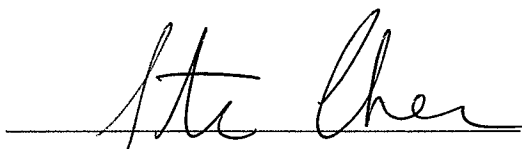


A-201

- In a late-night chat with Maryrose Dunton I wrote, “[i]f I were running the show, I’d say, we concentrate all of our efforts in building up our numbers as aggressively as we can through whatever tactics, however evil, i.e. scraping MySpace.” When I wrote “if I were running the show,” I was referring to the fact that Chad Hurley was the CEO of the company, not me. My reference to “scraping MySpace” concerned an idea to run a computer program on the MySpace website to gather information about MySpace users, which had nothing to do with copyright and which, in any event, we did not implement. My reference to “building up our numbers as aggressively as we can” had nothing to do with copyright issues.

I certify under penalty of perjury under the laws the United States that the foregoing is true and correct. Signed this 28th day of April, 2010 at San Francisco, California.

A handwritten signature in black ink, appearing to read "Steve Chen", written over a horizontal line.

Steve Chen

HIGHLY CONFIDENTIAL
FILED UNDER SEAL

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. |) | |
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| 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. |) | |
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**DECLARATION OF BRENT HURLEY IN OPPOSITION TO PLAINTIFFS’
MOTIONS FOR SUMMARY JUDGMENT**

BRENT HURLEY, pursuant to 28 U.S.C. § 1746, hereby declares as follows:

1. I started working at YouTube in August of 2005 as the first full-time employee of the company and served as YouTube’s Director of Finance & Operations during its initial years of operation. From my arrival at the company, I participated directly in creating specifications and features for the YouTube service, helping to define how the service would function and working to improve the experience of those using it. I was also extensively involved in a variety of YouTube’s copyright protection efforts. The facts set forth in this declaration are true of my own

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personal knowledge and if called and sworn as a witness, I could and would testify competently to them.

2. In December 2005, YouTube launched a feature known as “Subscribe to Tags” which has been active on the site since then. The feature allows any YouTube user to define “tags” consisting of words or short phrases. YouTube then automatically alerts the user whenever a new video is uploaded to the site containing that tag: (1) in its title; (2) in the written description of the video that the uploader supplied; or (3) in the tags that the uploader had associated with the video. The alerts are presented to users whenever they access their YouTube account. Thus, for example, users who subscribed to the tag “skiing,” would automatically receive a list of the newly-uploaded videos that contained the word “skiing” in their titles, descriptions or tags.

3. In January 2006, YouTube extended the Subscribe to Tags functionality to enable any user to receive automated alerts about new videos matching words or phrases the user defined, even if the user was not visiting YouTube at the time. To do so, YouTube made its service accessible to anyone using the popular and free technology known as Really Simple Syndication (“RSS”). In this manner, users could have automated, customized notices sent to them as often as they liked, listing new videos on YouTube matching the tags they had predefined.

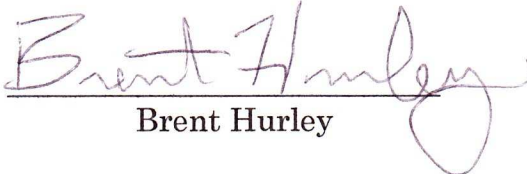
4. The ability to receive automatic updates on videos posted to YouTube with particular tags was a function that YouTube also later packaged as part of its copyright protection system specifically for content owners. This aspect of the system, however, merely duplicated the “subscribe to tags” and “RSS” functionality that had long been available to content owners and ordinary YouTube users alike.

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5. The functionality of allowing users to set keywords and receive alerts when new videos matched those keywords was a convenience. Even without this feature, users and content owners could obtain the same information simply by entering terms into the YouTube search function and reviewing the results.

6. This functionality is limited in two important respects. First, while it can alert users when videos are uploaded with selected tags, it cannot tell users whether the uploaded video actually contains content related to those tags. If user uploaded a video of a cat but titled or labeled the video with the tag "dog," users subscribed to the tag "dog" would receive an alert for the cat video. In addition, the functionality could not enable users to receive alerts when unauthorized videos or professional videos were uploaded to the site because it had no ability to make such determinations. If a user subscribed to the tag "star wars," the user would receive alerts for all videos uploaded with the tag "star wars" whether the video was an authorized trailer for a "Star Wars" film, a video of a child trick-or-treating in a Star Wars costume, a Viacom-authorized video clip of Stephen Colbert re-enacting a light saber fight from the Star Wars movies, or one of thousands of other videos that could conceivably be labeled with a "star wars" tag.

I certify under penalty of perjury of the law the United States that the foregoing is true and correct. Executed this 19 day of April, 2010 in Boston, Massachusetts.


Brent Hurley

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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|-------------------------------------|---|----------------------------|
| VIACOM INTERNATIONAL INC., ET AL., |) | |
| |) | |
| Plaintiffs, |) | ECF Case |
| v. |) | |
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| 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. |) | |
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**DECLARATION OF CHAD HURLEY SUPPORT OF DEFENDANTS’ OPPOSITION TO
PLAINTIFFS’ MOTIONS FOR PARTIAL SUMMARY JUDGMENT**

CHAD HURLEY, pursuant to 28 U.S.C. § 1746, hereby declares as follows:

1. I am one of the three founders of YouTube (along with Steve Chen and Jawed Karim) and YouTube’s Chief Executive Officer. I submit this declaration in support of Defendants’ opposition to plaintiffs’ motions for partial summary judgment.

2. As explained in my March 3, 2010 declaration submitted in support of YouTube’s motion for summary judgment, YouTube was not founded with an intent to in any way encourage or foster copyright piracy. Our intent was to create a site for personal videos created by users.

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3. Early on, Steve Chen, Jawed Karim, and I debated the role of so-called “stupid” or “viral” videos on YouTube. We generally used this as a shorthand for “prank” or “stunt” videos (like a person drinking an entire gallon of milk). It was not a shorthand for network television shows or feature films. What we referred to as stupid videos were amateur videos that we understood to have been created as something to be circulated virally around the Internet. At the time we started YouTube, there were a few other video websites (including bigboys.com, stupidvideos.com, and filecabi.net) that were focusing on those kinds of videos. While stupid videos seemed to have the potential to be popular, they did not represent the kind of user-created, personal videos that I wanted YouTube to attract and build a community around. Steve, Jawed, and I had many discussions about what policies we should have for these kinds of “stupid videos” and we expressed different views at different times. But those debates were about our vision for YouTube, whether it should be only about personal videos or whether we should be more willing to have some “stupid videos” on the site as well. These debates were not about copyright infringement. None of us wanted videos on YouTube that were infringing a copyright or that the creators of those videos did not want on the site.

4. Steve, Jawed and I agreed we should reject videos due to concerns about copyright. Although I had no idea whether professional-looking videos on YouTube were authorized or unauthorized, I wanted to remove them because I didn’t want our users to get the wrong impression that YouTube was intended for uploading videos they did not create or were not authorized to upload. As I wrote in a June 2005 email, saying we should remove videos that appeared to be from a network TV show, “the key to our success is personal videos” and “We are not another ‘StupidVideos’ or

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'Bittorrent'." In the same email, I said that "viral videos are fine" but not something that comes from "a network or movie." See Ex. A hereto, a true and correct copy of a 6/26/05 email chain among me, Steve Chen, and Jawed Karim.

5. One example of our internal debates about stupid videos is an email exchange that Steve, Jawed, and I had in July 2005, in which Jawed advocated allowing "stupid videos" on YouTube, which he estimated "will be 1% of our videos." I responded, "yup, we need the views. i'm a little concerned with the recent supreme court ruling on copyright material though." I then proposed allowing users to select among various descriptors when uploading videos (including "personal" and "viral"). My thinking was that if "viral" videos ever did become a source of copyright problems, this mechanism would allow YouTube to more easily remove them. See Ex. B hereto, a true and correct copy of an email chain among me, Steve Chen, and Jawed Karim.

6. In my March 3, 2010 declaration, I also discussed a number of emails among Steve, Jawed, and I where we discussed our vision for YouTube and how we put that vision into practice by rejecting users' videos that looked like professionally produced material that we thought may not be authorized. Some more examples of this include the following:

- a. I proposed a "rule of thumb" under which videos with "obvious network branding" would be rejected. See Ex. C hereto, a true and correct copy of a 6/28/05 email I wrote to Steve and Jawed.
- b. On July 2, 2005, I sent an email to Jawed telling him an account name of a user with music videos to be removed. See Ex. D hereto, a true and correct copy of a 7/2/05 email I wrote to Jawed.

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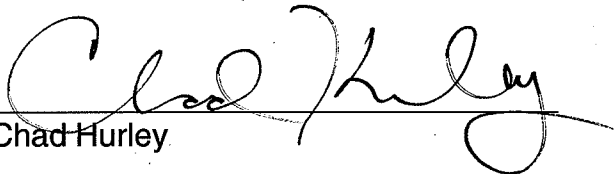
- c. On July 4, 2005, I exchanged email with Jawed about rejecting music videos and footage from Major League Baseball. See Ex. E hereto, a true and correct copy of a 7/4/05 email string among me, Steve, and Jawed.
- d. On July 16, 2005, Jawed sent me and Steve an email about rejecting clips from the movie *Initial D*. See Ex. F hereto, a true and correct copy of a 7/16/05 email string among me, Steve, and Jawed.
- e. On August 1, 2005, I emailed Jawed about rejecting videos that appeared to be clips from the television show Family Guy and Jawed replied "reject, definitely." See Ex. G hereto, a true and correct copy of a 8/1/05 email string including me and Jawed.

7. After Viacom took down approximately 100,000 videos from YouTube in February 2007, YouTube's traffic increased. I expected this would happen, as I did not think a takedown of Viacom content would affect YouTube. See Ex. H hereto, a true and correct copy of an email chain including me and Omid Kordestani. Third party web site reporting data released shortly thereafter confirmed my expectations, showing that visits to YouTube actually surged, rather than decreased after Viacom's takedown. See Ex. I, hereto, a true and correct copy of a 2/27/07 email copied to me. YouTube's data also shows increased video views in the post-February 2007 time frame. For example, according to data I have reviewed, YouTube's average daily views in January 2007 were approximately 252 million. By May 2008, YouTube's average daily views had increased to approximately 1.1 billion. Since then, YouTube's average daily views have

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continued to increase, and have now nearly doubled since May 2008, to approximately 2 billion daily views.

I certify under penalty of perjury under the laws the United States that the foregoing is true and correct. Signed this 29th day of April, 2010 at San Bruno, California.


Chad Hurley

From: Jawed <[REDACTED]>
Sent: Saturday, July 2, 2005 10:38 AM
To: Chad Hurley <chad@youtube.com>
Cc: Chen Steve <[REDACTED]>
Subject: Re: more vids to remove

ya, all videos added to admin.

Jawed

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

On Sat, 2 Jul 2005, Chad Hurley wrote:

> this guy has a ton of music videos that need to be removed..
>
> http://www.youtube.com/profile_videos.php?user=slvgdvg
>
> -chad
>
>

From: Jawed [REDACTED]
Sent: Monday, July 4, 2005 2:53 PM
To: Chad Hurley <chad@youtube.com>
Cc: Steve Chen <[REDACTED]>
Subject: Re: commercials

ok I did ORB and MLB.

Jawed

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

On Mon, 4 Jul 2005, Chad Hurley wrote:

> can you also add all of those "orb" music videos back to the list
> too... maybe do a search for music or mtv and add all of music videos
> back to admin... then I'll go through them.

>
> also search for MLB... i think some baseball videos are still on the
> site.

>

>

>

>

> On Jul 4, 2005, at 12:59 PM, Jawed wrote:

>

>> I added a shitload of commercial videos BACK into admin.

>>

>> please review and reject... most of them. I think with all the great
>> videos we are getting, we should kill these stupid TV ads. They are so
>> lame compared to genuine personal videos.

>>

>> Jawed

>>

>>

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

>>

>>

>>

>>

>

>

>

From: Jawed <[REDACTED]>
Sent: Saturday, July 16, 2005 6:36 AM
To: Chad Hurley <chad@youtube.com>; Steve Chen <[REDACTED]>
Subject: copyright

someone uploaded a shitload of "Initial D-" stuff. "Clip from the Hong Kong film Initial D."

I think we should reject all that shit.

Jawed

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

From: Jawed <[REDACTED]>
Sent: Monday, August 1, 2005 9:42 AM
To: Chad Hurley <chad@youtube.com>
Cc: YouTube Group <[REDACTED]>
Subject: Re: koolkeith500

reject, definitely.

Jawed

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

On Mon, 1 Aug 2005, Chad Hurley wrote:

> This user is starting to upload tons of "Family Guy" copyrighted
> clips... I think it's time to start rejecting some of them. Any
> objections?
>
> -Chad
>
>
>
>

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

VIACOM INTERNATIONAL INC., *et al.*,

Plaintiffs,

v.

YOUTUBE, INC., *et al.*,

Defendants.

Civil Action No. 07-cv-2103

THE FOOTBALL ASSOCIATION
PREMIER LEAGUE LIMITED, *et al.*,

Plaintiffs,

v.

YOUTUBE, INC., *et al.*,

Defendants.

Civil Action No. 07-cv-3502

DECLARATION OF MICHAEL GORDON

I, Michael Gordon, hereby declare as follows:

1. I am Chief Strategy Officer and Co-founder of Limelight Networks, Inc. (“Limelight”). I make this declaration based on my personal knowledge and belief.
2. Limelight provided Internet content delivery services to YouTube, Inc. (“YouTube”) from approximately 2005 to 2008, but YouTube does not currently use Limelight’s services.
3. Limelight has provided and continues to provide Internet content delivery services to customers that are owned or controlled by Viacom International Inc. (“Viacom Customers”).

4. For example, Limelight has provided Internet content delivery services to iFilm Corporation.

5. I am informed and believe that iFilm Corporation is owned or controlled by Viacom International Inc. (“Viacom”).

6. Limelight currently provides Internet content delivery services to MTV Networks.

7. I am informed and believe that MTV Networks is owned or controlled by Viacom.

8. In addition, Limelight has provided Internet content delivery services to Reality Digital, Inc.

9. Limelight’s US-based servers are located in its ten US points of presence. During a portion of the time YouTube subscribed to Limelight’s services, Limelight had fewer than ten US points of presence.

10. To my knowledge, no users of YouTube or of any Viacom Customer upload content directly to servers or computers owned or operated by Limelight.

11. To my knowledge, Limelight has no technical information about how users upload content to servers or computers operated by YouTube or by the Viacom Customers.

12. To access content from YouTube or from the Viacom Customers, Internet users typically request it by typing a Uniform Resource Locator (URL) into the address bar of an Internet browser, or by using a device or software program that similarly requests content identified by URLs. The user’s device or software (“the user device”) obtains the requested content through a series of steps, as follows:

13. Step 1: the URL is parsed to obtain an Internet hostname or host IP address (Internet URLs contain one or the other, usually explicitly, but sometimes through reference to a

base URL or domain). If the URL contains a host IP address Steps 2 through 7 are skipped and the user device proceeds to Step 8.

14. Step 2: the hostname is sent to a resolver, which is a software component that interacts with other components of the Internet Domain Name System (“DNS”).

15. Step 3: the resolver determines whether it already has on-hand a valid resolution of the hostname; if it does, it skips Steps 4 through 7 and the user device proceeds to Step 8. If not, it moves to Step 4.

16. Step 4: The resolver sends a hostname resolution request to the DNS proxy server it is configured to use.

17. Step 5: The DNS proxy server determines whether it already has on-hand a valid resolution of the hostname; if it does, it skips step 6 and proceeds to step 7. If it does not (and assuming for the sake of illustration that it does not have on-hand a valid resolution for any part of the hostname), then

18. Step 6: The DNS proxy server sends a hostname resolution request to an Internet DNS root name server. The root name server answers with a referral, normally in the form of one or more NS records, referring the DNS proxy server to a name server authoritative for the top-level domain contained in the hostname. The DNS proxy server then sends a hostname resolution request to the top-level domain name server, which similarly answers with a referral, also normally in the form of one or more NS records, referring the DNS proxy to a name server authoritative for the second-level domain contained in the hostname. The DNS proxy server then sends a hostname resolution request to the authoritative second-level name server, which typically answers either with one or more IP addresses (an A record) or answers with a CNAME

record. If the DNS proxy server receives a CNAME record, it restarts the resolution process from the beginning for the hostname contained in the CNAME record.

19. Step 7: Once the DNS proxy server has received a resolution containing one or more IP addresses, it returns the IP address(es) to the resolver.

20. Step 8: The user device then sends a request for the URL to the IP address (or one of the IP addresses, if it has received more than one from the DNS proxy server).

21. In order to use Limelight services for delivery of content, a publisher such as YouTube or a Viacom Customer uses a Limelight-assigned hostname, either by putting it in URLs it sends to users or by putting it in CNAME records it sends in response to requests for hostname resolutions. In either case, Limelight authoritative name servers then resolve the Limelight-assigned hostname to the IP addresses of either Limelight content servers or the IP addresses of Limelight switches (which will subsequently connect users to Limelight content servers). User devices then send content requests to Limelight content servers or switches, respectively.

22. Both YouTube and Viacom Customers used this process in order to utilize Limelight content delivery services.

23. When a Limelight content server receives a request for content, it typically determines the origin URL by deriving it from the requested URL.

24. If it is a first request, the Limelight server requests the content from the publisher via the Internet, using the origin URL.

25. If the Limelight server receives the content from the publisher, it delivers the content, and as a part of that process, it may cache the content.

26. If it does not receive the content from the publisher, the content server returns a message.

27. Under some circumstances, the Limelight content server may look in its cache prior to requesting the content to determine if the content has previously been cached.


28. If the content has been cached and has not expired, the content server delivers the cached content. Requests for content can be for a complete object, such as is normally the case for graphics and pictures, or can be for a part of an object (typically, for a specific byte range), such as is often the case for multimedia objects. Objects in the cache “age out” automatically according to a “Least Recently Used” algorithm, whereby, when space in cache is needed, the least recently used content will normally be overwritten first.

29. It is not possible for Limelight to determine the number of instances that a content object would be cached within its servers. The number of instances that an object would be cached would depend on many factors, such as, for example, the paths through which data travels, and the number of, location of, and timeframes during which user devices request the content.

30. The cache is located within servers that Limelight does not manufacture, but purchases from third parties. Limelight is not knowledgeable regarding the exact physical means by which data is electronically stored within these servers.

31. Both YouTube and Viacom Customers used this process in order to utilize Limelight content delivery services.

Dated: April 25,, 2010



Michael Gordon

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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 DAVID KING IN SUPPORT OF DEFENDANTS'
OPPOSITION TO PLAINTIFFS' MOTIONS FOR SUMMARY JUDGMENT**

I, DAVID KING, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I work at Google as a Product Manager for YouTube's Content ID system. On March 1, 2010, I executed a declaration in support of YouTube's motion for summary judgment in this case. That declaration described YouTube's development and implementation of content-identification technologies, including the suite of video and audio "fingerprinting" tools that we call "Content ID." I have read the portions of Viacom's motion for summary judgment discussing Content ID and submit this declaration in response to certain assertions that Viacom has made.

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2. YouTube started background work on video fingerprinting in the fall of 2006 (shortly after the Google acquisition) and began full-scale development efforts on Content ID in January 2007. At that time, YouTube was also working to implement the audio-based fingerprinting technology we had licensed from Audible Magic. In early 2007, Audible Magic's primary application was identifying sound recordings; the technology was untested in identifying audiovisual content such as clips from television shows and movies. In contrast, the video fingerprinting tool that YouTube had begun developing was specifically designed to identify such audiovisual content.

3. Audible Magic also had no ability to identify musical compositions embodied in sound recordings. In February 2007, I asked Jeremy Stern, Audible Magic's Vice-President of Business Development, if Audible Magic could provide YouTube with data that mapped the specific sound recordings it could detect to the musical compositions underlying those sound recordings. Mr. Stern informed me that Audible Magic did not have such data.

4. During the time that YouTube was building and testing Content ID (from January to September 2007), I was in frequent contact with a number of media companies to keep them abreast of our efforts and to make sure that the tool we were developing would be useful for their needs. Viacom was one of the companies that I regularly spoke with about these issues. My main contacts at Viacom were Alan Bell, the Chief Technology Officer of Paramount, and Joe Simon, the Chief Information Officer of Viacom.

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5. Viacom was one of the first content owners that YouTube invited to participate in the pre-launch testing of Content ID. YouTube wanted to work with rights holders who had a significant range of content and who had the technical sophistication to do a serious test of our technology, regardless of whether we thought they would ultimately use Content ID to block their content from appearing on YouTube or to find their content for purposes of monetization.

6. Viacom accepted YouTube's invitation, and the parties signed a test agreement on June 13, 2007. After that, my team had a series of meetings and discussions with Viacom's team to discuss our technology and the testing protocols, including a "Video Fingerprinting Partner Kickoff Meeting" held on July 19. In the summer of 2007, Viacom conducted two separate tests of Content ID, one on behalf of Paramount Pictures and another on behalf of MTVN. A sample of the correspondence between Viacom and YouTube concerning the development and testing of Content ID is attached as Exhibits 1-7 of this declaration.

7. Content ID officially launched in early October 2007. Content owners immediately began signing up to use Content ID to identify their content on YouTube. At that time, Content ID was open for Viacom to use, free of charge. On October 15, 2007, a member of my team wrote to Viacom to confirm that Content ID was operational and to expressly invite Viacom to start using it:

Our updated Video ID system has been running on live YouTube uploads for 2 weeks now. If you would like to use the actual Video ID system that is now operational, your Technical Account Manager can supply the necessary contract. We at YouTube would like to thank you for your participation and look forward to having you use the live Video ID system.

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A copy of that email is attached as Exhibit 8 of this declaration.

8. YouTube never conditioned the availability of Content ID, whether to Viacom or any other content owner, on the content owner's willingness to license its content to appear on YouTube. To the contrary, we made clear that content owners were free to use Content ID, if they wished, exclusively to block their content from appearing on YouTube.

9. Viacom and YouTube entered into a written agreement for Viacom to start using Content ID on February 1, 2008. A true and correct copy of that agreement is attached to this declaration as Exhibit 9. Among other things, that agreement expressly provides that "Rights Owner does not agree to license and monetize content, and elects only to block or track content."

10. Content ID can only identify content for which reference fingerprints exist in YouTube's system. To get reference fingerprints into YouTube's system, the right holder typically provides a copy of the works (or portions of those works) that it wants to match and YouTube generates the reference fingerprints. Alternatively, the rights holder can create reference fingerprints itself and provide them to YouTube. Under the February 1, 2008 agreement, Viacom agreed to "deliver to Google" either copies of its works needed to create fingerprints or the fingerprints themselves. Based on that agreement, we expected Viacom immediately to begin providing reference material so that Content ID could start matching any Viacom content that might be uploaded. We had multiple discussions with Viacom in the first few months of 2008 to urge them to do so and to address any technical issues


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that arose. But it was not until May 2008 that Viacom first started providing the reference material needed for Content ID to locate Viacom content on YouTube.

11. In March 2009, I was informed that Cherry Lane, a music publisher, was interested in learning more about Content ID. I offered to participate in a teleconference with Cherry Lane's representatives, but they insisted on an in-person meeting. Accordingly, I flew to New York met with Keith Hauprich and other representatives of Cherry Lane. In that meeting, I described how Cherry Lane could use Content ID to detect the presence of content on YouTube that they believed Cherry Lane had rights to. Following that meeting, YouTube provided Cherry Lane with a written agreement to allow it to use Content ID. Cherry Lane never signed the agreement and never elected to begin using Content ID.

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

Dated: San Bruno, California
April 29, 2010


David King

To: "David G King" <dgking@google.com>
From: "George Salem" <gsalem@google.com>
Cc:
Bcc:
Received Date: 2007-10-16 11:54:44 GMT
Subject: It's up to you now! They wanted the ""boss""

----- Forwarded message -----

From: Bell, Alan - Paramount <Alan_Bell@paramount.com>
Date: Oct 16, 2007 3:05 PM
Subject: RE: YouTube Trial ending (Viacom / Paramount Account)
To: George Salem <gsalem@google.com>
Cc: "Perry, Alfred - Paramount" <Alfred_Perry@paramount.com>

George,

please forward to me the necessary contract, or let me know who I should contact,

Thanks

Alan

EVP and CTO

Paramount Pictures

From: George Salem [mailto:gsalem@google.com]
Sent: Monday, October 15, 2007 5:47 PM
To: FPTest; -PPC-IT-Fingerprint Test
Cc: Mark Yoshitake
Subject: YouTube Trial ending (Viacom / Paramount Account)

Dear Trial Partner:

We are concluding the Video Fingerprint Trial on Wednesday, 17 October. At that time, your account options will be updated and videos will no longer have an option to be uploaded for fingerprint testing. Daily reports will

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conclude on Wednesday; your test and reference videos will be deleted from our servers shortly after that.

Our updated Video ID system has been running on live YouTube uploads for 2 weeks now. If you would like to use the actual Video ID system that is now operational, your Technical Account Manager can supply the necessary contract.

We at YouTube would like to thank you for your participation and look forward to having you use the live Video ID system.

Regards,

George Salem
YouTube LLC
650.246.4560

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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| VIACOM INT'L INC., ET AL., |) | |
| |) | |
| Plaintiffs, |) | ECF Case |
| v. |) | Civil No. 07-CV-2103 (LLS) |
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| YOUTUBE, INC., ET AL., |) | |
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| Defendants |) | |
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| THE FOOTBALL ASSOCIATION |) | |
| PREMIER LEAGUE LIMITED, ET AL., |) | |
| on behalf of themselves and all others |) | |
| similarly situated, |) | ECF Case |
| |) | Civil No. 07-CV-3582 (LLS) |
| Plaintiffs, |) | |
| v. |) | |
| |) | |
| YOUTUBE, INC., ET AL., |) | |
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**DECLARATION OF ZAHAVAH LEVINE IN SUPPORT OF DEFENDANTS'
OPPOSITION TO PLAINTIFFS' MOTIONS FOR SUMMARY JUDGMENT**

I, Zahavah Levine, declare as follows:

1. I am currently Associate General Counsel of Google Inc. ("Google"). Prior to Google's acquisition of YouTube, Inc. ("YouTube"), I was General Counsel and Vice President of Business Affairs of YouTube. I previously submitted a declaration in this matter in support of YouTube's Motion for Summary Judgment, describing a host of steps YouTube has long taken and continues to take in the interests of

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

2. Typically, content owners license their content to YouTube simply by uploading it to the service after agreeing to YouTube's standard terms of use agreement. YouTube supplements this standardized licensing process with directly negotiated agreements in order to ensure the availability of content from particular content owners. Since I arrived at YouTube in early 2006, I have personally been involved in licensing negotiations with dozens of companies and organizations who desire to have content they claim to own accessible to the world through YouTube. In some cases, the content owner has not previously uploaded its content to YouTube and the parties negotiate the manner in which the content owner will deliver its content to YouTube. In other cases, YouTube offers value in exchange for an agreement that the party "claim" and license to YouTube its content that was uploaded by general users of the site rather than request removal of it, as the content owner might otherwise choose to do. Sometimes, directly negotiated agreements involve both of these types of arrangements.

3. Parties who claim rights in musical compositions (i.e. music publishers) can similarly upload videos that contain their content, license third parties to include their content in videos uploaded to YouTube, or reach direct license agreements with YouTube for the use of their content in videos uploaded to YouTube by ordinary YouTube users. Videos uploaded to YouTube may include music in various forms, such as video footage of the user him or herself playing an instrument or singing, a user's video footage of someone else playing an instrument or singing, or a homemade video of a non-musical event with a commercial sound recording used as background music. When YouTube receives notice from a music publisher that a given video uses, in an unauthorized manner, a composition that the publisher claims to own, YouTube

promptly removes that video from its service in accordance with its standard procedures.

4. YouTube has directly negotiated agreements with a variety of publishers (including the four “major” publishers in the United States) under which the publishers agree to claim and directly license the music and generally not to request the removal of videos that they believe use their compositions. In exchange, where YouTube has been provided with information that a given video uses one of the publishers’ compositions, and other conditions are satisfied, YouTube may show advertisements alongside the video and share the associated revenue with the appropriate publishers. The difficulty in implementing these arrangements lies first in determining which particular composition is used in a given video, and then in determining which publisher or publishers own or co-own that composition. Indeed, even where YouTube has entered into commercial relationships with music publishers that include sweeping license grants to publishers’ catalogs of music, YouTube has been unable to maximize the commercial potential of these agreements because it has been unable to identify the compositions in a great many videos that appear on the service.

5. Determining that a Particular Composition is used in a Given Video. Since early 2007, YouTube has employed audio detection and filtering technology on the site, starting with a service known as Audible Magic, that it supplemented and eventually replaced with its own Content ID system. As a general matter, when these systems are populated with the appropriate reference materials, they can detect the presence of a specific sound recording in a video uploaded to YouTube. But these systems have no ability to detect the presence of a given musical composition in a video. First, these audio detections systems detect only sound recordings that have been submitted as reference material to our database of reference files. If music

appears on YouTube in a form other than the sound recording for which a reference file has been supplied (such as footage of a person singing or humming a tune), it is unrecognizable to the systems. Second, even for a sound recording that has been provided as a reference file, YouTube requires data correlating a specific sound recording to the specific composition embodied in that sound recording. YouTube has never had ready access to a comprehensive or reliable source of the necessary correlating data. I have asked representatives of the Harry Fox Agency, an operation representing certain music publishing interests, to supply YouTube with data correlating sound recordings to musical compositions that could be integrated into our systems. Harry Fox has declined to provide YouTube the data in such a manner.

6. While there are some sources of publishing information that can be accessed by the public, specifically those offered by ASCAP, BMI and Harry Fox, these sources: (a) expressly disclaim completeness and reliability; (b) are available only for manual, individual, song-by-song look-ups; (c) require the user to have the specific title of a sound recording, which is information YouTube often does not possess; and (d) often yield multiple results for a search on a given title — with the user having no way to determine which of the results are related to the actual song in question.

7. Determining Who the Publisher May Be for a Given Composition. In the absence of a reliable and readily accessible source of information mapping sound recordings to the compositions embodied in them, YouTube must rely on representations from music publishers who can identify particular videos or particular sound recordings as containing compositions they claim to own. In addition, as part of its Content-ID system, YouTube allows any publisher to submit information claiming that a particular sound recording embodies a composition in which it holds rights. From then on, when YouTube's system detects the presence of

that sound recording in a video, absent a conflicting representation from another party claiming rights in the video, YouTube will follow the directions of the publisher with respect to that video. If the publisher has represented that any video using the sound recording and thus the composition makes unauthorized use of the composition, YouTube will block the video from appearing on the service. A publisher may alternatively choose to “track” videos using the sound recording and thus the composition, perhaps because it has licensed another party to use the composition generally and wants to ensure it is being properly compensated by that party. Finally, a publisher may elect to “monetize” a video containing the sound recording that uses their composition. Assuming YouTube has secured permission from the other rights holders who may have an interest in the video (e.g. the owner of the sound recording, the owner of the video and any co-owners of the composition), YouTube will typically then show advertising in connection with that video, and share the revenues with the publisher.

8. Without representations from the relevant publisher, YouTube generally does not have reliable information about who the publisher or publishers may be for a given composition, let alone information on whom those publishers may have authorized to use their composition, or information on whether they wish to remove from the service a particular video using a sound recording embodying their composition.

9. Performing Rights Societies. YouTube has at various times had blanket licenses for public performance rights to musical compositions with performance rights societies, including ASCAP, BMI & SESAC. These agreements are in no way premised on YouTube knowing which compositions are used in a particular video or which publishers own rights to compositions used in any particular sound recording. As part of the agreements, YouTube provides information to the performance rights

societies about certain *sound recording* titles that its systems identify as having been used in videos on the service (and publishing information only to the limited extent YouTube has it). Using that information, the societies then map those sound recordings to compositions using their own identifying information that they have declined to provide to YouTube, and distribute royalty payments to publishers they represent in accordance with their own methodologies.

10. Since at least my arrival at the company on March 20, 2006, the YouTube service has had a feature on video watch pages that allows users who are logged in to their YouTube account to identify particular content as “inappropriate” for various reasons. A user may use this functionality to claim that a video “infringes” his or copyrights. Users who click on that link when viewing a particular video are directed to a page (today at http://www.youtube.com/t/dmca_policy) at which they are given instructions on how submit a DMCA notice for the video. Only users who claim rights in the video are permitted to submit a DMCA notice. In addition, there has always been a “copyright” link on the bottom of every page throughout the site which directs users to instructions on how to send YouTube a DMCA notice.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge. Executed the 30 day of April 2010, at San Bruno, California.


Zahavah Levine

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**UNITED STATES DISTRICT COURT
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**DECLARATION OF CHRISTOPHER MAXCY IN SUPPORT OF
DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTIONS FOR PARTIAL
SUMMARY JUDGMENT**

CHRISTOPHER MAXCY, pursuant to 28 U.S.C. § 1746, hereby declares as follows:

1. I am the Director of Partner Development at YouTube, where I have been employed since December 2005. I have testified in this case as YouTube's designated corporate witness regarding any service, features, or privileges that YouTube makes available to content partners that it does not make available to ordinary users of the service. I have reviewed the portions of the plaintiffs' motions for summary judgment discussing YouTube's use of Audible Magic's audio-

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fingerprinting technology. I have first-hand knowledge about YouTube's licensing and use of Audible Magic's technology, and submit this declaration in response to certain assertions that the plaintiffs have made concerning those issues.

2. YouTube first became aware of Audible Magic in the Spring of 2006. At the time, we were negotiating with some of the major record labels (including Warner Music Group) about potential content partnerships. I recall that Warner Music suggested that we speak with Audible Magic about possibly using its audio-fingerprinting technology to identify sound recordings owned by Warner in videos uploaded to YouTube. It was my understanding at that time that Audible Magic's primary application was scanning audio files exchanged on peer-to-peer networks looking for commercial sound recordings. Based on conversations with the record labels and with Audible Magic, I learned that Audible Magic's technology had not previously been used to scan video files on a user-generated content website like YouTube. Nevertheless, I followed up with Audible Magic to learn more about its technology and determine whether it might be useful for YouTube's needs.

3. Later in 2006, after a series of discussions with Audible Magic, a group of YouTube engineers tested Audible Magic's technology alongside the audio fingerprinting technology offered by another vendor. We ultimately decided to use Audible Magic and signed a licensing agreement in October 2006. To my knowledge, YouTube was the first user-generated content website to license Audible Magic's technology.

4. In licensing Audible Magic's technology, our goal was to integrate it into a new platform that we were building called "Claim Your Content" ("CYC"). The idea behind CYC was to enable content owners to identify videos on YouTube and "claim" the content of those videos as their own. The content owner would then instruct YouTube what to do with the claimed video: whether to "block" it (remove it from the service), "track" it (leave it up and receive information about it), or "monetize" it (leave it up with advertising displayed alongside it and share in the revenue generated by those ads). We envisioned Audible Magic's technology as one of the ways that content owners using CYC could find videos to claim.

5. Integrating Audible Magic into our new CYC system was a significant technical and logistical challenge. Audible Magic had never before been deployed on a user-submitted content website (much less a website that had the enormous volume of uploads that YouTube did). Also, we would be using Audible Magic to identify audio files contained within videos, which was not the way that the technology had previously been used on peer-to-peer networks. We were not sure whether Audible Magic would work at all, and there were serious questions about how reliably it would work and what technical problems might arise.

6. As with any new technology, we wanted to test and carefully roll-out Audible Magic. In doing so, we thought it prudent to work at first with a small number of companies to make sure that Audible Magic would function as we hoped and would be able to handle the significant load it would face once it launched. During this start-up phase, which lasted from roughly the time we licensed Audible

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Magic through the first quarter of 2007, we worked primarily with a few of the record labels to set up the new CYC platform and to make sure that Audible Magic's technology would be effectively integrated into it. Those companies had experience with Audible Magic, and it was their sound recordings that Audible Magic was designed to identify.

7. Our expectation, however, was that once we got the new CYC platform up and running, it would be made broadly available to content owners. It was not YouTube's policy to condition the availability of Audible Magic (or any of our other content-identification technologies) on a rights holder's willingness to enter into a content-licensing deal with YouTube. To my knowledge, YouTube *never* relied on a copyright holder's unwillingness to license content as a basis for refusing access to Audible Magic or any other fingerprinting technology that we had available.

8. In 2006 and early 2007, I participated in YouTube's negotiations with Viacom over a possible content-licensing agreement. Those negotiations began before Google's acquisition of YouTube. During the course of those negotiations, I attended several meetings with Viacom executives, including Michael Wolf and Adam Cahan. Those executives said that they were aware of videos containing Viacom content on YouTube. But Mr. Cahan and Mr. Wolf told us on several occasions that Viacom wanted that content to remain on YouTube while the licensing discussions were ongoing.

9. In early February 2007, after negotiations between Viacom and YouTube had broken down, I consulted with YouTube's CEO Chad Hurley. We

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concluded that YouTube should offer to Viacom our soon-to-be-released CYC tool (including Audible Magic). We believed that Viacom should be the very first company to use the tool and that this would send a powerful message that YouTube took Viacom's concerns seriously and that we did not want Viacom content on YouTube if Viacom itself did not want it there.

10. I informed YouTube's engineering department of our decision to determine if the plan was technologically feasible. Nearly simultaneously, on February 2, 2007, I reached out to Adam Cahan at Viacom to set up a meeting to discuss Viacom using the CYC tool. I asked that we speak that very day. Cahan responded that he would rather discuss the matter on Monday, February 5.

11. Over that weekend, I learned that Viacom had requested that YouTube remove music videos that supposedly had aired on MTV. That was a source of concern because Viacom did not own the rights to the audio tracks of those music videos. If Viacom were to use the CYC tool to automatically block any YouTube video containing the audio track from a music video, that would prevent our music label partners from distributing their content on YouTube and would prevent users from uploading videos that they had every right to share. I concluded that YouTube would need to develop additional protocols to ensure that content owners would use CYC to block only those materials that they actually owned.

12. In light of this development, I reached out to Cahan and told him that we would need to postpone our meeting. I did not tell Cahan that YouTube would only provide access to CYC in connection with a content-partnership deal.

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13. On February 6, 2007, in response to a specific request from Cahan, I provided him with access to YouTube's CVP tool. That was not in lieu of CYC. My offer to Cahan to have Viacom use CYC never closed and Cahan never followed up with me to continue discussions about Viacom's use of CYC.

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

Dated: San Bruno, California
April 28, 2010



Christopher Maxcy

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DECLARATION OF MICAH SCHAFFER IN SUPPORT OF DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

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

1. I am a former employee of YouTube, Inc. ("YouTube"). I submitted a declaration in support of YouTube's Motion for Summary Judgment in which I discussed a number of things, including various marketing activities by content owners that I learned of during the three and half years that I was employed at YouTube.

2. I recognize the YouTube video with video id HPB9tq7f_1k, which was uploaded to the YouTube account "clelltickle." It is a promotional video from the comedy team called "Human Giant." The agent of one of the group's members told me

that the video had been uploaded by the group, and asked me if YouTube would feature this video, as YouTube had done for Human Giant's first video in August 2006. Based on this conversation, I understood that the video was authorized to be on YouTube.

3. I referred the request to others at YouTube in charge of such decisions. They decided to feature the video on YouTube's homepage on February 17, 2007.

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 29th day of April 2010, at New York, New York.


Micah Schaffer

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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| YOUTUBE, INC., ET AL., |) | |
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| Defendants. |) | |

**DECLARATION OF ANDREW H. SCHAPIRO IN SUPPORT OF
DEFENDANTS’ OPPOSITION TO PLAINTIFFS’ MOTIONS FOR PARTIAL
SUMMARY JUDGMENT AND DEFENDANTS’ OBJECTIONS TO
EVIDENCE AND MOTION TO STRIKE MATERIAL FROM VIACOM’S
SUMMARY JUDGMENT SUBMISSIONS AND PUTATIVE CLASS
PLAINTIFFS’ RULE 56.1 STATEMENT**

Andrew H. Schapiro, pursuant to 28 U.S.C. § 1746, hereby declares as follows:

1. I am a partner at the firm of Mayer Brown LLP, attorneys for Defendants YouTube, Inc., YouTube, LLC, and Google Inc. (collectively, “YouTube”) in the above-captioned matters. I submit this Declaration in support of Defendants’ Opposition to Plaintiffs’ Motions for Partial Summary Judgment and Defendants’ Objections to Evidence and Motion to Strike Material from Viacom’s Summary Judgment Submissions and Putative Class Plaintiffs’ Rule 56.1 Statement.

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2. Attached hereto are true and correct copies of the following documents.

Documents with the following Bates prefixes were produced by the following party or non-party in these actions:

- Documents with the Bates prefix “GOO001” were produced by YouTube in these actions.
- Documents with the Bates prefix “VIA” were produced by plaintiffs Viacom International Inc., Comedy Partners, Country Music Television, Inc., Paramount Pictures Corporation and Black Entertainment Television LLC (collectively, “Viacom”) in these actions.
- Documents with the Bates prefix “CH” were produced by named plaintiff Cherry Lane Music Publishing Company, Inc.
- Documents with the Bates prefix “PL” were produced by named plaintiff The Football Association Premier League Limited (“Premier League”), and documents with the Bates prefix “PLC” were produced by the individual Clubs making up the Premier League.
- Documents with the Bates prefix “RD” were produced by Reality Digital pursuant to a subpoena.
- Documents with the Bates prefix “MPAA” were produced by non-party Motion Picture Association of America pursuant to a subpoena.
- Documents with the Bates prefix “AM” were produced by non-party Audible Magic pursuant to a subpoena.
- Documents with the Bates prefix “CSSU” were produced by non-party Credit Suisse pursuant to a subpoena.
- Documents with the Bates prefix “WS” were produced by non-party WiredSet pursuant to a subpoena.
- Documents with the Bates prefix “AUD” were produced by non-party Auditude pursuant to a subpoena.
- Documents with the Bates prefix “BAYTSP” were produced by non-party BayTSP, Inc. pursuant to a subpoena.
- Documents with the Bates prefix “FS” were produced by non-party Fanscape Inc. pursuant to a subpoena.

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- Documents with the Bates prefix “ICED” or “IM” were produced by non-party ICED Media Ltd. pursuant to a subpoena.
- Documents with the Bates prefix “JK” were produced by non-party Jawed Karim pursuant to a subpoena.

| Exhibit | Description |
|----------------|---|
| 1 | Excerpts of the Deposition of Warren Solow (Jan. 14, 2010) |
| 2 | BAYTSP 003734513 – BAYTSP 003734514 |
| 3 | <i>Pacenza v. IBM Corp.</i> , No. 04 Civ. 5831 (SCR), slip op. (S.D.N.Y. July 26, 2007) |
| 4 | Email from Scott Wilkens to Michael Rubin (Feb. 18, 2010) |
| 5 | VIA02644435 |
| 6 | VIA00024535 |
| 7 | VIA10794802 – VIA10794804 |
| 8 | G00001-01855855 |
| 9 | VIA10392821 – VIA10392822 |
| 10 | VIA00366609 – VIA00366611 |
| 11 | VIA10391626 – VIA10391627 |
| 12 | G00001-02464774 |
| 13 | VIA01259506 |
| 14 | G00001-01151214 – G00001-01151216 |
| 15 | VIA00366904 – VIA00366905 |
| 16 | ICED000659 – ICED000792 |
| 17 | VIA01183836 – VIA01183837 |
| 18 | G00001-00858588 – G00001-00858589 |
| 19 | VIA01127413 – VIA01127417 |
| 20 | VIA01256408 – VIA01256418 |
| 21 | VIA00911452 – VIA00911453 |
| 22 | VIA00346888 – VIA00346892 |
| 23 | VIA10405927 – VIA10405928 |
| 24 | VIA01986353 |
| 25 | VIA00369528 – VIA00369534 |
| 26 | VIA01107876 – VIA01107878 |
| 27 | VIA00372241 |
| 28 | FS020957 – FS020965 |
| 29 | VIA10390550 – VIA10390552 |
| 30 | VIA00183009 – VIA00183013 |
| 31 | VIA10405377 – VIA10405378 |
| 32 | VIA00330203 – VIA00330204 |
| 33 | VIA00377151 |
| 34 | VIA00373066 |
| 35 | VIA11609108 |
| 36 | VIA00373203 |

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| 37 | BAYTSP 003720838 – BAYTSP 003720839 |
| 38 | VIA10487876 |
| 39 | VIA00830842 – VIA00830860 |
| 40 | VIA00518503 |
| 41 | YouTube screenshot, “Talking Dog from ‘Norbit’” |
| 42 | VIA00377161 |
| 43 | VIA00430652 |
| 44 | VIA16669294 – VIA16669298 |
| 45 | VIA01163976 – VIA01163977 |
| 46 | BAYTSP 004270654 – BAYTSP 004270656 |
| 47 | BAYTSP 003733297 – BAYTSP 003733309 |
| 48 | VIA00222252 – VIA00222253 |
| 49 | VIA00353643 |
| 50 | VIA00356563 – VIA00356565 |
| 51 | VIA01987932 |
| 52 | VIA00354498 |
| 53 | VIA11918115 – VIA11918116 |
| 54 | VIA01297987 – VIA01297993 |
| 55 | FS008462 – FS008465 |
| 56 | VIA00374543 – VIA00374544 |
| 57 | VIA00859418 – VIA00859433 |
| 58 | VIA00378149 – VIA00378150 |
| 59 | VIA12603576 |
| 60 | VIA02370869 – VIA02370871 |
| 61 | FS047864 |
| 62 | YouTube screenshot, “YouTube – GossipGirl40’s Channel” |
| 63 | VIA01293224 |
| 64 | FS040028 – FS040030, FS005633 – FS005638, FS044318 – FS044322, FS006613 – FS006617, FS005922 – FS005930, FS008751 – FS008758 |
| 65 | FS042795 – FS042819 |
| 66 | FS042979 |
| 67 | FS001794 – FS001808 |
| 68 | “About Us,” www.youtube.com (Apr. 28, 2005), retrieved from Internet Archive (http://web.archive.org/web/20050428171556/www.youtube.com/about.php) |
| 69 | JK00004824 – JK00004825 |
| 70 | JK00009428 |
| 71 | Excerpts of the Deposition of Heather Gillette (Aug. 12, 2008) |
| 72 | “FAQ – South Park Studios” (http://www.southparkstudios.com/fans/faq/archives.php?month=8&year=2003) |
| 73 | “YouTube removing Comedy Central Clips,” Oct. 30, 2006 (http://money.cnn.com/2006/10/30/technology/youtube_comedycentral/index.htm) |
| 74 | G00001-09623261 – G00001-09623262 |

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| 75 | JK00005044 |
| 76 | JK00005042 |
| 77 | Excerpts of the Deposition of Jawed Karim (June 9, 2009) |
| 78 | Excerpts of the Deposition of Tina Exarhos (Feb. 23, 2009) |
| 79 | VIA00557328 – VIA00557329 |
| 80 | VIA00866489 – VIA00866491 |
| 81 | JK00003503 – JK00003504 |
| 82 | JK00006392 – JK00006393 |
| 83 | Excerpts of the Deposition of Chad Hurley (Apr. 22, 2009) |
| 84 | JK00000226 – JK00000232 |
| 85 | JK00006166 – JK00006169 |
| 86 | JK00006156 – JK00006157 |
| 87 | JK00009595 – JK00009596 |
| 88 | VIA00330354 |
| 89 | Excerpts of the Deposition of Tom Freston (Sept. 11, 2009) |
| 90 | Defendants’ “Highly Confidential” Amended Responses and Objections to Plaintiffs’ First Set of Interrogatories (Jan. 10, 2010) |
| 91 | VIA17711810 – VIA17711931 |
| 92 | VIA11918012 – VIA11918013 |
| 93 | Excerpts of the Deposition of Zahavah Levine (Apr. 2, 2009) |
| 94 | Excerpts of the Deposition of Micah Schaffer (July 23, 2008) |
| 95 | GOO001-06107604 – GOO001-06107605 |
| 96 | GOO001-04887593 – GOO001-04887595 |
| 97 | GOO001-00425955 – GOO001-00425956 |
| 98 | GOO001-00192224 – GOO001-00192225 |
| 99 | GOO001-00192600 |
| 100 | GOO001-00543903 – GOO001-00543904 |
| 101 | GOO001-04893650 – GOO001-04893659 |
| 102 | Excerpts of the Deposition of Stanley Pierre-Louis (Oct. 14, 2008) |
| 103 | VIA17607534 |
| 104 | Excerpts of the Deposition of Mika Salmi (Oct. 16, 2009) |
| 105 | “ITV Interview: Mika Salmi, Founder and CEO, Atom Entertainment” |
| 106 | VIA07326570 |
| 107 | VIA01233269 – VIA01233270 |
| 108 | Excerpts of the Deposition of Brian Bradford (Mar. 12, 2009) |
| 109 | Excerpts of the Rule 30(b)(6) Deposition of Stage Three Music (US), Inc., by Maryann Slim (Oct. 23, 2009) |
| 110 | Excerpts of the Deposition of Alex Ellerson (May 22, 2009) |
| 111 | HFA Terms of Use (http://www.harryfox.com/public/termsUse.jsp) |
| 112 | ASCAP Terms of Use (http://www.ascap.com/about/terms/copyright.html) |
| 113 | Excerpts of the Deposition of Vance Ikezoye (Sept. 10, 2009) |
| 114 | Excerpts of the Deposition of Lauren Apolito (Jan. 7, 2010) |
| 115 | VIA01603422 – VIA01603445 |

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| 116 | Excerpts of the Deposition of Brent Hurley (Aug. 26, 2008) |
| 117 | Excerpts of the Deposition of Scott Roesch (Sept. 25, 2009) |
| 118 | Excerpts of the Deposition of Randy St. Jean (Oct. 19, 2009) |
| 119 | RD017085 – RD017093 |
| 120 | GOO001-00010746 |
| 121 | Excerpts of the Deposition of Cuong Do (Feb. 13, 2009) |
| 122 | Excerpts of the Deposition of Varun Kacholia (Jan. 8, 2010) |
| 123 | VIA10353129 – VIA10353130 |
| 124 | Excerpts of the Deposition of Victoria Libin (Dec. 2, 2009) |
| 125 | Ex. A to Plaintiffs’ Second Set of Interrogatories to Defendants YouTube, Inc., YouTube, LLC and Google Inc. |
| 126 | Excerpts of the Deposition of Mark Ishikawa (Jan. 14, 2010) |
| 127 | BAYTSP 003723655 – BAYTSP 003723656 |
| 128 | BAYTSP 003738845 – BAYTSP 003738882 |
| 129 | BAYTSP 003738714 – BAYTSP 003738745 |
| 130 | BAYTSP 003726951 - BAYTSP003726953 |
| 131 | Excerpts of the Deposition of Amy Powell (Dec. 15, 2009) |
| 132 | Excerpts of the Rule 30(b)(6) Deposition of YouTube, by Christopher Maxcy (Jan. 14, 2010) |
| 133 | Excerpts of the Rule 30(b)(6) Deposition of YouTube, by David King (Jan. 13, 2010) |
| 134 | Excerpts of the Deposition of Eric Schmidt (May 6, 2009) |
| 135 | Data produced by Audible Magic (Ikezoye Dep. Ex. 4A) |
| 136 | Excerpts of the Deposition of Viacom, by Lee L’Archevesque (Feb. 18, 2010) |
| 137 | MPAA012777 – MPAA012778 |
| 138 | MPAA012808 |
| 139 | VIA02072896 – VIA02072897 |
| 140 | AM 002090 – AM 002091 |
| 141 | GOO001-03427120 – GOO001-03427143 |
| 142 | GOO001-08050272 – GOO001-08050275 |
| 143 | BAYTSP 001125857 – BAYTSP 001125858 |
| 144 | BAYTSP 003820301 |
| 145 | Excerpts of the Deposition of Kent Walker (Dec. 17, 2009) |
| 146 | Excerpts of the Deposition of Alan Bell (Aug. 5, 2009) |
| 147 | Excerpts of the Rule 30(b)(6) Deposition of Viacom, by Mark Hall (Feb. 23, 2010) |
| 148 | VIA01707188 – VIA01707189 |
| 149 | “Biz not sure how to treat upstart YouTube,” <i>The Hollywood Reporter</i> |
| 150 | MPAA-0501207 |
| 151 | MPAA-0501218 – MPAA-0501219 |
| 152 | GOO001-01622450 |
| 153 | MPAA012723 |
| 154 | MPAA012724 |
| 155 | MPAA012767 |

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| 156 | MPAA012776 |
| 157 | G00001-02529442 – G00001-02529443 |
| 158 | G00001-02905739 – G00001-02905740 |
| 159 | G00001-01528471 – G00001-01528472 |
| 160 | G00001-01618900 – G00001-01618902 |
| 161 | G00001-09645851 – G00001-09645853 |
| 162 | Excerpts of the Deposition of Dean Garfield (Nov. 2, 2009) |
| 163 | VIA16072829 |
| 164 | MPAA-0009366 |
| 165 | Excerpts of the Rule 30(b)(6) Deposition of The Football Association Premier League Limited, by Oliver Weingarten (Dec. 15-16, 2009) |
| 166 | Excerpts of the Rule 30(b)(6) Deposition of Fédération Française de Tennis, by Georgina Loth (Dec. 2, 2009) |
| 167 | Excerpts of the Rule 30(b)(6) Deposition of Cherry Lane Music Publishing Company, Inc., by Keith Hauprich (Sept. 24, 2009) |
| 168 | Excerpts of the Rule 30(b)(6) Deposition of Edward B. Marks Music Company, Freddy Bienstock Music Company d/b/a Bienstock Publishing Company and Alley Music Corporation, by Theodora Michaels (Sept. 24, 2009) |
| 169 | Excerpts of the Rule 30(b)(6) Deposition of The Music Force Media Group LLC, The Music Force LLC, and Sin-Drome Records, by Henry Marx (Nov. 3, 2009) |
| 170 | Excerpts of the Deposition of Victoria Traube (October 8 2009) |
| 171 | Excerpts of the Deposition of Theresa Torrance (Jan. 21, 2009) |
| 172 | Excerpts of the Rule 30(b)(6) Deposition of X-Ray Dog Music, Inc., by Timothy Stithem (Dec. 8, 2009) |
| 173 | VIA01704321 – VIA01704323 |
| 174 | VIA00613131 – VIA00613133 |
| 175 | “Viacom Chief Says YouTube Clips Weren’t Licensed (Update 1),” <i>Bloomberg Businessweek</i> , Mar. 25, 2010 (http://www.businessweek.com/news/2010-03-25/viacom-chief-says-youtube-clips-weren-t-licensed-update1-.html) |
| 176 | VIA00911831 |
| 177 | VIA00182868 |
| 178 | VIA02182390 |
| 179 | VIA10129251 – VIA10129254 |
| 180 | VIA01055149 – VIA01055150 |
| 181 | VIA12601627 – VIA12601629 |
| 182 | VIA01227862 |
| 183 | Excerpts of the Deposition of Omid Kordestani (Feb. 12, 2009) |
| 184 | Excerpts of the Deposition of David Drummond (Feb. 12, 2009) |
| 185 | VIA00613676 |
| 186 | VIA00613194 – VIA00613195 |
| 187 | VIA00328176 |
| 188 | VIA01184175 – VIA01184176 |
| 189 | VIA00343398 |

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| 190 | VIA00671509 |
| 191 | VIA01179558 – VIA01179560 |
| 192 | VIA02071393 |
| 193 | VIA01893734 |
| 194 | VIA00396145 – VIA00396146 |
| 195 | VIA09076933 – VIA09076942 |
| 196 | Excerpts of the Deposition of Suzanne Reider (Oct. 3, 2008) |
| 197 | GOO001-01620945 |
| 198 | GOO001-06107416 |
| 199 | VIA00471741 – VIA0471744 |
| 200 | VIA00258331 |
| 201 | GOO001-00234754 – GOO001-00234760 |
| 202 | GOO001-00566305 – GOO001-00566310 |
| 203 | Excerpts of the Deposition of Patrick Walker (July 22, 2008) |
| 204 | Excerpts of the Deposition of Peter Chane (Dec. 2, 2009) |
| 205 | Excerpts of the Deposition of Bhanu Narasimhan (Sept. 18, 2009) |
| 206 | Excerpts of the Deposition of David Eun (Aug. 7, 2009) |
| 207 | Excerpts of the Deposition of Jonathan Rosenberg (Dec. 4, 2009) |
| 208 | Excerpts of the Deposition of Sergey Brin (Oct. 15, 2009) |
| 209 | Excerpts of the Deposition of Larry Page (Oct. 1, 2009) |
| 210 | Excerpts of the Deposition of Tim Armstrong (Oct. 30, 2008) |
| 211 | Excerpts of the Deposition of Maryrose Dunton (Aug. 22, 2008) |
| 212 | Excerpts of the Deposition of Storm Duncan (July 16, 2008) |
| 213 | CSSU 003560 – CSSU003586 |
| 214 | Excerpts of the Deposition of Jason Witt (Sept. 25, 2008) |
| 215 | VIA01497249 – VIA01497338 |
| 216 | VIA01474688 – VIA01474724 |
| 217 | Excerpts of the Deposition of Judy McGrath (July 29, 2009) |
| 218 | VIA00574637 – VIA00574639 |
| 219 | VIA01707396 – VIA01707398 |
| 220 | VIA01837343 – VIA01837344 |
| 221 | Excerpts of the Rule 30(b)(6) Deposition of Viacom, by Warren Solow (Dec. 18, 2009) |
| 222 | Excerpts of the Deposition of Roelof Botha (Aug. 5, 2009) |
| 223 | VIA15293049 – VIA15293056 |
| 224 | VIA11495647 – VIA11495660 |
| 225 | VIA11495816 – VIA11495837 |
| 226 | VIA15154372 – VIA15154386 |
| 227 | VIA16674999 – VIA16675027 |
| 228 | VIA15293234 – VIA15293246 |
| 229 | VIA11920121 – VIA11920166 |
| 230 | VIA11494286 – VIA11494449 |
| 231 | VIA12619574 – VIA12619606 |

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| 232 | VIA10942639 – VIA10942643 |
| 233 | VIA13670445 – VIA13670460 |
| 234 | VIA16421052 – VIA16421053 |
| 235 | VIA08766210 – VIA08766212 |
| 236 | VIA14012942 |
| 237 | VIA17063901 – VIA17063937 |
| 238 | VIA16074316 – VIA16074319 |
| 239 | VIA00330494 – VIA00330495 |
| 240 | VIA16074297 – VIA16074300 |
| 241 | VIA10405260 |
| 242 | VIA10402213 – VIA10402214 |
| 243 | VIA11786386 |
| 244 | VIA00468808 |
| 245 | VIA16073161 – VIA16073162 |
| 246 | VIA00206833 |
| 247 | VIA00206834 |
| 248 | VIA02094724 |
| 249 | BAYTSP 003742450 – BAYTSP003742452 |
| 250 | BAYTSP 003724542 – BAYTSP 003724548 |
| 251 | BAYTSP 003747348 |
| 252 | BAYTSP 04183405 |
| 253 | PL00146756 – PL00146758 |
| 254 | BAYTSP 004381247 – BAYTSP 004381248 |
| 255 | FS038779 |
| 256 | CH00079729 |
| 257 | Excerpts of the Deposition of Todd Apmann (July 23, 2009) |
| 258 | Excerpts of the Deposition of Nicole Browning (Oct. 7, 2009) |
| 259 | Excerpts of the Deposition of Damon Burrell (Apr. 14, 2009) |
| 260 | Excerpts of the Deposition of Donna Cooper (Oct. 31, 2008) |
| 261 | Excerpts of the Deposition of Tom Dooley (Sept. 30, 2009) |
| 262 | Excerpts of the Deposition of Cindy Emch (Nov. 19, 2009) |
| 263 | Declaration of George F. Salem in Support of Defendants' Surreply to Plaintiffs' Joint Motion to Compel (Apr. 4, 2008) |
| 264 | Excerpts of the Deposition of Erik Flannigan (Oct. 16, 2008) |
| 265 | Excerpts of the Deposition of Michael Fricklas (Sept. 22, 2009) |
| 266 | Excerpts of the Deposition of Michelena Hallie (Dec. 10, 2009) |
| 267 | Excerpts of the Deposition of Doug Herzog (Jan. 16, 2009) |
| 268 | Excerpts of the Deposition of Brendan Jackson (Nov. 5, 2009) |
| 269 | Excerpts of the Deposition of Courtney Nieman (Dec. 16, 2009) |
| 270 | Excerpts of the Deposition of Alfred Perry (Dec. 16, 2009) |
| 271 | Excerpts of the Deposition of Megan Wahtera (Dec. 4, 2009) |
| 272 | VIA00734485 – VIA00734496 |
| 273 | VIA15262766 – VIA15262811 |

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| 274 | VIA16813940 – VIA16813966 |
| 275 | BAYTSP003809148 – BAYTSP003809156 |
| 276 | VIA15256605 – VIA15256607 |
| 277 | VIA02355274 – VIA02355310 |
| 278 | BAYTSP004341833 |
| 279 | “No Joke: ‘SouthPark’ Uploads Spared,” <i>Multichannel News</i> , Oct. 14, 2006 |
| 280 | BAYTSP 001093517 – BAYTSP 001093523 |
| 281 | VIA01603422 – VIA01603445 |
| 282 | JK00000824 |
| 283 | JK00005698 |
| 284 | Email chain between Michael Rubin and Scott Wilkens (Apr. 2010) |
| 285 | IM_00000628 – IM_00000642 |
| 286 | Plaintiffs’ Confidential Supplemental and Amended Objections and Responses to Certain of YouTube’s Interrogatories to Viacom International, Inc. et al. (Apr. 16, 2010) |
| 287 | GOO001-00829703 |
| 288 | GOO001-00925742 – GOO001-00925743 |
| 289 | GOO001-00274220 – GOO001-00274222 |
| 290 | GOO001-00498634 – GOO001-00498635 |
| 291 | Excerpts of the Deposition of Wendy Chang (July 11, 2008) |
| 292 | GOO001-04734072 – GOO001-04734075 |
| 293 | GOO001-05397369 |
| 294 | GOO001-05397390 |
| 295 | GOO001-05397401 – GOO001-05397403 |
| 296 | Excerpts of the Deposition of Gideon Yu (Aug. 14, 2009) |
| 297 | GOO001-00939843 – GOO001-00939844 |
| 298 | VIA01663829 |
| 299 | VIA08940860 |
| 300 | BAYTSP 003719030 – BAYTSP 003719031 |
| 301 | Excerpts of the Deposition of Shashi Seth (July 16, 2009) |
| 302 | GOO001-05943950 |
| 303 | “Getting Started: Private videos (and how to share them)” (http://www.google.com/support/youtube/bin/answer.py?hl=en-uk&answer=157177) |
| 304 | VIA00173620 |
| 305 | Excerpts of the Deposition of Michael Wolf (Apr. 17, 2009) |
| 306 | BAYTSP004378423 – BAYTSP004378433 |
| 307 | VIA16086446 |
| 308 | VIA00174704 |
| 309 | PL00130888 – PL00130891 |
| 310 | BAYTSP004272806 – BAYTSP004272832 |
| 311 | GOO001-05164888 – GOO001-05164927 |

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| 312 | Defendants' Supplemental "Highly Confidential" Responses and Objections to Plaintiffs' Second Set of Interrogatories (Apr. 26, 2010) |
| 313 | BAYTSP004341831 |
| 314 | GOO001-01607047 – GOO001-01607050 |
| 315 | GOO001-09681151 – GOO001-09681202 |
| 316 | BAYTSP004405246 – BAYTSP004405247 |
| 317 | WS-02484 |
| 318 | Excerpts of the Deposition of Michael Robinson (Jan. 15, 2010) |
| 319 | VIA11786232 – VIA11786276 |
| 320 | Excerpts of the Deposition of Nicholas Seet (Nov. 24, 2009) |
| 321 | GOO001-06134729 – GOO001-06134730 |
| 322 | AUD00133540 – AUD00133541 |
| 323 | VIA02095742 – VIA02095747 |
| 324 | GOO001-00075158 |
| 325 | Excerpts of the Deposition of Jim Patterson (Dec. 18, 2009) |
| 326 | VIA10432652 – VIA10432657 |
| 327 | VIA10432614 |
| 328 | VIA11787186 |
| 329 | VIA13821920 – VIA13821921 |
| 330 | BAYTSP004369131 |
| 331 | VIA10389617 – VIA10389624 |
| 332 | GOO001-06147919 – GOO001-06147973 |
| 333 | VIA12746723 – VIA12746729 |
| 334 | Excerpts of the Rule 30(b)(6) ESI Deposition of Viacom, by Warren Solow (Sept. 19, 2007) |
| 335 | Excerpts of the Deposition of Wade Davis (Aug. 6, 2009) |
| 336 | VIA08711358 – VIA08711459 |
| 337 | VIA00159503 – VIA00159505 |
| 338 | Atom Entertainment Terms of Service |
| 339 | VIA01228819 |
| 340 | VIA16465948 – VIA16465956 |
| 341 | VIA00070376 – VIA00070378 |
| 342 | VIA02349844 – VIA02349849 |
| 343 | Agreement and Plan of Merger by and among Viacom Inc., Surprise Merger Sub Inc., Atom Entertainment Inc., The Stockholder Representative Named Herein and The Principal Stockholders, dated as of August 9, 2006 |
| 344 | VIA11748626 – VIA11748627 |
| 345 | AM003814 – AM003842 |
| 346 | VIA08719005 – VIA08719006 |
| 347 | RD004338 – RD004339 |
| 348 | VIA11431530 – VIA11431531 |
| 349 | VIA01675542 |
| 350 | VIA00332214 – VIA00332216 |

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| 351 | VIA00556103 |
| 352 | VIA01981185 |
| 353 | VIA00848179 – VIA00848180 |
| 354 | VIA11691261 – VIA11691262 |
| 355 | VIA00701323 – VIA00701340 |
| 356 | VIA00399413 – VIA00399414 |
| 357 | VIA00466749 – VIA00466750 |
| 358 | PLC00000597 – PLC00000598 |
| 359 | PLC00000237 – PLC00000238 |
| 360 | Excerpts of the Deposition of Joshua Dern (Nov. 24, 2009) |
| 361 | Flux webpage (http://www.flux.com/Content/Video/AddVideo.aspx) |
| 362 | Excerpts of the Deposition of Blair Harrison (Dec. 9, 2009) |
| 363 | VIA00906338 – VIA00906339 |
| 364 | GOO001-00630880 – GOO001-00630881 |
| 365 | VIA15809187 – VIA15809276 |
| 366 | “Principles for User Generated Content Services” (http://www.ugcprinciples.com) |
| 367 | VIA02066750 – VIA02066794 |
| 368 | VIA15121970 – VIA15122007 |
| 369 | VIA02451027 – VIA02451037 |
| 370 | Excerpts of the Deposition of Scott Hurwitz (Sept. 10, 2008) |
| 371 | VIA14008024 – VIA14008056 |
| 372 | VIA14008139 – VIA14008144 |
| 373 | VIA00367207 – VIA00367211 |
| 374 | Deposition Notice to MPAA (Nov. 20, 2009) |
| 375 | Amended Deposition Notice to MPAA (Jan. 10, 2010) |
| 376 | Email chain between Bart Volkmer and Kelly Klaus (Jan. 2010) |
| 377 | Chart of S. Redstone Production (Excel List) |
| 378 | Excerpts of the Deposition of Kristina Tipton (Oct. 29, 2009) |
| 379 | Chart of K. Tipton Production (Bar Chart) |
| 380 | VIA00366274 – VIA00366287 |
| 381 | VIA00862882 |
| 382 | PL00145484 – PL00145485 |
| 383 | GOO001-00016101 – GOO001-00016104 |
| 384 | Excerpts of the Deposition of Tamar Teifeld (Feb. 18, 2009) |
| 385 | VIA00330126 – VIA00330127 |
| 386 | VIA00857333 |
| 418 | Excerpts of the Deposition of Keith Hauprich (Nov. 4, 2008) |
| 419 | Letter from William Hohengarten to Michael Rubin (May 12, 2009) |
| 420 | MPAA 0501208 |
| 423 | GOO001-02201131 – GOO001-02201132.0228 |
| 424 | Excerpts of the Deposition of Michael Solomon (September 1, 2009) |
| 425 | MPAA004540 – MPAA004541 |

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3. Defendants' Opposition to Plaintiffs' Motions for Partial Summary

Judgment refers to a number of videos that Plaintiffs have alleged as clips in suit in these actions. Attached hereto are true and correct copies of those videos. Version "A" of each video is provided in the "Flash Video," or ".flv," format, as stored on YouTube's servers. (See Solomon Opening Decl. ¶ 12, which explains the manner in which those videos were captured from YouTube's servers.) For the Court's convenience, we have also converted each video to the "MPEG-1" format, and include that format as version "B."

| Exhibit | Description |
|----------------|-----------------------------|
| 387A | apDu_3WiKwo (.flv format) |
| 387B | apDu_3WiKwo (MPEG-1 format) |
| 388A | zTwq5XyE-Ls (.flv format) |
| 388B | zTwq5XyE-Ls (MPEG-1 format) |
| 389A | oaZ4blN_Xhs (.flv format) |
| 389B | oaZ4blN_Xhs (MPEG-1 format) |
| 390A | 5SNiRZ5KOGA (.flv format) |
| 390B | 5SNiRZ5KOGA (MPEG-1 format) |
| 391A | vWaW1YPZrgk (.flv format) |
| 391B | vWaW1YPZrgk (MPEG-1 format) |
| 392A | Bet6HRAfAtk (.flv format) |
| 392B | Bet6HRAfAtk (MPEG-1 format) |
| 393A | zrHkvQ3qMmA (.flv format) |
| 393B | zrHkvQ3qMmA (MPEG-1 format) |
| 394A | i2E7xIz7hdY (.flv format) |
| 394B | i2E7xIz7hdY (MPEG-1 format) |
| 395A | jJOKjNdv9g (.flv format) |
| 395B | jJOKjNdv9g (MPEG-1 format) |
| 396A | wGyejIrrn2U (.flv format) |
| 396B | wGyejIrrn2U (MPEG-1 format) |
| 397A | UtNKMRN17r4 (.flv format) |
| 397B | UtNKMRN17r4 (MPEG-1 format) |
| 398A | t963-Dhs_oE (.flv format) |
| 398B | t963-Dhs_oE (MPEG-1 format) |
| 399A | aYjJ04Fkpkc (.flv format) |
| 399B | aYjJ04Fkpkc (MPEG-1 format) |

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| Exhibit | Description |
|----------------|-----------------------------|
| 400A | Lef-uPNCpeU (.flv format) |
| 400B | Lef-uPNCpeU (MPEG-1 format) |
| 401A | VGKHKSTi3Zg (.flv format) |
| 401B | VGKHKSTi3Zg (MPEG-1 format) |
| 402A | JhbFKmC7JO0 (.flv format) |
| 402B | JhbFKmC7JO0 (MPEG-1 format) |
| 403A | Nim6DGLP1iU (.flv format) |
| 403B | Nim6DGLP1iU (MPEG-1 format) |
| 404A | NaYpm5hRlh8 (.flv format) |
| 404B | NaYpm5hRlh8 (MPEG-1 format) |
| 405A | TQtCNV7w2fs (.flv format) |
| 405B | TQtCNV7w2fs (MPEG-1 format) |
| 406A | mExEHOejl4 (.flv format) |
| 406B | mExEHOejl4 (MPEG-1 format) |
| 407A | ZQGMm-aNpZU (.flv format) |
| 407B | ZQGMm-aNpZU (MPEG-1 format) |
| 408A | iD0wwVmN2Vc (.flv format) |
| 408B | iD0wwVmN2Vc (MPEG-1 format) |
| 409A | IfJGC4Be_NU (.flv format) |
| 409B | IfJGC4Be_NU (MPEG-1 format) |
| 410A | HPB9yq7f_1k (.flv format) |
| 410B | HPB9yq7f_1k (MPEG-1 format) |
| 411A | YYeJEFa-xCA (.flv format) |
| 411B | YYeJEFa-xCA (MPEG-1 format) |
| 421A | NpqqWW0z7vM (.flv format) |
| 421B | NpqqWW0z7vM (MPEG-1 format) |
| 422A | x8wOTcv5E38 (.flv format) |
| 422B | x8wOTcv5E38 (MPEG-1 format) |

4. Defendants' brief describes a video appearing on the YouTube website, available at http://www.youtube.com/watch?v=E3WqfFI-K_U. Attached hereto as Exhibit 412 is a true and correct copy of the video appearing on that webpage. Version "A" of the video is provided in the "Flash Video," or ".flv" format, as stored on YouTube's servers. (See Solomon Opening Decl. ¶ 12, which explains the manner in which those videos were captured from YouTube's servers.) For the Court's convenience, we have also converted the video to the "MPEG-1" format, and include

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that format as version “B.” Also attached as Exhibit 413 is a true and correct copy of a screenshot captured on April 30, 2010 for the URL.

5. Attached as Exhibit 414 is a true and correct copy of a video appearing on the webpage <http://www.limelightnetworks.com/customers/>. Attached as Exhibit 415 is a true and correct copy of a printout of that webpage as of April 29, 2010.

6. Attached hereto as Exhibit 416 is a subset of data produced by YouTube from its systems in response to requests by Plaintiffs. The data show certain details about the YouTube videos bearing Video IDs YYeJEFa-xCA and HPB9yq7f_1k, including the username and email address of the uploader, the date on which the video was uploaded to YouTube, and the title the user provided when uploading the video.

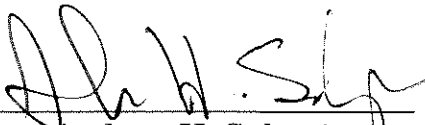
7. Attached hereto as Exhibit 417 is a subset of data produced by YouTube from its systems in response to requests by Plaintiffs. The data show certain details about YouTube accounts, including the name (if any) and email address provided during registration.

8. Among the data that Plaintiffs requested and YouTube produced from its systems regarding the Clips in Suit was data showing when the Clips in Suit were uploaded by users to YouTube. I have reviewed that data and it shows that more than 15,000 Clips in Suit were uploaded on or after May 1, 2008.

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Dated: New York, NY
May 10, 2010



Andrew H. Schapiro

Schapiro Exhibit 1

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

VIACOM INTERNATIONAL, INC., COMEDY)
PARTNERS, COUNTRY MUSIC.)
TELEVISION, INC., PARAMOUNT)
PICTURES CORPORATION, and BLACK)
ENTERTAINMENT TELEVISION, LLC,)

Plaintiffs,)

vs.) NO. 07-CV-2103

YOUTUBE, INC., YOUTUBE, LLC,)
and GOOGLE, INC.,)

Defendants.)

_____)
THE FOOTBALL ASSOCIATION PREMIER)
LEAGUE LIMITED, BOURNE CO., et al.,)
on behalf of themselves and all)
others similarly situated,)

Plaintiffs,)

vs.) NO. 07-CV-3582

YOUTUBE, INC., YOUTUBE, LLC, and)
GOOGLE, INC.,)

Defendants.)

_____)
VIDEOTAPED DEPOSITION OF WARREN SOLOW
NEW YORK, NEW YORK
JANUARY 14TH, 2010

JOB NO. 18509

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VIDEOTAPED DEPOSITION OF WARREN
SOLOW, held at the offices of Wilson,
Sonsini, Goodrich & Rosati, PC, 1301
Avenue of the Americas, New York, New
York, pursuant to notice, before
Maureen Ratto, Registered Professional
Reporter and Notary Public of the State
of New York on January 14, 2010, at
10:13 a.m.

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A P P E A R A N C E S

FOR THE PLAINTIFFS:

JENNER & BLOCK, LLP

BY: SUSAN J. KOHLMANN, ESQ.

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FOR THE DEFENDANTS:

WILSON, SONSINI, GOODRICH & ROSATI, LLP

BY: MICHAEL H. RUBIN, ESQ.

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650-849-3311

MRUBIN@wsgr.com

1 what Mark Ishikawa is referring to when
2 he identifies project number two.

3 Q. That would be the same for
4 Paramount Project 1 and Paramount
5 11:51:14 Project 2?

6 A. I'm unsure of the nomenclature
7 that Mark Ishikawa may use internally
8 and how it maps to the agreed upon
9 contracts between the two companies
10 11:51:33 that are identified by statement of
11 work.

12 Q. It's possible, then, based on
13 your understanding, that BayTSP is
14 referring to projects by different
15 11:51:50 names than Viacom is. Is that what
16 you're saying, Mr. Solow?

17 MS. KOHLMANN: Objection as to
18 form. You can answer.

19 A. I'm saying that I have -- it has
20 11:52:04 recently been brought to my attention
21 that the identification of projects or
22 sub projects or endeavors within BayTSP
23 do not map directly to the agreed upon
24 contracts, statement of works between
25 11:52:33 the two organizations.

1 Q. Do the -- does that degree of
2 variance in the mapping of project
3 name, based upon what you recently
4 learned, have an impact on the
5 11:53:01 execution by BayTSP of Viacom's
6 instructions?

7 MS. KOHLMANN: Objection as to
8 form.

9 A. I've not yet seen that
10 11:53:22 manifested in performance.

11 Q. Have you investigated it?

12 A. No.

13 Q. Without regard to any specific
14 project, as a general proposition,
15 11:54:00 BayTSP is charged by Viacom with
16 sending takedown notices to online
17 services. Isn't that correct?

18 MS. KOHLMANN: Objection as to
19 form. You can answer.

20 11:54:14 A. That is a component of -- of the
21 services they provide.

22 Q. And with regard to that
23 component of the services they provide,
24 there are some online services to which
25 11:54:38 BayTSP is authorized to send takedown

1 notices on Viacom's behalf and there
2 are other online services with respect
3 to which BayTSP is not authorized to
4 send takedown notices. Isn't that
5 11:54:50 right?

6 MS. KOHLMANN: Objection as to
7 form.

8 A. Yes.

9 Q. Which online services has BayTSP
10 11:55:03 been authorized to send takedown
11 notices to?

12 A. Those services that are listed
13 in the agreed upon and counter signed
14 statement of works between the two
15 11:55:27 companies. I believe that that list
16 would include YouTube, Google video,
17 MySpace and Yahoo video, at least for a
18 period of time.

19 Q. Can you recall any others?

20 11:55:45 A. I'm sorry. I'll need
21 clarification here and perhaps my
22 answer will be clarifying.

23 I can't speak to the scope of
24 the Paramount projects. They may have
25 11:56:10 included other sites. They may or may

1 not have. As I said, there is a P2P
2 component missing out of his
3 description or -- of what he refers to
4 as Viacom Project 1.

5 11:56:25 Q. To be clear, when you say "he"
6 you are referring to Mr. Ishikawa in
7 the document sent to you titled
8 "Warren's answers" in the form of
9 Exhibit 3?

10 11:56:38 MS. KOHLMANN: Objection. You
11 can answer.

12 A. Yes.

13 Q. My question was not limited to
14 that document or to Mr. Ishikawa, just
15 11:56:45 to be clear.

16 A. Okay. Could you repeat it then?

17 Q. Sure. I wanted to step back
18 from Exhibit 3. You can actually set
19 it aside if you like, and ask the
20 11:56:57 broader question.

21 Viacom has authorized BayTSP to
22 send takedown notices to certain online
23 services on its behalf but not to
24 others. Correct?

25 11:57:11 A. Viacom defined the list of sites

1 for which Bay should focus their
2 efforts. I'm not aware of any document
3 that said do not look at this site.

4 Q. Okay. But BayTSP is not
5 11:57:38 authorized to send takedown notices on
6 Viacom's behalf to any site than those
7 expressly listed in the agreements
8 between the two companies. Isn't that
9 right?

10 11:57:52 A. That I'm aware of, there could
11 -- to the extent of my awareness, yes.

12 Q. Mr. Solow, can BayTSP on its own
13 initiative send takedown notices to any
14 site it so chooses for any Viacom
15 11:58:09 content that it so chooses?

16 A. No.

17 MS. KOHLMANN: Objection as to
18 form. Go ahead.

19 A. No.

20 11:58:16 Q. In fact, it can only send
21 takedown notices to the sites that
22 Viacom directs it to do so, for the
23 content that it is directed to send
24 notices for pursuant to the rules that
25 11:58:30 Viacom directs. Isn't that right?

1 MS. KOHLMANN: Objection as to
2 form. You can answer.
3 A. That is correct.
4 Q. With respect to the sites for
5 11:58:41 which BayTSP is authorized to send
6 takedown notices you identified four;
7 YouTube, Google video, MySpace and
8 Yahoo video. My question is, are there
9 more than those four that you are aware
10 11:58:54 of?
11 A. No.
12 Q. What peer to peer networks is
13 BayTSP authorized to monitor?
14 A. I don't know.
15 11:59:20 Q. Who would know that?
16 A. It depends on the time period
17 that you are speaking of.
18 Q. Today.
19 A. Stanley Pierre-Louis.
20 11:59:48 Q. Do you know who would know that
21 for the period around March, 2007?
22 A. In March of 2007 Bay was
23 monitoring eDonkey, my recollection is
24 failing me there. Anybody who had
25 12:00:18 access to the statement of work would

1 -- could tell you that. I couldn't
2 tell you who, off the top of their
3 heads, could provide that information.

4 Q. Do you know what steps BayTSP
5 12:00:30 was authorized to take with respect to
6 P2P networks other than monitoring
7 those services?

8 MS. KOHLMANN: Objection as to
9 form. You can answer.

10 12:00:39 A. I don't recall what the exact
11 protocol was on the P2P side.

12 Q. As part of BayTSP's takedown
13 work flow for Viacom, BayTSP makes a
14 copy of each YouTube clip prior to
15 12:01:06 sending a takedown notice to YouTube,
16 correct?

17 MS. KOHLMANN: Objection.

18 A. Yes. They endeavor to do that.

19 Q. In fact, they do that prior to
20 12:01:16 sending a takedown notice, don't they?

21 A. Yes.

22 Q. Is that work flow in place for
23 each of the four services that BayTSP
24 monitors for Viacom?

25 12:01:34 MS. KOHLMANN: Objection as to

1 parties or Viacom agents to whom that
2 information has been provided as you
3 sit here today?

4 A. I believe it would be provided
5 14:50:31 to Global.

6 Q. Other than Viacom's agents who
7 are involved with identifying Viacom
8 content on the internet, do you know if
9 it's ever been provided to any other
10 14:50:49 Viacom agents or any other third
11 parties?

12 A. As a list? What -- I don't
13 understand the object of the sentence,
14 what have I provided? What is it that
15 14:51:09 we're providing?

16 Q. The information contained in
17 what Michael Housley aggregates at your
18 direction regarding the uploading
19 activity of Viacom and its agents on
20 14:51:21 the YouTube website and on the internet
21 generally.

22 MS. KOHLMANN: Objection as to
23 form.

24 A. For clarity, are we talking
25 14:51:30 dissemination of a list that Michael

1 Housley has created or are we talking
2 about the upstream from that? Down
3 stream of that? I'm still not
4 understanding what it is that you're
5 14:51:42 asking is being disseminated.

6 Q. Let's focus first on the
7 information being disseminated as
8 aggregated by Mr. Housley.

9 MS. KOHLMANN: Objection.

10 14:51:52 A. Can you -- now, can you repose
11 the question?

12 Q. Sure. In the form as aggregated
13 by Mr. Housley at your direction, do
14 you know if the data regarding Viacom
15 14:52:11 and its agents uploading activity of
16 Viacom content on the internet
17 including YouTube has been provided to
18 any Viacom agent or other third party,
19 other than those that are involved in
20 14:52:24 monitoring the internet for Viacom
21 content?

22 MS. KOHLMANN: Objection as to
23 form.

24 A. Yes.

25 14:52:48 Q. Please identify them?

1 A. I believe that it has been
2 provided to Jenner & Block and Sherman
3 & Sterling.

4 Q. Do you know when that
5 14:53:04 information was provided to your
6 counsel in this action?

7 A. Not specifically, no.

8 MR. RUBIN: Susan, I'll ask
9 right now that information be produced
10 14:53:28 in the case. If you want to meet and
11 confer about it I'm happy to do so.
12 It's plainly responsive.

13 Q. Other than the partners you've
14 identified thus far, and setting aside
15 14:53:46 those that are involved in monitoring
16 the internet for Viacom content, can
17 you identify any others to whom that
18 data has been provided?

19 A. No.

20 14:54:44 Q. Do you believe that set of data
21 is comprehensive, Mr. Solow?

22 MS. KOHLMANN: Objection as to
23 form.

24 A. I don't know.

25 14:55:02 Q. What leads you to be unable to

1 conclude that the data provided to you
2 from Viacom subsidiaries and Viacom
3 agents regarding their upload activity
4 with respect to Viacom content on the
5 14:55:16 internet and on YouTube might not be
6 comprehensive?

7 MS. KOHLMANN: Objection.

8 Misstates the record. You can answer.

9 A. When one doesn't know the extent
10 14:55:30 of the universe of a data set it's hard
11 to make a determination that something
12 is missing.

13 Q. Have you had any experience that
14 leads you to conclude that data has
15 14:55:46 been, from time to time, been missing
16 from that data set?

17 MS. KOHLMANN: Objection as to
18 form.

19 A. I can't recall an instance where
20 14:56:10 an instance or event that played out
21 which led me to believe that.

22 Q. Is this data set checked prior
23 to the sending of a takedown notice for
24 a given piece of content to insure that
25 14:56:35 that content is not authorized to be on

1 the service at issue?

2 MS. KOHLMANN: Objection as to
3 form.

4 A. There is an expectation that
5 14:56:50 will happen, yes.

6 Q. What is the purpose of having
7 that expectation?

8 A. I want to make sure I understand
9 the question.

10 14:57:14 Q. Let me ask it again. It might
11 be a bit confusing. Who checks that
12 data set prior to sending a takedown
13 notice to insure that the content in
14 the takedown notice is not also in that
15 14:57:38 data set?

16 MS. KOHLMANN: Objection as to
17 form.

18 A. Generally BayTSP.

19 Q. Is it correct that BayTSP checks
20 14:58:03 the set of data reflecting what Viacom
21 subsidiaries and agents have identified
22 as content they have uploaded to
23 YouTube and other areas of the internet
24 prior to sending a takedown notice for
25 14:58:28 the purpose of insuring that the

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rule.

Q. And you always mark the flag high importance on e-mails you sent?

A. I do not.

18:10:42 Q. Do you only do so when you believe the importance to actually be high?

MS. KOHLMANN: Objection.

A. In most cases, yes.

18:10:55 Q. What did you write to Ms. Nieman that you deemed to be so urgent and of such high importance?

A. I was endeavoring to get her to act quickly to re-- to facilitate the reposting of these clips.

18:11:18 Q. Clips that had been taken down by Viacom, is that correct?

A. That's correct.

Q. Didn't you also tell her you had been under the impression that this user was on the protected, do not take down list?

18:11:28 MS. KOHLMANN: Objection. You can answer.

18:11:44 A. That is what it says here in

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this e-mail, yes.

Q. Why were you under that impression at the time you sent this e-mail, Mr. Solow?

18:11:52 A. I don't recall why specifically I was under that impression.

Q. Do you see the response from Evelyn Espinosa to Courtney Nieman and Travis Hill?

18:12:14 A. Yes.

Q. What does it say?

A. "Once again... how do you/the video group KNOW who is on the protected list? ? ? ? ?"

18:12:36 Q. And in fact, "know" is in all caps, correct?

A. Correct.

Q. In your experience in e-mail isn't a word put in all caps for emphasis?

18:12:46 A. Often.

Q. How did Courtney or the video group know who was on the protected list?

18:12:59 MS. KOHLMANN: Objection as to

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18:13:07

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18:13:38

18:13:50

18:14:04

form.
A. I don't know.
Q. In fact, it was your understanding at least on May 1st that there was some breakdown in that process, right?
MS. KOHLMANN: Objection as to form.
A. Right. Although, I did couch it as I was under the impression. So given an intimate understanding of how I communicate, that was my way of giving them a chance to correct me where I was wrong.
Q. Indeed. But it was in fact your impression at the time that there was some breakdown in the process regarding confirming whether or not a clip was authorized prior to issuance of a takedown notice. Isn't that right?
MS. KOHLMANN: Objection.
A. My impression was that this user was or should have been on a protected do not take down list.
Q. Do you know if a retraction was

1 sent for any or all videos attached to
2 the 66 in 2008?

3 A. I believe retractions were sent
4 for these clips.

5 18:14:13 Q. Do you know if those videos are
6 life on the service today?

7 A. I don't believe they are.

8 Q. But didn't you just testify that
9 Viacom issued a retraction for those
10 18:14:34 videos?

11 MS. KOHLMANN: Objection.

12 A. Can we have the court reporter
13 read back my answer?

14 Q. Why don't you just answer it
15 18:14:44 again, Mr. Solow?

16 A. I'd say it would be more
17 consistent to rely on my answer.

18 Q. I'll ask you the question again.
19 It is your understanding that BayTSP
20 18:14:55 issued a retraction for some or all the
21 videos set forth in the those attached
22 to Exhibit 28 on Viacom's behalf?
23 Isn't that right?

24 A. Yes.

25 18:15:07 MR. RUBIN: Let's mark Exhibit

1 29.
2 (SolowP-29 is received and
3 marked for identification.)
4 Q. Mr. Solow, Exhibit 29 is a
5 18:15:44 document produced by BayTSP in this
6 action bearing BayTSP 001124869
7 consists of a retraction notice sent by
8 BayTSP to YouTube on May 1st, 2007 just
9 a few hours after the e-mail we saw in
10 18:16:14 Exhibit 28.
11 A. Yes.
12 Q. Do you recognize this document?
13 A. No. I do not.
14 Q. Is this a document that contains
15 18:16:32 a retraction of some or all of the
16 notice of alleged infringement
17 contained as attachments to Exhibit 28?
18 MS. KOHLMANN: Objection. You
19 can answer.
20 18:16:43 A. I don't know, short of going
21 through and matching everyone of these
22 video IDs to the IDs in here, I don't
23 know.
24 Q. Let's short cut that and just
25 18:17:04 focus on one.

1 A. Okay.

2 Q. If you can pull up Exhibit 28 in

3 front of you.

4 A. Yes.

5 18:17:09 Q. And turn to the second page.

6 A. Yes.

7 Q. Do you see that video ID

8 enclosed in the takedown notice in the

9 first in time e-mail?

10 18:17:20 A. The one that ends in W8.

11 Q. Exactly, the one that ends in W8

12 on the page that ends in Bates number

13 951.

14 A. Yes.

15 18:17:29 Q. If I can turn your attention now

16 to Exhibit 29.

17 A. Yes.

18 Q. Do you see there's a long list

19 of URLs that end in video IDs?

20 18:17:40 A. Yes.

21 Q. If I can bring your attention to

22 the eighth from the bottom?

23 A. Yes.

24 Q. Do you see that that's the same

25 18:17:49 video ID that's identified in the

1 second page of Exhibit 28?
2 A. Yes.
3 Q. Rather than repeating this
4 exercise for every one of them, would
5 18:18:02 you agree that Exhibit 29 is at least a
6 retraction notice for some or at least
7 one of the videos represented in the
8 takedown notices attached to Exhibit
9 28?
10 18:18:14 A. Yes.
11 Q. And you have no reason to
12 believe that the rest of the videos
13 identified in Exhibit 28 weren't also
14 contained in retraction notices issued
15 18:18:25 by BayTSP on Viacom behalf to YouTube,
16 do you?
17 MS. KOHLMANN: Objection.
18 A. No.
19 Q. But I believe you testified that
20 18:18:36 it's your understanding that these
21 videos aren't live on the service
22 today?
23 MS. KOHLMANN: Objection.
24 Q. Is that right?
25 18:18:43 A. I have not checked that recently

1 but I believe that that is the case.

2 Q. Why would that be the case?

3 A. Because we ultimately determined
4 that the rights to these clips were not

5 18:19:08 -- were not those -- were not the
6 rights of the person who complained
7 about the -- that was an inarticulate
8 way of saying that.

9 We believed that the person
10 18:19:21 filing the or complaining about the
11 takedown was not the actual rights
12 owner.

13 MR. RUBIN: I'd like to
14 introduce Exhibit 30.

15 18:19:39 (SolowP-30 is received and
16 marked for identification.)

17 Q. When you say "we", Mr. Solow,
18 who is the "we" that made that decision
19 or reached that conclusion?

20 18:20:00 A. That was the communal Viacom
21 legal community, we, the people
22 involved in this type of work, a
23 collaborative investigation.

24 Q. Exhibit 30 is a document
25 18:20:32 produced by BayTSP in this action,

1 bearing Bates number BayTSP 003733804.

2 Do you recognize this document?

3 A. Yes.

4 Q. This is the document that

5 18:20:55 reflects the communication from Viacom

6 to BayTSP of the conclusion that you

7 just described regarding authorization

8 of the BullRun videos, isn't it?

9 MS. KOHLMANN: Objection as to

10 18:21:13 form.

11 A. Yes.

12 Q. And this came on May 7th, 2007

13 isn't that right?

14 MS. KOHLMANN: Objection.

15 18:21:26 A. Yes.

16 Q. In Exhibit 28 we were looking at

17 a moment ago on May 1st, 2007, the

18 Tuesday before is when you sent your

19 urgent e-mail asking that these videos

20 18:21:38 be restored to the service. Isn't that

21 right?

22 A. Yes.

23 Q. Mr. Solow, have you ever used

24 the YouTube service before?

25 18:22:19 A. Yes.

Schapiro Exhibit 2

From: Courtney Nieman
Sent: Monday, June 04, 2007 3:48 PM
To: 'Solow, Warren'
Subject: RE: Current list of Filtered YouTube Accounts

Warren,

Yes that is LiberalViewer, typo in my list not in the filter.

Courtney Nieman
-----Original Message-----
From: Solow, Warren [mailto:Warren.Solow@viacom.com]
Sent: Sunday, June 03, 2007 8:37 PM
To: Courtney Nieman
Subject: RE: Current list of Filtered YouTube Accounts

Is that really supposed to be livalviewer?

-----Original Message-----
From: Courtney Nieman [mailto:courtneyni@baytsp.com]
Sent: Tuesday, May 01, 2007 3:53 PM
To: Solow, Warren
Cc: Evelyn Espinosa; Mark M. Ishikawa; Courtney Nieman; Travis Hill
Subject: Current list of Filtered YouTube Accounts

Warren,

We thought it might be a good time to update the list of filtered accounts:

irenemariemodels
thesparksfly
BadBoyRecords
reaction2006
Vlogging
FutureWorld77
shishka
ladyfragment
bpfrecrods
Livalviewer
vhlstaff
Wiredset
jerseymouth1
laurenceegibbs
Snackboard
Damonjohnson
Isitfridayyet
SpikeTV
bestweekevertv
reno9112miami
TNAWrestling
TXCANY
powermadeak47
bravenewfilms
victorweb
cbs
universalmusicgroup
blacktreemedia
bullrunvideo

Please let me if there are any additions that need to be made to this list. If anyone at

A-284

Viacom has or is using a YouTube account to put up material.

Courtney Nieman
Manager Client Services
BayTSP, Inc.
408-341-2314
AIM: BayTSPCanne
Have you checked out BayTSP's Piracy news web log?
<http://www.baytsp.com/weblog>

The information contained in this email message may be confidential and is intended only for the parties to whom it is addressed. If you are not the intended recipient or an agent of same, please notify us of the mistake by telephone (408-341-2300) or email and delete the message from your system. Please do not copy the message or distribute it to anyone.

This message was prepared at the request of counsel.

Schapiro Exhibit 4

From: Wilkens, Scott B [SWilkens@jenner.com]
Sent: Thursday, February 18, 2010 2:47 PM
To: Rubin, Michael
Cc: Kohlmann, Susan J.; 'Gitterman, Noah Siskind'; Volkmer, Bart
Subject: Watch Data

Michael,

I am writing in reference to our last meet and confer regarding watch data, As we have noted before, and as we repeat here, we do not understand the relevance of the video viewing data for an account that was used to upload authorized marketing materials, in some cases only one or two clips. And as we have repeatedly emphasized, any purported relevance of such data has to be weighed against the privacy interests at stake for the accounts at issue. You agreed during the last call that any non-anonymized watch data produced would be produced pursuant to the new highest level of confidentiality under the protective order, which we believe is important in light of the privacy interests that attach to accounts used for personal viewing. Although we continue to dispute Defendants' claim of relevance, in order to reach agreement and ensure that the watch data for all parties is produced expeditiously, following is a list of YouTube account names, each of which was used by Viacom to upload one or more authorized Viacom marketing clips to YouTube. Assuming we can agree on the wording of an appropriate stipulation, which we discussed briefly on the last call, we agree to the production of non-anonymized data for these accounts for the time period previously agreed by the parties. We have already made clear that we do not object to the production of watch data for YouTube accounts that were used by BayTSP, Auditudo or a viral marketer acting on Viacom's behalf, although we continue to dispute the relevance of such data. We will circulate a proposed stipulation shortly.

beheard
bestweekever
bestweekevertv
BroadwayJoe
BroadwayJoe415
chu2007
Damonjohnson
Demansr
FiveChemical
JackassTwoMovie
keithhn
mosjef73
mysticalgirl8
MTV2
MTV2AllThatRocks
mtvnewsinterns
MTVSneakAttack
NMarketing
Paraccount
ParamountClassics
ParamountGermany
paramountpictureshow
ParamountVantage
ParkMyVibe
PinkStrawberry
Reaction2006
reno911miami
SpikeTV
StuntmanForever
thinkmtv
veehonerockz

VH1staff
virtualmtv

A-287

Regards,
Scott

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Schapiro Exhibit 6

Comedy Central Viral Content Distribution and Monitoring Recommendation

Objectives:

- Be where our audience is - drive digital buzz around our shows and stars.
- Understand Comedy Central's position in ever expanding world of self published content.

Method:

- Distribute Comedy Central content to viral video sites, entertainment sites, blogs, underground multi-genre sites, Latin sites and anything new that may come along.
 - Sites to include Youtube, Gawker, Myspace, CollegeHumor, Friendster, etc.
- Monitor and report on reach and viral strength of Comedy Central content by tracking views and adoptions of streams.
 - Tools used to include Yahoo! Buzz Index, Google Blog Monitoring, Technorati and others.
- Where applicable, offer branded product giveaways to niche community sites, in exchange for deep links to ComedyCentral.com/Motherload.
 - Can be good way to create user generated commentary on products and shows.

Agency Partner:

- **Iced Media** - specialist in integrated digital media & viral marketing.
 - Clients include Paramount Pictures (Jackass 2 & Nacho Libre), Sony, Def Jam, Universal, Bad Boy Entertainment etc.

Time and Scope:

- Six month period with no restrictions on content volume.
 - Bi-weekly standard reports with special reports upon requests
- Iced Media will distribute content & provide reporting, per the above methodology.
- \$40,000 for all services

Schapiro Exhibit 32

From: Joe Armenia <joe.armenia@mtvstaff.com>
Date: Tue, 28 Nov 2006 15:07:28 -0500
To: Tina <Tina.Exarhos@mtvstaff.com>
Subject: Re:

Heres a selected list of content and sites (combination of promo spots, custom viral content and show clips). Its just....average.

Let me know if you want more.

Run's House

- Digg and JoJo Music Video: 23,315 views on YouTube

Call to Greatness

- Bra Unclipping Clip: 48,000 views on Buzznet; 6,066 views on YouTube
- Implant Clip: 7,000 views on Buzznet

The Hills

- Trailer: 7,032 views on YouTube
- Week 4 "Next On": 14,072 views on YouTube
- Week 5 "Next On": 11,177 views on YouTube
- Week 7 "Next On": 8,947 views on YouTube
- Total Views on YouTube for The Hills: 57,575

Movie Awards

- "Cooking" Promo Spot: 13,452 views on YouTube; 1,962 on iFilm
- "Golf" Promo Spot: 34,102 views on YouTube; 3,904 on iFilm
- "Tae Bo" Promo Spot: 337,139 views on YouTube; 6,732 on iFilm

Laguna Beach

- Season 3 Trailer: 45,506 views on YouTube
- Week 4 "Next On": 11,136 views on YouTube
- Week 5 "Next On": 19,980 views on YouTube
- Week 7 "Next On": 15,183 views on YouTube
- Week 8 "Next On": 10,644 views on YouTube
- Cami Remix: 6,534 views on YouTube
- Total Views on YouTube for Laguna Beach: 128,664

The Duel

- Trailer: 11,132 views on YouTube
- Tina vs Beth Viral Clip: 15,694 views on YouTube
- T&A Hook-Ups: 12,165 views on YouTube
- Total Views on YouTube for The Duel to date: 53,000

On 11/27/06 10:24 PM, "Exarhos, Tina" <Tina.Exarhos@mtvstaff.com> wrote:

This drives me crazy....I told him that we were VERY aggressively providing clips on an on-going basis to YouTube. Can you get me info on what clips have done best? I wouldn't share this email with anyone else b/c I wouldn't want to upset them.....

From: DeBenedittis, Paul A. - Programming
Sent: Mon 11/27/2006 3:36 PM
To: Exarhos, Tina
Subject:

Should we discuss a more aggressive approach with our series clips, short-form, etc.
How can I help?

CBS Scores 29.2 Mil. Total Views on YouTube Channel

Mike Shields

NOVEMBER 27, 2006 -

A fight between two comely women on CBS' NCIS has helped drive some early success for the network's new partnership with YouTube.

Roughly a month after the CBS Brand Channel debuted on YouTube, CBS said that the 300-plus video clips its has distributed on the video-sharing site has become some of its more popular content, delivering 29.2 million total views or an average of 857,000 streams a day since the channel went live on Oct. 18.

The most popular clip to date is NCIS/Cat Fight, a snippet from the Mark Harmon-starring drama featuring two female characters wrestling each other to the ground as several men gawk. NCIS/Cat Fight, one of three CBS clips to crack YouTube's top 25 for this month, has been viewed over 1.6 million times.

The other top clips from the first 17 days of November are tied to promotional appearances made by comic Sacha Baron Cohen, the star of the movie Borat: Cultural Learnings of America for Make Benefit Glorious Nation of Kazakhstan. Cohen's appearance on Late Show with David Letterman has been viewed on YouTube over a million times, while his visit to The Early Show has generated nearly 970,000 streams.

CBS says that more than 20,000 users have subscribed to its YouTube branded channel since last month. Newly installed CBS Interactive president Quincy Smith said that early on, the YouTube channel is providing the network with useful insight, while possibly even driving new viewers to CBS' shows. "What's most exciting here is the extent to which CBS is learning about its audience as never before," said Smith. "YouTube users are clearly being entertained by the CBS programming they're watching as evidenced by the sheer number of video views. Professional content seeds YouTube and allows an open dialogue between established media players and a new set of viewers."

Since the CBS Brand Channel launched, CBS reports that, while directly attributable or not, Late Show with David Letterman has added 200,000 new viewers while The Late Late Show with Craig Ferguson is up 100,000 viewers.

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Schapiro Exhibit 34

Subject: Re: freedom writers
From: "Powell, Amy - Paramount" <[REDACTED]>
To: 'scott@icedmedia.com'
Cc: Date: Sun, 03 Dec 2006 01:49:42 +0000

Sounds like a plan. KT can get you the single "Dream" (will.i.am + common) right away.... And she can get you clips asap too. Will everything else you're proposing push back to YouTube?

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

From: Scott Hurwitz
To: Amy Powell
Sent: Dec 1, 2006 3:25 PM
Subject: Re: freedom writers

We just broke 1000 members today. Up to this point we've been doing message board posts, comments to other YouTube users' videos, inviting users that have created their own web cam videos, posting freedom writers clips on other viral sites and joining groups within those communities to let them know about the youtube group.

What's really going to drive the numbers will be features and promotions at key teen and entertainment sites. I'm talking with BlackPlanet.com about building out a feature that will highlight the "be heard" group. That should come together next week. Kiwibox, Aced and PopYoularity are all going to do news features on the group and it's development as well. We'll push for more of those news style features this week and see what blogs we can get in addition to the entertainment, teen and community sites.

A song from the soundtrack would give our urban music sites a reason to mention the "be heard" group too. We could easily package an audio stream with the link to the group for those sites.

Clips from the film will do the same thing for the entertainment sites. We can package a movie clip with the "be heard" link for them.

On the grassroots side, I'm going to have my team make use of myspace, tagworld and yfly more as well. The more talk in various message and bulletin boards, the better.

On Dec 1, 2006, at 5:56 PM, Powell, Amy - Paramount wrote:

Hi- what can we do to step up the FW / YouTube campaign? I'm concerned its not growing as much as it could / should...

Amy Powell
Senior Vice President
Interactive Marketing
Paramount Pictures
[REDACTED]

Scott J. Hurwitz
Senior Vice President
ICED MEDIA
415 W Broadway Ste 2N
NY NY 10012-3737
646-753-6401
scott@icedmedia.com

Schapiro Exhibit 40

From: "Diamond, Brian" <Brian.Diamond@mtvstaff.com>
Date: Tue, 23 Jan 2007 15:10:03 -0500
To: "Kay, Kevin" <Kevin.Kay@spiketv.com>, "Farrell, Steve" <Steve.Farrell@spiketv.com>
Cc: "Flannigan, Erik" <Erik.Flannigan@mtvstaff.com>, "Herzog, Doug" <Doug.Herzog@comedycentral.com>
Subject: Re: Blindfold Kickboxing

Will investigate and get back to you asap!

BD

Brian J. Diamond
SVP Sports and Specials
Spike TV
1775 Broadway-9th floor
NY, NY 10019
212-767-8667
brian.diamond@spiketv.com

Sent from my BlackBerry Wireless Handheld

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

From: Kay, Kevin
To: Farrell, Steve; Diamond, Brian
Cc: Flannigan, Erik; Herzog, Doug
Sent: Tue Jan 23 14:58:33 2007
Subject: RE: Blindfold Kickboxing

That's great. Let's hope it does.

Brian, how soon can we get the guy in the bear suit getting hit by the truck clip up there? Also, the vomit cam from their competitive eating contest?

Those pretty much say it all...

From: Farrell, Steve
Sent: Tuesday, January 23, 2007 2:53 PM
To: Diamond, Brian; Kay, Kevin
Cc: Flannigan, Erik
Subject: Blindfold Kickboxing

FYI

<http://www.youtube.com/watch?v=IKcsTnLtqFc>

#16 Entertainment Vid watched this week on all of YouTube. Over 100K people have viewed.

We could call that viral with a straight face. See if it helps tune in.

Schapiro Exhibit 43

From: Mickey Worsnup <Mickey_Worsnup@Paramount.com>
Date: Mon, 05 Feb 2007 15:00:53 -0800
To: "Powell, Amy - Paramount" [REDACTED]
Subject: TF virals

Here are links to all three- not sure if they are the master links are not,
a lot of duplicates on there (which is a good thing)

<http://www.youtube.com/watch?v=TayX61LLZrk>

<http://www.youtube.com/watch?v=nosvMZS6uUc>

<http://www.youtube.com/watch?v=ofEzT3ns-o0>

Schapiro Exhibit 44

From: "Fricklas, Michael" <Michael.Fricklas@viacom.com>
Date: Tue, 6 Feb 2007 20:20:25 -0500
To: "Morril, Mark" <Mark.Morril@viacom.com>, "Hallie, Michelena" <Michelena.Hallie@mtvn.com>, "Perry, Alfred - Paramount" <Alfred_Perry@Paramount.com>, "Martin, Scott - Paramount" <Scott_Martin@Paramount.com>
Cc: "Prentice, Rebecca - Paramount" <Rebecca_Prentice@Paramount.com>, "Cahan, Adam" <Adam.Cahan@mtvn.com>
Subject: RE: Variety stories:Privileged and Confidential

[REDACTED]

This e-mail is confidential and may be privileged. If you receive it in error, please delete it and notify the sender of the error. Thank you.

> -----Original Message-----

>From: Morrill, Mark
>Sent: Tuesday, February 06, 2007 5:36 PM
>To: Hallie, Michelena; Perry, Alfred - Paramount; Martin, Scott - Paramount
>Cc: Prentice, Rebecca - Paramount; Cahan, Adam; Fricklas, Michael
>Subject: RE: Variety stories:Privileged and Confidential

[REDACTED]

>
>From: Hallie, Michelena
>Sent: Tuesday, February 06, 2007 4:37 PM
>To: Perry, Alfred - Paramount; Morrill, Mark; Martin, Scott - Paramount
>Cc: Prentice, Rebecca - Paramount
>Subject: RE: Variety stories:Privileged and Confidential

[REDACTED]

[REDACTED] As of now, we are posting clips and providing ip addresses to Bay so they know not to take them down. [REDACTED]

>
>
>
>

>From: Perry, Alfred - Paramount
>Sent: Tuesday, February 06, 2007 4:08 PM
>To: Morrill, Mark; Martin, Scott - Paramount; Hallie, Michelena
>Cc: Prentice, Rebecca - Paramount
>Subject: FW: Variety stories:Privileged and Confidential

[REDACTED]

>
>Thanks.

>From: Powell, Amy - Paramount
>Sent: Tuesday, February 06, 2007 12:56 PM
>To: Anderson, Jon - PPI
>Cc: Heath Tyldesley/PPI/MP/Paramount_Pictures@Paramount_Pictures; Perry, Alfred - Paramount
>Subject: RE: Variety stories