CA 90038	
City, State:			
Postal Code:			
Country:			
Phone:	(212) 846-4811	(323) 956-8990	
Fax:	(201) 553-7714	(818) 571-1335	
Email:	stanley.pierre-louis@viacom.com	Alan_Bell@Paramount.com	
CONTENT LICENSE OPTION: <input type="checkbox"/> Rights Owner agrees to license and monetize content pursuant to the Content License Agreement. <input type="checkbox"/> Rights Owner agrees to license and monetize content pursuant to a separate license agreement with Google dated [] titled []. <input checked="" type="checkbox"/> Rights Owner does not agree to license and monetize content, and elects only to block or track content.			
Rights Owner and Google hereby agree to this Content Identification and Management Agreement ("Agreement"). Effective Date: February 1, 2008			
Google Inc. BY: <u>David H. Egan</u> NAME: DAVID EGAN TITLE: Vice President, Content Partnerships Google, Inc. 1600 Amphitheatre Parkway Mountain View, CA 94043 2008 02 20 10:45:55 -08'00'	Viacom Inc. (and its wholly-owned/affiliate entities) BY: <u>Michael D. Fricklas</u> NAME: Michael D. Fricklas TITLE: Executive VP, General Counsel 1515 Broadway New York, NY 10036		



Google's content identification and management system ("System") and content preparation software ("Software") are designed to help Rights Owner identify its Works on YouTube and set Usage Policies for those Works. The following terms govern Rights Owner's use of the System and Software.

1. Definitions.

"Block" means the Usage Policy available in the System for Rights Owner to specify that a user video be blocked from playback on YouTube in the territories selected by Rights Owner.

"ID File" means the unique binary data that describes a Work and is used for the automatic identification of that Work or a portion thereof. ID Files may be provided by Rights Owner to Google or created by Google using the Reference Files.

"Monetize" means the Usage Policy available in the System for Rights Owner to license to Google in the territories selected by Rights Owner a user video matching an ID File or claimed by Rights Owner using the search functionality that may be offered by the System.

"Reference Files" means the Works provided by Rights Owner to Google pursuant to this Agreement.

"Software" has the meaning given in the preamble.

"System" has the meaning given in the preamble.

"Track" means the Usage Policy available in the System for Rights Owner where it does not specify that the user video be blocked from playback on YouTube, but also does not grant any licenses thereto.

"Usage Policy" means Monetize, Track, or Block, or such other policies as may be made available by Google from time to time.

"Work" means audio and audiovisual works owned or controlled by Rights Owner.

"YouTube" means YouTube.com and subdomains.

2. Reference Files and ID Files. (a) Rights Owner will deliver to Google the Reference Files or ID Files created using the Software. If Rights Owner provides Reference Files, Google will create corresponding ID Files. Rights Owner shall retain all rights, including without limitation copyright rights, in Reference Files. Rights Owner will provide metadata associated with each Reference File or ID File (such as title, description, the Usage Policy, and the territorial scope of each Usage Policy) via an XML feed or otherwise pursuant to Google's reasonable specifications. Rights Owner will make commercially reasonable efforts to ensure that the metadata delivered to Google is accurate and current. Google will provide appropriate format, resolution, and bit-rate specifications for the delivery of Reference Files, ID Files, and metadata. (b) Rights Owner may inactivate from use in the System any of its Reference Files and ID Files at any time and thereby terminate Google's license to use the Reference Files and ID Files. Google will store the Reference Files and ID Files on secure servers and will protect Reference Files and ID Files from unauthorized access as specified in Exhibit A. Google will develop the capability to delete or destroy, at Rights Owner's Request, any or all of Rights Owner's Reference Files and ID Files; provided, however, that nothing herein alters either party's document retention or discovery obligations in connection with any pending or future litigation between the parties, and Google's retention of ID Files or Reference Files in compliance with any such obligations will not be deemed a breach of this Agreement. Google will use commercially reasonable efforts to implement such capability no later than July 31, 2008.

3. User Video Matches. The System will compare all videos uploaded to YouTube, including all videos designated "private" and those available through versions of YouTube localized for particular countries, against the ID Files to identify matches and apply the Usage Policies assigned by Rights Owner to any matches. Google will use commercially reasonable efforts to improve the System with the goal of minimizing the time between video upload and application of the Usage Policies set by Rights Owner. The System may also provide Rights Owner the capability to perform text searches for user videos that may contain the Works and assign Usage Policies for such materials. Rights Owner may change any Usage Policy at any time. If a particular ID File has not yielded any matches within a one-year period of time, Google may by written notice request from Rights Owner permission to remove such ID file from the System, which Rights Owner may authorize in its sole discretion. Google may replace old ID Files with new ID Files of a particular work at any time in connection with System upgrades and technical

modifications. Rights Owner shall not knowingly make false claims on user videos. Knowingly false claims may lead to termination of this Agreement by Google.

4. Disputes. Google may establish reasonable procedures to resolve claims that appear to be in good faith by a user that a Work has been blocked due to error, mistake, or otherwise. Rights Owner will cooperate with Google to resolve such disputes. If, during the course of evaluating such claims, Rights Owner reviews content designated as private by the user, Rights Owner will not disclose the content to any third party except as necessary to complete its evaluation process or in contemplation of, or participation in, a judicial proceeding. Notwithstanding the foregoing, nothing herein shall limit Rights Owner's rights and remedies under applicable law against a user with respect to any video under review.

5. Licenses and Ownership. (a) Google grants to Rights Owner a non-exclusive, non-transferable, royalty-free, limited license to use the System and Software solely for the purpose of creating ID Files and identifying and managing its Works on YouTube. By providing Reference Files and/or ID Files, Rights Owner grants Google a non-exclusive, non-transferable, royalty-free, limited license to store, copy (including the right to make temporary cache and storage copies), modify or reformat, excerpt, analyze, use to create algorithms and binary representations, and otherwise use those files solely in connection with the System and subject to the terms of this Agreement. (b) Rights Owner shall not sell, lease, lend, convey, modify, adapt, translate, prepare derivative works from, decompile, reverse engineer, disassemble or attempt to derive source code from the System or Software. All rights or licenses not explicitly granted by the parties herein are specifically reserved. Except for the licenses specifically granted above, all of Rights Owner's intellectual property rights in the Reference Files and ID Files (whether provided by Rights Owner to Google or created by Google) remain with Rights Owner, and all of Google's intellectual property rights in YouTube, the Software, the System and related information and files remain with Google. For the avoidance of doubt, Rights Owner does not grant Google the right to modify, adapt, prepare derivative works, store or reproduce Reference Files and ID Files except as necessary to comply with the terms of this Agreement, nor does Rights Owner grant Google the right to publicly perform, publicly display, or distribute Reference Files and ID Files. Upon any termination of this Agreement, both parties will delete all ID Files from their respective storage systems.

6. Confidentiality. Neither party will disclose the terms of this Agreement to any third party (except to outside counsel or retained experts), or issue any public announcement regarding the terms of this Agreement, without the other party's prior written agreement. The parties shall not disclose to any third parties nonpublic information disclosed by one party to the other under this Agreement, and shall protect such information applying the same degree of care used by the parties to protect their own confidential information. If this Agreement or any confidential information of either party is required to be produced by law, the noticed party will promptly notify the other party and, to the extent practicable, cooperate to obtain an appropriate protective order prior to disclosing any confidential information. Except with respect to the terms and existence of this Agreement, this Agreement imposes no obligation upon Google or Rights Owner with respect to the other party's confidential information that: (i) a party knew before receiving it from the other party pursuant to this Agreement or a party knew before participating in the System; (ii) becomes publicly available through no fault of the other party; (iii) is rightfully received by the other party from a third party without a duty of confidentiality; or (iv) is independently developed without reference to Google's confidential information.

7. Representations and Warranties, Indemnities. Each party represents and warrants that it has authority to grant the licenses set forth in Section 5. Rights Owner represents and warrants that it believes in good faith, after reasonable investigation, that it has all rights required to set the Usage Policies that it has set with respect to its Works. Each party shall indemnify, defend and hold harmless the other party, and their respective directors, officers, employees, and agents from any third party claims arising out of a breach of that party's representations and warranties.

8. DISCLAIMERS, LIMITATIONS OF LIABILITY. EXCEPT FOR THE EXPRESS WARRANTIES MADE BY THE PARTIES IN SECTION 7, THE PARTIES DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. EXCEPT FOR THE INDEMNIFICATION OBLIGATIONS IN SECTION 7, NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR INDIRECT, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES OR PENALTIES ARISING FROM ANY ACTION TAKEN PURSUANT TO THIS AGREEMENT. PRIOR TO RIGHTS OWNER PROVIDING REFERENCE FILES TO GOOGLE FOR THE PREPARATION OF ID FILES, THE PARTIES AGREE TO ENTER INTO GOOD FAITH NEGOTIATIONS LIMITING GOOGLE'S AGGREGATE LIABILITY FOR ANY CAUSE OF ACTION ARISING FROM OR RELATED TO BREACHES OF THE SECURITY PROVISIONS IN EXHIBIT A RESULTING IN A REFERENCE FILE BEING WRONGFULLY COPIED OR ACQUIRED BY ANY THIRD PARTY. FOR THE AVOIDANCE OF DOUBT, NOTHING HEREIN SHALL BE DEEMED A RELEASE OR WAIVER BY RIGHTS OWNER WITH RESPECT TO CLAIMS FOR DAMAGES ARISING FROM THE PRESENCE OF A WORK ON YOUTUBE THAT HAS NOT BEEN LICENSED TO GOOGLE BY RIGHTS OWNER; PROVIDED, HOWEVER, GOOGLE SHALL NOT BE LIABLE TO RIGHTS OWNER FOR ANY AMOUNT UNDER ANY THEORY OF LIABILITY WITH RESPECT TO THOSE ID FILES FOR WHICH RIGHTS OWNER AFFIRMATIVELY ELECTS THE "TRACK" USAGE POLICY.

9. NO EFFECT ON PENDING, FUTURE, OR RELATED LITIGATION. Notwithstanding the foregoing, nothing in this Agreement shall limit or expand in any way whatsoever Google's and/or Rights Owner's pursuit or introduction of evidence in any litigation or contemplated litigation between them, including but not limited to *Viacom International, Inc. et al v. YouTube, Inc. et al.*, Case No. 1:07-cv-02103-LLS, filed on March 13, 2007, and currently pending in the United States District Court for the Southern District of New York. Furthermore, nothing in this Agreement shall be cited as a defense against or agreement to the production of any relevant material in discovery in any lawsuit, subject to any protective order entered in such lawsuit, and nothing in this Agreement shall operate in any respect as a release or waiver of any of the claims in any lawsuit except as expressly provided in Section 8.

10. Termination. (a) Either party may end this Agreement on 30 days written notice. All licenses granted in this Agreement will expire upon termination. (b) Sections 1, 5(b), 6-8, 9(b), and 10 survive termination.

11. Miscellaneous. The parties are independent contractors, and nothing in this Agreement creates an agency, partnership, or joint venture. Neither party may assign rights or obligations under this Agreement to any third party without the prior written consent of the other. This Agreement sets forth the entire agreement between the parties and supersedes any prior or contemporaneous agreements regarding its subject matter. This Agreement may be amended only in a writing signed by both parties. If this Agreement conflicts with any other agreement applying to Google's use of Works on YouTube, these terms control. Each party will send any notices hereunder in writing and to the attention of the Legal Department at the address listed on the first page of this Agreement. If any provision of this Agreement conflicts with applicable laws or is adjudicated to be illegal, that provision will be deemed eliminated from the Agreement and the Agreement will remain in effect so long as the essential purpose can still be achieved. This Agreement is governed by the laws of the State of California (excluding its choice of law rules) and applicable federal laws. Except with respect to claims or actions involving users pursuant to Section 4, any litigation to enforce the terms of this Agreement will be brought in any state or federal court of competent jurisdiction in Santa Clara County, California; each party consents to venue and exclusive personal jurisdiction of such courts. This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which, when taken together, will constitute a single instrument.

**EXHIBIT A
SECURITY DOCUMENT**

Security Overview for Video ID at Google

Introduction

Securing networked servers against would-be hackers is key to ensuring the success of any system. When it comes to partner collaboration, the importance is paramount. Google invests billions of dollars in technology, people, and process to ensure data at Google is safe, secure, and private. Google's dedicated team of security professionals is responsible for designing in security from the onset, reviewing all design, code, and finished product to ensure it meets strict Google security and data privacy standards. The same infrastructure used to host various applications at Google and to secure hundreds of thousands of user's data is also used to manage millions of consumers' data and billions of dollars in advertising transactions. Customer information and files are safe and secure.

This document describes the security measures and controls that Google has put in place to ensure the security of customer data. The key aspects covered include:

- Physical security and internal information security at Google data centers
- Change management processes, data backup/destruction, privacy policy
- Infrastructure for Video ID data

This document describes a snapshot of the current procedures for security. Google reserves the right to adjust these measures as our systems change and attackers adapt.

Security Team

Google employs a large team of information security experts to design and maintain our defense systems, and to make security a core part of the development philosophy and culture. Because we must protect the data of hundreds of millions of end users, we take extra care to make sure that all applications and services that we launch are secure.

Google's security team consists of some of the most accomplished security veterans in the IT industry. Many have experience running security operations at Fortune 500 companies, including some of the most well known financial service institutions. Examples of the backgrounds of individuals on the security team include:

- Chief Information Security Officer at Charles Schwab
- Director of Secure Networking Research at Bell Labs
- Technical Director for Information Security at Charles Schwab
- Senior Network Forensics Specialist from the National Nuclear Security Administration

The security team is involved in all aspects of the security process at Google, including the construction of a custom security infrastructure tuned to Google's unique platforms. They are responsible for the perimeter defense systems described below, as well as the security review process for applications described later in the document.

Data Center Environment and Physical Security

Google Data Center Infrastructure

Google maintains a vast number of geographically distributed data centers located primarily in the USA and the European Union. Data centers are unmarked and in undisclosed locations to maximize security.

Physical Security Staffing

At the Google data centers, there is a Security Operations Center, which is manned 24 hours a day, 7 days a week by a physical security services organization. The security organization deploys three shifts of 8 hours to provide continuous coverage. The security operations centers contain the monitors for the Closed Circuit TV (CCTV) cameras and all alarm systems. Internal and external patrols of the data center are performed each shift. The data centers are housed in facilities that require electronic key access, with alarms that are linked to the guard station manned 24 hours a day, 7 days a week.

Physical Security Access Procedures

Formal access procedures exist for allowing physical access to the data centers. All entrants to the data center must identify themselves as well as show proof of identity to security operations. Valid proof of identity is a photo ID issued by Google and a governmental entity. Only authorized Google employees and contractors are allowed entry to the data centers. Data center managers must approve any visitors in advance for the specific data center and internal areas they wish to visit.

Only authorized Google employees and contractors who permanently work at the data centers are permitted to request card access to these facilities. Data center card access requests must be made through e-mail, and requires the approval of the requestor's manager and the Data Center Director. All other Google employees and authorized contractors requiring temporary data center access must sign in at the guard station, present an Google badge (Google employees or contractors) or ID issued by their employer (authorized contractors) and reference an approved data center access record identifying the individual as approved.

Physical Security Devices

The data centers employ electronic card key and biometric access control system that are linked to a system alarm. The access control system monitors and records each individual's access to perimeter doors, shipping/receiving, the raised floor, and other critical areas. Unauthorized activity and failed access attempts are logged by the access control system, investigated as appropriate, and reported to the security manager. The security manager reviews and approves these reports. Authorized access throughout the business operations and data centers is restricted based on zones and the individual's job responsibilities.

All entrants to the data centers must pass through a mantrap. The mantrap is designed to physically limit access to one person at a time (floor sensors and automatic 180 degree turnstile) and prohibits the "handing off" of a badge back to a secondary person.

The fire doors at the data centers are alarmed and can only be opened from the inside. The fire doors are fitted with push bars to open. There is a specified delay on the push bar unless a fire alarm has been activated. If a person tries to exit the building through a fire door without a fire alarm having been triggered, an alarm would register in the security operations center.

CCTV cameras are in operation both inside and outside the data centers. The positioning of the cameras has been designed to cover strategic areas including, among others, the perimeter, doors to the data center building, shipping/receiving and the raised floor.

Security operations personnel manage the CCTV monitoring, recording and control equipment. The CCTV equipment is connected by secure cables throughout the data centers. Cameras record on site via digital video recorders 24 hours a day, 7 days a week. The surveillance records are retained for 60-90 days based on activity.

Environmental Safeguards

Redundancy

The data centers are designed with resiliency and redundancy. The redundancy is intended to minimize the impact of common equipment failures and environmental risks. Infrastructure systems have been designed to eliminate single points of failure. Dual circuits, switches, networks or other necessary devices are utilized to provide this redundancy. Critical facilities infrastructure at the data centers have been designed to be robust, fault tolerant and concurrently maintainable. Preventative and corrective maintenance is performed without interruption of services.

All environmental equipment and facilities have documented preventative maintenance procedures that detail the procedure and frequency of performance in accordance with the manufacturer's or internal specifications. Preventative and corrective maintenance of the Google data center equipment is scheduled through the standard change process. Preventative maintenance is performed on all infrastructure systems according to documented procedures.

Power

The data center electrical power systems are designed to be fully redundant and maintainable without impact to continuous operations, 24 hours a day, and 7 days a week. A primary as well as an alternate power source, each with equal capacity, is provided for every critical infrastructure component in the data center. This redundancy begins with dual utility power feeds, primary and alternate, to parallel utility switchboards sized so that any one can provide power to the entire facility. The output power is then routed to Automated Transfer Switches (ATS), which supply all building loads including uninterruptible power supplies (UPS), building and mechanical services, and heating, ventilation and air conditioning systems.

Battery backup power is provided by UPS batteries, which supply consistently reliable power protection during utility brownouts, blackouts, over voltage, under voltage, and out-of-tolerance frequency conditions. During normal operations, the utility power charges the battery modules as well as supplies power to the data center raised floor. If utility power is interrupted, the UPS batteries provide back-up until the diesel generator systems take over. In the event of unavailability of both electrical utility and diesel generators, the UPS batteries can provide emergency electrical power to run the data center at full capacity for 10 minutes.

If utility power is interrupted or is out of specification, the power supply will automatically switch to battery mode to continue to supply power to the data center without interruption. When utility power returns, the switch will remain in bypass so that the data center operations team can ascertain the issue has been corrected and can bring the systems back to normal mode in a controlled manner.

Solid State Transition Transfer Switches (SSTTS) are also in place. Should UPS power fail, the SSTTS can be used to transparently transfer all loads from the external dual utility power feeds to the diesel generators.

Diesel engine generators are in place to provide power to critical equipment and customer loads. The generators are capable of providing enough emergency electrical power to run the data center at full capacity typically for a period of days. These generators automatically startup and provide power within seconds in the event of a power outage.

The automatic startup and power distribution is controlled by a programmable logic controller, which has a redundant backup.

Google has short notice diesel refueling contracts in place.

Climate and Temperature

Air-cooling is required to maintain a constant operating temperature for servers and other computing hardware, which prevents over heating and reduces the possibility of service outage. Computer room air conditioning units are powered by both normal and emergency electrical systems. Security operations teams monitor these units and perform periodic inspections and preventative maintenance.

Fire Detection and Suppression

At the data center, automatic fire detection and suppression equipment has been installed to prevent damage to computing hardware. The fire detection systems utilize heat, smoke, and/or water detection sensors that are located in the data center ceiling as well as underneath the raised floor.

In the event fire or smoke is detected, the detection system will sound audible and/or visible alarms in the zone affected, at the security operations console and at the remote monitoring desk of the local fire department.

In addition, there are fire extinguishers located throughout the data centers.

Logical Software Infrastructure Security Measures

Google Server Environment

Google's servers are designed in-house from the ground up, and Google maintains control over the entire hardware and software stack. The operating system is based on Linux, and has been customized to solely run Google services. Since these are not meant to be general purpose systems like a typical OS, the core services and binaries of the OS have been stripped down, hardened, and heavily modified to leave only those necessary to run Google's applications.

As a result of this degree of control and homogeneity over the entire stack, Google designs its security infrastructure in a very different way from traditional systems. Rather than having to guard against a wide array of unknown inputs into many third party applications, Google can anticipate exactly what types of queries can come into the system and only accept this whitelisted set of queries. This philosophy is utilized throughout the security framework to only accept what is expected, and this provides a highly secure application environment.

Firewalls and Intrusion Detection

Google employs multiple layers of firewalls and intrusion detection to ensure that that our external attack surface is protected.

Intrusion detection is intended to provide insight into ongoing attack activities and provide adequate information to respond to incidents. Many companies make extensive use of third-party technologies (e.g., Network Intrusion Detection Systems - NIDS, Host-based Intrusion Detection Systems - HIDS) to look for known attacks against commonly-installed software, and Security Operations Centers (SOCs) to respond when they arise.

We take a different approach by:

- Tightly controlling the size and make-up of our attack surface through preventative measures
- Employing intelligent detect controls at data entry points
- Employing technologies that automatically remedy dangerous situations.

Most of our Internet-exposed attack surface is comprised of Google-created software and the internal environment is large and complex. Traditional IDS products are not economical, efficient or useful in these situations and we have needed to rely on smarter methods of detecting exploitation.

When we approach intrusion detection concepts, we break down our attack surface according to anticipated input vectors (i.e., how hackers will attempt to break in). All of Google's hosting infrastructure is custom-built so we have the ability to tightly define our perimeter and the entrance points into our network.

While we cannot talk in detail about the exact defenses without potentially compromising Google's defense system, some of the major areas of coverage that achieve the goals above are as follows:

- As mentioned previously, the OS on every system is stripped down, modified, and hardened to avoid third party vulnerabilities on running systems
- All IP traffic is routed through custom front end servers that detect and stop malicious requests
- Traffic is examined for exploitation of programming errors via methods such as cross-site scripting, and high priority alerts are generated when such an exploit is found
- To prevent buffer overflow attacks, all open source software that is Internet facing or that processes external data goes through several levels of code review, audit, and modification before allowed into production. All changes are contributed back to the open source community.
- Systems are checked continually for binary modifications, and any unrecognized modifications are purged
- Router ACLs are used to provide perimeter defense, and an internally routable IP space is used to make sure external connections are never made to internal systems
- Layer 3 filtering is used to mitigate packet-level attacks

Multi-tenant Distributed Data Environment

Google applications run in a multi-tenant distributed environment. Rather than segregating customer data to one machine or set of machines, data from all customers is

distributed amongst a shared infrastructure of tens of thousands of homogeneous machines.

This provides a variety of security benefits for user data, including:

- **Data Distribution** – Data is spread across thousands of systems. As a result, no one system has all of a user's data or all of a company's data. This makes it impossible for an intruder to target and remove a set of systems containing data for any particular customer. It would be like searching for a needle in a haystack.
- **Infrastructure Homogeneity** – Because all systems are the same, security fixes can be very quickly diagnosed and deployed for the entire infrastructure. Google does not need to worry that a particular machine has a different version of the infrastructure software than other systems. Additionally, even if an intruder were to physically breach a datacenter, they would not be able to identify one system from another since they all physically look the same.
- **Failover and Scalability** – Because all systems are the same, any of these systems can be spun up to serve customer data. As a result, the infrastructure can scale and fail over based on dynamic needs.
- **Data Obfuscation** – All user data is stored in a homogeneous Google-proprietary filesystem that does not follow traditional file system storage and access methods (such as NFS or CIFS). As a result, the data is obfuscated and not easily readable by anyone even if they were to breach the system.

Infrastructure for Video ID

Upload Servers

Customers will utilize an SFTP dropbox on specific servers attached to the internet. The login requires a static IP, a public key (sent to YouTube) and a private key (staying at the customer site), and a user account. This login is restricted to SFTP only and uses well tested security methods (SSH2, RSA, or DSA). Once logged onto the server, all customers will be separated with a chroot into their sub-directories (and only their subdirectories). The customer can upload multiple video and XML data files into that subdirectory or a child. After uploads have completed, all files are moved into a processing directory and are no longer accessible to the customer. Files will remain on the server for a period of up to 21 days and then are purged.

These servers are separate machines from the streaming servers at YouTube and cannot stream the uploaded files. The machines can only be accessed internally by a limited number of admin account owners.

Database Servers

The database servers receive the files from the upload server (via a private Google network). The videos are transcoded and ID files are created to be used by the Video ID service. Videos are stored indefinitely (320x240 resolution) in the event a new ID file is required in a Video ID upgrade. The videos and ID files are stored under GFS on Google

machines that not accessible via the Internet. Like the upload servers, these servers can only be accessed internally by a limited number of admin account owners.

Google's Own Data on Same Infrastructure

One of the strongest endorsements of Google's security infrastructure is that Google stores our own data on the same infrastructure as our customers. Any security hole would expose critical Google intellectual property and business information, so extreme care and examination was taken to ensure safety and security of the infrastructure.

Internal Security and Change Management Processes

Security is a process that must be a part of the overall culture and operation of the organization. Google takes many measures to ensure that security is central to the process.

Internal Data Access Processes and Policies

Access Policy

LDAP, Kerberos and a Google proprietary system utilizing RSA keys provides Google with secure and flexible access mechanisms. These account mechanisms grant only approved access rights to site hosts, logs, customer information and configuration information. We require the use of unique user IDs, strong passwords, and carefully monitored access lists to ensure appropriate usage of accounts. The granting or modification of access rights are based on a user's job responsibilities on a need to know basis and must be approved by data owners. Approvals are managed by workflow tools that maintain audit records of all changes.

Furthermore, it is Google's policy to provide system access to individuals who have been trained and require this level of access to perform authorized tasks. Access to systems is logged to create an audit trail for accountability.

Where passwords are employed for authentication at Google (e.g., login to workstations), password policies that follow best-practices are implemented. These standards include password expiry, restrictions on password reuse and sufficient password strength. For access to extremely sensitive information (e.g., Credit Card data), Google uses hardware tokens.

Code Development Review Process

Design

Major parts of the system and application architecture are documented in a design document before any development has begun. The lead developer will detail the architecture, impact, and security considerations, and circulate amongst the engineering team for open review and approval. Security-focused engineers are involved in the product development process during all phases of the development cycle.

Development and Test

Code change requests as well as system and hardware maintenance are standardized, categorized, and prioritized according to need. To the extent possible, the process and corresponding procedures are documented and designed to drive a controlled framework as well as the proper segregation of duties for the initiation, design, test, approval and migration of changes. The process outlines the change classification and corresponding activities to be performed during each of the phases, which are dependent on the impact the change will have to the system.

The change management process starts with a developer checking out a source code file to make a change. Once development is completed, the developer performs unit tests, if applicable, and a review is performed before the code is checked back into the repository. Google requires that a review independent of the developer be assigned.

Once a file has been properly approved, the release process begins. Code is compiled into a binary, and the binary is transferred to the QA environment where integration testing is performed. Depending on the type of change, dedicated QA resources may exist. If QA resources are unavailable, the lead engineers will take responsibility for performing load and regression testing within the QA environment. Once QA is complete, the binary is moved for migration to production.

Launch

A change is scheduled to be "pushed" to the production environment by the automated change management tool. The push process determines which production files will be migrated by checking the production configuration files which are also managed through the change management process.

Software developers are required to go through a security review when launching any new service on Google infrastructure. During this review, a security engineer from the Google security team will look at the following:

- Review the design document, and review the notes from any previous design review
- Build and run the application or use a test instance of the application to familiarize themselves with the application functionality
- Test against the running application for common known security vulnerabilities
- Review the code for security-sensitive areas such as input validation, file and network I/O, database access, cross-site scripting, and others

The security review is part of the launch checklist process which every application must pass before going into production.

Incident Reporting and Reaction Process

Google employs multiple proactive efforts to monitor for security incidents, including but not limited to inbound security reports, open source alerts, automated perimeter systems, and community alerts. When an Information Security incident occurs, Google security

responds immediately based on the level of threat. Notification of an incident may be generated automatically by monitoring systems or manually by a Google employee. Google works very closely with the security community to track reported issues in Google services and open source tools. More information can be found at <http://www.google.com/intl/en/corporate/security.html>

When notified of a problem, a Google security engineer makes a risk assessment and begins following prescribed response plans for the issue. Google has documented escalation procedures and communication protocols to address when and how incidents should be escalated as well as who should be notified.

Google continually monitors the production system in a variety of ways such as automated systems that look for predefined events (e.g., router crashes) and the use of statistical dashboards to diagnose and analyze issues (e.g., bandwidth utilization). Thresholds are configured on these monitoring systems so that the system health of network components, servers and other devices can be monitored closely. System reliability teams and customer support technicians respond to alerts generated when the monitoring system detects thresholds have been reached.

Personnel Hiring, Background Check, and Security Training Process

Google has formalized global hiring practices designed to ensure new, rehired, or transferred employees are qualified for their functional responsibility. At a minimum, these practices include verification of the individual's education and previous employment as well as a referral check. Where local labor law or statutory regulations permit, Google may conduct criminal, credit, and/or security checks on all potential employees. The specifics or extent of background checks performed is dependent on the position for which the individual is applying.

Training of personnel is accomplished through the employee's development plan as well as supervised on-the-job training. The development plan is intended to help employees determine which learning activities should be completed to obtain or retain the skills and competencies for their job. This includes any special training necessary for the individual's technical position.

Upon acceptance of employment, all employees are required to execute a confidentiality agreement as well as acknowledge receipt and compliance with Google's Employee Handbook. The confidentiality and privacy of customer information and data is emphasized in the handbook as well as during new employee orientation.

All employees are required to attend security training as part of new hire orientation. At this training, they are instructed about the security policy of the company and escalation procedures.

Every employee has a written job description, and every job description includes the responsibility to communicate timely significant issues and exceptions to an appropriate higher level of authority within the Company.

Data Replication and Data Disposal

Data Replication

Data redundancy is built into the GFS file system, and all data that is written in GFS is replicated at least three times to separate systems. Such protections make sure that a customer's data is protected in the event of a disaster.

Distributed Data Center Architecture

Google does not rely on just one datacenter to run our applications. We operate a geographically distributed set of datacenters to keep services running in the event of incidents and disasters at a single datacenter. Google runs datacenters in over a dozen locations worldwide, and has plans to build several more Google-owned datacenters in the near future. These datacenters are connected via high-speed private links to ensure secure and fast data transfer between datacenters.

Datacenter locations are undisclosed to the public, and data centers are unmarked to ensure optimal data security.

Google's data center management staff is also distributed in multiple geographies to ensure around the clock coverage and system administration that is not location dependent.

Video and ID File Data

"Reference Only" videos are used exclusively for Video ID; the video and ID files for Video ID are in database servers, separate from YouTube video servers. These videos and ID files can be disabled via XML actions. (Note that it is possible to disable the video and still keep the existing ID file active). When either the video or the video-and-ID files are disabled, they become immediately inactivated from the Video ID services. Within 48 hours, disabled ID files are purged and a new Video ID database is fully written across datacenters; this removes all remnants of the ID files. Video files are not deleted from the Video ID servers or backup files.

Data Destruction

Production disks go through a series of data destruction processes when they are removed from our systems. Disks are first logically wiped before they are physically accessed by our production staff. They are then removed from the system and confirmed to be wiped.

Google Privacy Policy

Compliance with Safe Harbor

Google adheres to the US safe harbor privacy principles of Notice, Choice, Onward Transfer, Security, Data Integrity, Access and Enforcement, and is registered with the U.S. Department of Commerce's safe harbor program. This is detailed in the Google privacy policy.

<http://www.google.com/privacypolicy.html>

version 1.0-01/2008

Schapiro Exhibit 173

From: "Cahan, Adam" <Adam.Cahan@mtvn.com>
Date: Sun, 9 Jul 2006 14:14:47 -0400
To: "Wolf, Michael" <Michael.Wolf@mtvn.com>, "McGrath, Judy" <Judy.McGrath@mtvstaff.com>
Subject: Update.

just finished a call: nick, blair, stef, nada, denmark, wade, bob

Key takeaways:

- we all believe this is a transformative acquisition that we should pursue. In its early stages of developing a business model but that is clearly at an inflection point in traffic growth. We view youtube moving beyond social sharing of video into a utility for video search more broadly.

- youtube has now reached 20m uniques US as of may. The number we believe is at the inflection point with closest competitor at 50 percent

- non-us traffic may be as big as 3x - one source - alexa that tracks non-us but not ideal source. Means we will need to come up with a perspective on how easily we can monetize those audience (ie ad networks, uk v. Other) as they play into cost.

- business model. 3 pieces.

1 premium branded display like advertising on the homepage where we see film/enter as the key category. Already disney, weinstein are there. Mtvn has exposure at 17 percent of our total dollars to this category.

2. Targeted advertising related to search and video consumption - think of this as advertisers bidding to be played and the link of relevance to the video. So someone search for scary and along side the "natural" results are paid performance videos for trailers etc.

3 ros inventory for non targeted pageviews - nada's specialty and where they are today

- on the cost side: mostly bandwidth cost that blair is developing based on his model.

Next steps:

-adam/blair/stef/nick - building out strategic rationale presentation with inputs from our call this morning.

- adam/blair/stef/nada/nick pulling together business model based on key drivers and inputs from call

Think it would make sense for us to have a check-in late today/early tomorrow. We can do with a quick subset of the group just to get everyone on same page.

Schapiro Exhibit 175

From: Walker, Gregg <Gregg.Walker@viacom.com>
Date: Mon, 10 Jul 2006 11:53:30 -0400
To: Davis, Wade <Wade.Davis@viacom.com>
Subject: RE: YouTube - Update

>
>-----
>From: Walker, Gregg
>Sent: Monday, July 10, 2006 11:51 AM
>To: Davis, Wade
>Subject: YouTube - Update
>Importance: High
>
>Wade,
>
>On the YouTube Call right now. Judy and Michael are pushing to have the attached deck sent to Freston ASAP with some text edits (and no numbers). The model is not ready yet. Bakish is working on it with Blair and Stef Schwartz, amongst others.
>
>Mike Dolan just jumped on the call as I was typing this email. So the email might be moot. Mike demanded that we have a model in place before we get too far down the road. He emphasized that the company doesn't have any revenue (\$6mm per year). Mike is OK with the info being shared with Freston before the model is completed and signed off by all players.
>
>Gregg
>
>Gregg Walker
>Vice President, Mergers & Acquisitions
>Viacom
>1515 Broadway - 53rd Floor
>New York, NY 10036
>(212) 846-6977
>F: (212) 846-1497
>gregg.walker@viacom.com
>

List of attachments:
REVISED DECK (Outlook item)

From: Bakish, Robert <bb@viacom.com>
Date: Mon, 10 Jul 2006 10:58:25 -0400
To: Blair Harrison <bharrison@ifilm.com>, Cahan, Adam <Adam.Cahan@mtvn.com>, Schwartz, Stefanie <Stefanie.Schwartz@mtvn.com>, Lehman, Nicholas <Nicholas.Lehman@mtvn.com>, West, Denmark <Denmark.West@mtvstaff.com>, <nadastir@yahoo.com>, Patel, Kruti <Kruti.Patel@viacom.com>, Walker, Gregg <Gregg.Walker@viacom.com>, Davis, Wade <Wade.Davis@viacom.com>, Epstein, Josh <Josh.Epstein@mtvstaff.com>, Ed Wood <ewood@ifilm.com>
Subject: REVISED DECK

guys i re-worked this for the 11a. i realize it is last minute but take a look..tx

List of attachments:
06.7.10.beagle.ppt

CONFIDENTIAL

Project Beagle

Discussion with Judy McGrath and Michael Wolf

July 10, 2006

Today's Objective

- **Quickly bring you up to speed on the last few days of work looking at Youtube**
- **Find a time to go through some numbers later today**
- **Jointly explore what this means to all of us**
- **Agree on next steps, including the nature of dialog with the rest of the Viacom decision makers**

1

YouTube Overview

2

Youtube at a Glance

- Founded February 2005
- Site motto: "Broadcast Yourself" -- Features and usage
 - Users can instantly upload, watch, tag and share videos.
 - Getting to comprehensive - search millions of videos uploaded by community members
 - Personalize the experience by subscribing to member videos, saving favorites, and creating playlists. Developing a persona on YouTube
 - Embed YouTube videos on websites using video implants or APIs
 - Users can make their posted videos public or private
 - Ability to watch and share videos from mobile phones or PDAs
- Management:
 - Chad Hurley – CEO & co-founder – prior Paypal
 - Steve Chen – CTO & co-founder – Prior Paypal
 - Sales and bus dev. mostly x-Yahoo! (Chris Maxcy)
- Investors:
 - YouTube announced its first round of funding in November 2005 for \$3.5 million from venture-capital firm Sequoia Capital.
 - In April 2006, YouTube received an additional \$8 million in a second round of funding from Sequoia – investment led by Roelof Botha, former CFO of PayPal

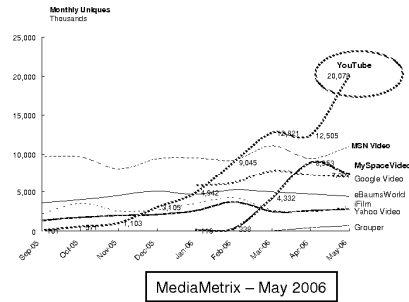
YouTube is a “Video Utility” -- Serving an Extremely “Longtail” of Content

- YouTube is a utility people use to contribute, share and consume video
 - Users currently upload ~70K videos per day and invest in tagging, cataloging and sharing their videos
- Consumption of “branded” content on YT is low
 - There are no movie trailers in the top 30, nor are there any clips from popular TV shows
 - Only four of the top 30 most watched videos of all time on YouTube are music videos, one of which is in German
- In fact, in the “branded area,” Ifilm does significantly more streams than Youtube, even though Ifilm is much smaller from a user base perspective
 - o *Pirates of the Caribbean 2* trailers consumption on YT = 250k; consumption on IFILM = 1m
 - o Even the much-discussed SNL “Lazy Sunday” sketch and its myriad spoofs have been seen more times on IFILM than on YouTube
- Net-net, Youtube is much closer to video search than VOD

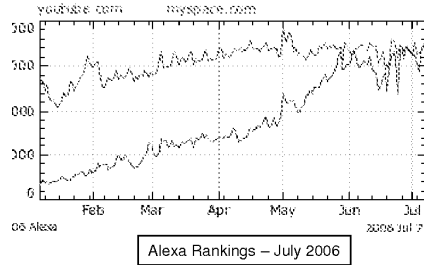
4

YouTube is Showing Break Out Growth

NIELSEN NETRATINGS MONTHLY UNIQUES

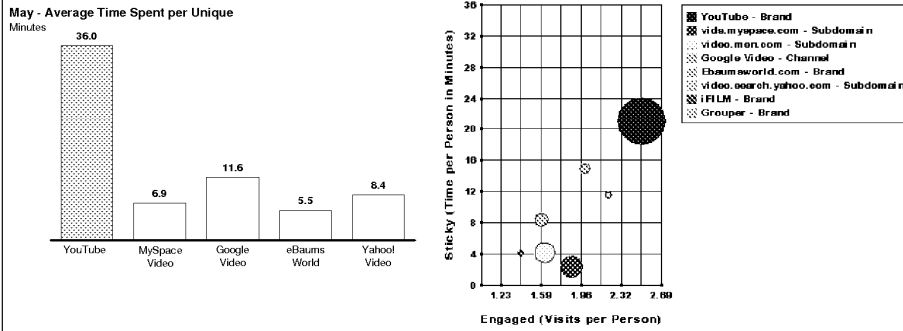


Daily Reach (per million)




- In video, YouTube is a clear leader with **20M uniques** (NetRatings) growing 100% month-on-month
- YouTube has a massive global reach: it is a top 10 site in 8 countries, a top 20 site in 18 countries, and a top 50 site in 49 countries. Overall, Alexa ranks it 19th in the world; approximately 80% of traffic is non-US

The Site is Extremely “Sticky” -- Particularly vs. Competitive Sites



- **Relative to the competition it is experiencing 3-5X time spent with an average of 36 minutes per unique per month (MMX).**

However, Youtube's Advertising Business is in its Infancy



The screenshot shows the YouTube homepage with a search bar at the top containing the text "Lazy Sunday". Below the search bar, there are navigation tabs for Home, Videos, Channels, Groups, Subscribers, and Uploads. A large banner image is displayed below the navigation. The main content area shows search results for "Lazy Sunday", including a video thumbnail, the title "Lazy Sunday", and the channel name "Eminem".

- We do not believe Youtube has any significant ad business
- The company has (correctly) been focused on the user experience and has not implemented any invasive advertising
 - Focuses on Banners
 - No “pre-roll” video inventory
- However, it has recently done business with Disney, NBC, and Weinstein as well as ad networks

Fit With MTVN/Viacom

8

As Video Consumption Moves to the Web, YouTube has Emerged As a First Choice Asset for the Company

- YouTube is the dominant platform for consumers as they migrate to using video to express themselves
 - It is quickly becoming a “video social network”
 - There is currently no other asset that approaches this position
- YouTube would be a transformative acquisition for MTV Networks / Viacom in the internet space; we would:
 - Immediately become the leading global deliverer of video online
 - Have an unrivaled global video distribution footprint, with dominance in almost every country
 - Own the world’s largest repository of digital video that is relevant to our audiences

9

**Four Key Success Factors for Youtube as
Part of MTVN/Viacom...**

- 1. Maintain consumer leadership position**
- 2. Crack the ad model**
- 3. Evolve the content model to fully incorporate
“branded content”**
- 4. Maintain “technology company” status**

...Each is Discussed in turn

10

1) Consumer Leadership: While YouTube is Number One, the Space is Competitive, Meaning its Position Cannot Be Taken for Granted

- A range of companies – including the portals, the social networks and pure-play start-ups are aggressively pursuing this space, creating alternatives for consumers
- Therefore, Youtube must focus not only on continuing to attract new consumers, but maintaining existing ones -- The key here will likely be to increase “switching costs”
 - Today, Youtube has a “limited audience lock-in”
 - Unlike MySpace, there is less investment in personal profiles and personalities
 - Youtube will have to focus on adding features which make it harder to move
 - With limited switching costs audiences are likely to migrate to other sources should the site's appeal be diminished – ad integration will be a particularly sensitive issue
- At the same time, it would be beneficial to be more than the world's Funniest Home Videos

11

2) Advertising: Success Will Require Tapping the Branded and Ad Network Spaces as Well as Creating A New “Ad Sense-Like” Product

- YouTube’s traffic is fragile with respect to attempts to monetize it through traditional “inserted” video advertising.
- Audience tolerance for pre and post-roll video advertising will be low compared to websites that are used predominantly for the consumption of professional programming that is not available elsewhere (e.g. IFILM, Overdrive)
- The model we have built assumes three revenue generation models, two of which already exist and are well understood, one of which is new and therefore untested.
- The proposed monetization mechanisms are:
 - Branded Premium Advertising & Sponsorships
 - Cost per View / “Video Ad Sense” Model
 - Run Of Site / Advertising Network

12

The Markets We Know – Branded and Ad Networks

- “Branded” revenue will be generated from key real estate, and will likely be in the form of auctioned premium advertising and sponsorships
 - Paid Placement – home page based sponsored video (i.e. one block where film studios bid for placement of their trailers)
 - Premium Content – over time the use of ad supported premium clips/content in a separate section (i.e., Movie of the week, first looks, releases, film trailers, etc).
 - That said, there is some concerns surrounding generation of significant revenue from entertainment advertisers (e.g. studios) include:
 - Likely lack of ability to *drive* traffic to home page and other destinations within the site,
 - Most popular and therefore valuable content – such as huge movie releases (trailers, etc.) – will likely be available freely anyway.
- In addition, we assume the use of advertising networks for yield management – initially domestically and over time internationally

13

The “Video Ad Sense-Like” Opportunity

- Users have so much freedom of choice for the consumption of media that marketers can no longer assume they can “buy time” within it.
- Advertisers are becoming obliged to offer compelling content and services. Google’s advertising model made this clear, whereby advertisers not only bid for the privilege of real estate but advertising that does not make good use of available real estate is penalized.
- We propose a revenue model for YouTube that treats advertising and content as near-equals, as in Google’s “natural vs. sponsored” search results. Cost per view paid video advertising would appear throughout the YouTube site, alongside the programming.
- Advertisers would bid for keyword-space, and could ultimately upload their own creative.
- Audiences would be receptive to the advertisers’ content because it would never be forced upon them but offered more as a *service* or as additional content to them, and advertising content that doesn’t perform (is not watched) would be automatically discounted and would ultimately disappear.

14

3) Evolve the content model to fully incorporate “branded content

- **Today, Youtube incorporates some branded content**
- **However, the experience is not maximized and the business model is not fully defined**
- **On a going forward basis, Youtube needs to evolve to deal with both of these issues**

15

4) Maintain “Technology Company” status

KEY SUCCESS FACTORS

- Ability to hire and retain technical talent: requires significant technical talent to develop targeted advertising and search related competencies. E.g., developing cost per play models that match categories of video to advertisers. As a corporately owned company it will be more challenging to incentivize new hires
- Ongoing investment in infrastructure: YouTube is at an early stage of infrastructure development and will require ongoing investments in storage/caching, and servers to maintain speed and effectiveness
- Investment in innovation: As a platform, YouTube requires ongoing investment in innovation to maintain the relevance of its searches and sharing technology

16

Viacom / YouTube – Sources of Value Added

- Provide users with fame on television i.e., The crowd decides, we put it on air - best of appears weekly on Comedy Central and MTVN, provides additional incentive for users to upload, vote and promote themselves on YouTube
- Brands/ editorial fit enables us to both source talent, innovative content for consumption across platforms. We are one of the few providers willing to put edgier content on TV. ie. User generated music video, user generated ads on television
- Video content – breadth and depth can power YouTube to the next level of relevance. By providing all of our clip based video in raw form – i.e. non branded editorial experience- simple search and obtain. We can push YouTube to become a more comprehensive destination and source for broader syndication
- Promotion – fit with our target audience and demo. We can reinforce and drive traffic/ promotion to YouTube.

17

Financial Model

- **We currently are in the midst of finalizing out operating projections**
 - **Advertising revenue**
 - **Video storage and delivery costs**
 - **General company management costs**
- **In addition, the Viacom M&A team is on board and waiting to overlay the requisite financial items**
- **We anticipate having something for you to review later day**

18

Summary and Next Steps

- **Refine model**
- **Integrate your input**
- **Socialize the opportunity with other key members of the Viacom management team (Dolan/Freston)**
- **Depending on the outcome of these steps, potentially engage with the controlling VC this week**

19

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

VIACOM INT'L INC., ET AL.,

Plaintiffs,

v.

YOUTUBE, INC., ET AL.,

Defendants

ECF Case
Civil No. 07-CV-2103 (LLS)

THE FOOTBALL ASSOCIATION
PREMIER LEAGUE LIMITED, ET AL.,
on behalf of themselves and all others
similarly situated,

Plaintiffs,

v.

YOUTUBE, INC., ET AL.,

Defendants.

ECF Case
Civil No. 07-CV-3582 (LLS)

DECLARATION OF MICHAEL SOLOMON IN SUPPORT OF
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

I, Michael Solomon, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am currently a Senior Staff Engineer at YouTube, Inc. ("YouTube"). I first began working on the development of what would become the YouTube.com website after being approached in early 2005 by Steve Chen, a former colleague of mine at PayPal. My work on YouTube began in May 2005 as help with software development and general operations work, and I was formally hired by YouTube as a software engineer in October 2005. I continued to assist with the development of the YouTube.com website up to and after its acquisition by Google Inc. in October 2006. I

have personal knowledge of the facts set forth herein and, if called as a witness, I could and would testify competently to them.

How Users Upload Videos to YouTube

2. YouTube operates a website located on the Internet at <http://www.youtube.com>, where users around the world can upload videos free of charge to computer servers owned or leased by YouTube. YouTube's systems are capable of simultaneously playing millions of these authorized, user uploaded videos at the same time to YouTube users around the world. The process of uploading a video to YouTube is initiated by YouTube users. As has always been the case since I began working on the YouTube service, the series of events that is triggered by a user's decision to upload a video to YouTube and ends with the user's video being made playable on YouTube is fully automated and does not involve the intervention or active involvement of YouTube personnel.

3. Before being able to upload a video to YouTube, a user must first register and create an account with the service. Once that one-time registration process has been completed and the user is signed-in to his YouTube account, the first step a user takes to upload a video involves navigating to the upload portion of the YouTube website. The user then selects a video file to upload to the YouTube system from the selection available on the user's personal computer, webcam, mobile phone, or other storage device, depending on how the user is accessing the service. Having selected the video he wishes to upload, the user then instructs the YouTube system to upload that video by clicking on a virtual upload "button."

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.

5. I have confirmed that each one of the video clips at issue in this lawsuit was uploaded to YouTube by a user of the service in a process similar to the one I just described.

Storing & Transcoding User's Videos

6. YouTube users are able to upload video files in a number of common and widely-used file formats, including Windows Media Video (.WMV), .3GP, .AVI, .MOV, .MP4, .MPEG, and Flash (.FLV). Because most Internet browsers are not able to easily play video files in all of these formats, a user's video upload prompts the YouTube system to convert the user's video into the Flash file format, which is a more common file format that most Internet browsers can play. This conversion process is known as "transcoding," and it occurs automatically and without any human intervention.

7. In light of the increasing popularity of using mobile phones and other consumer electronics devices to view Internet content, the YouTube system began allowing users to view videos from mobile phones and other consumer electronics devices, in addition to their personal computers. These devices typically have different file format requirements than personal computer-based Internet browsers and often cannot play Flash files. Using an automated transcoding process similar to the one used to convert user-uploaded videos into Flash, the YouTube system now transcodes user-uploaded videos into several other file formats supported by a variety of viewing devices. One such example is the transcoding of user-uploaded video files into the H.264 format, which is playable on Apple's iPhone. Adopting new encoding

formats is an example of YouTube's efforts to remain current and compatible with evolving technology, enabling the user uploaded videos it stores to be accessible to the largest number of users in the most efficient manner.

8. After a user uploaded video has been transcoded, the original video file and any transcodes are stored by YouTube on its network of computers and servers. As a part of this process, the YouTube system makes more than one copy of the stored version of the user's video files in order to increase the utility and reliability of the service for YouTube's users. This process also ensures that users' uploaded videos can remain playable in instances where any single storage device fails, and enables YouTube to efficiently distribute the load of storing millions of videos and speeding their playback in response to requests coming from users across the globe.

Viewing Users' Stored Videos

9. Anyone with Internet access and standard Internet browsing software can view for free the videos that other users have stored on YouTube. As noted above, YouTube users can also access the YouTube service from mobile or other consumer electronics devices. Users initiate video playback of a YouTube video by visiting YouTube and selecting the video that they wish to view. Like the choice of whether and which video to upload to YouTube, the decision of which video to view is made entirely by the user.

10. The YouTube system allows users to view videos stored on YouTube's servers through a process known as "streaming." The streamed files can begin playing on a user's computer before the complete video file has been fully transmitted. In response to a playback request, the YouTube system automatically streams a copy of the requested video from one of its video servers to the user's personal computer (or other device, such as an iPhone), where it plays for the user to watch. In almost all cases, YouTube prohibits users from downloading videos off the site, and does not

offer that functionality to users. In the context of viewing YouTube videos on a personal computer, for example, streaming differs from downloading because during streaming a complete copy of the video being streamed is not stored on the end user's computer before viewing can begin.

Searching for User's Stored Videos on YouTube

11. Users may search the YouTube website for videos of interest by entering a query consisting of terms the user deems relevant into search fields provided on various pages throughout the site. In response to the query, the service automatically returns a results page that shows the user a page or pages containing single reduced-size still images ("thumbnails") of the video clips that the search algorithm identifies as being responsive to the user's query, accompanied by a portion of the text the user who uploaded the video provided to describe the video. A video can be viewed by clicking on its corresponding thumbnail image and visiting the "watch page" for that clip.

Production of YouTube videos in connection with YouTube's Motion for Summary Judgment

12. The YouTube videos submitted in connection with YouTube's Motion for Summary Judgment were obtained by having an internal engineering team write a computer script that authenticated with an internal video server, then pulled specific YouTube videos based on a list of Video IDs we were provided by counsel. The videos that were pulled from YouTube's system were then transferred to counsel.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration is executed the 3rd day of March 2010, at Palo Alto, California.



Michael Solomon

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

VIACOM INTERNATIONAL INC., ET)	
AL.,)	
	)	ECF Case
Plaintiffs,)	
v.	)	Civil No. 07-CV-2103 (LLS)
)	
YOUTUBE, INC., ET AL.,)	
)	
Defendants.)	
<hr/>		
THE FOOTBALL ASSOCIATION)	
PREMIER LEAGUE LIMITED, ET AL.,)	
on behalf of themselves and all others	)	ECF Case
similarly situated,)	
	)	Civil No. 07-CV-3582 (LLS)
Plaintiffs,)	
v.)	
)	
YOUTUBE, INC., ET AL.,)	
)	
Defendants.)	
<hr/>		

**DECLARATION OF HUNTER WALK IN SUPPORT OF DEFENDANTS’
MOTION FOR SUMMARY JUDGMENT**

HUNTER WALK, pursuant to [28 U.S.C. § 1746](#), hereby declares as follows:

1. I am a Director of Product Management at Google Inc., and have been employed by Google since December 2003. I joined the YouTube product organization in January 2007 shortly after the acquisition by Google. As Director of Product Management, I lead the product team that is responsible for the development of YouTube, and have personal knowledge of YouTube’s business objectives, purpose and scope.

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

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intentionally reflects that goal by emphasizing “you” – *i.e.*, your own, original videos. Its longtime slogan, “Broadcast Yourself,” is still prominently featured on the service and reinforces that message.

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.

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.

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 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.

6. YouTube has become a valuable source of information in our democracy. Among other things:

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- During the 2008 presidential election, all the major candidates posted video clips to YouTube to spread their messages to the electorate. *See, e.g.,* <http://www.youtube.com/user/johnmccaindotcom?blend=3&ob=4&relk=cti#p/f/25/JTL4jC1bKzY> (Clip on John McCain's YouTube Channel of speech during the 2008 Presidential Campaign); <http://www.youtube.com/user/barackobamadotcom?blend=1&ob=4&relk=cth#p/u/781/vpmFd25tRqo> (President Barack Obama's "Seven" TV Ad, posted to his YouTube Channel during the 2008 Presidential Campaign).
- In two of the presidential debates, ordinary Americans were able to ask questions directly of the candidates by submitting videos to YouTube. *See, e.g.,* <http://www.youtube.com/user/YTdebates#p/u/46/XWokI0NaGMc> (The CNN/YouTube Debates).
- President Obama delivers a weekly video address that the White House posts to YouTube and recently sat down for an interview in which he answered questions submitted through YouTube by ordinary Americans, an event described as "the 21st century equivalent of Roosevelt's fireside chats." Attached as [Exhibit 1](#) is a true and correct copy of a January 31, 2010 article that appeared on NewYorkTimes.com, titled *Obama to Field Questions Posted by YouTube Users*. *See also, e.g.,* <http://www.youtube.com/user/whitehouse?blend=1&ob=4&relk=cth#p/u/91/94RRh9qZGYc> (January 2, 2010 Weekly Address); <http://www.youtube.com/watch?v=0pqzNJYzh7I> (The YouTube Interview with President Obama).
- Hundreds of members of Congress (including the Speaker of the House and the Senate Minority Leader) have set up their own channels on YouTube on which they post videos to communicate directly with their constituents. *See* <http://www.youtube.com/user/NancyPelosi> (Speaker of the House of Representatives, Nancy Pelosi); <http://www.youtube.com/user/RepublicanLeader> (Senator Minority Leader, Mitch McConnell).
- The 111th Congress unveiled Senate and House "hubs" on YouTube to which all members of the Senate and the House of Representatives can post video messages. *See* <http://www.youtube.com/user/senatehub> (Senate Hub); <http://www.youtube.com/user/househub> (House Hub).

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7. Other U.S. organizations likewise use YouTube to educate and engage the American public. For example:

- The U.S. Marine Corps, U.S. Army, U.S. Navy and U.S. Air Force all created their own channels on YouTube to share videos of soldiers in action around the world. *See* <http://www.youtube.com/user/MarineCorpsNews> (U.S. Marine Corps); <http://www.youtube.com/user/soldiersmediacenter> (U.S. Army); <http://www.youtube.com/user/UnitedStatesNavy> (U.S. Navy); <http://www.youtube.com/user/AFBlueTube> (U.S. Air Force).
- The U.S. Coast Guard posts clips to YouTube to show real-time videos of Coast Guard activities, including the work the Coast Guard is doing in Haiti to assist with the disaster relief efforts and U.S. Coast Guard rescue missions. *See* <http://www.youtube.com/watch?v=mDUInYe8G2c> (Coast Guard rescue mission on the Colorado River).
- NASA has its own channels on YouTube, where videos are posted of NASA astronauts touring the International Space Station or answering user questions from outer space. *See, e.g.,* <http://www.youtube.com/user/ReelNASA#p/a/3CD87307666C1B55/0/e16eXXAoisg> (Inviting users to submit video questions to the NASA astronauts); <http://www.youtube.com/user/NASAtelelevision#p/u/631/JgBgmw-2U8c> (International Space Station Tour Part I).
- Even the Library of Congress (which encompasses the U.S. Copyright Office) has its own channel on YouTube, offering videos on subjects from digital preservation, to Theodore Roosevelt, to lectures on the science of neuromusic. *See* <http://www.youtube.com/user/LibraryOfCongress> (Library of Congress Channel).

8. The embrace of YouTube by official bodies extends well beyond our shores; governments, heads of state, and leaders from around the world are on YouTube. The Vatican, the British royal family, Queen Rania of Jordan, the Iraqi government, the Kremlin, the United Nations, and presidents from Israel to France to South Korea to Estonia (among thousands of other individuals and organizations)

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all have YouTube channels to which they regularly upload videos. *See, e.g.,*

<http://www.youtube.com/user/vatican> (The Vatican);

<http://www.youtube.com/user/theroyalchannel> (The British Royal Family);

<http://www.youtube.com/user/kremlin> (The Kremlin);

<http://www.youtube.com/user/Iraqigov> (Iraqi Government);

<http://www.youtube.com/user/unitednations> (United Nations);

<http://www.youtube.com/peres> (President of Israel);

<http://www.youtube.com/user/PresidentMBLee> (President of South Korea).

9. But it is not just heads of state who are interested in YouTube.

YouTube is a window to events occurring all over the world, bringing information and shedding light on issues that might otherwise go unnoticed and enabling first-hand reporting from war zones and from inside repressive regimes. In my role as Director of Product Development, I have traveled the world talking to people about YouTube. I have heard firsthand from people across the globe how they use YouTube to understand what is happening in their countries based on the variety of opinions, citizen journalism and news reports that are uploaded to the site. And YouTube has been used to raise awareness about numerous political and humanitarian crises, including the violence in Myanmar, the earthquakes in Haiti, and the post-election protests in Iran after the government imposed a media blackout. *See, e.g.,* <http://www.youtube.com/watch?v=HgQd0K5W0vI> (Footage of Haiti Earthquake); <http://www.youtube.com/watch?v=I0MkATcn04M> (Footage of

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the political protests in Iran); <http://www.youtube.com/watch?v=mcQ8zMpthis> (Footage of the violence and unrest in Myanmar).

10. Nonprofit organizations like the American Red Cross, the WWF (formerly the World Wildlife Fund), the World Food Program and the Ad Council use YouTube to publicize their causes, including relief efforts for the 2008 hurricanes, the plight of endangered animals, child malnutrition in underdeveloped countries, Autism awareness, support for veterans and safety belt education. *See, e.g.,* <http://www.youtube.com/watch?v=Og1bYPn8nW8> (American Red Cross PSA, 2008 hurricane relief); <http://www.youtube.com/watch?v=7g9mOMQfY2s> (WWF PSA, Save the Gorilla); <http://www.youtube.com/watch?v=1B98PEXsoXs> (Ad Council PSA, Safety Belt Education). Local organizations do too. Recently, the staff of the Providence St. Vincent Medical Center in Portland, Oregon got together to create a video of themselves dancing around the hospital wearing pink gloves to generate awareness about breast cancer. The video resonated with the YouTube community and now has more than 6,000,000 views. *See* <http://www.youtube.com/watch?v=OEdVfyt-mLw> (Pink Glove Dance).

11. Many organizations have sought to leverage the tremendous power of YouTube by partnering with YouTube to engage the YouTube community. For example:

- In January of this year, at Viacom's request, YouTube enabled its users to watch the Hope for Haiti Now benefit concert live online and encouraged its users to donate to the earthquake relief efforts. *See e.g.,* <http://youtube-global.blogspot.com/2010/01/live-tonight-top-artists-perform-in.html> (YouTube Blog announcing live-streaming of Hope for Haiti Now concert).

- In October 2009, YouTube partnered with the World Food Program on World Food Day to raise awareness and funds to help fight world hunger. See <http://youtube-global.blogspot.com/2009/10/can-billion-views-help-billion-people.html> (YouTube blog post on World Food Day); <http://www.youtube.com/watch?v=6jSBW0BOPqM> (World Food Program Video – A Billion for a Billion).
- In 2008, YouTube partnered for the first time with the World Economic Forum, inviting users to respond to the “Davos Question”: What one thing do you think that companies, countries or individuals must do to make the world a better place in 2008? Not only were clips of some of the YouTube users’ responses played at the World Economic Forum’s Annual General Meeting in Davos, Switzerland, but YouTube also posed the same question to the meeting attendees, and 120 of the world’s top leaders and thinkers provided video responses that were posted to YouTube, including Henry Kissinger, Hamid Karzai, Rajendra Pachauri, Yo-Yo Ma and many, many others. See <http://www.youtube.com/watch?v=BDqs-OZWw9o> (2008 Davos Question); http://www.youtube.com/view_play_list?p=749732FFD312CA7F (Responses to 2008 Davos Question).

12. YouTube is transforming education. The site serves as a vehicle for making education accessible – for free – to its millions of users, allowing students of all ages to audit classes at leading universities. Through channels on YouTube EDU, universities from around the world have uploaded more than 40,000 videos of lectures on subjects ranging from particle physics to Shakespeare. YouTube EDU includes universities from the United Kingdom, Canada, France, Spain, Italy, the Netherlands, Russia, Israel, and Australia, as well as universities from all over the United States, including Columbia University, Harvard University, Stanford University, University of Florida, University of Michigan, Carnegie Mellon University, Duke University, Yale University, the University of Virginia, MIT and the University of Notre Dame, to name just a few. Many of those lectures are

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viewed thousands, and sometimes hundreds of thousands, of times. For example, Marian C. Diamond is a professor of anatomy and neuroscience at the University of California at Berkeley who has been teaching for over 40 years. Her lectures have enjoyed tremendous popularity on YouTube and her Integrative Biology 131 lecture on Organization of the Body has been viewed nearly 400,000 times. *See, e.g.*, http://www.youtube.com/channels?s=ytedu_mv (YouTube EDU); <http://www.youtube.com/watch?v=S9WtBRNyds0> (Professor Diamond's lecture on Organization of the Body).

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. *See* <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 *To Impress, Tufts Prospects Turn to YouTube*. *See also* <http://www.youtube.com/watch?v=SGJMoYcM8yY> (example of student admissions video submission to Tufts).

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

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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. *See, e.g.,*

<http://www.youtube.com/watch?v=7jRE3xRm8Vk> (How to Travel Cheaply);

<http://www.youtube.com/watch?v=Phjw9dzHU-0> (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).

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. *See* <http://www.youtube.com/user/reporterscenter> (YouTube Reporters’ Center Channel).

16. YouTube has not only given creators large and small a powerful promotional channel to market their work to a global audience, it has become a haven for aspiring artists, who have posted their own original content to YouTube that is often professional in quality if not in budget, and has allowed unknown performers, filmmakers, and artists to rise to worldwide fame. YouTube videos have won Grammy awards and Emmys, *see, e.g.,*

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<http://www.youtube.com/watch?v=dTAAsCNK7RA> (OK Go Treadmill Video, which won a Grammy); <http://www.youtube.com/watch?v=jmR0V6s3NKk> (I Met the Walrus, First YouTube video to win an Emmy); launched unknown singers to fame, *see, e.g.*, <http://www.youtube.com/watch?v=EwTZ2xpQwpA> (Tay Zonday, Chocolate Rain); catapulted aspiring filmmakers to multi-million dollar deals, *see, e.g.*, <http://www.youtube.com/watch?v=-dadPWhEhVk> (Unknown Uruguay filmmaker, Federico Alvarez, gets \$30 million film deal after posting this clip on YouTube); and provided a platform for unexpected YouTube stars like an 83-year-old widower who has become a YouTube sensation, *see* http://www.youtube.com/watch?v=p_YMigZmUuk (geriatric1927, First Try).

17. Major movie and televisions studios, sports leagues, news organizations and other companies have also embraced the YouTube service. These organizations use YouTube for a myriad of purposes, including:

- Advertising – both overtly and covertly – by companies like Ray Ban, American Express and E*Trade. *See, e.g.*, <http://www.youtube.com/watch?v=-prfAENSh2k> (Ray Ban commercial); <http://www.youtube.com/watch?v=m56F4EKN9hg> (American Express commercial); <http://www.youtube.com/watch?v=uHPg262Kr9c> (E*Trade commercial).
- Uploading footage of sporting events like the Stanley Cup Playoffs, NBA Finals, U.S. Open, Wimbledon, Warsaw Open and soccer matches by sports teams, leagues and organizations like the NBA, NHL, U.S. Open, ATP, Wimbledon, MLS, and Real Madrid. *See, e.g.*, <http://www.youtube.com/watch?v=xLYWtjEUKa4> (Top Plays of the NBA Finals, uploaded by the NBA); <http://www.youtube.com/watch?v=JkUNGWH1Jzg> (2008 Stanley Cup Playoff Highlights, uploaded by the NHL); <http://www.youtube.com/watch?v=-MIm5WgIepE> (2009 U.S. Open: Djokovic vs. McEnroe, uploaded by the U.S. Open); http://www.youtube.com/watch?v=Sh9E_JO3nV0 (Highlights of Real

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Madrid soccer match, uploaded by Real Madrid);

<http://www.youtube.com/watch?v=FOqVpflq3EE> (Footage of Roger Federer warming up for Wimbledon match, uploaded by Wimbledon);

<http://www.youtube.com/watch?v=f0IRXINcPjI> (Warsaw Open highlights, uploaded by the ATP).

- Featuring music videos posted or claimed by the artist or record label. *See, e.g.*, http://www.youtube.com/watch?v=NaGLVS5b_ZY (Celine Dion, “A New Day Has Come”); <http://www.youtube.com/watch?v=6vQpW9XRiyM> (Bruce Springsteen, “Glory Days”).
- Posting news clips and information from organizations like CBS News, Fox News Channel, the Associated Press, Time Magazine, and Newsweek, as well as from news stations around the world, such as NTV Kenya. *See, e.g.*, <http://www.youtube.com/user/foxnewschannel> (Fox News Channel on YouTube); <http://www.youtube.com/user/CBSNewsOnline> (CBS News Channel on YouTube); <http://www.youtube.com/user/ntvkenya> (NTV Kenya on YouTube).
- Bringing back classic television programs like Star Trek, MacGyver, and Monty Python. *See* <http://www.youtube.com/show/startrek> (Star Trek); <http://www.youtube.com/show/macgyver> (MacGyver); <http://www.youtube.com/user/MontyPython> (Monty Python). Even Sesame Street has a YouTube channel, where users can watch clips of their favorite Sesame Street moments. *See, e.g.*, <http://www.youtube.com/watch?v=vSYadh2xmcl> (Elmo’s Song); <http://www.youtube.com/watch?v=Ye8mB6VsUHw> (Cookie Monster singing C is for Cookie).

18. Celebrities from media moguls to musicians to athletes have used

YouTube to promote both themselves and the causes they believe in:

- Oprah, Paul McCartney, Andrea Bocelli and a host of other celebrities have their own channels on YouTube. *See* <http://www.youtube.com/oprah> (Oprah’s Channel); <http://www.youtube.com/user/paulmccartney> (Paul McCartney’s Channel); <http://www.youtube.com/user/andreabocelli> (Andrea Bocelli’s Channel).
- Not only does the rock band U2 have its own YouTube channel (*see* <http://www.youtube.com/user/u2official>), but the band’s lead singer and

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well-known humanitarian Bono also has a channel to promote “(Red),” a brand designed to help raise awareness and money to fight AIDS in Africa (see <http://www.youtube.com/user/joinred>).

- Lance Armstrong and Team RadioShack have a channel on YouTube where users can watch clips of Armstrong and Team RadioShack in training (see <http://www.youtube.com/user/TeamRadioShack>); Armstrong also launched a challenge to YouTube users through his LiveStrong channel, inviting users to submit videos about the challenges they have overcome (<http://www.youtube.com/watch?v=9S9vlgtt264>).
- Singer Alicia Keys not only has her own channel on YouTube (see <http://www.youtube.com/user/aliciakeys>), but Keys and her recording label, UMG, recently partnered with YouTube and American Express to live-stream Keys’ AIDS benefit concert (see <http://www.youtube.com/watch?v=dF6D7xs1qMY>).

19. Users in the legal field have also found innovative ways to use YouTube. Law enforcement officials have posted clips to the service seeking the public’s help in identifying and locating criminal suspects whose faces can be seen in surveillance videos, see, e.g., <http://www.youtube.com/watch?v=TwslagFWKlY> (Franklin Police Department), and the Southern District of Indiana makes available informative videos about the judiciary on its YouTube channel, see <http://www.youtube.com/user/USDCINSD> (Southern District of Indiana Channel).

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

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creativity and to connect with the global community. Some of the videos posted by YouTube's users include:

- Their pets doing funny things or performing tricks. *See, e.g.,* http://www.youtube.com/watch?v=1JynBEX_kg8 (Voice over of conversation between two kittens); <http://www.youtube.com/watch?v=TZ860P4iTAM> (Nora the Cat, playing the piano); <http://www.youtube.com/watch?v=4PcL6-mjRNk> (Dog playing ball by himself); <http://www.youtube.com/watch?v=xPxDw7ajfGE> (Baby duck feeding fish); http://www.youtube.com/watch?v=imFTcjHIY_s (skateboarding dog).
- Amateur footage of amazing events, like an astounding confrontation between lions, crocodiles and a herd of buffalo at a watering hole in Kruger National Park. *See* <http://www.youtube.com/watch?v=LU8DDYz68kM> (Battle at Kruger).
- Invitations to share ideas, like YouTube user and silent magician MadV's invitation to the YouTube community to write a simple statement on their hands for the world to see, which received an overwhelming number of responses. *See, e.g.,* <http://www.youtube.com/watch?v=Z-BzXpOch-E> (Montage of user responses to original invitation); <http://www.youtube.com/watch?v=s7a9xCIAAddU> (2009 video inviting additional responses).
- The antics of young children. *See, e.g.,* http://www.youtube.com/watch?v=_OBlgSz8sSM (Charlie Bit My Finger); <http://www.youtube.com/watch?v=E8aprCNnecU> (Little boy tells mommy what he thinks of her); <http://www.youtube.com/watch?v=5P6UU6m3cck> (Baby Laughing).
- People dancing along to the music. *See, e.g.,* <http://www.youtube.com/watch?v=zlfKdbWwruY> (Where the Hell is Matt); <http://www.youtube.com/watch?v=dMH0bHeiRNng> (Evolution of Dance).
- Amazing inventions and fascinating photography. *See, e.g.,* <http://www.youtube.com/watch?v=eaRcWB3jwMo> (robot built from Legos that can solve a Rubik's Cube in 10 seconds); <http://www.youtube.com/watch?v=EMhUZAq5IxQ> (time lapse photography of snowfall in Washington, D.C.).

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- High school students demonstrating their creativity through a class project or posting their athletic highlight films for potential college recruiters. *See, e.g.*, <http://www.youtube.com/watch?v=T7TI-AJi2O8> (Shorewood High School Lip Dub); <http://www.youtube.com/watch?v=hSvIOd7tfh0> (High school student soccer highlights).
- U.S. soldiers sending holiday greetings home. *See, e.g.*, <http://www.youtube.com/watch?v=vPm27Wm-0tY> (Montage video of soldiers' holiday greetings home).
- Surprising wedding marches. *See, e.g.*, <http://www.youtube.com/watch?v=4-94JhLEiN0> (wedding party does surprise wedding march).
- Their fight against cancer. *See, e.g.*, <http://www.youtube.com/watch?v=cvj-0RUpteo> (Boey Fights Cancer).
- Their singing talent (including a proposed YouTube theme song). *See, e.g.*, <http://www.youtube.com/watch?v=pXD7rDgsL88> (Irving Fields' YouTube Theme Song).
- Their search for a bone marrow donor. *See, e.g.*, <http://www.youtube.com/watch?v=i1azm1oNRbk> (Leigh Buckley seeks bone marrow donor).
- Footage of them at the zoo, like the very first YouTube video. *See* <http://www.youtube.com/watch?v=jNQXAC9IVRw> (Me at the Zoo).

21. YouTube's impact on society has been so profound that it inspires intellectual study. Michael Wesch, an Assistant Professor of Cultural Anthropology at Kansas State University, conducted a study on the anthropology of YouTube and participatory culture. Professor Wesch gave a presentation on this topic, titled "An anthropological introduction to YouTube," at the Library of Congress and, of course, he posted the video of that presentation on YouTube. *See* http://www.youtube.com/watch?v=TPAO-IZ4_hU. Among the fascinating aspects of

YouTube discussed in Professor Wesch's presentation is its unique participatory, collaborative and community-centric nature, where people become linked to one another in ways we may never have expected, all through the power of the YouTube platform.

22. YouTube's users have used YouTube to create a new model for how individuals, companies, organizations and even governments communicate. It is a social network, where people from around the world can easily share video and favorites among each other. It is a forum for free expression, offering an open platform for all types of artistic and political expression, cultural exchange, and entertainment. It is a stage for spreading a message, advancing a cause, or promoting a product to a worldwide audience. It is an educational tool for governments, institutions of higher learning, and ordinary people interested in sharing their expertise. It is a prominent cultural reference point, a repository for individual creative expression of all types, a community that fosters knowledge, art, philanthropy, humor, democracy, journalism, and above all, self-expression.

I certify under penalty of perjury that the foregoing is true and correct.

Dated: SF, California
February 28, 2010



Hunter Walk

156-153-004 C7*1130
Figueira Decl. Tab
39

From: Brent Hurley <brent@youtube.com>
Sent: Tuesday, November 22, 2005 4:13 PM
To: Jawed [REDACTED]
Subject: Re: flagging

39

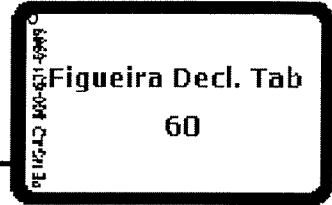
We took it down because, as stated in the Digital Millennium Act, we're only obligated to remove content when contacted directly by the copyright owner. We don't want random users to flag things as copyrighted because they don't own the content.

On 11/22/05 6:33 AM, "Jawed" [REDACTED] wrote:

> hey Brent, do you know why we got rid of the Copyright flagging? Now it's
> just:
>
> Feature This! Inappropriate Miscategorized
>
> what happened to (C)?
>
> Jawed
>
>
> <http://www.jawcd.com/>
>
>

Hurley, B
EXHIBIT NO. 3
8.24.08
A. IGNACIO HOWARD CSR, RPR

From: Jawed [REDACTED]
Sent: Friday, August 19, 2005 1:22 AM
To: Steve Chen [REDACTED]
Subject: Interested?



I am about to send this to Doug. Comments?

Hi Doug,

As you may know, Steve Chen, Chad Hurley, and I started YouTube.com. So the team is extremely small, and we're looking for just a couple more people to help us out.

Our growth is going through the roof:

http://www.alex.com/data/details/traffic_details?&range=1y&size=large&compare_sites=&y=r&url=youtube.com#top

We recently got slashdotted, and that has gotten the attention of many other media outlets. We are about to be featured in the LA Times.

What I'm about to write below is still confidential, but I'm letting you know because we want to see if you're interested in joining our team.

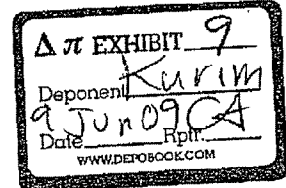
We have been talking to Sequoia (Roelof is a partner there now), and they've told us in certain terms that they are extremely interested in investing in us. We've had two meetings with them thus far, and are meeting with Mike Moritz there next week. Additionally, Reid Hoffman, Peter Thiel, and Josh Kopelman (the founder of Half.com) have all expressed interest in investing in YouTube together as an "Angel team". So it seems very likely that we will be raising money from most, if not all of these parties within the next few weeks. Reid has already given us an empty section of 1840 Embarcadero to work in (Reid's LinkedIn is there now), so we effectively have an office already.

Our goal is to use the funding to pursue a two-phased approach. First we will further grow our audience and reach to secure our position as the #1 place for personal videos on the internet. Then we will monetize the audience we have acquired by hosting video ads. There is also an option of offering premium services. And, we think that in the current climate we will likely become an acquisition target in the near future. So there will be many interesting and lucrative options for YouTube.

Since our team is so small, and since we have funded it ourselves thus far, we would be able to offer you a very attractive equity stake in YouTube, should you be interested. Obviously the details of this are time-sensitive, since hiring other people, or raising money, affects the equity positions.

On the technical side, there are many interesting problems. There's the video encoding stuff (we are encoding uploaded movies from all sorts of formats to Flash video), and scalability issues. We implemented a self-replication video cluster architecture which has worked out very well... in fact, we easily withstood the slashdot effect :)

If you want, we can meet with you and provide you with all the details.



Let me know what you think. Thanks,

60-0002

Jawed

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

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16 **UNITED STATES DISTRICT COURT**
17 **CENTRAL DISTRICT OF CALIFORNIA**

18 METRO-GOLDWYN-MAYER
19 STUDIOS INC., et al.,
20 Plaintiffs,

21 v.

21 GROKSTER, LTD., et al.,
22 Defendants.

23 JERRY LEIBER, et al.,
24 Plaintiffs,

25 v.

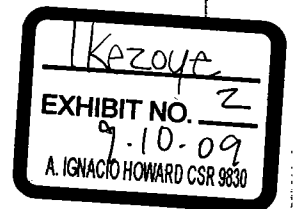
25 CONSUMER EMPOWERMENT BV
26 a/k/a FASTTRACK, et al.,
27 Defendants.

28 AND RELATED COUNTERCLAIMS

CV 01-08541 SVW (FMOx)
(Consolidated with: CV 01-09923 SVW
(FMOx))

**DECLARATION OF VANCE
IKEZOYE IN SUPPORT OF
PLAINTIFFS' MOTIONS FOR
SUMMARY JUDGMENT**

Date: May 1, 2006
Time: 1:30 p.m.
Ctirm: The Hon. Stephen V. Wilson



1 I, Vance Ikezoye, the undersigned, declare:

2 1. I am the President and Chief Executive Officer of Audible Magic
3 Corporation. I make this declaration to demonstrate that there are methods to
4 prevent unauthorized recordings from being distributed on peer-to-peer systems
5 like those operated by defendants; such methods have been and continue to be
6 deployed, with tremendous success, in mass scale commercial settings. I have
7 personal knowledge of the following facts and, if called and sworn as a witness,
8 could competently testify thereto.

9 2. Established in 1999, Audible Magic focuses on the application of
10 content-based audio identification technology as a solution for digital rights
11 management. It is the leader in providing content management services to the
12 digital media and entertainment industries.

13 3. From the beginning, Audible Magic has proudly disseminated
14 information on the capabilities and successes of our technology. Audible Magic
15 has a regular and frequent presence in industry conferences. We continue to
16 market our technology in emergent and evolving contexts.

17 4. The core of Audible Magic's work is audio recognition technology
18 that classifies sound based on its perceptual characteristics. A company called
19 Muscle Fish, LLC, which began in 1992 and which Audible Magic acquired in
20 July 2000, originally developed the technology. This technology relies on Mel-
21 Filtered Cepstral Coefficients ("MFCCs"), which are measurements that accurately
22 characterize and model audio in the same way the ear perceives sound. When a
23 person hears any sound, the human ear perceives the spectra of the sound. (A
24 spectrum measures amplitude as a function of frequency.) We have found that
25 measuring the shape of the spectrum is the method of identifying uniqueness in a
26 segment of audio that is the most accurate and robust, i.e., able to work in many
27 different environments and despite changes in format and acoustic and digital
28

1 modifications. Thus, Audible Magic's technology analyzes the shape of the
2 spectrum inherent in a digital audio file. The MFCC describes the shape of that
3 spectrum, adjusted for the way that the human ear actually perceives sound.

4 5. The analysis performed by this technology produces a set of numeric
5 values called a "feature vector" or "digital fingerprint," which is absolutely unique
6 to a particular master recording, whether a sound recording or the soundtrack to a
7 video or motion picture. In essence, each digital fingerprint identifies a master
8 recording, much as a human fingerprint identifies a person. The fingerprinting
9 technology works on all forms of audio, regardless of the digital format into which
10 the audio has been encoded.

11 6. The fingerprint remains constant through all typical audio processing,
12 such as the compression that occurs when an audio file is encoded into digital
13 formats, including MP3, the most popular format. Thus, one fingerprint can be
14 used to recognize all manipulated forms of the original audio. The fingerprints are
15 accurate enough that they can differentiate between various live and studio
16 performances of a single song.

17 7. Audible Magic's technology also accurately identifies songs
18 regardless of the bit rate of the file. The bit rate is the number of bits (small pieces
19 of data) that occur in a given amount of time, usually a second. Thus, a bit rate is
20 usually expressed in some multiple of bits per second -- for example, kilobits, or
21 thousands of bits per second (Kbps). The higher the bit rate, the larger the file and
22 the better the sound quality. Users can set the bit rate at several different levels,
23 but the identification technology will work in a range of bit rates from highly
24 compressed 20 Kbps to CD quality, over 300 Kbps. This range includes the bit
25 rates used by regular users of P2P services, who generally prefer the higher quality
26 that comes with higher bit rates, usually at least 56 Kbps and more often much
27 higher.

28

1 8. The fingerprints are very small. Only 20 seconds of a master
2 recording is needed to create the fingerprint. A typical fingerprint is hundreds of
3 times smaller than a typical file encoded in MP3, the most popular digital format
4 for sound recordings, and thousands of times smaller than a typical WAV file
5 (another popular digital format for sound recordings). The small size of the
6 fingerprint makes it much easier to store and much faster to transmit and check the
7 fingerprints of unknown audio files against a reference database of fingerprints of
8 known recordings.

9 9. The fingerprint technology is very secure and cannot be tampered
10 with. As long as the audio is not distorted to the point that the listening experience
11 is significantly affected, the fingerprint will positively identify the recording.

12 10. Audible Magic possesses a database of fingerprints from
13 approximately 6 million copyrighted songs. This database roughly represents the
14 music available for purchase in North America and consists of music from the four
15 major and over 500 independent music labels. Fingerprints from this large archive
16 are used to populate an Audible Magic Identification Server with a reference
17 database.

18 11. Audible Magic markets several tools that employ our patented audio
19 fingerprinting technique. Our "CopySense P2P Plug-in" can be easily integrated
20 into any file-sharing service. Based on our content identification technology and
21 services, the CopySense P2P Plug-in provides the file-sharing network with the
22 ability to identify, filter, and link to purchase any registered copyrighted file.
23 Additionally, our "CopySense Network Appliance" was designed specifically to
24 intelligently manage P2P applications at a network level. Its capabilities include
25 identifying and blocking (or allowing) P2P files containing offending media
26 content such as copyrighted songs, by performing "on-the-fly" matches of files
27 against copyrighted material registered in our database. Finally, our "Replicheck"
28 service allows the media manufacturing industry to automatically check

1 reproduction jobs for copyrighted content by matching each song on a CD master
2 against our database.

3 12. With the Copy Sense P2P Plug-in, Audible Magic's fingerprinting
4 technology is currently being used to "block" or prevent unauthorized recordings
5 from being distributed and copied in P2P systems. These systems are very similar
6 to those operated by defendants in this case.

7 13. For example, Audible Magic has successfully deployed the audio
8 fingerprinting technology in the iMesh system. The Audible Magic tool has been
9 adopted by hundreds of thousands of iMesh users and currently appears to make up
10 a significant majority of all active iMesh users.

11 14. The Audible Magic tool has demonstrated itself to be readily scalable
12 to enormous volume.

13 15. Based on the Audible Magic technology that was incorporated into the
14 iMesh client, an audio fingerprint was calculated for each target file at the client
15 level. That fingerprint was communicated to an Audible Magic Identification
16 Server hosting a database of fingerprints corresponding to works not authorized for
17 distribution. If the fingerprint of the unknown audio file matched a fingerprint in
18 the reference database, the identification server responded with a command to the
19 user module to "block" the file. If the fingerprint was not recognized, the server
20 sent a "do not block" command. When the module received a "block" command
21 from the server, it terminated the transfer and deleted what had already been
22 received. A "do not block" command resulted in the completion of the download.
23 The iMesh-Audible Magic filter was, therefore, a "filter out" filter, meaning that
24 all files were permitted to be freely exchanged unless the work was specifically
25 identified as one that was not authorized for distribution.

26 16. The iMesh-Audible Magic filter was designed to filter on both the
27 "download" side (when the iMesh user attempted to download a file from another
28 user) and the "upload" side (when someone attempted to obtain a file from the

1 iMesh user). In this way, iMesh could ensure that its users were not downloading
2 or distributing to others files not authorized for distribution. In addition, the
3 Audible Magic technology was “network agnostic,” which meant that it filtered
4 sound recordings on multiple networks, across platforms, without regard to the
5 particular brand of client application on the other end of the intended transfer.

6 17. I understand that testing of the iMesh-Audible Magic filter has
7 demonstrated, with real world empirical evidence, that the audio fingerprinting
8 filter would successfully block well over 99% of the files unauthorized for peer-to-
9 peer distribution. These results confirm our own evaluations and testing of the
10 fingerprinting technology. That technology, moreover, can be implemented on its
11 own, or in conjunction with other filters.

12 18. iMesh is currently using an architecturally similar version of the
13 Audible Magic tool in its commercial business relating to the authorized
14 distribution of licensed recordings. In that enterprise, iMesh is licensed to
15 distribute certain works. With the Audible Magic fingerprinting technology,
16 iMesh is able to ensure that its users are not downloading or distributing files that
17 are not authorized for distribution, regardless of the network to which iMesh is
18 connected and regardless of whether that network contains different brands of
19 client applications that do not filter out copyrighted works. The Audible Magic-
20 iMesh filter has scaled seamlessly to 5 million “look-ups” per day, and easily could
21 scale to meet the needs of any network in use today.

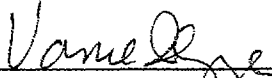
22 19. Audible Magic has also implemented its fingerprinting technology on
23 a mass scale at the educational network and ISP level. For example, over 60
24 universities use Audible Magic’s CopySense Network Appliance, which is able to
25 completely block all P2P protocols. The system enables the schools to filter P2P
26 traffic by blocking all transfers or by blocking only those transfers containing
27 copyrighted or sexual content. The many schools that use the CopySense Network
28 Appliance include the following publicly announced universities: Central

1 Washington University; Fresno Pacific University; Texas A&M, Kingsville;
2 Tulane University; University of Maryland, Coppin State; University of Portland;
3 and Wittenberg University. Many of these schools turned to Audible Magic
4 because illegal file sharing was debilitating their network bandwidth. At
5 Wittenberg University, for example, it was the Student Senate that unanimously
6 voted to block illegal file-sharing, because of the poor network performance that
7 was being caused by illegal file-sharing. Twice in the same year, P2P traffic had
8 taken the university's network bandwidth down to zero. Audible Magic's
9 technology resolved the issue simply by blocking the illegal file-sharing. Similar
10 positive effects on network bandwidths were seen at each of the other universities
11 to employ the technology. The Audible Magic device monitors myriad protocols
12 simultaneously and terminates transfers in real-time at each of these schools.

13 20. Needless to say, our technology is effective when our database is
14 comprehensive. Any initial press reports of early stumbles pertaining to the iMesh
15 deployment are almost entirely attributable to initial delays in populating our
16 reference database. That database is now expansive, and it continues to grow. As
17 discussed above, our technology has been implemented in numerous mass scale
18 commercial settings with tremendous success.

19 21. In sum, for several years, Audible Magic has offered copyright
20 filtering technology and tools that could be used effectively to stop infringement
21 on P2P networks, while not interfering with the free exchange of noninfringing
22 works. The Audible Magic technology can easily handle tens of millions of
23 requests a day for identification against a reference database of millions of
24 recordings. The technology currently achieves above 99% correct identification
25 rates; our false positive identification rate is better than 1 in 10,000. These rates
26 are minimums as we have not performed tests that establish the upper bounds of
27 our technical accuracy. Audible Magic's goal, which we are continually working
28 towards, is 100% correct identification.

1 I declare under penalty of perjury under the laws of the United States that
2 the foregoing is true and correct and that this Declaration was executed on
3 February 2, 2006, at Los Gatos, CA.

4
5 
6 Vance Ikezoye

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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

<hr/>)	
VIACOM INTERNATIONAL INC.,)		
COMEDY PARTNERS,)		
COUNTRY MUSIC TELEVISION, INC.,)		
PARAMOUNT PICTURES	)	Case No. 1:07-CV-02103-LLS	
CORPORATION,	)	(Related Case No. 1:07-CV-03582-LLS)	
and BLACK ENTERTAINMENT)		
TELEVISION LLC,	)	DECLARATION OF WARREN	
	)	SOLOW IN SUPPORT OF	
	Plaintiffs,	PLAINTIFFS' MOTION FOR	
v.	)	PARTIAL SUMMARY JUDGMENT	
)		
YOUTUBE, INC., YOUTUBE, LLC, and)		
GOOGLE INC.,)		
	Defendants.		
)		
<hr/>)		

I, WARREN SOLOW, declare as follows:

1. I am the Vice President of Information and Knowledge Management at Viacom Inc. I have worked at Viacom Inc. since May 2000, when I was joined the company as Director of Litigation Support. I make this declaration in support of Viacom’s Motion for Partial Summary Judgment on Liability and Inapplicability of the Digital Millennium Copyright Act Safe Harbor Defense. I make this declaration on personal knowledge, except where otherwise noted herein.

Ownership of Works in Suit

2. The named plaintiffs (“Viacom”) create and acquire exclusive rights in copyrighted audiovisual works, including motion pictures and television programming.

A-192

3. Viacom distributes programs and motion pictures through various outlets, including cable and satellite services, movie theaters, home entertainment products (such as DVDs and Blu-Ray discs) and digital platforms.

4. Viacom owns many of the world's best known entertainment brands, including Paramount Pictures, MTV, BET, VH1, CMT, Nickelodeon, Comedy Central, and SpikeTV.

5. Viacom's thousands of copyrighted works include the following famous movies: *Braveheart*, *Gladiator*, *The Godfather*, *Forrest Gump*, *Raiders of the Lost Ark*, *Breakfast at Tiffany's*, *Top Gun*, *Grease*, *Iron Man*, and *Star Trek*.

6. Viacom's thousands of copyrighted works include the following famous television shows: *The Daily Show with Jon Stewart*, *The Colbert Report*, *South Park*, *Chappelle's Show*, *Spongebob Squarepants*, *The Hills*, *iCarly*, and *Dora The Explorer*.

7. Pursuant to Fed. R. Evid. § 1006, attached hereto as Exhibits A-E are summaries of evidence relating to Viacom's ownership of the audiovisual works that were infringed on YouTube and that are at issue in this litigation ("Works in Suit").

8. Exhibits A-E were prepared at my direction and summarize documents that have been produced to Defendants during discovery. Each exhibit identifies the Viacom Bates numbers corresponding to each document summarized in the exhibit.

9. Viacom owns or controls the copyrights or exclusive rights under copyright in the Works in Suit listed in Exhibits A-E.

10. Exhibit A summarizes evidence relating to Plaintiff Viacom International Inc's ownership of Works in Suit, including the title of the work, the episode of the work (if applicable), the copyright registration number, the name of the copyright registrant,

chain of title information (if applicable), and the Bates numbers where the evidence may be found in Viacom's document production.

11. Exhibit B summarizes evidence relating to Plaintiff Comedy Partners' ownership of Works in Suit, including the title of the work, the episode of the work (if applicable), the copyright registration number, the name of the copyright registrant, chain of title information (if applicable), and the Bates numbers where the evidence may be found in Viacom's document production.

12. Exhibit C summarizes evidence relating to Plaintiff Country Music Television Inc.'s ownership of Works in Suit, including the title of the work, the episode of the work (if applicable), the copyright registration number, the name of the copyright registrant, chain of title information (if applicable), and the Bates numbers where the evidence may be found in Viacom's document production.

13. Exhibit D summarizes evidence relating to Plaintiff Paramount Pictures Corporation's ownership of Works in Suit, including the title of the work, the episode of the work (if applicable), the copyright registration number, the name of the copyright registrant, chain of title information (if applicable), and the Bates numbers where the evidence may be found in Viacom's document production.

14. Exhibit E summarizes evidence relating to Plaintiff Black Entertainment Television LLC's ownership of Works in Suit, including the title of the work, the episode of the work (if applicable), the copyright registration number, the name of the copyright registrant, chain of title information (if applicable), and the Bates numbers where the evidence may be found in Viacom's document production.

15. A copy of each Work in Suit was produced to Defendants in discovery.

Infringement of Works In Suit

16. Pursuant to Fed. R. Evid. § 1006, attached hereto as Exhibit F is a summary of information regarding the infringing video clips that were copied from the Works in Suit and that appeared on YouTube without Viacom's authorization ("Clips in Suit"), and that are the subject of Viacom's Motion for Partial Summary Judgment.

17. Exhibit F lists 62,637 Clips in Suit that collectively infringe 3,085 Works in Suit listed on Exhibits A-E.

18. Exhibit F was prepared at my direction and summarizes information that has been produced to Defendants or is in the possession, custody, or control of Defendants.

19. The first column of Exhibit F identifies, for each Clip in Suit, the Viacom Plaintiff that owns the copyright interest in the infringed Work in Suit.

20. The second column of Exhibit F identifies, for each Clip in Suit, the title – and (if applicable) the episode information – for the infringed Work in Suit.

21. The third column of Exhibit F identifies, for each Clip in Suit, the copyright registration number for the infringed Work in Suit.

22. The fourth column of Exhibit F identifies, for each Clip in Suit, the universal record locator (URL) for the location on the YouTube website where the Clip in Suit appeared.

23. The fifth column of Exhibit F identifies, for each Clip in Suit, the YouTube Video ID for the clip. The Video ID is a unique identifier assigned by YouTube.

A-195

24. A team working under my supervision matched each Clip in Suit listed on Exhibit F to the Work in Suit listed on Exhibit F by watching and listening to each clip and comparing it to the work the clip infringed.

25. A team working under my supervision also matched the copyright registration data for each Work in Suit to each Clip in Suit, and recorded that information.

26. Viacom has not authorized Defendants to copy, distribute, reproduce, display, or perform the copyrighted audiovisual content contained in the clips listed in Exhibit F.

27. Attached hereto as Exhibit G is a list of 408 infringing video clips that were copied from Viacom's copyrighted works and appeared on YouTube without Viacom's authorization, but as to which Viacom is not moving for summary judgment at this time. These clips consist primarily of outtakes and bonus footage from Works in Suit, as well as clips from unregistered episodes of Viacom-owned television series. These works were all identified to Defendants on Viacom's October 15, 2009 Amended Clips in Suit List as "unregistered." Although Viacom is not moving for summary judgment as to these infringing clips at this time, Viacom does not waive its claims concerning these clips.

Defendants' Deployment of Digital Fingerprinting to Block Unauthorized Content

28. Viacom and Defendants initially signed an agreement in February 2008 for Defendants to use digital fingerprinting technology to prevent the infringement of Viacom's copyrighted works on the YouTube website. That agreement was later modified in May 2008.

29. Defendants implemented digital fingerprinting to prevent the infringement of Viacom's copyrighted works on the YouTube website in May 2008.

Viacom's Limited Use of YouTube for Promotional Marketing Purposes

30. I am familiar with Viacom's use of YouTube in limited circumstances to display promotional marketing clips, such as trailers of movies and television programs.

31. In connection with this limited promotional marketing, Viacom generally used accounts that were set up with YouTube's assistance or that were known to YouTube to be authorized Viacom accounts, including but not limited to: "paracount," "paramountvantage," and "paramountclassics" – which were used by Paramount Pictures Corporation – and "MTV2," "SpikeTV," and "vh1staff" – which were used by MTV Networks, an unincorporated subsidiary of Viacom International Inc.

32. In connection with this limited promotional marketing, Viacom also hired third party marketing companies, including but not limited to Wiredset and Fanscape, which used YouTube accounts with names such as "wiredset," "fanscapevideos," and "fanscapemtv." To the best of my knowledge, the authorized activities of Wiredset and Fanscape were also known to YouTube.

I declare under penalty of perjury that the foregoing is true and correct. Executed
this 3 day of March, 2010, at New York, New York.



Warren Solow

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

VIACOM INTERNATIONAL INC., ET AL.,)	
)	
Plaintiffs,	)	ECF Case
v.)	
	)	Civil No. 07-CV-2103 (LLS)
YOUTUBE, INC., ET AL.,)	
)	
Defendants.)	
)	
THE FOOTBALL ASSOCIATION PREMIER)	
LEAGUE LIMITED, ET AL., on behalf of)	
themselves and all others similarly situated,	)	ECF Case
)	
Plaintiffs,	)	Civil No. 07-CV-3582 (LLS)
v.)	
)	
YOUTUBE, INC., ET AL.,)	
)	
Defendants.)	
)	
)	

**DECLARATION OF STEVE CHEN IN SUPPORT OF DEFENDANTS’
OPPOSITION TO PLAINTIFFS’ MOTIONS FOR PARTIAL SUMMARY
JUDGMENT**

STEVE CHEN, pursuant to 28 U.S.C. § 1746, hereby declares as follows:

- I, along with Chad Hurley and Jawed Karim, founded YouTube, Inc.

(“YouTube”). I served as YouTube’s Chief Technical Officer. I submit this declaration in support of YouTube’ opposition to plaintiffs’ motions for partial summary judgment.

- Plaintiffs point to an email from me concerning a problem with our Internet service provider (“ISP”). I wrote that “I *think* it’s because we’re hosting copyrighted content.” The complaint from YouTube’s ISP was about someone sending junk email

from YouTube’s IP address, not about the videos on YouTube or any copyright issues. A

true and correct copy of an email that I sent to Chad Hurley and Jawed Karim on June 15, 2005 reflecting this is attached hereto as Exhibit 1. In my initial email, I expressed concern that our ISP might have been requesting that we remove content solely in response to a complaint that we had never seen. I did not think that would be appropriate. My concern did not come from a desire to have YouTube host unauthorized material. And YouTube did not change its ISP based on this email exchange.

- Plaintiffs also state that an email from me shows that YouTube knew about and decided to keep “truckloads” of infringing videos on the site. That is not what I wrote. The document says that one can find such content “if you search for the right tags on *Flickr*” (a photo-sharing site now owned by Yahoo!). The document describes one idea that I had regarding “borderline” content, that is, videos that were “racy” but not pornographic, or videos as to which authorization might have been debatable. As my email shows, I was responding to an inquiry from Roelof Botha about his concern that “racy” videos being uploaded to YouTube might alienate some users. I wanted users to see that YouTube was a place for personal videos, and so I had the idea of downgrading the prominence or visibility of any videos that were “borderline,” even if they were not subject to outright removal under the law or our terms of use. In any event, we did not adopt that policy.

- Plaintiffs claim that I concluded that 80% of traffic on YouTube “depended on pirated videos.” They are wrong. My suggestion that removing certain videos would reduce traffic by 80% concerned “stupid” and “viral” videos, not clips from movies or television shows. Those terms refer to videos of pranks or stunts circulating on the

Internet. Chad Hurley was concerned that YouTube was “becoming another big-boys or stupidvideos,” sites that primarily hosted “stupid” and “viral” videos. He proposed that YouTube start removing “stupid” videos altogether. I disagreed, arguing that “if we do remove that stuff, site traffic and virality will drop to maybe 20% of what it is.” My statement was a sheer guess, supported by no research or evidence. It was based on the well known 80/20 rule stating that 80% of effects come from 20% of causes. When I said that removing “that stuff” would result in site traffic dropping to “20% of what it is,” I was referring to the type of videos available on big-boys and stupidvideos, not ones that were suspect for copyright reasons. My next message confirms that by reiterating my prediction and then engaging in a separate analysis of the “copyright infringement stuff.” Jawed Karim’s response said that YouTube should “continue” removing clips from movies and television shows, adding “if we keep that policy, *I don’t think our views will decrease at all.*” I expressly agreed with Karim’s observations and reaffirmed that YouTube should “take down whole movies. take down entire TV shows.”

- In an email that I sent to Chad Hurley on July 29, 2005 with the subject line “filecabi.net,” I wrote “Steal it!” That was a joke, not a serious proposal as can be seen by my follow-up message in which I wrote: “haha ya. or something. just something to watch out for. check out their alexa ranking.” I was not advocating that YouTube “steal” anything from filecabi.net, which was a site dedicated to “stupid” and “prank” videos and was similar to big-boys and stupidvideos. When I wrote to Hurley that “the only reason why our traffic surged was due to a video of this type,” I was referring to viral videos like an early YouTube video of a person playing the drinking game “quarters.”