

10-3270

10-3342

**IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

VIACOM INTERNATIONAL INC., COMEDY PARTNERS,
COUNTRY MUSIC TELEVISION, INC., PARAMOUNT PICTURES CORPORATION,
BLACK ENTERTAINMENT TELEVISION LLC,
Plaintiffs-Appellants,
(caption continued on inside cover)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

**SUPPLEMENTAL JOINT APPENDIX
VOLUME II OF IX (Pages SJA-259 to SJA-488) – PUBLIC VERSION**

Paul M. Smith
William M. Hohengarten
Scott B. Wilkens
Matthew S. Hellman
JENNER & BLOCK LLP
1099 New York Avenue, NW
Washington, DC 20001
(202) 639-6000

Theodore B. Olson
Matthew D. McGill
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, NW
Washington, DC 20036
(202) 955-8500

Attorneys for Plaintiffs-Appellants (10-3270)
(Counsel continued on inside cover)

v.

YOUTUBE, INC., YOUTUBE, LLC, GOOGLE INC.,
Defendants-Appellees.

THE FOOTBALL ASSOCIATION PREMIER LEAGUE LIMITED, on behalf of
themselves and all others similarly situated, BOURNE CO., CAL IV
ENTERTAINMENT, LLC, CHERRY LANE MUSIC PUBLISHING COMPANY,
INC., NATIONAL MUSIC PUBLISHERS' ASSOCIATION, THE RODGERS &
HAMMERSTEIN ORGANIZATION, EDWARD B. MARKS MUSIC
COMPANY, FREDDY BIENSTOCK MUSIC COMPANY, dba Bienstock
Publishing Company, ALLEY MUSIC CORPORATION, X-RAY DOG
MUSIC, INC., FEDERATION FRANCAISE DE TENNIS, THE MUSIC FORCE
MEDIA GROUP LLC, SIN-DROME RECORDS, LTD., on behalf of themselves
and all others similarly situated, MURBO MUSIC PUBLISHING, INC., STAGE
THREE MUSIC (US), INC., THE MUSIC FORCE, LLC,
Plaintiffs-Appellants,

ROBERT TUR, dba Los Angeles News Service,
THE SCOTTISH PREMIER LEAGUE LIMITED,
Plaintiffs,

v.

YOUTUBE, INC., YOUTUBE, LLC, GOOGLE INC.,
Defendants-Appellees.

Susan J. Kohlmann
JENNER & BLOCK LLP
919 Third Avenue
New York, NY 10022
(212) 891-1600

Stuart J. Baskin
SHEARMAN & STERLING LLP
599 Lexington Avenue
New York, NY 10022
(212) 848-4000

Attorneys for Plaintiffs-Appellants (10-3270)

Max W. Berger
John C. Browne
BERNSTEIN LITOWITZ BERGER
& GROSSMANN LLP
1285 Avenue of the Americas
New York, NY 10019
(212) 554-1400

Charles S. Sims
William M. Hart
Noah Siskind Gitterman
Elizabeth A. Figueira
PROSKAUER ROSE LLP
1585 Broadway
New York, NY 10036
(212) 969-3000

Attorneys for Plaintiffs-Appellants (10-3342)

Andrew H. Schapiro
A. John P. Mancini
Brian M. Willen
MAYER BROWN LLP
1675 Broadway
New York, NY 10019
(212) 506-2500

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

Attorneys for Defendants-Appellees

TABLE OF CONTENTS

PAGE

Volume I of IX

Documents Submitted by Viacom International, Inc., et al., Plaintiffs-Appellants

Viacom's Reply to Defendants' Counterstatement to Viacom's Statement of Undisputed Facts in Support of Its Motion for Partial Summary Judgment, dated June 14, 2010 (document filed under seal on June 14, 2010) (Docket No. 360)	SJA-1
---	-------

Volume II of IX

Declaration of William M. Hohengarten in Support of Viacom's Motion for Partial Summary Judgment, dated March 4, 2010 (document filed under seal on March 5, 2010 and unsealed document electronically filed March 18, 2010) (Docket No. 191)	SJA-259
Exhibit 2 to Hohengarten Declaration— Declaration of Warren Solow without exhibits, dated March 3, 2010 (Docket No. 191)	SJA-317
Exhibit 3 to Hohengarten Declaration— Email from Scherberth to C. Hurley, dated December 17, 2006 (Docket No. 191)	SJA-324
Exhibit 10 to Hohengarten Declaration— Email from YouTube Bounces to Do, dated March 29, 2006 (Docket No. 191)	SJA-333
Exhibit 12 to Hohengarten Declaration— Email from Schaffer to Maxcy, dated February 23, 2007 (Docket No. 191, 193, 201)	SJA-334

Exhibit 13 to Hohengarten Declaration— YouTube Content SQUAD Presentation, dated May 2007 (Docket No 201)	SJA-393
Exhibit 69 to Hohengarten Declaration— Email from Reider to Eun, dated September 14, 2007 (Docket No. 208)	SJA-402
Exhibit 71 to Hohengarten Declaration— Email from Justin G. to Kang, dated December 20, 2006 (Docket No. 208)	SJA-406
Exhibit 85 to Hohengarten Declaration— Email from Veedub to Ewing-Davis, dated July 18, 2007 (Docket No. 208)	SJA-410
Exhibit 113 to Hohengarten Declaration— Email from Reider to Adair, dated May 19, 2007 (Docket No. 210)	SJA-413
Exhibit 114 to Hohengarten Declaration— Email from Stefanotti to Arsiwala, dated June 8, 2007 (Docket No. 210)	SJA-417
Exhibit 115 to Hohengarten Declaration— Email from Hoffner to Eun, May 21, 2007 (Docket No. 210)	SJA-421
Exhibit 118 to Hohengarten Declaration— YouTube Terms of Use, Undated (Docket 210)	SJA-424
Exhibit 136 to Hohengarten Declaration— Email from Chastagnol v. Schrempp, Aug. 15, 2006 (Docket No. 212)	SJA-430
Exhibit 242 to Hohengarten Declaration— Custodial Documents Produced by Schmidt, Undated (Docket No. 214)	SJA-436
Exhibit 258 to Hohengarten Declaration— Screen Capture of YouTube webpage, dated September 14, 2009 (Docket No. 217)	SJA-437

Exhibit 259 to Hohengarten Declaration— Screen Capture of YouTube webpage, dated August 18, 2009 (Docket No. 217)	SJA-439
Exhibit 260 to Hohengarten Declaration— Screen Capture of YouTube webpage, dated September 2, 2009 (Docket No. 217)	SJA-442
Exhibit 276 to Hohengarten Declaration— Google Investor Relations webpage, undated (Docket No. 217) .	SJA-445
Exhibit 278 to Hohengarten Declaration— Google Stock Price, Nov. 13, 2006 (Docket No. 217)	SJA-447
Exhibit 285 to Hohengarten Declaration— Screen Capture of YouTube webpage, dated February 5, 2009 (Docket No. 217)	SJA-448
Exhibit 288 to Hohengarten Declaration— 10 Reasons to Use Gmail, dated February 18, 2010 (Docket No. 219)	SJA-458
Exhibit 314 to Hohengarten Declaration— Excerpts of Deposition of Eric Schmidt, dated May 6, 2009 (Docket No. 222)	SJA-461

Volume III of IX

Exhibit 316 to Hohengarten Declaration— Excerpts of Deposition of Brent Hurley, dated August 26, 2008 (Docket No. 222)	SJA-489
Exhibit 321 to Hohengarten Declaration— Excerpts of Deposition of Franck Chastagnol, dated December 10, 2008 (Docket No. 222)	SJA-549
Exhibit 322 to Hohengarten Declaration— Excerpts of Deposition of Cuong Do, dated February 13, 2009 (Docket No. 222)	SJA-571

Exhibit 336 to Hohengarten Declaration— Excerpts of Deposition of Vance Ikezoye, dated September 10, 2009 (Docket No. 224)	SJA-619
Exhibit 342 to Hohengarten Declaration— Excerpts of Deposition of Zahavah Levine, April 2, 2009 (Docket No. 224)	SJA-687
Exhibit 348 to Hohengarten Declaration— Deposition of Suzanne Reider, dated October 3, 2008 (Docket No. 224)	SJA-714
Exhibit 358 to Hohengarten Declaration— Declaration of Ikezoye in Support of Plaintiffs’ Proposed Preliminary Injunction Order in the N.D. of Illinois, MDL 1425 (Docket No. 225)	SJA-739

Volume IV of IX

Exhibit 360 to Hohengarten Declaration— Defendants’ “Highly Confidential” Amended Responses and Objections to Plaintiffs’ First Set of Interrogatories, dated January 11, 2010 (Docket No. 225)	SJA-745
Declaration of Susan J. Kohlmann in Support of Viacom’s Opposition to Defendants’ Motion for Summary Judgment, dated April 30, 2010 (Docket No. 316)	SJA-759
Exhibit 21 to Kohlmann Declaration— Email from Liu to Healy, dated March 30, 2007 (Docket No. 316)	SJA-773
Exhibit 23 to Kohlmann Declaration— Email from Ging to Hernandez, dated November 27, 2006 (Docket No. 316)	SJA-775
Exhibit 24 to Kohlmann Declaration— Email from Hernandez to Jen, dated November 17, 2006 (Docket No. 316)	SJA-782

Exhibit 25 to Kohlmann Declaration— Email from Sida to Foxworthy, dated December 4, 2006 (Docket No. 316)	SJA-786
Exhibit 26 to Kohlmann Declaration— Email to Sida to Harris, dated December 4, 2006 (Docket No. 316)	SJA-794
Exhibit 27 to Kohlmann Declaration— Email from Johmann to Donahue, dated June 5, 2006 (Docket No. 316)	SJA-803
Exhibit 36 to Kohlmann Declaration— Email from Nieman to Asch, dated March 7, 2007 (Docket No. 317)	SJA-807
Exhibit 59 to Kohlmann Declaration— Email from Bakish to Witt, dated July 17, 2006 (Docket No. 318)	SJA-808
Exhibit 60 to Kohlmann Declaration— Email from Bordo to Wahtera, dated September 28, 2007 (Docket No. 318)	SJA-810
Exhibit 61 to Kohlmann Declaration— Email from Wolf to McGrath, dated July 5, 2006 (Docket No. 318)	SJA-812
Exhibit 63 to Kohlmann Declaration— Email from Wahtera to Ging, dated September 28, 2007 (Docket No. 318)	SJA-814
Exhibit 66 to Kohlmann Declaration— Excerpts of Deposition of Adam Cahan, dated December 9, 2009 (Docket No. 318)	SJA-815
Exhibit 72 to Kohlmann Declaration— Excerpts of Deposition of Michael Fricklas, dated September 22, 2009 (Docket No. 318)	SJA-823

Exhibit 73 to Kohlmann Declaration— Excerpts of Deposition of Michelena Hallie, dated December 10, 2009 (Docket No. 318)	SJA-829
Exhibit 74 to Kohlmann Declaration— Excerpts of Deposition of Mark Ishikawa, dated January 14, 2010 (Docket No. 318)	SJA-842
Exhibit 81 to Kohlmann Declaration— Excerpts of Deposition of Warren Solow, dated December 18, 2009 (Docket No. 319)	SJA-852
Exhibit 82 to Kohlmann Declaration— Excerpts of Deposition of Tamar Teifeld, dated February 18, 2009 (Docket No. 319)	SJA-872
Exhibit 83 to Kohlmann Declaration— Excerpts of Deposition of Kristina Tipton, dated October 29, 2009 (Docket No. 319)	SJA-880
Exhibit 84 to Kohlmann Declaration— Excerpts of Deposition of Megan Wahtera, dated December 4, 2009 (Docket No. 319)	SJA-890
Exhibit 85 to Kohlmann Declaration— Excerpts of Deposition of Michael Wolf, dated April 17, 2009 (Docket No. 319)	SJA-904
Declaration of Scott B. Wilkens in Support of Viacom’s Opposition to Defendants’ Motion for Summary Judgment, dated April 28, 2010 (document filed under seal on May 21, 2010) (Docket No. 320)	SJA-914
Exhibit 35 to Wilkens Declaration— Email from Tipton to Donahue, dated June 1, 2006 (Docket No. 320)	SJA-923
Exhibit 36 to Wilkens Declaration— Email from Cuong to Donahue, dated March 2, 2006 (Docket No. 320)	SJA-925

Exhibit 37 to Wilkens Declaration— Email from Baldini to Donahue, dated June 23, 2006 (Docket No. 320)	SJA-932
Exhibit 38 to Wilkens Declaration— Email from Tipton to Byrne, dated October 26, 2006 (Docket No. 320)	SJA-934
Exhibit 39 to Wilkens Declaration— Email from Donahue to Fang, dated July 13, 2006 (Docket No. 320)	SJA-938
Exhibit 40 to Wilkens Declaration— Email from Donahue to Dunton, dated August 28, 2006 (Docket No. 320)	SJA-940
Exhibit 41 to Wilkens Declaration— Director Account Partners, August 25, 2006 (Docket No. 320)	SJA-943
Exhibit 42 to Wilkens Declaration— Major Media Co.'s & Top Brands Signed, dated June 12, 2006 (Docket No. 320)	SJA-945
Exhibit 43 to Wilkens Declaration— Email from Donahue to B. Hurley, dated February 17, 2006 (Docket No. 320)	SJA-946
Exhibit 44 to Wilkens Declaration— Excerpt of Deposition of Amy Powell, dated December 15, 2009 (Docket No. 320)	SJA-947
Exhibit 46 to Wilkens Declaration— Excerpt of Deposition of Matthew Waite, dated October 8, 2009 (Docket No. 320)	SJA-957
Exhibit 47 to Wilkens Declaration— Screen Capture of YouTube webpage, dated April 28, 2010 (Docket No. 320)	SJA-966

Volume V of IX**Documents Submitted by YouTube, Inc., et al., Defendants-Appellees**

YouTube's Counterstatement to Viacom's Statement of Undisputed Facts in Support of its Motion for Partial Summary Judgment on Liability and Inapplicability of the Digital Millennium Copyright Act Safe Harbor Defense, dated April 30, 2010 (document filed under seal)	SJA-968
Defendants' Counterstatement to Class Plaintiffs' Statement of Uncontroverted Material Facts in Support of Their Motion for Partial Summary Judgment, dated May 10, 2010 (document filed under seal)	SJA-1138
Defendants' Reply to Class Plaintiffs' Counterstatement of Controverted Material Facts in Opposition to Defendant's Motion for Summary judgment, dated June 4, 2010 (document filed under seal)	SJA-1180

Volume VI of IX

Reply to Viacom's Counter-Statement in Response to Defendants' Local Rule 56.1 Statement in Support of Defendants' Motion for Summary Judgment & Response to Viacom's Supplemental Counter-Statement, dated June 14, 2010 (document filed under seal)	SJA-1208
Stipulation & Order Regarding Viacom's Copyright Monitoring Privilege Assertions, dated August 19, 2009.....	SJA-1281
Declaration of William M. Hohengarten in Support of Viacom's Motion for Partial Summary Judgment, dated March 4, 2010 (document filed under seal on March 5, 2010, unsealed document filed electronically March 18, 2010)	Omitted

Exhibit 290 to Hohengarten Declaration— Email from Fenton to Scarborough, dated October 8, 2006	SJA-1287
Declaration of Michael Rubin, for Defendants, in Support of Defendants’ Motion for Summary Judgment, dated March 5, 2010	Omitted
Exhibit 25 to Rubin Declaration— Email from Powell to akivaschaffer, dated May 14, 2007	SJA-1295
Exhibit 28 to Rubin Declaration— Email from Powell to Arneson, et al., dated November 8, 2007	SJA-1298
Exhibit 30 to Rubin Declaration— Email from French to Wise, dated March 6, 2008	SJA-1300
Exhibit 43 to Rubin Declaration— Email from Ishikawa to Perry, dated May 10, 2006	SJA-1304
Exhibit 62 to Rubin Declaration— Email from Solow to Cordone, dated February 14, 2008	SJA-1309
Exhibit 86 to Rubin Declaration— Email from Arizala to Morales, dated January 3, 2007	SJA-1311
Exhibit 96 to Rubin Declaration— Email from Tipton to courtney, dated February 28, 2007	SJA-1315
Declaration of Andrew H. Schapiro, for Defendants, in Support of Defendants’ Motion for Summary Judgment, dated March 11, 2010 (corrected)	Omitted
Exhibit 7 to Schapiro Declaration— Email from Cahan to McGrath, dated July 13, 2006	SJA-1329
Exhibit 8 to Schapiro Declaration— Email from Toffler to Cahan, dated October 7, 2006	SJA-1331
Exhibit 9 to Schapiro Declaration— Email from Dooley to Dauman, dated November 29, 2006	SJA-1334

Exhibit 10 to Schapiro Declaration— Email from Cahan to McGrath, dated December 23, 2006	SJA-1337
Exhibit 20 to Schapiro Declaration— Excerpts of Deposition of Theodora Michaels, dated September 24, 2009	SJA-1339
Exhibit 22 to Schapiro Declaration— The Rodgers & Hammerstein Organization’s Responses and Objections to Defendants’ First Set of Requests for Admission to the Rodgers & Hammerstein Organization, dated January 12, 2010.....	SJA-1355
Exhibit 43 to Schapiro Declaration— Email from Apmann to Zan, dated August 4, 2006	SJA-1385
Exhibit 46 to Schapiro Declaration— Email from Tipton to Bonnici, dated June 11, 2007	SJA-1391
Exhibit 47 to Schapiro Declaration— Excerpts of Deposition of Megan Wahtera, dated December 4, 2009.....	SJA-1393
Exhibit 50 to Schapiro Declaration— Email from Kadetsky to Perta, dated June 30, 2006	SJA-1404
Exhibit 79 to Schapiro Declaration— Excerpts of Deposition of Victoria G. Traube, dated December 18, 2009	SJA-1406
Exhibit 81 to Schapiro Declaration— Cal IV Synchronization License Agreement	SJA-1442
Exhibit 82 to Schapiro Declaration— Email from Bradford to Taylor, dated June 8, 2007	SJA-1445
Exhibit 83 to Schapiro Declaration— Stage Three Music (US), Inc.’s Responses and Objections to Defendants’ First Set of Requests for Admission to Stage Three Music (US), Inc., dated January 11, 2010	SJA-1451

Volume VII of IX

Exhibit 84 to Schapiro Declaration— Email from Slim to Neil, dated August 17, 2007	SJA-1508
Exhibit 86 to Schapiro Declaration— Cherry Lanes’ Responses and Objections to Defendants’ First Set of Requests for Admission to Cherry Lane Music Publishing Company, Inc., dated January 8, 2009	SJA-1515
Exhibit 87 to Schapiro Declaration— Email from Barron to Williams, dated February 1, 2007	SJA-1544
Exhibit 89 to Schapiro Declaration— Bourne Co.’s Responses and Objections to Defendants’ First Set of Requests for Admission to Bourne Co., dated January 8, 2009	SJA-1549
Exhibit 90 to Schapiro Declaration— Edward B. Marks’ Responses and Objections to Defendants’ First Set of Requests for Admission to Edward B. Marks Music Company, dated January 11, 2010	SJA-1577
Exhibit 91 to Schapiro Declaration— Bienstock Publishing Company’s Responses and Objections to Defendants’ First Set of Requests for Admission to Freddy Bienstock Music Company d/b/a/ Bienstock Publishing Company, dated January 11, 2010	SJA-1601
Exhibit 92 to Schapiro Declaration— Excerpts of 30(b)(6) Deposition of X-Ray Dog Music, Inc. through Timothy A. Stithem, dated December 8, 2009	SJA-1625
Exhibit 93 to Schapiro Declaration— X-Ray Dog Synchronization and Master Use License, dated June 17, 2009	SJA-1645

Exhibit 98 to Schapiro Declaration— The Music Force Media Group LLC, The Music Force LLC, and Sin-Drome Records, Ltd.’s Responses and Objections to Defendants’ First Set of Requests for Admission, dated January 8, 2010	SJA-1650
Exhibit 103 to Schapiro Declaration— Cal IV Entertainment LLC’s Responses and Objections to Defendants’ First Set of Requests for Admission to Cal IV Entertainment LLP, dated January 8, 2010	SJA-1680
Exhibit 107 to Schapiro Declaration— Excerpts of Deposition of Georgina Loth, dated December 2, 2009.....	SJA-1705
Exhibit 117 to Schapiro Declaration— Excerpts of Deposition Marco Berrocal, dated November 5, 2009	SJA-1717
Exhibit 132 to Schapiro Declaration— Excerpts of Deposition of Nicholas Seet / Auditude, Inc, dated November 24, 2009	SJA-1728
Exhibit 133 to Schapiro Declaration— Excerpts of Deposition of Mika Salmi, dated October 16, 2009. .	SJA-1735
Exhibit 135 to Schapiro Declaration— Email from Ishikawa to Martin, dated July 10, 2006	SJA-1743
Exhibit 137 to Schapiro Declaration— Email from Ishikawa to Perry, dated November 6, 2006.....	SJA-1745
Exhibit 141 to Schapiro Declaration— Email from Ishikawa to Perry, dated October 28, 2006.....	SJA-1749
Exhibit 142 to Schapiro Declaration— Email from Perry to Martin, dated April 19, 2006.....	SJA-1751
Exhibit 143 to Schapiro Declaration— Email from Perry to Kim, dated June 22, 2007.....	SJA-1755

Exhibit 149 to Schapiro Declaration— Email from Powell to Perry, dated July 26, 2006	SJA-1758
Exhibit 151 to Schapiro Declaration— Email from Ciadella to Barron, dated June 27, 2007	SJA-1761
Exhibit 152 to Schapiro Declaration— Excerpts of Deposition of Gregg Barron, dated September 23, 2008	SJA-1763
Exhibit 153 to Schapiro Declaration— Excerpts of Deposition of Lauren Apolito, dated January 7, 2010	SJA-1777
Exhibit 154 to Schapiro Declaration— Email from Bradford to Copyright Service, dated June 8, 2007	SJA-1785

Volume VIII of IX

Exhibit 155 to Schapiro Declaration— Excerpts of Deposition of Daniel Hill, dated March 13, 2009	SJA-1788
Exhibit 156 to Schapiro Declaration— DVD Synchronization License Agreement, dated April 16, 2008	SJA-1799
Exhibit 157 to Schapiro Declaration— Email from Slim to Lewis, dated April 8, 2009	SJA-1804
Exhibit 178 to Schapiro Declaration— Declaration of Michael Housley, dated February 28, 2008.....	SJA-1807
Exhibit 179 to Schapiro Declaration— Plaintiffs' Objections and Responses to YouTube's Third Set of Interrogatories to Viacom International, Inc. et al., dated January 8, 2010	SJA-1812

Declaration of Andrew H. Schapiro in Support of Defendants’ Opposition to Plaintiffs’ Motions for Partial Summary Judgment, dated April 30, 2010	Omitted
Exhibit 130 to Schapiro Declaration— Email from Arizala to Hill, dated November 22, 2006.....	SJA-1838
Exhibit 131 to Schapiro Declaration— Excerpts of Deposition of Amy Powell, dated December 15, 2009	SJA-1842
Exhibit 139 to Schapiro Declaration— Email from Rockwell to Ikezoye, dated December 5, 2006	SJA-1858
Exhibit 151 to Schapiro Declaration— Email from Ikezoye to Garfield, dated May 8, 2006.....	SJA-1861
Exhibit 153 to Schapiro Declaration— Email from Garfield to Chris, dated April 12, 2006	SJA-1864
Exhibit 154 to Schapiro Declaration— Email from Garfield to Chris, dated April 28, 2006	SJA-1866
Exhibit 155 to Schapiro Declaration— Email from Garfield to Chris, dated August 8, 2006	SJA-1868
Exhibit 156 to Schapiro Declaration— Email from Maxcy to Garfield, dated September 25, 2006.....	SJA-1870
Exhibit 158 to Schapiro Declaration— Email from Maxcy to Garfield, dated October 17, 2006	SJA-1872
Exhibit 160 to Schapiro Declaration— Email from Liang to Chris, dated December 8, 2006	SJA-1875
Exhibit 162 to Schapiro Declaration— Excerpts of Deposition of Dean Garfield, dated November 2, 2009	SJA-1879
Exhibit 164 to Schapiro Declaration— Email from Lin to Seidel, dated September 12, 2007.....	SJA-1896

Exhibit 165 to Schapiro Declaration— Excerpts of Deposition of Oliver Weingarten, dated December 16, 2009	SJA-1898
Exhibit 166 to Schapiro Declaration— Excerpts of Deposition of Georgina Loth, dated December 2, 2009.....	SJA-1909
Exhibit 167 to Schapiro Declaration— Excerpts of Deposition of Keith Hauprich, dated September 24, 2009	SJA-1916
Exhibit 168 to Schapiro Declaration— Excerpts of Deposition of Theordora Michaels, dated September 24, 2009	SJA-1922
Exhibit 169 to Schapiro Declaration— Excerpts of Deposition of Henry Marx, dated November 3, 2009	SJA-1928
Exhibit 170 to Schapiro Declaration— Excerpts of Deposition of Victoria Traube, dated October 8, 2009.....	SJA-1941
Exhibit 171 to Schapiro Declaration— Excerpts of Deposition of Theresa Torrance, dated January 21, 2009	SJA-1948
Exhibit 172 to Schapiro Declaration— Excerpts of 30(b)(6) Deposition of X-Ray Dog Music, Inc. through Timothy A. Stithem, dated December 8, 2009	SJA-1956
Exhibit 212 to Schapiro Declaration— Excerpts of 30(b)(6) Deposition of Storm Duncan, dated July 16, 2008	SJA-1965
Exhibit 216 to Schapiro Declaration— “Project Beagle” File and Documents	SJA-2017
Exhibit 285 to Schapiro Declaration— Comedy Central Viral Placements YTD 2007.....	SJA-2055

Exhibit 425 to Schapiro Declaration— Email from Liang to Garfield, dated October 23, 2006	SJA-2071
Declaration of Andrew H. Schapiro in Further Support of Defendants’ Motion for Summary Judgment, date June 14, 2010	Omitted
Exhibit 6 to Schapiro Declaration— Email from Wester to partner-support, dated August 18, 2008	SJA-2074
Exhibit 19 to Schapiro Declaration— Email from Hallie to Nieman, dated November 16, 2006	SJA-2076
Exhibit 20 to Schapiro Declaration— Email from Hallie to Cruz, dated November 15, 2006	SJA-2078

Volume IX of IX

Exhibit 21 to Schapiro Declaration— Email from Cahan to Hallie, dated December 7, 2006	SJA-2086
Exhibit 26 to Schapiro Declaration— Email from Nieman to Ishikawa, dated January 15, 2007	SJA-2089
Exhibit 27 to Schapiro Declaration— Email from Simon to Ishikawa, dated January 24, 2007	SJA-2101
Exhibit 29 to Schapiro Declaration— Email from French to Wise, dated March 5, 2008	SJA-2103
Exhibit 30 to Schapiro Declaration— Email from Hallie to Arizala, dated December 15, 2006	SJA-2107
Exhibit 33 to Schapiro Declaration— Data Showing Performance of Certain Keywords	SJA-2110
Exhibit 34 to Schapiro Declaration— Email from Higareda to Solow, dated December 13, 2007	SJA-2125
Exhibit 49 to Schapiro Declaration— Historical Screenshot from the YouTube website	SJA-2150

Exhibit 50 to Schapiro Declaration— Source Code Reflecting YouTube’s Terms of Service	SJA-2152
Exhibit 51 to Schapiro Declaration— Historical Screenshot from the YouTube website	SJA-2155
Exhibit 67 to Schapiro Declaration— Excerpts of Deposition of Deborah Kadetsky, dated August 18, 2009	SJA-2159
Exhibit 68 to Schapiro Declaration— Plaintiff Viacom International, Inc. et al.’s Responses to Defendants’ First Set of Requests for Admission, dated January 8, 2010	SJA-2171
Exhibit 173A/173B to Schapiro Declaration – Video File (See Page SJA-2227)	
Exhibit 174A/174B to Schapiro Declaration – Video File (See Page SJA-2227)	
Exhibit 175A/175B to Schapiro Declaration – Video File (See Page SJA-2227)	

**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)	Case No. 1:07-cv-02103 (LLS)
LLC,)	(Related Case No. 1:07-cv-03582 (LLS))
)	
Plaintiffs,)	DECLARATION OF WILLIAM M.
)	HOHENGARTEN IN SUPPORT OF
v.)	VIACOM'S MOTION FOR
)	PARTIAL SUMMARY JUDGMENT
YOUTUBE INC., YOUTUBE, LLC, and)	
GOOGLE, INC.,)	
)	
Defendants.)	
)	
_____)	

I, William M. Hohengarten, hereby declare as follows:

1. I am a partner with the law firm Jenner & Block LLP and represent the plaintiffs in the above-captioned action ("Viacom"). I submit this declaration in support of Viacom's Motion for Partial Summary Judgment on Liability and Inapplicability of the Digital Millennium Copyright Act Safe Harbor Defense. Attached to this declaration are Exhibits referenced in Viacom's Memorandum of Law and Viacom's Statement of Undisputed Facts in Support of Viacom's Motion for Partial Summary Judgment. I make this declaration based on personal knowledge, except where otherwise noted herein.

Fung Slip Opinion

2. Attached as Exhibit 1 for the Court's convenience is a true and correct copy of the slip opinion in *Columbia Pictures Industries, Inc. v. Gary Fung*, No. CV 06-5578 SVW (C.D. Cal. Dec. 21, 2009).

Solow Declaration

3. Attached as Exhibit 2 are the Declaration of Warren Solow in Support of Plaintiffs' Motion for Partial Summary Judgment, dated March 3, 2010, and Exhibits A-G thereto.

Sum of YouTube View Count Data for Viacom Clips in Suit

4. During discovery, Viacom identified to Defendants the infringing video clips of Viacom's copyrighted works that have appeared on YouTube without authorization and that are at issue in this lawsuit ("Clips in Suit"). The Clips in Suit are listed in Exhibits F and G to the Declaration of Warren Solow, which is Exhibit 2 to this Declaration. In response to discovery requests, Defendants have produced data showing the number of times each Clip in Suit was viewed on the YouTube website ("YouTube View Count Data"). Pursuant to Fed. R. Evid. § 1006, an employee of Jenner & Block LLP, working at my direction, summed the YouTube View Count Data for all Clips in Suit and arrived at a figure of over 507 million views.

Documents Produced by Defendants

5. The documents listed below in paragraphs 6 through 201 are true and correct copies of documents produced by Defendants in this action, and accordingly are marked by Defendants with a Bates number beginning with the prefix "GOO001-".

6. Attached as Exhibit 3 is a true and correct copy of a document produced by Defendants marked with the Bates range GOO001-00303096-104.

7. Attached as Exhibit 4 are a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-00011355, a true and correct copy of an associated email attachment marked with the Bates number GOO001-00011356, and a true and correct copy of an associated email attachment marked with the Bates number GOO001-00011357. These documents were introduced as Exhibit 12 at the Rule 30(b)(6) deposition of David King, Exhibit 18 at the deposition of Chris Maxcy, and Exhibit 30 at the deposition of David Eun.

8. Attached as Exhibit 5 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-02757578.

9. Attached as Exhibit 6 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-00660588. This email exchange was introduced as Exhibit 8 at the deposition of Chad Hurley and as Exhibit 15 at the deposition of Zahavah Levine.

10. Attached as Exhibit 7 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-01907664.

11. Attached as Exhibit 8 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-01424049-50.

12. Attached as Exhibit 9 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-05951723-37.

13. Attached as Exhibit 10 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-02482760. This email exchange was introduced as Exhibit 2 at the deposition of Cuong Do.

14. Attached as Exhibit 11 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-00561567-82. This document was introduced as Exhibit 12 at the deposition of Micah Schaffer.

15. Attached as Exhibit 12 are a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-00744094, and a true and correct associated email attachment produced by Defendants marked with the Bates number range GOO001-00744095-152.

16. Attached as Exhibit 13 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-00044974-82. This document was introduced as Exhibit 7 at the deposition of Heather Gillette.

17. Attached as Exhibit 14 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-07167907-08.

18. Attached as Exhibit 15 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-00504044-45.

19. Attached as Exhibit 16 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-00629095. This email exchange was introduced as Exhibit 7 at the deposition of Brent Hurley, Exhibit 1 at the deposition of Cuong Do, and Exhibit 8 at the deposition of Zahavah Levine.

20. Attached as Exhibit 17 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-00629474.

21. Attached as Exhibit 18 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-00839842-46.

22. Attached as Exhibit 19 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-00007027-29.

23. Attached as Exhibit 20 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-02403826-27.

24. Attached as Exhibit 21 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-02824049-52.

25. Attached as Exhibit 22 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-00762173-198. This document was introduced as Exhibit 13 at the deposition of Brent Hurley.

26. Attached as Exhibit 23 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-07728393-95.

27. Attached as Exhibit 24 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-00522244. This email exchange was introduced as Exhibit 5 at the deposition of Micah Schaffer.

28. Attached as Exhibit 25 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-05172407.

29. Attached as Exhibit 26 are a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-00630641, and a true and correct copy of an associated email attachment produced by Defendants marked with the Bates number GOO001-00630642. These documents were introduced as Exhibit 20 at the deposition of Brent Hurley.

30. Attached as Exhibit 27 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-03060898-904.

31. Attached as Exhibit 28 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-00558783-84.

32. Attached as Exhibit 29 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-02761607-11.

33. Attached as Exhibit 30 are a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-00420319, and a true and correct copy of an associated email attachment produced by Defendants marked with the Bates number GOO001-00420320-27.

34. There is no Exhibit 31 to this Declaration, and that exhibit number is therefore intentionally left blank.

35. Attached as Exhibit 32 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-03631419.

36. Attached as Exhibit 33 are a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-03406085, and a true and correct copy of an associated email attachment produced by Defendants marked with the Bates number GOO001-03406086.

37. Attached as Exhibit 34 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-00988969-72. This email exchange was introduced as Exhibit 15 at the deposition of Heather Gillette and as Exhibit 18 at the deposition of Kevin Donahue.

38. Attached as Exhibit 35 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-00953867-69. This email exchange was introduced as Exhibit 14 at the deposition of Heather Gillette.

39. There is no Exhibit 36 to this Declaration, and that exhibit number is therefore intentionally left blank.

40. Attached as Exhibit 37 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-01627276-79. This email exchange was introduced as Exhibit 2 at the Rule 30(b)(6) deposition of Chris Maxcy.

41. Attached as Exhibit 38 are a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-03045959, and a true and correct copy of an excerpt from an associated email attachment produced by Defendants marked with the Bates number range GOO001-03045960-8245.

42. Attached as Exhibit 39 are a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-00794737, and a true and correct copy of an associated email attachment marked with the Bates number range GOO001-00794738-58. These documents were introduced as Exhibit 15 at the deposition of David Eun, Exhibit 15 at the deposition of David Drummond, Exhibit 6 at the deposition of Eric Schmidt, Exhibit 4 at the deposition of Bhanu Narasimhan, and Exhibit 3 at the deposition of Peter Chane.

43. There is no Exhibit 40 to this Declaration, and that exhibit number is therefore intentionally left blank.

44. Attached as Exhibit 41 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-03114019. This email exchange was introduced as Exhibit 3 at the deposition of Bhanu Narasimhan.

45. Attached as Exhibit 42 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-00802317.

46. Attached as Exhibit 43 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-06555098-99. This email exchange was introduced as Exhibit 8 at the deposition of Bhanu Narasimhan.

47. Attached as Exhibit 44 are a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-00990640, and a true and correct copy of an associated email attachment marked with the Bates number GOO001-00990641. These documents were introduced as Exhibit 5 at the deposition of Eric Schmidt, Exhibit 11 at the deposition of Wendy Chang, Exhibit 14 at the deposition of David Drummond, Exhibit 2 at the deposition of Larry Page, and Exhibit 2 at the deposition of Peter Chane.

48. Attached as Exhibit 45 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-03592968-69. This email exchange was introduced as Exhibit 4 at the deposition of Peter Chane.

49. Attached as Exhibit 46 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-03594244. This email exchange was introduced as Exhibit 8 at the deposition of Peter Chane.

50. Attached as Exhibit 47 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-05084213.

51. Attached as Exhibit 48 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-00562962-65. This email exchange was introduced as Exhibit 12 at the deposition of Patrick Walker.

52. Attached as Exhibit 49 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-00566289. This email exchange was introduced as Exhibit 12 at the deposition of Peter Chane.

53. Attached as Exhibit 50 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-00495746-57. This email exchange was introduced as Exhibit 6 at the deposition of David Eun and as Exhibit 9 at the deposition of Peter Chane.

54. Attached as Exhibit 51 are a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-00496021, and a true and correct copy of an associated email attachment marked with the Bates number range GOO001-00496022-62. These documents were introduced as Exhibit 9 at the deposition of David Eun, Exhibit 9 at the deposition of Omid Kordestani, and Exhibit 13 at the deposition of Peter Chane. The email attachment was introduced as Exhibit 7 at the deposition of Bhanu Narasimhan.

55. Attached as Exhibit 52 are a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-00496614, and a true and correct copy of an associated email attachment marked with the Bates number range GOO001-00496615-47. These documents were introduced as Exhibit 8 at the deposition of Eric Schmidt, Exhibit 10 at the deposition of Omid Kordestani, Exhibit 18 at the deposition of David Drummond, Exhibit 7 at the deposition of Sergey Brin, Exhibit 16 at the deposition of Peter Chane, and Exhibit 2 at the deposition of Jonathan Rosenberg.

56. Attached as Exhibit 53 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-01495915-18.

57. Attached as Exhibit 54 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-02055019-20. This email exchange was introduced as Exhibit 35 at the deposition of David Drummond.

58. Attached as Exhibit 55 are a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-02693804, and a true and correct copy of an associated email attachment marked with Bates number range GOO001-02693808-13.

59. Attached as Exhibit 56 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-05150988.

60. Attached as Exhibit 57 are a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-04430721, and a true and correct copy of an associated email attachment produced by Defendants marked with the Bates number range GOO001-04430722-722.003. These documents were introduced as Exhibit 10 at the deposition of Peter Chane.

61. Attached as Exhibit 58 are a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-02361246, and a true and correct copy of an associated email attachment produced by Defendants marked with the Bates number range GOO001-02361247-48.

62. Attached as Exhibit 59 are a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-00496065, and a true and correct copy of an associated email attachment produced by Defendants marked with the Bates number range GOO001-00496066-94. These documents were introduced as Exhibit 8 at the deposition of David Eun and as Exhibit 13 at the deposition of Wendy Chang.

63. Attached as Exhibit 60 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-00502665-93. This document was introduced as Exhibit 10 at the deposition of David Eun and as Exhibit 5 at the deposition of Tim Armstrong.

64. Attached as Exhibit 61 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-00482516-18. This email exchange was introduced as Exhibit 13 at the deposition of Patrick Walker.

65. Attached as Exhibit 62 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-00496651-54. This email exchange was introduced as Exhibit 12 at the deposition of David Eun, Exhibit 8 at the deposition of Omid Kordestani, Exhibit 17 at the deposition of David Drummond, Exhibit 7 at the deposition of Eric Schmidt, Exhibit 3 at the deposition of Larry Page, Exhibit 5 at the deposition of Sergey Brin, and Exhibit 3 at the deposition of Jonathan Rosenberg.

66. Attached as Exhibit 63 are a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-00791569, and a true and correct copy of an associated email attachment produced by Defendants marked with the Bates number range GOO001-00791570-611. These documents were introduced as Exhibit 15 at the deposition of Wendy Chang, Exhibit 17 at the deposition of Larry Page, and Exhibit 4 at the deposition of Jonathan Rosenberg.

67. Attached as Exhibit 64 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-00563430-33. This email exchange was introduced as Exhibit 14 at the deposition of David Eun, Exhibit 19 at the deposition of David Drummond, Exhibit 6 at the deposition of Sergey Brin, Exhibit 17 at the deposition of Peter Chane, and Exhibit 5 at the deposition of Jonathan Rosenberg.

68. Attached as Exhibit 65 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-00563469-70. This email exchange was introduced as Exhibit 11 at the deposition of Patrick Walker.

69. Attached as Exhibit 66 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-00792297. According to the metadata produced by Defendants, this email exchange was produced from the files of Google co-founder Larry Page.

70. Attached as Exhibit 67 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-04736644-47.

71. Attached as Exhibit 68 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-03548410-12.

72. Attached as Exhibit 69 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-02021241-44.

73. Attached as Exhibit 70 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-01395950. This email exchange was introduced as Exhibit 22 at the deposition of Chad Hurley and as Exhibit 12 at the deposition of Eric Schmidt.

74. Attached as Exhibit 71 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-01271624-27. This email exchange was introduced as Exhibit 10 at the deposition of Heather Gillette.

75. Attached as Exhibit 72 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-03383629.

76. Attached as Exhibit 73 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-01364485. This document was introduced as Exhibit 15 at the deposition of Michael Solomon.

77. Attached as Exhibit 74 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-07155101.

78. Attached as Exhibit 75 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-00217336.

79. Attached as Exhibit 76 are a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-03037036, and a true and correct copy of an associated email attachment produced by Defendants marked with the Bates number range GOO001-03037037-65. These documents were introduced as Exhibit 3 at the deposition of Shashi Seth.

80. Attached as Exhibit 77 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-05154818.

81. Attached as Exhibit 78 are a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-05943950, and a true and correct copy of an associated email attachment produced by Defendants marked with the Bates number range GOO001-05943951-59. These documents were introduced as Exhibit 12 at the deposition of Shashi Seth.

82. Attached as Exhibit 79 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-01016844-45. This email exchange was introduced as Exhibit 4 at the deposition of Shashi Seth.

83. Attached as Exhibit 80 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-00225766-68. This email exchange was introduced as Exhibit 39 at the deposition of Wendy Chang.

84. Attached as Exhibit 81 are a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-02414976-79, and a true and correct copy of an associated email attachment marked with the Bates number GOO001-02414980. These documents were introduced as Exhibit 10 at the deposition of Shashi Seth.

85. Attached as Exhibit 82 are a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-03241189-90, and a true and correct copy of an associated email attachment marked with the Bates number range GOO001-03241191-92. These documents were introduced as Exhibit 11 at the deposition of Shashi Seth.

86. Attached as Exhibit 83 are a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-00747816, and a true and correct copy of an associated email attachment marked with the Bates number range GOO001-00747817-989. These documents were introduced as Exhibit 5 at the deposition of Shashi Seth.

87. Attached as Exhibit 84 are a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-02201131, and true and correct copies of excerpts from an associated email attachment marked with the Bates number range GOO001-02201132-132.0228.

88. Attached as Exhibit 85 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-00827503-05.

89. Attached as Exhibit 86 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-01998134-50.

90. Attached as Exhibit 87 are a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-00829227-28, and a true and

correct copy of an associated email attachment marked with the Bates number range GOO001-00829229-229.007.

91. Attached as Exhibit 88 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-00797774-77.

92. Attached as Exhibit 89 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-05942431-32.

93. Attached as Exhibit 90 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-02057400-02.

94. Attached as Exhibit 91 are a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-00984825-27, a true and correct copy of an associated email attachment produced by Defendants marked with the Bates number range GOO001-00984828-33, and a true and correct copy of an associated email attachment marked with the Bates number range GOO001-00984834-40. These documents were introduced as Exhibit 26 at the deposition of Omid Kordestani.

95. Attached as Exhibit 92 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-00746418. This email exchange was introduced as Exhibit 27 at the deposition of Chris Maxcy.

96. Attached as Exhibit 93 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-00751570-71.

97. Attached as Exhibit 94 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-00869300.

98. Attached as Exhibit 95 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-02244041-57.

99. There is no Exhibit 96 to this Declaration, and that exhibit number is therefore intentionally left blank.

100. There is no Exhibit 97 to this Declaration, and that exhibit number is therefore intentionally left blank.

101. There is no Exhibit 98 to this Declaration, and that exhibit number is therefore intentionally left blank.

102. There is no Exhibit 99 to this Declaration, and that exhibit number is therefore intentionally left blank.

103. There is no Exhibit 100 to this Declaration, and that exhibit number is therefore intentionally left blank.

104. There is no Exhibit 101 to this Declaration, and that exhibit number is therefore intentionally left blank.

105. There is no Exhibit 102 to this Declaration, and that exhibit number is therefore intentionally left blank.

106. There is no Exhibit 103 to this Declaration, and that exhibit number is therefore intentionally left blank.

107. Attached as Exhibit 104 are a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-00330654, and an associated email attachment produced by Defendants marked with the Bates number range GOO001-00330655-59. These documents were introduced as Exhibit 17 at the deposition of Wendy Chang.

108. Attached as Exhibit 105 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-05164894-927.

109. Attached as Exhibit 106 are a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-00330681, and a true and correct copy of an associated email attachment produced by Defendants marked with the Bates number range GOO001-00330682-84. These documents were introduced as Exhibit 18 at the deposition of Wendy Chang.

110. Attached as Exhibit 107 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-00633965-92.

111. Attached as Exhibit 108 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-05920388-419.

112. Attached as Exhibit 109 are a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-00763354, a true and correct copy of an associated email attachment produced by Defendants marked with the Bates number range GOO001-00763355-63, and a true and correct copy of an associated email attachment produced by Defendants marked with the Bates number range GOO001-00763364-76. These documents were introduced as Exhibit 14 at the deposition of Brent Hurley.

113. Attached as Exhibit 110 are a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-00658376-77, and a true and correct copy of an associated email attachment produced by Defendants marked with the Bates number range GOO001-00658378-84. These documents were introduced as Exhibit 16 at the deposition of Brent Hurley and as Exhibit 12 at the deposition of David Drummond.

114. Attached as Exhibit 111 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-02656593-94. This email exchange was introduced as Exhibit 9 at the deposition of David Drummond.

115. Attached as Exhibit 112 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-002338150-84.

116. Attached as Exhibit 113 are a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-02439050-52, and a true and correct copy of an associated email attachment produced by Defendants marked with the Bates number range GOO001-02439053. These documents were introduced as Exhibit 21 at the deposition of Omid Kordestani.

117. Attached as Exhibit 114 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-00255239-42. This email exchange was introduced as Exhibit 13 at the deposition of Shashi Seth.

118. Attached as Exhibit 115 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-00237661-63. This email exchange was introduced as Exhibit 22 at the deposition of Omid Kordestani.

119. Attached as Exhibit 116 are a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-01295801, and a true and correct copy of an associated email attachment produced by Defendants marked with the Bates number range GOO001-01295802. These documents were introduced as Exhibit 20 at the deposition of Omid Kordestani.

120. Attached as Exhibit 117 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-08030008-10.

121. Attached as Exhibit 118 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-00421229-34. The metadata produced by Defendants indicate this document was last modified on February 3, 2006.

122. Attached as Exhibit 119 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-02826891-95. The metadata produced by Defendants indicate this document was last modified on March 14, 2006.

123. Attached as Exhibit 120 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-00824855-59. The metadata produced by Defendants indicate this document was last modified on July 26, 2006.

124. Attached as Exhibit 121 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-02829970-74. The metadata produced by Defendants indicate this document was last modified on August 18, 2006.

125. There is no Exhibit 122 to this Declaration, and that exhibit number is therefore intentionally left blank.

126. There is no Exhibit 123 to this Declaration, and that exhibit number is therefore intentionally left blank.

127. Attached as Exhibit 124 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-07056597-603. The metadata produced by Defendants indicate this document was last modified on February 26, 2007.

128. Attached as Exhibit 125 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-01232697-703. The metadata produced by Defendants indicate this document was last modified on June 19, 2007.

129. Attached as Exhibit 126 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-02768034-35.

130. Attached as Exhibit 127 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-01027757-73.

131. Attached as Exhibit 128 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-01535521-24.

132. Attached as Exhibit 129 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-04431787-88.

133. Attached as Exhibit 130 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-00509640. This email exchange was introduced as Exhibit 48 at the deposition of Chad Hurley and as Exhibit 10 at the deposition of Kevin Donahue.

134. Attached as Exhibit 131 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-00222797-803.

135. Attached as Exhibit 132 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-02754251. This email exchange was introduced as Exhibit 3 at the deposition of Franck Chastagnol.

136. Attached as Exhibit 133 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-02027618-19. This email exchange was introduced as Exhibit 14 at the deposition of Shashi Seth.

137. Attached as Exhibit 134 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-00561601-21. This document was introduced as Exhibit 27 at the deposition of Zahavah Levine.

138. Attached as Exhibit 135 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-08643428.

139. Attached as Exhibit 136 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-02493069-74.

140. Attached as Exhibit 137 are a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-02930251-52, and a true and correct copy of an associated email attachment produced by Defendants marked with the Bates number range GOO001-02930253-82.

141. Attached as Exhibit 138 are a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-02604786-87, and a true and correct copy of an associated email attachment produced by Defendants marked with the Bates number range GOO001-02604788-91.

142. Attached as Exhibit 139 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-01950611-18. This document was introduced as Exhibit 8 at the Rule 30(b)(6) deposition of David King.

143. Attached as Exhibit 140 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-09612201.

144. Attached as Exhibit 141 are a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-03427120-21, and a true and correct copy of an associated email attachment produced by Defendants marked with the Bates number range GOO001-03427122-43. These documents were introduced as Exhibit 9 at the deposition of Vance Ikezoye and as Exhibit 24 at the deposition of Chad Hurley.

145. Attached as Exhibit 142 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-02867502-05.

146. Attached as Exhibit 143 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-02493328-37.

147. Attached as Exhibit 144 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-01511226-27. This email exchange was introduced as Exhibit 27 at the deposition of Chad Hurley, Exhibit 31 at the deposition of David Drummond, Exhibit 18 at the deposition of Eric Schmidt, Exhibit 14 at the deposition of Larry Page, and Exhibit 14 at the deposition of Sergey Brin.

148. Attached as Exhibit 145 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-02506820-28.0006. Defendants produced this document with apparent errors in the document's images.

149. Attached as Exhibit 146 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-01202238-43. This document was introduced as Exhibit 6 at the deposition of Chris Maxcy and as Exhibit 2 at the deposition of Franck Chastagnol.

150. There is no Exhibit 147 to this Declaration, and that exhibit number is therefore intentionally left blank.

151. Attached as Exhibit 148 are a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-01870875, a true and correct copy of an associated email attachment produced by Defendants marked with the Bates number range GOO001-01870876-78, a true and correct copy of an associated email attachment produced by Defendants marked with the Bates number range GOO001-01870879-81, and a true and correct copy of an associated email attachment produced by Defendants marked with the Bates number range 01870882-84.

152. Attached as Exhibit 149 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-02826036-46. This document was

introduced as Exhibit 23 at the deposition of David Drummond, Exhibit 15 at the deposition of Eric Schmidt, Exhibit 11 at the deposition of Larry Page, and Exhibit 8 at the deposition of Jonathan Rosenberg.

153. There is no Exhibit 150 to this Declaration, and that exhibit number is therefore intentionally left blank.

154. There is no Exhibit 151 to this Declaration, and that exhibit number is therefore intentionally left blank.

155. Attached as Exhibit 152 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-02874326-27.

156. Attached as Exhibit 153 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-02240369-411. This document was introduced as Exhibit 18 at the deposition of Omid Kordestani and as Exhibit 27 at the deposition of David Drummond.

157. Attached as Exhibit 154 are a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-02524911, a true and correct copy of an associated email attachment produced by Defendants marked with the Bates number range GOO001-02524912-63, and a true and correct copy of an associated email attachment produced by Defendants marked with Bates number range GOO001-02524964-5010. This document was introduced as Exhibit 28 at the deposition of David Drummond. Portions of this document were introduced as Exhibit 19 at the deposition of Omid Kordestani.

158. Attached as Exhibit 155 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-02241782-835. This document was introduced as Exhibit 5 at the deposition of Zahavah Levine.

159. Attached as Exhibit 156 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-02354601-05.

160. Attached as Exhibit 157 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-09612078-79.

161. Attached as Exhibit 158 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-05175716-18.

162. Attached as Exhibit 159 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-00889264-81.

163. Attached as Exhibit 160 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-09684557-79.

164. Attached as Exhibit 161 are true and correct copies of excerpts from a document produced by Defendants marked with the Bates number range GOO001-02276277-384.

165. Attached as Exhibit 162 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-07726987-7009.

166. Attached as Exhibit 163 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-02243231-53.

167. There is no Exhibit 164 to this Declaration, and that exhibit number is therefore intentionally left blank.

168. Attached as Exhibit 165 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-02242506-23.

169. Attached as Exhibit 166 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-02242907-24.

170. Attached as Exhibit 167 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-02392607-43. This document was introduced as Exhibit 5 at the deposition of Jim Patterson.

171. Attached as Exhibit 168 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-06176212-24.

172. Attached as Exhibit 169 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-06176368-86.

173. Attached as Exhibit 170 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-02552363-70.

174. Attached as Exhibit 171 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-00010746. This email exchange was introduced as Exhibit 21 at the deposition of Chris Maxcy and as Exhibit 3 at the deposition of Jim Patterson.

175. Attached as Exhibit 172 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-00243149-52.

176. Attached as Exhibit 173 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-09684201-21.

177. Attached as Exhibit 174 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-02338330-43.

178. Attached as Exhibit 175 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-01177848.

179. Attached as Exhibit 176 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-00508644-47. This email

exchange was introduced as Exhibit 5 at the deposition of Kevin Donahue and as Exhibit 11 at the deposition of Brent Hurley.

180. Attached as Exhibit 177 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-09531942-68.

181. Attached as Exhibit 178 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-06147947-73.

182. Attached as Exhibit 179 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-02034326-30.

183. Attached as Exhibit 180 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-06811230-34.

184. Attached as Exhibit 181 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-00827716-17.

185. Attached as Exhibit 182 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-02866493-517.

186. Attached as Exhibit 183 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-00718495-98.

187. Attached as Exhibit 184 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-06361166-79. Defendants produced this document in a format that is difficult to read. Despite Viacom's request that Defendants produce a corrected, readable version of this document, Defendants failed to do so.

188. Attached as Exhibit 185 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-01949763-65.

189. Attached as Exhibit 186 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-09684681-719. Despite repeated requests by Viacom's counsel over many months during discovery, Defendants failed to produce this document until four days before the filing of Viacom's Motion for Partial Summary Judgment.

190. Attached as Exhibit 187 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-09684647-66. Despite repeated requests by Viacom's counsel over many months during discovery, Defendants failed to produce this document until four days before the filing of Viacom's Motion for Partial Summary Judgment.

191. Attached as Exhibit 188 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-09684752-818. Despite repeated requests by Viacom's counsel over many months during discovery, Defendants failed to produce this document until four days before the filing of Viacom's Motion for Partial Summary Judgment.

192. Attached as Exhibit 189 is a true and correct copy of a document produced by Defendants marked with the Bates number GOO001-00746412.

193. Attached as Exhibit 190 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-06525907-09.

194. Attached as Exhibit 191 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-00923210-12. This email exchange was introduced as Exhibit 8 at the deposition of Patrick Walker and as Exhibit 1 at the deposition of David Eun.

195. Attached as Exhibit 371 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-01529251.

196. Attached as Exhibit 372 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-02316969-72. This document was introduced as Exhibit 1 at the deposition of Nicole Wong.

197. Attached as Exhibit 373 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-02502815-19. This document was introduced as Exhibit 16 at the deposition of Eric Schmidt, Exhibit 25 at the deposition of David Drummond, Exhibit 12 at the deposition of Larry Page, and Exhibit 11 at the deposition of Sergey Brin.

198. Attached as Exhibit 374 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-06010126-31.

199. Attached as Exhibit 375 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-06669529.

200. Attached as Exhibit 378 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-07181365-67.

201. Attached as Exhibit 382 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-08050272-75. This email exchange was introduced as Exhibit 6 at the deposition of Kent Walker.

Instant Message Conversation Transcripts Produced by Defendants

202. In the course of discovery, Defendants produced transcripts of instant message conversations. Like the other documents Defendants produced, these transcripts of instant message conversations are marked with Bates numbers beginning with the prefix "GOO001-".

203. Defendants produced these instant message transcripts in HTML format, which is difficult to read. An employee of Jenner & Block LLP, working at my direction, generated more easily readable versions of the instant message conversation transcripts by opening them in an ordinary Internet browser. Those versions reflect the manner in which they would be seen by the participants in the instant message conversation. This readable format does not alter the content of the instant message discussions in any way. For the Court's convenience, each exhibit listed below in paragraphs 204 through 217 that contains the transcript of an instant message conversation includes (a) the readable version of the transcript of the instant message conversation generated by a Jenner & Block LLP employee acting at my direction; and (b) the original transcript of the same instant message conversation as produced by Defendants. In order to ensure the protection of potentially private information of Defendants' employees, Jenner & Block LLP employees, at my direction, have redacted certain personal and irrelevant material from these instant message conversation transcripts.

204. Attached as Exhibit 192 is a true and correct copy of the instant message conversation transcript produced by Defendants marked with the Bates number range GOO001-00507525-32. The transcript produced by Defendants is preceded by a readable version generated in the manner described in paragraph 203 *supra*. This instant message conversation was introduced as Exhibit 3 and as Exhibit 4 at the deposition of Maryrose Dunton.

205. Attached as Exhibit 193 is a true and correct copy of the instant message conversation produced by Defendants marked with the Bates number range GOO001-00507535-40. The transcript produced by Defendants is preceded by a readable version generated in the manner described in paragraph 203 *supra*. This instant message conversation was introduced as Exhibit 5 and as Exhibit 15 at the deposition of Maryrose Dunton.

206. Attached as Exhibit 194 is a true and correct copy of the instant message conversation produced by Defendants marked with the Bates number range GOO001-00507405-07. The transcript produced by Defendants is preceded by a readable version generated in the manner described in paragraph 203 *supra*.

207. Attached as Exhibit 195 is a true and correct copy of the instant message conversation produced by Defendants marked with the Bates number range GOO001-01931840-51. The transcript produced by Defendants is preceded by a readable version generated in the manner described in paragraph 203 *supra*.

208. Attached as Exhibit 196 is a true and correct copy of the instant message conversation produced by Defendants marked with the Bates number range GOO001-07585952-93. The transcript produced by Defendants is preceded by a readable version generated in the manner described in paragraph 203 *supra*.

209. Attached as Exhibit 197 is a true and correct copy of the instant message conversation produced by Defendants marked with the Bates number range GOO001-00507331-43. The transcript produced by Defendants is preceded by a readable version generated in the manner described in paragraph 203 *supra*.

210. Attached as Exhibit 198 is a true and correct copy of the instant message conversation produced by Defendants marked with the Bates number range GOO001-01931799-811. The transcript produced by Defendants is preceded by a readable version generated in the manner described in paragraph 203 *supra*.

211. Attached as Exhibit 199 is a true and correct copy of the instant message conversation produced by Defendants marked with the Bates number range GOO001-02363217-

19. The transcript produced by Defendants is preceded by a readable version generated in the manner described in paragraph 203 *supra*.

212. Attached as Exhibit 200 is a true and correct copy of the instant message conversation produced by Defendants marked with the Bates number range GOO001-07738864-

65. The transcript produced by Defendants is preceded by a readable version generated in the manner described in paragraph 203 *supra*.

213. Attached as Exhibit 201 is a true and correct copy of the instant message conversation produced by Defendants marked with the Bates number range GOO001-00829681-

94. The transcript produced by Defendants is preceded by a readable version generated in the manner described in paragraph 203 *supra*. This instant message conversation was introduced as Exhibit 19 and as Exhibit 20 at the deposition of Maryrose Dunton.

214. Attached as Exhibit 202 is a true and correct copy of the instant message conversation produced by Defendants marked with the Bates number range GOO001-00829702-

18. The transcript produced by Defendants is preceded by a readable version generated in the manner described in paragraph 203 *supra*. This instant message conversation was introduced as Exhibit 21 and as Exhibit 22 at the deposition of Maryrose Dunton.

215. Attached as Exhibit 203 is a true and correct copy of the instant message conversation produced by Defendants marked with the Bates number range GOO001-07169720-

33. The transcript produced by Defendants is preceded by a readable version generated in the manner described in paragraph 203 *supra*.

216. Attached as Exhibit 376 is a true and correct copy of the instant message conversation produced by Defendants marked with the Bates number range GOO001-07169708-

19. The transcript produced by Defendants is preceded by a readable version generated in the manner described in paragraph 203 *supra*.

217. Attached as Exhibit 377 is a true and correct copy of the instant message conversation produced by Defendants marked with the Bates number range GOO001-07169928-

43. The transcript produced by Defendants is preceded by a readable version generated in the manner described in paragraph 203 *supra*.

Documents Produced by YouTube Co-Founder Jawed Karim

218. In response to a subpoena issued by Viacom in this action on December 7, 2007, YouTube co-founder Jawed Karim produced documents on May 16 and 21, 2008. The documents that Karim produced are marked with Bates numbers beginning with the prefix “JK”.

219. In his deposition, Mr. Karim testified that the documents marked with the Bates prefix “JK” were “all documents produced as a result of, you know, my involvement with YouTube.” He also testified that “the e-mails, you know, any e-mails that -- that I wrote and received, those were all in my e-mail file,” and explained that the e-mails came from two accounts: “my personal e-mail kind of early on, before there was a YouTube,” and “then there also was the e-mails I used from the YouTube e-mail account.” *See* Exhibit 313 hereto (Karim Dep.) at 28:22-29:21.

220. Mr. Karim also described the process in which his personal emails were collected. As he explained, “There was a collection process at Wilson, Sonsini, I believe. And so I brought in, you know, all of my e-mails. And the person responsible for the collection, I -- I worked with him to extract the YouTube related e-mails from all those e-mails.” *See* Exhibit 313 hereto (Karim Dep.) at 30:3-14.

221. Mr. Karim also described the process by which emails from his YouTube email account were collected. As he explained, that “procedure was simply to copy, you know, sent and received e-mails in -- in all other e-mail folders.” Mr. Karim participated in this process by “transfer[ring] the data.” *See* Exhibit 313 hereto (Karim Dep.) at 30:16-31:3.

222. Attached as Exhibit 204 is a true and correct copy of a document produced by Jawed Karim marked with the Bates number range JK00009887-91.

223. Attached as Exhibit 205 is a true and correct copy of an email exchange produced by Jawed Karim marked with the Bates number range JK00009137-39.

224. Attached as Exhibit 206 is a true and correct copy of an email exchange produced by Jawed Karim marked with the Bates number range JK00004704-05. This email exchange was introduced as Exhibit 29 at the deposition of Chad Hurley and as Exhibit 24 at the deposition of Jawed Karim.

225. Attached as Exhibit 207 is a true and correct copy of an email exchange produced by Jawed Karim marked with the Bates number JK00005039. This email exchange was introduced as Exhibit 23 at the deposition of Jawed Karim.

226. Attached as Exhibit 208 is a true and correct copy of an email exchange produced by Jawed Karim marked with the Bates number JK00005043. This email exchange was introduced as Exhibit 1 at the deposition of Chad Hurley and as Exhibit 31 at the deposition of Jawed Karim.

227. Attached as Exhibit 209 is a true and correct copy of an email exchange produced by Jawed Karim marked with the Bates number range JK00009381-82. This email exchange was introduced as Exhibit 7 at the deposition of Jawed Karim.

228. Attached as Exhibit 210 is a true and correct copy of an email exchange produced by Jawed Karim marked with the Bates number JK00009383. This email exchange was introduced as Exhibit 8 at the deposition of Jawed Karim.

229. Attached as Exhibit 211 is a true and correct copy of an email exchange produced by Jawed Karim marked with the Bates number JK00005928. This email exchange was introduced as Exhibit 20 at the deposition of Jawed Karim.

230. Attached as Exhibit 212 is a true and correct copy of an email exchange produced by Jawed Karim marked with the Bates number JK00005929. This email exchange was introduced as Exhibit 33 at the deposition of Chad Hurley.

231. Attached as Exhibit 213 is a true and correct copy of an email exchange produced by Jawed Karim marked with the Bates number JK00006057. This email exchange was introduced as Exhibit 4 at the deposition of Chad Hurley and as Exhibit 17 at the deposition of Jawed Karim.

232. Attached as Exhibit 214 is a true and correct copy of an email exchange produced by Jawed Karim marked with the Bates number JK00000382. This email exchange was introduced as Exhibit 2 at the deposition of Brent Hurley and as Exhibit 45 at the deposition of Chad Hurley.

233. Attached as Exhibit 215 is a true and correct copy of an email exchange produced by Jawed Karim marked with the Bates number range JK00007416-18. The page marked with Bates number JK00007416 was introduced as Exhibit 41 at the deposition of Chad Hurley.

234. Attached as Exhibit 216 is a true and correct copy of an email exchange produced by Jawed Karim marked with the Bates number range JK00006055-56. This email exchange was introduced as Exhibit 34 at the deposition of Chad Hurley.

235. Attached as Exhibit 217 is a true and correct copy of an email exchange produced by Jawed Karim marked with the Bates number range JK00006166-69. This email exchange was introduced as Exhibit 40 at the deposition of Jawed Karim.

236. Attached as Exhibit 218 is a true and correct copy of an email exchange produced by Jawed Karim marked with the Bates number range JK00009595-96.

237. There is no Exhibit 219 to this Declaration, and that exhibit number is therefore intentionally left blank.

238. There is no Exhibit 220 to this Declaration, and that exhibit number is therefore intentionally left blank.

239. Attached as Exhibit 221 are a true and correct copy of an email exchange produced by Jawed Karim marked with the Bates number range JK00006259-60, and an associated email attachment produced by Jawed Karim marked with the Bates number range JK00006263-70. These documents were introduced as Exhibit 45 and Exhibit 46, respectively, at the deposition of Jawed Karim.

240. Attached as Exhibit 222 is a true and correct copy of an email exchange produced by Jawed Karim marked with the Bates number JK00009668. This email exchange was introduced as Exhibit 19 at the deposition of Jawed Karim.

241. Attached as Exhibit 223 is a true and correct copy of an email exchange produced by Jawed Karim marked with the Bates number range JK00006392-93. This email exchange was introduced as Exhibit 12 at the deposition of Jawed Karim.

242. Attached as Exhibit 224 is a true and correct copy of an email exchange produced by Jawed Karim marked with the Bates number range JK00006689-90. This email exchange was introduced as Exhibit 18 at the deposition of Jawed Karim.

243. Attached as Exhibit 225 is a true and correct copy of an email exchange produced by Jawed Karim marked with the Bates number range JK00006627-28.

244. Attached as Exhibit 226 is a true and correct copy of an email exchange produced by Jawed Karim marked with the Bates number range JK00009791-92.

245. Attached as Exhibit 227 is a true and correct copy of an email exchange produced by Jawed Karim marked with the Bates number range JK00007378-79.

246. Attached as Exhibit 228 is a true and correct copy of an email exchange produced by Jawed Karim marked with the Bates number range JK00007420-22. This email exchange was introduced as Exhibit 35 at the deposition of Jawed Karim and as Exhibit 5 at the deposition of Chad Hurley.

247. Attached as Exhibit 229 is a true and correct copy of an email exchange produced by Jawed Karim marked with the Bates number JK00007423. This email exchange was introduced as Exhibit 55 at the deposition of Jawed Karim.

248. Attached as Exhibit 230 is a true and correct copy of an email exchange produced by Jawed Karim marked with the Bates number JK00007479. This email exchange was introduced as Exhibit 38 at the deposition of Jawed Karim.

249. There is no Exhibit 231 to this Declaration, and that exhibit number is therefore intentionally left blank.

250. Attached as Exhibit 232 is a true and correct copy of an email exchange produced by Jawed Karim marked with the Bates number JK00008043. This email exchange was introduced as Exhibit 11 at the deposition of Chad Hurley and as Exhibit 36 at the deposition of Jawed Karim.

251. Attached as Exhibit 233 is a true and correct copy of an email exchange produced by Jawed Karim marked with the Bates number JK00008331-35.

252. Attached as Exhibit 234 is a true and correct copy of an email exchange produced by Jawed Karim marked with the Bates number JK00000824.

253. Attached as Exhibit 235 is a true and correct copy of an email exchange produced by Jawed Karim marked with the Bates number JK00000836.

254. Attached as Exhibit 236 are a true and correct copy of an email exchange produced by Jawed Karim marked with the Bates number JK00002261, and a true and correct copy of an associated email attachment produced by Jawed Karim marked with the Bates number JK00002262. These documents were introduced as Exhibits 51 and 52 at the deposition of Jawed Karim.

255. Attached as Exhibit 237 is a true and correct copy of a document produced by Jawed Karim marked with the Bates number range JK00000173-79. This document was introduced as Exhibit 47 at the deposition of Jawed Karim.

256. Attached as Exhibit 238 is a true and correct copy of an email exchange produced by Jawed Karim marked with the Bates number range JK00009130-32. This email exchange was introduced as Exhibit 29 at the deposition of Jawed Karim.

257. Attached as Exhibit 239 is a true and correct copy of an email exchange produced by Jawed Karim marked with the Bates number JK00008859.

258. Attached as Exhibit 379 is a true and correct copy of an email exchange produced by Jawed Karim marked with the Bates number range JK00004669-70.

259. Attached as Exhibit 380 is a true and correct copy of an email exchange produced by Jawed Karim marked with the Bates number JK00005597. This email exchange was introduced as Exhibit 2 at the deposition of Chad Hurley.

260. Attached as Exhibit 381 is a true and correct copy of an email exchange produced by Jawed Karim marked with the Bates number range JK00007560-61. This email exchange was introduced as Exhibit 42 at the deposition of Chad Hurley and as Exhibit 34 at the deposition of Jawed Karim.

261. Attached as Exhibit 240 is a true and correct copy of an AVI-format video file produced by Jawed Karim and given the Bates number file name JK00010387_MVI_0922.avi. A portion of this video file was introduced as Exhibit 12 at the deposition of Chad Hurley.

262. For the Court's convenience, and at my direction, an employee of Jenner & Block LLP created a true and correct transcript of Exhibit 240. This transcript is attached hereto as Exhibit 241.

Defendants' Failure to Produce Emails of Top Executives

263. Virtually none of the Exhibits listed above as produced by Jawed Karim (bearing JK Bates numbers) were produced by Defendants, even though YouTube co-founders Steve Chen and Chad Hurley and other YouTube employees are listed as senders and/or recipients on most of the documents preserved and produced by Mr. Karim and attached as exhibits hereto.

264. Chad Hurley testified that he "lost all" of his emails from the key time periods in this case. *See* Exhibit 312 hereto (C. Hurley Dep.) at 187:15-16. Jenner & Block LLP's review of Defendants' document production indicates that Defendants produced fewer than ten custodial Chad Hurley emails per month for August, September, and October 2005, and fewer than 25 such emails per month for November and December 2005 and January 2006.

265. Jenner & Block LLP's review of Defendants' document production indicates that Defendants did not produce a single Steve Chen custodial email from March through July 2005, and produced only one Chen custodial email from each of August and September 2005. From November 2005 through October 2006, Defendants produced fewer than ten custodial Chen emails per month.

266. At his deposition, Google CEO Eric Schmidt agreed that a search for responsive custodial Schmidt documents from June 2006 through February 2007 yielded only 19 documents. Mr. Schmidt further testified: "It was my practice to delete or otherwise cause the e-mails that I had read to go away as quickly as possible." *See* Exhibit 314 hereto (Schmidt Dep.) at 18:24-19:2. The document attached as Exhibit 242 is chart of Custodial Documents Produced by Eric Schmidt that counsel for Viacom prepared by analyzing Defendants' document production. This chart was introduced as Exhibit 1 at the deposition of Eric Schmidt.

Documents Produced by Viacom

267. Documents produced by Viacom in this action are marked with Bates numbers beginning with the prefix "VIA."

268. The documents listed in paragraphs 270 through 273 were retained by the Viacom Plaintiffs' in the course of regularly conducted business activity, collected pursuant to the Viacom Plaintiffs' discovery obligations, and produced to Defendants in this litigation.

269. There is no Exhibit 243 to this Declaration, and that exhibit number is therefore intentionally left blank.

270. Attached as Exhibit 244 is a true and correct copy of a letter sent from Viacom General Counsel Michael Fricklas to Google General Counsel Kent Walker at Mr. Walker's business address. The letter was produced by Viacom marked with the Bates number range

VIA01475465-76 and introduced as Exhibit 4 at the deposition of Kent Walker. Mr. Fricklas sent this letter on February 2, 2007 and Mr. Walker replied as shown in Exhibit 382 hereto, which is an email exchange produced by Defendants.

271. Attached as Exhibit 245 are a true and correct copy of an email exchange produced by Viacom marked with the Bates number VIA00727695, and a true and correct copy of an associated email attachment produced by Viacom marked with Bates number range VIA00727696-98. These documents were introduced by Defendants as Exhibit 5 at the deposition of Jason Witt.

272. There is no Exhibit 246 to this Declaration, and that exhibit number is therefore intentionally left blank.

273. Attached as Exhibit 383 is a true and correct copy of an email exchange produced by Viacom marked with the Bates number range VIA17716283-85.

Documents Obtained From Publicly Accessible Portions of Defendants' Websites

274. The following exhibits are true and correct copies of documents printed from publicly accessible portions of the Google and YouTube websites. Each exhibit referenced in paragraphs 276 through 318 below was printed from the YouTube or Google website by an employee of Jenner & Block LLP acting at my direction.

275. There is no Exhibit 247 to this Declaration, and that exhibit number is therefore intentionally left blank.

276. Attached as Exhibit 248 is a true and correct copy of a screenshot of a YouTube watch page produced by Viacom marked with the Bates number range VIA14375471-72.

277. Attached as Exhibit 249 is a true and correct copy of a screenshot of a YouTube watch page produced by Viacom marked with the Bates number range VIA14375444-45.

278. Attached as Exhibit 250 is a true and correct copy of a screenshot of a YouTube watch page produced by Viacom marked with the Bates number range VIA14375526-28.

279. Attached as Exhibit 251 is a true and correct copy of a screenshot of a YouTube watch page produced by Viacom marked with the Bates number range VIA14375557-59.

280. Attached as Exhibit 252 is a true and correct copy of a screenshot of a YouTube watch page produced by Viacom marked with the Bates number range VIA14375446-47.

281. Attached as Exhibit 253 is a true and correct copy of a screenshot of a YouTube watch page produced by Viacom marked with the Bates number VIA14375721.

282. Attached as Exhibit 254 is a true and correct copy of a screenshot of a YouTube watch page produced by Viacom marked with the Bates number VIA14375701.

283. Attached as Exhibit 255 is a true and correct copy of a screenshot of a YouTube watch page produced by Viacom marked with the Bates number range VIA14375674-75.

284. Attached as Exhibit 256 is a true and correct copy of a screenshot of a YouTube watch page produced by Viacom marked with the Bates number range VIA14375466-67. This document was introduced as Exhibit 10 at the deposition of Matthew Liu.

285. Attached as Exhibit 257 is a true and correct copy of a screenshot of a YouTube watch page produced by Viacom marked with the Bates number range VIA14375535-36.

286. Attached as Exhibit 258 is a true and correct copy of a screenshot of a YouTube watch page generated by Counsel for Viacom. This document was introduced as Exhibit 11 at the deposition of Matthew Liu.

287. Attached as Exhibit 259 is a true and correct copy of a screenshot of a YouTube search results page produced by Viacom marked with the Bates number range VIA14375204-06.

This screenshot was introduced as Exhibit 12 at the deposition of Matthew Liu and as Exhibit 11 at the Rule 30(b)(6) deposition of Varun Kacholia.

288. Attached as Exhibit 260 is a true and correct copy of a screenshot of a YouTube search results page produced by Viacom marked with the Bates number range VIA14375664-66.

289. Attached as Exhibit 261 is a true and correct copy of a screenshot of a YouTube search results page produced by Viacom marked with the Bates number range VIA14375611-13.

290. Attached as Exhibit 262 is a true and correct copy of a screenshot of a YouTube search results page produced by Viacom marked with the Bates number range VIA14375671-73.

291. Attached as Exhibit 263 is a true and correct copy of a screenshot of a YouTube search results page produced by Viacom marked with the Bates number range VIA14375620-22.

292. Attached as Exhibit 264 is a true and correct copy of a screenshot of a YouTube search results page produced by Viacom marked with the Bates number range VIA14375635-37.

293. Attached as Exhibit 265 is a true and correct copy of a screenshot of a YouTube search results page produced by Viacom marked with the Bates number range VIA14375638-40.

294. Attached as Exhibit 266 is a true and correct copy of a screenshot of a YouTube page produced by Viacom marked with the Bates number range VIA14375228-29. This screenshot was introduced as Exhibit 13 at the deposition of Matthew Liu.

295. Attached as Exhibit 267 is a true and correct copy of a screenshot of a YouTube page produced by Viacom marked with the Bates number range VIA14375363-64.

296. Attached as Exhibit 268 is a true and correct copy of a screenshot of a YouTube page produced by Viacom marked with the Bates number range VIA14375413-14.

297. Attached as Exhibit 269 is a true and correct copy of a screenshot of a YouTube page produced by Viacom marked with the Bates number range VIA14375207-08.

298. Attached as Exhibit 270 is a true and correct copy of an “Official YouTube Blog” posting dated September 12, 2005.

299. Attached as Exhibit 271 is a true and correct copy of a press release from the YouTube website dated December 15, 2005 and titled “YouTube Opens Internet Video to the Masses.”

300. Attached as Exhibit 272 is a true and correct copy of an “Official YouTube Blog” posting dated February 16, 2006.

301. Attached as Exhibit 273 is a true and correct copy of an “Official YouTube Blog” posting dated October 8, 2006 and titled “How Flagging Works.”

302. Attached as Exhibit 274 is a true and correct copy of an “Official YouTube Blog” posting dated May 16, 2008 and entitled “New Features for Search, Contacts and Inbox.” This document was introduced as Exhibit 8 in the Rule 30(b)(6) deposition of Varun Kacholia.

303. Attached as Exhibit 275 is a true and correct copy of a page on Google’s Investor Relations webpage entitled “Google Announces Fourth Quarter And Fiscal Year 2006 Results.”

304. Attached as Exhibit 276 is a true and correct copy of Google’s October 9, 2006 press release announcing Google’s acquisition of YouTube.

305. Attached as Exhibit 277 is a true and correct copy of Google’s November 13, 2006 press release announcing the closing of Google’s acquisition of YouTube.

306. Attached as Exhibit 278 is a true and correct copy of a page on “Google finance,” a website operated by Defendants showing the closing price of Google stock on November 13, 2006.

307. Attached as Exhibit 279 is a true and correct copy of a page on the YouTube website entitled “Company History.”

308. There is no Exhibit 280 to this Declaration, and that exhibit number is therefore intentionally left blank.

309. Attached as Exhibit 281 is a true and correct copy of a page on the YouTube website entitled “Content Verification Program.”

310. Attached as Exhibit 282 is a true and correct copy of a page on the YouTube website entitled “Copyright Infringement Notification.” It is linked to from the word “instructions” in the text that states “[i]ndividual notifications may be submitted by following these instructions” on the “Content Verification Program” page in Exhibit 281 attached hereto.

311. Attached as Exhibit 283 is a true and correct copy of a page on the YouTube website entitled “Solve a Problem: Video not in search.”

312. Attached as Exhibit 284 is a true and correct copy of a screenshot taken from the YouTube website and introduced as Exhibit 7 at the deposition of Cuong Do.

313. Attached as Exhibit 285 are true and correct copies of screenshots taken from the YouTube website and introduced as Exhibit 3 at the deposition of Omid Kordestani.

314. Attached as Exhibit 286 is a true and correct copy of a document printed from the YouTube website by John Browne, Counsel for Plaintiffs in the Premier League Action, and introduced as Exhibit 9 at the deposition of Suzanne Reider. *See* Exhibit 348 hereto (Reider Dep.) at 168:18-173:18 (representation from Class counsel John Browne that he printed this document from the YouTube website, and testimony from Ms. Reider about the substance of the document).

315. Attached as Exhibit 287 is a true and correct copy of Google’s 2007 Annual Report, printed from the Google website.

316. Attached as Exhibit 288 is a true and correct copy of a page from Google's website entitled "Ten ways Gmail makes email easy and efficient. And maybe even fun."

317. Attached as Exhibit 387 is a true and correct copy of a page from Google's website entitled "Google Code of Conduct."

318. Attached as Exhibit 388 is a true and correct copy of a page on the YouTube website entitled "Content ID System."

Documents Produced by Third-Party Credit Suisse

319. Viacom issued a subpoena *duces tecum* in this action to third-party Credit Suisse Securities USA LLC ("Credit Suisse") on December 6, 2007. In response, Credit Suisse produced documents marked with Bates numbers beginning with the prefix "CSSU." Credit Suisse acted as a financial advisor to Defendant Google in connection with Google's acquisition of YouTube. *See* Exhibit 328 hereto (Duncan Dep.) at 60:16-68:25.

320. Attached as Exhibit 289 are true and correct copies of several documents and handwritten notes produced by Credit Suisse and together introduced as Exhibit 21 at the deposition of Storm Duncan. These documents are marked with Bates number ranges CSSU 001863-66, CSSU 001868-71, and CSSU 001944-57. *See* Exhibit 328 hereto (Duncan Dep.) at 192:2 -192:9, 199:24-200:5, and 207:25-210:13 (authenticating documents).

321. Attached as Exhibit 290 are a true and correct copy of an email exchange produced by Credit Suisse marked with the Bates number range CSSU 002845-46, and a true and correct copy of an associated email attachment produced by Credit Suisse marked with the Bates number range CSSU 002847-52. These documents were introduced as Exhibit 10 at the deposition of Storm Duncan. *See* Exhibit 328 hereto (Duncan Dep.) at 67:14-68:4 (authenticating documents).

322. Attached as Exhibit 291 is a true and correct copy of an email exchange produced by Credit Suisse marked with the Bates number CSSU 002686. This email exchange was introduced as Exhibit 13 at the deposition of Storm Duncan and as Exhibit 8 at the deposition of David Drummond. *See* Exhibit 328 hereto (Duncan Dep.) at 96:6-98:24 (authenticating documents).

323. Attached as Exhibit 292 are a true and correct copy of an email exchange produced by Credit Suisse marked with the Bates number range CSSU 004069-70, and a true and correct copy of an associated email attachment produced by Credit Suisse marked with the Bates number range CSSU 004071-74. These documents were introduced as Exhibit 14 at the deposition of Storm Duncan. *See* Exhibit 328 hereto (Duncan Dep.) at 96:6-98:24 (authenticating documents).

324. Attached as Exhibit 293 are a true and correct copy of an email exchange produced by Credit Suisse marked with the Bates number CSSU 003560, and a true and correct copy of an associated email attachment produced by Credit Suisse marked with the Bates number range CSSU 003561-86. These documents were introduced as Exhibit 17 at the deposition of Storm Duncan, Exhibit 5 at the deposition of Omid Kordestani, Exhibit 6 at the deposition of David Drummond, Exhibit 2 at the deposition of Eric Schmidt, Exhibit 3 at the deposition of Sergey Brin, Exhibit 7 at the deposition Jonathan Rosenberg, and Exhibit 1 at the deposition of Larry Page. *See* Exhibit 328 hereto (Duncan Dep.) at 113:3-114:4 (authenticating documents).

325. Attached as Exhibit 294 are a true and correct copy of an email exchange produced by Credit Suisse marked with the Bates number CSSU 003326, and a true and correct copy of an associated email attachment produced by Credit Suisse marked with the Bates number range CSSU 003327-50. These documents were introduced as Exhibit 19 at the deposition of

Storm Duncan. *See* Exhibit 328 hereto (Duncan Dep.) at 124:9-125:1 (authenticating documents).

326. Attached as Exhibit 295 is a true and correct copy of an email exchange produced by Credit Suisse marked with the Bates number range CSSU 002982-86.

Documents Produced by Venture Capital Investors in YouTube

327. Viacom issued subpoenas in this action to third-parties Sequoia Capital Operations LLC (“Sequoia Capital”), Artis Capital Management L.P. (“Artis Capital”), and TriplePoint Capital LLC (“TriplePoint Capital”). In response to the subpoenas, Sequoia Capital produced documents marked with Bates numbers beginning with the prefix “SC,” Artis Capital produced documents marked with Bates numbers beginning with the prefix “AC,” and TriplePoint Capital produced documents marked with Bates numbers beginning with “TP.” As the United States District Court for the Northern District of California noted in granting Viacom’s motion to compel the production of documents from Sequoia Capital, Artis Capital, and TriplePoint Capital, they “are venture capital firms who were involved with defendant YouTube in its initial rounds of investment and eventual acquisition by defendants Google, which was effective on November 13, 2006. All respondents received significant quantities of Google shares when Google acquired YouTube and also indemnified Google for the outcomes of copyright infringement suits.” *Viacom Int’l, Inc. v. YouTube, Inc.*, No. C 08-80129 SI, 2008 U.S. Dist. LEXIS 79777 (N.D. Cal. Aug. 18, 2008).

328. Attached as Exhibit 296 are true and correct copies of excerpts from the closing documents for YouTube’s Series A financing, which were produced by Sequoia Capital marked with the Bates number range SC008403-627. The signatures of YouTube’s co-founders appear on the pages marked with Bates numbers SC008415, SC008426, SC008466, and SC008504.

329. Attached as Exhibit 297 are true and correct copies of excerpts from the closing documents for YouTube's Series B financing, which were produced by Sequoia Capital marked with the Bates number range SC008711-984. The signatures of YouTube's co-founders appear on the pages marked with Bates numbers SC008721-722, SC008731-733, SC008777, and SC008820-822.

330. Attached as Exhibit 298 is a true and correct copy of a document produced by Sequoia Capital marked with the Bates number range SC011742-79.

331. Attached as Exhibit 299 are a true and correct copy of an email exchange produced by Sequoia Capital marked with the Bates number SC010022, and an associated email attachment produced by Sequoia Capital marked with the Bates number range SC010023-28. These documents were introduced as Exhibit 11 at the deposition of David Drummond. *See* Exhibit 327 hereto (Drummond Dep.) at 89:7-89:22 (authenticating document).

332. Attached as Exhibit 300 is a true and correct copy of a document produced by Artis Capital marked with the Bates number AC005772. This document was introduced as Exhibit 22 at the deposition of David Lamond. *See* Exhibit 384 hereto (D. Lamond Dep.) at 148:14-148:17 (authenticating document).

333. Attached as Exhibit 301 are true and correct copies of excerpts from a document produced by Artis Capital marked with the Bates number AC007823-905. When sending this document to Counsel for Plaintiffs with redactions on December 17, 2009, Defendants' counsel identified it as the final version of the YouTube, Inc. Disclosure Schedule prepared in connection with the merger between Google and YouTube.

334. Attached as Exhibit 302 is a true and correct copy of a document produced by TriplePoint Capital marked with the Bates number range TP000479-95.

335. Attached as Exhibit 303 is a true and correct copy of a document produced by TriplePoint Capital marked with the Bates number range TP000055-143. This document was introduced as Exhibit 2 at the deposition of David Drummond and as Exhibit 2 at the deposition of David Estrada. *See* Exhibit 327 hereto (Drummond Dep.) at 21:23-22:9 (authenticating document).

Documents Produced by Third-Party Audible Magic

336. In response to a subpoena issued by Viacom in this action on April 16, 2008, third-party Audible Magic produced documents marked with Bates numbers beginning with the prefix “AM.” Audible Magic provided digital fingerprinting services to Defendants. *See* Exhibit 141 hereto (cover email and final agreement between YouTube and Audible Magic).

337. Attached as Exhibit 304 is a true and correct copy of a document produced by Audible Magic marked with the Bates number range AM 002090-91. This email exchange was introduced as Exhibit 6 at the deposition of Vance Ikezoye. *See* Exhibit 336 hereto (Ikezoye Dep.) at 54:23-55:25 (authenticating document).

338. Attached as Exhibit 305 is a true and correct copy of an email exchange produced by Audible Magic marked with the Bates number range AM 001241-44. This email exchange was introduced as Exhibit 13 at the deposition of Franck Chastagnol. *See* Exhibit 321 hereto (Chastagnol Dep.) at 180:17-181:22 (authenticating document).

339. Attached as Exhibit 306 is a true and correct copy of an email exchange produced by Audible Magic marked with the Bates number range AM 000917-28. This email exchange was introduced as Exhibit 8 at the deposition of Vance Ikezoye. *See* Exhibit 336 hereto (Ikezoye Dep.) at 62:12-63:19 (authenticating document).

Documents Produced by Third-Party Motion Picture Association of America

340. In response to a subpoena issued by Defendants on January 18, 2008, third-party Motion Picture Association of America (“MPAA”) produced documents marked with Bates numbers beginning with the prefix “MPAA.”

341. Attached as Exhibit 307 is a true and correct copy of a document produced by the MPAA marked with the Bates number range MPAA012777-78. This document was introduced as Exhibit 4 at the deposition of Dean Garfield and as Exhibit 5 at the Rule 30(b)(6) deposition of David King. *See* Exhibit 333 hereto (Garfield Dep.) at 33:24-34:2 (authenticating document).

342. Attached as Exhibit 308 is a true and correct copy of a document produced by the MPAA marked with the Bates number range MPAA012806-07. This document was introduced as Exhibit 7 at the deposition of Dean Garfield and as Exhibit 12 at the deposition of Jonathan Rosenberg. *See* Exhibit 333 hereto (Garfield Dep.) at 40:25-42:17 (authenticating document).

343. Attached as Exhibit 309 is a true and correct copy of an email exchange produced by the MPAA marked with the Bates number range MPAA0011721.

344. There is no Exhibit 310 to this Declaration, and that exhibit number is therefore intentionally left blank.

345. There is no Exhibit 311 to this Declaration, and that exhibit number is therefore intentionally left blank.

Deposition Transcripts From This Action

346. Attached as Exhibit 312 is a true and correct copy of the transcript of the deposition of Chad Hurley taken on April 22, 2009.

347. Attached as Exhibit 313 is a true and correct copy of the transcript of the deposition of Jawed Karim taken on June 9, 2009.

348. Attached as Exhibit 314 is a true and correct copy of the transcript of the deposition of Eric Schmidt taken on May 6, 2009.

349. Attached as Exhibit 315 is a true and correct copy of the transcript of the deposition of Larry Page taken on October 1, 2009.

350. Attached as Exhibit 316 are true and correct copies of excerpts from the transcript of the deposition of Brent Hurley taken on August 26, 2008.

351. Attached as Exhibit 317 are true and correct copies of excerpts from the transcript of the deposition of Roelof Botha taken on August 5, 2009.

352. Attached as Exhibit 318 are true and correct copies of excerpts from the transcript of the deposition of Sergey Brin taken on October 15, 2009.

353. Attached as Exhibit 319 are true and correct copies of excerpts from the transcript of the deposition of Peter Chane taken on December 2, 2009.

354. Attached as Exhibit 320 are true and correct copies of excerpts from the transcript of the deposition of Wendy Chang taken on July 11, 2008.

355. Attached as Exhibit 321 are true and correct copies of excerpts from the transcript of the deposition of Franck Chastagnol taken on December 10, 2008.

356. Attached as Exhibit 322 are true and correct copies of excerpts from the transcript of the deposition of Cuong Do taken on February 13, 2009.

357. Attached as Exhibit 323 are true and correct copies of excerpts from the transcript of the Rule 30(b)(6) deposition of Cuong Do taken on September 12, 2007.

358. Attached as Exhibit 324 are true and correct copies of excerpts from the transcript of the Rule 30(b)(6) deposition of Jeremy Doig taken on September 14, 2007.

359. Attached as Exhibit 325 are true and correct copies of excerpts from the transcript of the deposition of Kevin Donahue taken on October 15, 2008.

360. There is no Exhibit 326 to this Declaration, and that exhibit number is therefore intentionally left blank.

361. Attached as Exhibit 327 are true and correct copies of excerpts from the transcript of the deposition of David Drummond taken on February 12, 2009.

362. Attached as Exhibit 328 are true and correct copies of excerpts from the transcript of the deposition of Storm Duncan taken on July 16, 2008.

363. Attached as Exhibit 329 are true and correct copies of excerpts from the transcript of the deposition of Maryrose Dunton taken on August 22, 2008.

364. Attached as Exhibit 330 are true and correct copies of excerpts from the transcript of the deposition of Alex Ellerson taken on May 22, 2009.

365. Attached as Exhibit 331 are true and correct copies of excerpts from the transcript of the deposition of David Estrada taken on December 8, 2009.

366. Attached as Exhibit 332 are true and correct copies of excerpts from the transcript of the deposition of David Eun taken on August 7, 2008.

367. Attached as Exhibit 333 are true and correct copies of excerpts from the transcript of the deposition of Dean Garfield taken on November 2, 2009.

368. Attached as Exhibit 334 are true and correct copies of excerpts from the transcript of the deposition of Heather Gillette taken on August 12, 2008.

369. Attached as Exhibit 335 are true and correct copies of excerpts from the transcript of the deposition of Michael Housley taken on October 3, 2008.

370. Attached as Exhibit 336 are true and correct copies of excerpts from the transcript of the deposition of Vance Ikezoye taken on September 10, 2009.

371. Attached as Exhibit 337 are true and correct copies of excerpts from the transcript of the deposition of Kent Walker taken on December 17, 2009.

372. Attached as Exhibit 338 are true and correct copies of excerpts from the transcript of the deposition of the Rule 30(b)(6) deposition of Varun Kacholia taken on January 8, 2010.

373. Attached as Exhibit 339 are true and correct copies of excerpts from the transcript of the deposition of David King taken on December 12, 2008.

374. Attached as Exhibit 340 are true and correct copies of excerpts from the transcript of the deposition of the Rule 30(b)(6) deposition of David King taken on January 13, 2010.

375. Attached as Exhibit 341 are true and correct copies of excerpts from the transcript of the deposition of Omid Kordestani taken on February 12, 2009.

376. Attached as Exhibit 342 are true and correct copies of excerpts from the transcript of the deposition of Zahavah Levine taken on April 2, 2009.

377. Attached as Exhibit 343 are true and correct copies of excerpts from the transcript of the deposition of Andrew Lin taken on July 2, 2009.

378. Attached as Exhibit 344 are true and correct copies of excerpts from the transcript of the deposition of Matthew Liu taken on November 13, 2009.

379. Attached as Exhibit 345 are true and correct copies of excerpts from the transcript of the deposition of Chris Maxcy taken August 28, 2008.

380. Attached as Exhibit 346 are true and correct copies of excerpts from the transcript of the deposition of Bhanu Narasimhan taken September 18, 2009.

381. Attached as Exhibit 347 are true and correct copies of excerpts from the transcript of the deposition of Patrick Walker taken on July 22, 2008.

382. Attached as Exhibit 348 are true and correct copies of excerpts from the transcript of the deposition of Suzanne Reider taken on October 3, 2008.

383. Attached as Exhibit 349 are true and correct copies of excerpts from the transcript of the deposition of Michael Robinson taken on January 15, 2010.

384. Attached as Exhibit 350 are true and correct copies of excerpts from the transcript of the deposition of Jonathan Rosenberg taken on December 4, 2009.

385. Attached as Exhibit 351 are true and correct copies of excerpts from the transcript of the deposition of Micah Schaffer taken on July 23, 2008.

386. Attached as Exhibit 352 are true and correct copies of excerpts from the transcript of the deposition of Nicholas Seet taken November 24, 2009.

387. Attached as Exhibit 353 are true and correct copies of excerpts from the transcript of the deposition of Shashi Seth taken July 16, 2009.

388. Attached as Exhibit 354 are true and correct copies of excerpts from the transcript of the deposition of Gideon Yu taken on August 14, 2009.

389. There is no Exhibit 355 to this Declaration, and that exhibit number is therefore intentionally left blank.

390. Attached as Exhibit 384 are true and correct copies of excerpts from the transcript of the deposition of David Lamond taken on April 15, 2009.

391. Attached as Exhibit 385 are true and correct copies of excerpts from the transcript of the deposition of Jim Patterson taken on December 18, 2009.

392. Attached as Exhibit 386 are true and correct copies of excerpts from the deposition of Michael Solomon taken on September 1, 2009.

Declarations Filed in Other Actions

393. Attached as Exhibit 356 is a true and correct copy of the January 5, 2007 Declaration of Steve Chen in Support of Defendants' Motion for Summary Adjudication of Defendant's First Affirmative Defense of DMCA Safe Harbor in *Robert Tur d/b/a Los Angeles News Service v. YouTube, Inc.*, No. CV 06-4436 FMC (C.D. Cal.). Mr. Chen's declaration in the *Tur* case was introduced as Exhibit 16 at the deposition of Micah Schaffer in this case.

394. Attached as Exhibit 357 is a true and correct copy of the January 5, 2007 Declaration of Zahavah Levine in Support of Defendants' Motion for Summary Adjudication of Defendant's First Affirmative Defense of DMCA Safe Harbor in *Robert Tur d/b/a Los Angeles News Service v. YouTube, Inc.*, No. CV 06-4436 FMC (C.D. Cal.). Ms. Levine's declaration in the *Tur* case was introduced as Exhibit 29 at Ms. Levine's deposition in this case.

395. Attached as Exhibit 358 is a true and correct copy of the September 10, 2002 Declaration of Vance Ikezoye in Support of Plaintiffs' Proposed Preliminary Injunction Order in *In re Aimster Copyright Litigation*, No. 01 C 8933 (N.D. Ill.). This declaration was introduced as Exhibit 1 at the deposition of Vance Ikezoye in this matter.

396. Attached as Exhibit 359 is a true and correct copy of the February 2, 2006 Declaration of Vance Ikezoye in Support of Plaintiffs' Motions for Summary Judgment in *Metro-Goldwyn-Mayer Studios, Inc., v. Grokster, Ltd.*, No. 01-08541 SVW (C.D. Cal.). This declaration was introduced as Exhibit 2 at the deposition of Vance Ikezoye in this matter.

Interrogatory Responses

397. Attached as Exhibit 360 is a true and correct copy of Defendants' responses to Plaintiffs' First Set of Interrogatories.

398. Attached as Exhibit 361 is a true and correct copy of Defendants' responses to Plaintiffs' Second Set of Interrogatories.

Hearing Transcript

399. Attached as Exhibit 362 is a true and correct copy of an excerpt from the transcript of a Rule 16(b) conference in this action that was held on July 27, 2007.

Other Documents

400. Attached as Exhibit 363 is a true and correct copy of an S-3 Registration Statement filed by Defendant Google Inc. with the Securities and Exchange Commission on February 7, 2007. Counsel for Viacom retrieved this Registration Statement from the SEC's "Edgar" online search service. As of February 27, 2010, the Registration Statement is available at <http://www.sec.gov/Archives/edgar/data/1288776/000119312507022578/ds3asr.htm>.

401. Attached as Exhibit 364 is a true and correct copy of a document provided by Defendants' corporate representative Cuong Do and introduced as Exhibit 2 in the 30(b)(6) deposition of Cuong Do.

402. Attached as Exhibit 365 is a true and correct copy of the resume of YouTube co-founder Jawed Karim. The resume was introduced as Exhibit 1 in Mr. Karim's deposition, and authenticated by Mr. Karim. *See* Exhibit 313 hereto (Karim Dep.) at 7:10-8:23.

403. There is no Exhibit 366 to this Declaration, and that exhibit number is therefore intentionally left blank.

404. There is no Exhibit 367 to this Declaration, and that exhibit number is therefore intentionally left blank.

405. There is no Exhibit 368 to this Declaration, and that exhibit number is therefore intentionally left blank.

406. Attached as Exhibit 369 is a true and correct copy of a June 28, 2007 letter from Donald Verrilli, then-counsel to Viacom, to Mark Ouweleen and David Kramer, counsel for Defendants.

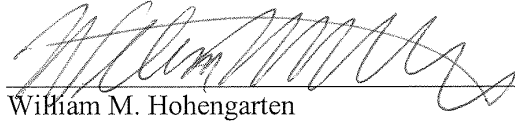
407. Attached as Exhibit 370 is a true and correct copy of a June 29, 2007 letter from Mark Ouweleen, then-counsel to Defendants, to Donald Verrilli, then-counsel to Viacom. This letter was emailed to Mr. Verrilli from the email address mark.ouweleen@bartlit-beck.com.

YouTube's Distribution of Copies of Videos Onto YouTube Users' Computers

408. When I have viewed videos on YouTube using the Internet Explorer web browser, I have found complete copies on my personal computer of the video files I viewed. Specifically, after I viewed several videos on YouTube, complete copies of those videos remained on my computer in my Temporary Internet Files folder, even after I navigated away from the YouTube site on my web browser. The complete copies of the video files left by YouTube remained on my personal computer in the Temporary Internet Files folder for periods of at least several hours (and perhaps indefinitely), even though I shut down and rebooted my personal computer during that period. I was able to play these videos on my personal computer, without returning to the YouTube site, simply by clicking on the copies of the video files left by YouTube in my Temporary Internet Files folder and opening those files in a Flash player. I was also able to move the copies of the videos from the Temporary Internet Files folder of my personal computer to other folders on my hard drive where, in my experience as a consumer

computer user, the copies would remain and be playable permanently, unless I took action to delete them.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 4th day of March 2010, at Washington, DC.


William M. Hohengarten

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

v.

Plaintiffs,

Defendants.

)
)
)
)
) Case No. 1:07-CV-02103-LLS
) (Related Case No. 1:07-CV-03582-LLS)
)
) **DECLARATION OF WARREN**
) **SOLOW IN SUPPORT OF**
) **PLAINTIFFS' MOTION FOR**
) **PARTIAL SUMMARY JUDGMENT**
)
)
)
)
)

I, WARREN SOLOW, declare as follows:

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

Ownership of Works in Suit

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Infringement of Works In Suit

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

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

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

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

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

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

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

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

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

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

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

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

Defendants' Deployment of Digital Fingerprinting to Block Unauthorized Content

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

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

Viacom's Limited Use of YouTube for Promotional Marketing Purposes

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

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

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

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



Warren Solow

To "chad@youtube.com" <chad@youtube.com>, "Steve Chen" <steve@youtube.com>
From "Emily Scherberth" [REDACTED]
Cc "Christy Foley" [REDACTED] "Suzie Reider" <sreider@google.com>,
"Jennifer Nielsen" <jenny@youtube.com>, "youtube" [REDACTED]
Bcc
Received Date 2006-12-17 04:46:58 GMT
Subject TIME Story Now Online

Hi Chad & Steve - Below is the much-anticipated TIME story along with links to other supporting coverage (e.g. photos & videos). The main story is a pretty straightforward piece which gets a bit personal at times, but overall, it's a very balanced (and sometimes humorous) look at the founding of YouTube and how the two of you came together to build one of the most transformative companies in recent memory.

There were no surprises in the way the topics we were initially concerned with were covered - Jawed is only briefly mentioned, the dinner party story is scrutinized, Kathy's dad is mentioned as only having given you advice in the early days of YouTube.

My only concern is the comments made by Gideon about sharing budgets with Google. It might be worthwhile to give the Google folks a heads-up that Gideon's words were taken a bit out of context and that he certainly wasn't purporting to deceive anyone. I'll leave it up to you guys and Gideon to decide on how to handle.

I would expect us to get some interview requests once the issue hits newsstands on Monday, so we may want to consider honoring a few top tier inquiries. What do your schedules look like on Monday? In the meantime, we'll work on a brief statement for each of you that we can send to other outlets (of course, we'll send to you for approval first).

Again, congratulations on being featured in one of the most important media franchises in history!

Emily

FULL COVERAGE ON TIME.COM

Main feature story (also below)

<http://www.time.com/time/magazine/article/0,9171,1570721,00.html>

Here are the photos (some of which will appear in the print issue)

<http://www.time.com/time/personoftheyear/2006/photoessay/youtube/>

Video of an early conversation (looks to have been taped by Jawed)

<http://www.time.com/time/personoftheyear/2006/video/>

Fast-forward version of photo shoot

<http://www.time.com/time/personoftheyear/2006/video/2.html>

The YouTube Gurus

How a couple of regular guys built a company that changed the way we see ourselves

By JOHN CLOUD <javascript void(0)>

Posted Saturday, Dec 16, 2006

Let's say you're in your 20s and you start your first Internet company. Let's say 21 months later you sell it for \$1.65 billion. What happens next?

At first, not much. Some of the money is tied up in escrow, and the traditions of modesty in Silicon Valley require a period of restraint before you spend in the big, life-changing way that your wealth will permit.

Still, the world wants to talk to you. Japanese television, Argentine newspapers, a bunch of French journalists and what seems like every news outlet in the U.S. Friends you haven't heard from in a long time send e-mails. Hey, how's it going? Long time no see! BTW I have this great business idea.

And so even though you've just left a photo shoot with an imperious, name-dropping L.A. photographer and ride to the airport in a jet-black Escalade, when you arrive at LAX, you have to stand in the United Economy line because you're still flying coach. Having removed your shoes to get through security—an indignity you'll never again endure if one day you spend an inconsequential few million on a jet—you walk past a newsstand to see your company on the cover of *Wired* and *GQ*.

"Oh, and have you seen *Fortune*? Yeah, we're in there too."

And there they are: Steve Chen, 28, and Chad Hurley, 29, two of the

three founders of YouTube (the other, Jawed Karim, went to grad school last year), a couple of boy-men looking out from a magazine and up at themselves in real life. Then they board the plane, Steve way in the back and Chad closer to the front after paying an extra \$24 for an "Economy Plus" seat.

Such is life these days for Chad and Steve-and because they are still young enough to get the occasional pimple, I don't mind calling them Chad and Steve. They are premoguls, near magnates. They foreshadow but don't quite yet embody the wealth and power that accompany their role as the new demiurges of the online world. At a GQ party in West Hollywood, Calif., a few weeks ago, Al Gore tapped Steve on the shoulder outside the bathroom to congratulate him on the success of YouTube. Chad chatted with Leonardo DiCaprio, handsome and taller than you think and ashing his cigarette on the floor. But at the end of the night, the YouTube boys were hanging with the B crowd, Steve eating a burger (despite a disapproving glare from his girlfriend Julie) and Chad drinking until 2:30 a.m. with a guy who was in the Jackass movies-not even the main guy. Guys, you gotta know when to leave the party. (When Leo does.)

But of course the party is just starting for Chad and Steve, whose omnium-gatherum of online videos has captivated the Web for the past year, at least since a Saturday Night Live digital short called Lazy Sunday was forwarded millions of times last December, increasing visits to youtube.com 83%. (If you don't know Lazy Sunday, don't tell anyone, particularly anyone under 30. Just quietly YouTube it now.)

YouTube became a phenomenon in 2006 for many reasons, but one in particular: it was both easy and edgy, a rare combination. You can watch videos on the site without downloading any software or even registering. YouTube is to video browsing what a Wal-Mart Supercenter is to shopping: everything is there, and all you have to do is walk in the door. Want to see Mikhail Baryshnikov performing in Giselle in 1977? A user named "goldenidol" uploaded a clip in August. Want to see a sure-to-make-you-queasy video of a girl snorting a strand of cooked spaghetti and then choking it out her mouth? You're in luck. "asemoknyo" put that clip on YouTube last month. All it costs is a few moments away from whatever you're supposed to be doing on your computer-and who doesn't have 30 sec. to watch that priceless clip of Faith Hill mouthing "WHAT?" when she lost a Country Music Association Award this year? (That video has been viewed at least 6 million times.)

YouTube is a new kind of medium, but it's still mass. Your grandmother could use it (a search for "grandmother" on YouTube yields more than 1,800 videos). But because the site doesn't prescreen uploads-which is a lot cheaper for Chad and Steve than hiring a bunch of editors to police millions of users-it ends up hosting a lot of out-there stuff as well: obscure bands, tear-jerking video diaries, "dead dog tricks" (don't ask), a "German toilet" (please don't ask). The unmediated free-for-all encouraged the valuable notion that the site was grass-roots, community-run and-to use an overworked term-"viral." These are partial fictions, of course. YouTube controls the "Featured Videos" on its home page, which can dramatically popularize a posting that otherwise might fade. Also, the video in the top-right section of the home page is an advertisement, even though it doesn't always look like one. There's no porn on the site-overtly sexual material is flagged by users and removed by YouTube, usually very quickly. But there is an endless supply of kinda weird, kinda cool, kinda inspiring stuff there,

which means you can waste hours on Chad and Steve's site

That, in turn, means advertisers want to be on YouTube, which is why Google paid so much for it. If even, say, 10% of the \$54 billion spent on TV advertising annually migrates to video sites like YouTube in the next few years, we will pity Chad and Steve for selling for a mere \$1.65 billion. But for now, with YouTube still unproven—it has never made much money, and it could be crushed by lawsuits from content creators whose material shows up on the site without permission—the blockbuster acquisition price carries a whiff of the late-'90s Silicon Valley gold rush. It now falls to Chad, the CEO, and Steve, who runs the tech side, to prove that what they created with Karim will not become the next broadcast com, the video provider Yahoo! bought for \$5.7 billion in 1999—and which now doesn't exist.

Turning YouTube from a sensational rumpus to a profitable corporation will require Chad and Steve to thread the company through legal disputes, hire at least 100% more employees than they have now, negotiate with the biggest ad and media companies in the world, maintain their unique identity without getting swallowed up by Google, please shareholders, manage press and flawlessly execute a thousand other tasks that far more experienced executives have flubbed. All while Chad has to make time for his wife and two small children, Steve needs to buy a car to replace his crappy Jeep Wrangler, and the broadband in the YouTube office is so slow, it takes forever to watch their own site. Can a couple of kids who grew up nowhere near Silicon Valley handle all this?

CHAD MEREDITH HURLEY has the lanky and languorous carriage of a teenager who just rolled out of bed. He wears a stubble beard over a complexion that doesn't see enough sun, and he has a habit of pushing his chin-length hair back from his forehead so that by the end of the day it's a bit oily and Gordon Gekko-ish.

Raised in the southeastern Pennsylvania town of Birdsboro, Chad is the middle child of Donald, a financial consultant, and JoAnn, a schoolteacher. He was an arty kid, always watercoloring and sculpting, which is not to say he ran with the artsy crowd. There is nothing affected or capering about Chad—his temperature runs so low he comes off at first as a dullard—and it's easy to imagine him as a slightly introverted, earnest boy trying to sell artwork (not lemonade) from his front lawn, as he did in an unsuccessful venture that taught him the difference between art and commerce.

Chad was unusual in that his artistic proclivities coincided with an interest in business and technology. In ninth grade, he built an amplifier that won third place in a national electronics competition. By the time he was in college, he would hole up for hours online, doing those things boys do these days—studying Web design, playing games, experimenting with animation. He did not come equipped with a sense of entitlement or snobbery, his brother Brent, 27, told me that to earn money during one summer in college, Chad joined a pyramid-marketing scheme for knife sets. "He would come over to our friends' houses and cut through a soda can or something," says Brent. "One of our family friends, they joke now, 'Hey, you sold us these knives and look at you now.'"

If it's true that people make their own luck, Chad made a lot of it. In 1999, he was finishing up at Indiana University of Pennsylvania, where

he had majored in computer science before switching to graphic design and printmaking ("Computer science, that was too technical, too mechanical for Chad," says his father Don. "He wanted to be on the creative side.") Chad spent much of his time running for the cross-country team, and he was in top shape at the time. The not insubstantial paunch he has added since then is a source of some consternation.) Around graduation, Chad read an article about a new company called PayPal, which back then was trying to enable PDA users to beam money to each other. Chad sent PayPal his resume, and on a Wednesday evening he came downstairs to announce he had a job interview on Friday. The company flew him to California and asked him to show his skills by designing a company logo (it's still the PayPal logo to this day). That Sunday, PayPal's CEO offered Chad a job as the company's first designer. He slept on a friend's floor for a few weeks, scrounging money for pizza before he got his first paycheck.

It was a propitious move, Chad had joined a firm that would soon abandon the handheld-payment concept in favor of something far more lucrative: securing online transactions. In 2002 eBay bought PayPal for \$1.54 billion, and as an early employee, Chad walked away with enough to buy a few luxuries—including his Tag Heuer watch—and plenty of seed money for a future venture. "Either he was incredibly brilliant and he saw the opportunity, or he was really lucky—I don't know," says Ryan Donahue, who was PayPal's second designer and roomed with Chad for a time. "But to hit gold with your first job out of college is pretty rare. And then for his first company to be YouTube, he's gotta be a smart guy."

Chad was also lucky to meet his future wife, Kathy Clark, at a party in 2000. Clark shared his interest in technology and in starting a family. She also turned out to be the daughter of James Clark, the legendary Silicon Valley entrepreneur who founded or co-founded three billion-dollar-plus companies: Silicon Graphics, Netscape and Healtheon. His daughter, 36, is an intensely private person—she was reticent when I visited the Clark-Hurley home in Menlo Park, Calif., for a brief meal of takeout burritos in their trophy kitchen (Wolf range, lovely). She asked that I not reveal the names of the kids. Kathy and Chad have never before publicly discussed her father's identity. Their reluctance is understandable. Jim Clark is one of the valley's most revered figures, and because he runs a media-sharing website—Shutterfly, founded in 1999—it would be tempting to think he was the real force behind the video-sharing site his son-in-law was starting. But Chad says Clark has had only a tiny role in YouTube, merely offering the boys advice in 2005, when the start-up was seeking its initial round of funding. "Basically I have never wanted to mix money and family, so we haven't talked much about it," Chad told me.

Chad's greatest stroke of luck at PayPal was meeting Steve Chen and Jawed Karim, two PayPal engineers with whom he would occasionally bat around ideas for start-ups. Karim, 27, enrolled at Stanford last year to pursue a master's in computer science, and today there's some tension between him and the other founders, who have become famous while he toils in a small, modestly furnished dorm room. Although Karim is named on YouTube's site as a co-founder, Chad and Steve have promoted a highly simplified history of the company's founding that largely excludes him. In the stripped-down version—repeated in dozens of news accounts—Chad and Steve got the idea in the winter of 2005, after they had trouble sharing videos online that had been shot at a dinner party at Steve's San Francisco apartment. Karim says the dinner party never happened and

that the seed idea of video sharing was his-although he is quick to say its realization in YouTube required "the equal efforts of all three of us "

Chad and Steve both say that the party did occur but that Karim wasn't there "Chad and I are pretty modest, and Jawed has tried to seize every opportunity to take credit," Steve told me But he also acknowledged that the notion that YouTube was founded after a dinner "was probably very strengthened by marketing ideas around creating a story that was very digestible "

No company, of course, is ever founded in a single moment, and YouTube evolved over several months Chad and Steve agree that Karim deserves credit for the early idea that became, in Steve's words, "the original goal that we were working toward in the very beginning" a video version of HOTorNOT com

HOTorNOT is a dating site that encourages you to rate, on a scale of 1 to 10, the attractiveness of potential mates It's a brutal, singles-bar version of MySpace, but Karim says it was a pioneer "I was incredibly impressed with HOTorNOT, because it was the first time that someone had designed a website where anyone could upload content that everyone else could view That was a new concept because up until that point, it was always the people who owned the website who would provide the content "

The idea of a video version of HOTorNOT lasted only a couple of months "It was too narrow," says Chad He notes that another early idea was to help people share videos for online auctions But as the site went live in the spring of 2005, the founders realized that people were posting whatever videos they wanted Many kids were linking to YouTube from their MySpace pages, and YouTube's growth piggybacked on MySpace's (MySpace remains YouTube's largest single source of U S traffic, according to Hitwise) "In the end, we just sat back," says Chad-and the free-for-all began Within months-even before Lazy Sunday-investors such as Time Warner and Sequoia Capital, a Menlo Park investment firm, began to approach YouTube about buying in Big advertisers started paying attention in October 2005, when a cool Nike ad-that-doesn't-look-like-an-ad of the Brazilian soccer player Ronaldo went viral in a big way on YouTube Sequoia-which has helped finance Apple, Google and other valley greats-ended up providing about \$8.5 million in 2005-just in time for Steve to avoid having to increase his credit-card limit yet again to pay for various tech expenses

STEVE SHIH CHEN has always been something of a risk taker He left the University of Illinois at Urbana-Champaign a semester and a half early to work for PayPal His family was wary "We told him it was risky, he just had a few months left" in college, says his brother Ricky, 26 "But he was determined to give it a shot " Steve was drawn to PayPal partly because several U of I alums worked there, including PayPal co-founder Max Levchin, who in turn was eager to hire Steve because of his educational background Steve had attended not only U of I -which has a well-respected computer-science program-but also the Illinois Mathematics and Science Academy (IMSA), a state-funded boarding school "IMSA plus U of I is generally a very winning formula," says Levchin, who says the combination produces "hard-core smart, hardworking, nonspoiled" young engineers who are perfect for start-ups "The kind of people that imsa attracts are the kind of people very prone to choose their own path," he says They also grow up quickly, since IMSA feels

more like a college than a high school. It's coed and highly competitive, the schoolwork is college level, and kids spend every possible second on the Internet.

Which isn't to say Steve is a geek—at least not an irretrievable geek. Chad gets more attention for his laid-back cool look, but Steve is actually more fun to hang out with, particularly since he started drinking a year and a half ago (right around the time YouTube was founded, he jokingly wonders if there's a connection). Steve seems to wear the responsibilities of the company more lightly than Chad, and he has absorbed less of the heavy pressure coaching. Steve, for instance, is willing to speculate about what his wealth might mean for him. "It's funny, you know, Chad and I will probably, are definitely at YouTube for the next five years. But you do start wondering, What's next? Now that you have some cash, and it's like, Well, if I could live in any city, where would I live?"

And?

"New York, in spite of the weather, is a cool place." For now, Steve lives in the San Francisco apartment he bought a bit rashly in 2005, when he had just left PayPal and YouTube was in its infancy.

Steve was born in Taipei and has his own interesting relationship with luck. When he was a little kid, maybe 6, his mother took him to see a fortune teller who told him he would never be rich. "And that's kind of stayed with me ever since," he told me. The experience left him with a sense of dread that he takes half-seriously. "We haven't actually seen any of the money [from the Google deal] yet," he says with a laugh, "and I keep thinking there will be some legal complication, or it will fall through somehow."

But things always seem to work out for Steve, who carries an aura of mischief with him like a cloud of cigarette smoke. He drinks cappuccino well into the night and doesn't get to work until noon approaches. Levchin says that when Steve was an engineer at PayPal, he quickly established himself as the guy who could find the "shortest, cleverest path instead of hammering your head against the wall." He'd be like, "Yeah, I can get this feature done fast." And the QA [quality assurance] team would be like, "Oh, man, Chen wrote this. Great. I'm going to be QAing this for a while." Because he would definitely take short cuts. But most people wouldn't really notice, and the product would be out faster.

As YouTube developed, Chad and Steve's complementary skills began to mesh. After Chad left PayPal in 2003, it seemed possible he would do something more artistic than be a CEO, he designed messenger bags, and he did a bit of work on a film. Levchin helped fund, Thank You for Smoking. "He is sort of an anomaly," says Donahue, his former roommate and the founder of HourTown.com. "Because if you look at the successful start-up stories, the formulaic founders' team is usually an engineer and a business person, or two engineers. It's rarely a designer or a truly creative person." But YouTube's success owes partly to its retro name, simple logo and alternative feel, all of which Chad contributed while Steve was making sure the videos played quickly and easily.

A mentor had also arrived with the Sequoia financing. Pierre Lamond, 76. In terms of Silicon Valley stature, Lamond approaches Chad's.

father-in-law Jim Clark. A founder of National Semiconductor, Lamond started at Sequoia in 1981. He monitors his investments closely, and he enjoyed receiving daily e-mails from Chad and Steve (many sent late at night) on various site metrics. He was pleasantly surprised to discover that Chad and Steve were great listeners—a rare quality in the genius culture of the valley—and that they spent money very carefully. Whenever site growth would plateau, Lamond would call them and say, "What happened?" And they would tell me, "We're running out of storage capacity." Lamond sometimes had to push them to buy more.

Early on, Chad and Steve made a crucial good decision: despite pressure from advertisers, they would not force users to sit through ads before videos played. Pre-roll ads would have helped their bottom line in the struggling months, but the site would never have gained its mythological community-driven status. It would have seemed simply like another Big Media site.

The question is, How do they preserve the site's underground image now that YouTube is merely a bijou in the Google empire? As it happens, Google executives are powerfully aware of this problem, and they are sending outward signals that YouTube will remain independent. Google recently sent a team of facilities people to the YouTube office outside San Francisco to ask how the YouTubers want the place decorated (YouTube moved to the old Gap offices in San Bruno before the acquisition, and they haven't had time to fix up the space). "The direction we were given," Google's facilities manager, Ninette Wong, told Chad in a meeting, "was to really get information from you, Chad—you, the man!—and to understand how to integrate the YouTube brand into the work space. It's really to kind of keep Google separate from YouTube." With the old start-up frugality still in mind, Chad said that his coders don't need more space to work—"They don't complain"—and that greenery is a low priority because "I hear it's expensive to maintain the plants at Google."

Google will appreciate his thrifty approach, but it's unlikely that the company knows the extent of YouTube's current independence. In a recent YouTube management meeting I sat in on, Gideon Yu, late of Yahoo! and now cfo at YouTube, told Chad and Steve, "The finance team [at Google] has been pushing me really hard on budgeting, your favorite topic. So what I'm telling them and what I'm telling us are"—he paused—"different."

A nervous laugh shot through the room, but Yu pressed on. "What I'm telling them is that there's no way we're going to get them any budgetary numbers—that it's just impossible because we have no idea what the integration looks like, blah, blah, blah. And they're buying it, a little bit. But I still think that the 'us' team, here, should put together some kind of rudimentary kind of plan—even if we don't share that upward."

To be sure, Google will get some control for its \$1.65 billion YouTube's managers must now report to Chad or Steve and a corresponding Google exec. That prompted Suzie Reidler, chief marketing officer, to ask the boys whether she now has two bosses. Without skipping a beat, Steve replied, "You only have to listen half the time." Playful as always, he added that he didn't think he was going to use a Google-supplied BlackBerry that would be fitted with Google's mail and calendar system.

The biggest threat to YouTube remains potential copyright lawsuits from content providers who could claim that the site-like Napster before it-is enabling thieves. In a recent report, Google acknowledged that "adverse results in these lawsuits may include awards of substantial monetary damages." Mark Cuban, the billionaire co-founder of Broadcast.com, has said publicly for months that the potential for legal trouble makes YouTube a bad investment. YouTube has responded by publicizing agreements it has made with media companies such as NBC Universal Television to legally show video clips from, say, *The Office*. Still, YouTube says federal law requires only that it remove videos when copyright holders complain-not to pre-emptively monitor the site for infringements, which would destroy its spontaneity. If kids can't play sad pop songs in the background of their video blogs, why would they blog at all?

In an e-mail, Cuban pointed out a contradiction in YouTube's position: "They are spending a ton of money to license content. Which makes me curious. Why license if all that content is viable under [federal law]? And when does the licensing ever end-won't everyone want [to get] paid? Even the personal videos of cats?"

Eric Schmidt, Google's CEO, told me his company had hired an outside firm to help it analyze YouTube's legal risks. "And we concluded that Mark Cuban's arguments were false. We read them, by the way. We just think he's false. Copyright law, the safe-harbor provisions-it works, as long as we do a good job of takedown"-quickly removing videos whenever copyright holders ask.

It's hard to imagine Chad and Steve sitting through endless meetings on safe-harbor laws. They're too young, too creative and-in Steve's case, at least-too penpatetic. They usually demur on questions of what they will do next, blandly stating their hopes to "improve the product," as Chad puts it. But Levchin, their former boss at PayPal, says, "The essential crisis is coming. They better get ready. And the essential crisis for an entrepreneur is, What is this all about? Did I just make the most money in my life ever? For what purpose? And am I going to start setting up my family office and manage my investments, or am I going to jump off another roof and hope there's a parachute?"

Which is a very old question indeed, one all newly wealthy people face when the market rewards them. Chad and Steve don't yet have an answer. They may have built a website that changed the online world in 2006, but they are still learning when to leave the party.

To: "Cuong Do" <cdo@youtube.com>
 From: [REDACTED]
 Cc: "YouTube Ops" [REDACTED]
 Bcc:
 Received Date: 2006-03-29 23:07:14 GMT
 Subject: Re: getting beaten down on digg

I think everyone in Ops agrees on this, but we lost heh.

--
bradley

On Mar 29, 2006, at 12:33 PM, Cuong Do wrote:

> I'm not a fan of this policy either. "Review before making public"
 > for >10 minute videos seems to be the right thing to do, especially
 > considering the army of content reviewers we seem to have now.
 >
 > Cuong
 >
 > On Mar 29, 2006, at 12:26 PM, Colin Corbett wrote:
 >
 >> http://www.digg.com/technology/
 >> YouTube.com_Downgrades_Feature_to_Prevent_Copyright_Violations
 >>
 >> 10 minutes is not going down too well.
 >> --C
 >>
 >

```

<?xml version="1.0" encoding="UTF-8"?>
<!DOCTYPE plist PUBLIC "-//Apple Computer//DTD PLIST 1.0//EN" "http://www.apple.com/DTDs/PropertyList-1.0.dtd">
<plist version="1.0">
<dict>
  <key>date-sent</key>
  <real>1143670028</real>
  <key>flags</key>
  <integer>570686593</integer>
  <key>original-mailbox</key>
  <string>pop://mike@dev.youtube.com/</string>
  <key>remote-id</key>
  <string>435e99690002003d</string>
  <key>sender</key>
  <string>Bradley Heilbrun &lt;brad@youtube.com>&gt;</string>
  <key>subject</key>
  <string>Re: getting beaten down on digg</string>
  <key>to</key>
  <string>Cuong Do &lt;cdo@youtube.com>&gt;</string>
</dict>
</plist>
  
```

DATE: 2/13/09
 DEPONENT: Du
 CASE: Viacom, et al., v. YouTube, et al., The Football
 Association Premier League, et al., v. YouTube, et al.,
 Case Nos. 07-CV-2203 and 07-CV-3582

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

SJA-334

Case 1:07-cv-02103-LLS Document 191-16 Filed 03/18/10 Page 1 of 3

To: Chris Maxcy <chris@youtube.com>
From: Micah Schaffer <micahs@google.com>
Cc:
Bcc:
Received Date: 2007-02-23 22:54:32 CST
Subject: content policies

The content policy training slides are here:
\\superfly\share\admin\Training\YT ConOps Content Training\

I've attached a copy of the powerpoint file, you'll need to view the shared folder if you want to see the video examples :)

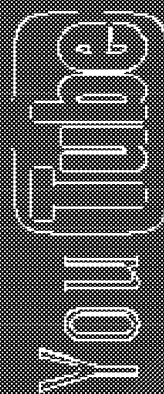
Micah

Attachments:

Content Policy Training Jan_31_2007.ppt

YouTube Content Policy Training

January 31, 2007



Attorney Client Privileged

Agenda

- Definitions
- Content Policies on
 - Children
 - Sexual Content
 - Body Parts
 - Crude Content
 - Illegal Acts
 - Violence
 - Hate/Anti
 - Spam/Scumware
- Q & A

YouTube

Definitions

You Tube

Sexually Gratifying (SG)

An image is SG when it is created or displayed for the purpose of appealing to or eliciting the viewer's sexual pleasure, satisfaction or reaction.

Ask yourself – Is this video “For the purpose of sexual gratification?”

YouTube

SG vs Non-SG Examples

Which one of these videos is SG and which is not?



YouTube

EDS

EDS stands for educational, documentary, or scientific purposes.

A “documentary” that contains otherwise prohibited or restricted images must be a video created solely for educational or instructional purposes. If it appears to you that such a video has a sexual or other purpose that violates the content policy, it does not qualify for the EDS exception.

You Tube

EDS Examples

Which one of these videos would qualify for EDS purposes?



YouTube

Masochism & Sadism

- “Masochism” is when a person gains sexual pleasure or satisfaction by humiliation and the acceptance of physical and/or emotional abuse. The video does not require an actual image of a sex act, it only requires HUMILIATION + SEXUAL ELEMENT
- “Sadism” occurs when a person gains sexual pleasure or satisfaction by causing physical or mental pain to another. Sadism includes attempts to seek another person to abuse, and therefore the image does not require an actual image of a sex act, it only requires the combination of ABUSE + SEXUAL ELEMENT

YouTube

Minimally Covered

A **female breast** is “minimally covered” when the nipple area is completely covered with no visible outline or dimension. Anything less than this amount of coverage is naked and exposed.

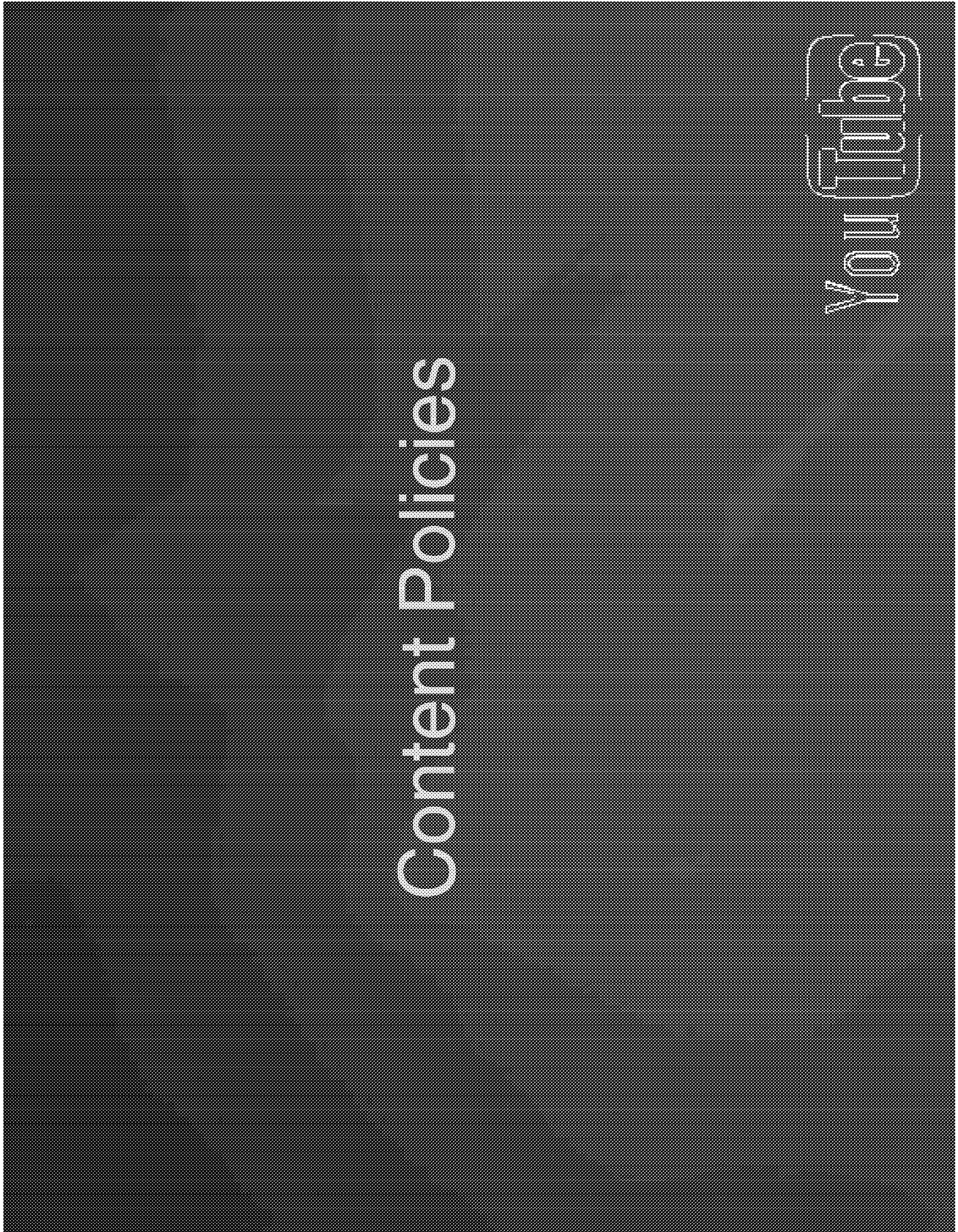
Buttocks are “minimally covered” when they are wearing more than a g-string style bathing suit, but less than shorts.

YouTube

Minimally Covered Examples



YouTube



What is the first thing you should ask yourself
when screening ANY video?

Is there a person
that looks like
a child anywhere in
the video?

YouTube

YouTube's Policy on Children

Strike, Terminate, and Escalate:

- Any SG content involving children
- Exposed or sheer coverage of bathing suit area
- Penile or labia outline of child
- SG Aggregation of content involving children
- Any predatory behavior involving images of children
- Any predatory behavior involving communications about or with children
- Any content exploitive of a minor
- Any content depicting child abuse
- Spanking involving minors

YouTube

YouTube's Policy on Children

What to look for (the Dost test):

- Genitals or pubic area are a focal point
- The setting of the image is sexually suggestive (i.e. a location generally associated with a sexual activity such as a bed)
- The minor is depicted in an unnatural pose or inappropriate attire considering her age
- The image suggests sexual coyness or willingness to engage in a sexual activity
- The image is intended or designed to elicit a sexual response in the viewer
- The minor is fully, or partially clothed, or nude

YouTube