

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 VI OF IX (Pages SJA-1208 to SJA-1507) – PUBLIC VERSION**

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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.

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HIGHLY CONFIDENTIAL
FILED UNDER SEAL

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

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

**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**

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Pursuant to Local Civil Rule 56.1, defendants YouTube, Inc. and Google Inc. (collectively “Defendants” or “YouTube”) set forth the following Reply in Response to Viacom’s Counter-Statement in Response to Defendants’ Local Rule 56.1 Statement in Support of Defendants’ Motion for Summary Judgment (“RVCS”) and Response to Viacom’s Supplemental Counter-Statement (“RV SVC”).¹

I. YOUTUBE’S REPLY TO VIACOM’S COUNTER-STATEMENT IN RESPONSE TO YOUTUBE’S LOCAL RULE 56.1 STATEMENT

Viacom raises no genuine dispute as to any material fact in YouTube’s 56.1. Viacom concedes that many facts are “uncontroverted.” *See infra* Section I. Where Viacom claims that certain facts are “controverted”, it still does not succeed in raising a genuine dispute; rather, Viacom simply cites to documents and testimony that are consistent with the asserted fact or offers irrelevant “facts” and argument that do nothing to controvert YouTube’s 56.1. Viacom’s responses are also replete with mischaracterizations of the record, omissions of dispositive facts, and inappropriate legal argument. *See infra* Section I.D.

Viacom further responds to many of the undisputed facts in YouTube’s 56.1 by reference to the arguments made in the VSUF. YouTube has responded fully to the VSUF in the CVSUF, and does not repeat those responses here.²

¹ The defined terms in the Reply Brief in Support of Defendants’ Motion for Summary Judgment (“YouTube Reply”) are adopted herein.

² YouTube hereby incorporates by reference its responses to those paragraphs from the VSUF cited in the VCS. *See* VCS ¶¶ 5, 6, 9, 16, 18, 19, 21, 22, 25, 26, 33, 36, 49, 57, 58, 87, 88, 89, 92, 95, 98, 101, 102, 109, 112, 113, 121, 128, 130, 145, 162, 164, 166, 167, 168.

A. VIACOM CONCEDES THAT MANY FACTS ARE “UNCONTROVERTED”

Viacom admits outright to sixty-nine of the undisputed facts set forth in YouTube’s 56.1 *See* VCS ¶¶ 1, 3, 4, 5, 11, 15, 17, 28, 29, 30, 31, 35, 37, 38, 39, 40, 41, 42, 43, 44, 46, 48, 50, 54, 60, 61, 68, 71, 72, 73, 74, 75, 80, 81, 82, 90, 91, 93, 94, 95, 96, 97, 99, 103, 104, 105, 108, 110, 111, 112, 113, 114, 117, 119, 120, 124, 130, 148, 150, 151, 152, 160, 161, 162, 164, 165, 169, 170, 171. Accordingly, the Court should adopt these facts as undisputed for purposes of this motion.

B. VIACOM PURPORTS TO DISPUTE SEVERAL FACTS BASED SOLELY ON EVIDENTIARY OBJECTIONS

Viacom disputes ten of the undisputed facts set forth in YouTube’s 56.1 solely based on its evidentiary objections and without attempting to offer evidence controverting the undisputed fact. *See* VCS ¶¶ 13, 32, 34, 100, 127, 145, 146, 147, 163, 168. Viacom’s evidentiary objections are baseless, and the Court should adopt these facts as undisputed for purposes of this motion.

C. VIACOM DEFERS RESPONSE TO CERTAIN FACTS AS RELEVANT ONLY TO THE CLASS ACTION

Viacom declines to respond to twenty of the undisputed facts set forth in YouTube’s 56.1 on the basis that those facts are relevant only to the Class Action. *See* VCS ¶¶ 2, 45, 116, 118, 136, 137, 138, 139, 140, 141, 142, 143, 144, 153, 154, 155, 156, 157, 158, 159. In light of Viacom’s failure to controvert these facts, the Court should adopt these facts as undisputed for purposes of this motion.

D. VIACOM DOES NOT IDENTIFY A MATERIAL DISPUTE WITH THE REMAINING FACTS IN YOUTUBE'S 56.1

Viacom does not controvert the remaining seventy-two of the undisputed facts set forth in YouTube's 56.1 because it fails to identify a material dispute as to those facts. *See* VCS ¶¶ 6, 7, 8, 9, 10, 12, 14, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 33, 36, 47, 49, 51, 52, 53, 55, 56, 57, 58, 59, 62, 63, 64, 65, 66, 67, 69, 70, 76, 77, 78, 79, 83, 84, 85, 86, 87, 88, 89, 92, 98, 101, 102, 106, 107, 109, 115, 121, 122, 123, 125, 126, 128, 129, 131, 132, 133, 134, 135, 149, 166, 167. The Court should adopt those facts as undisputed for purposes of this motion.

(1) Viacom Fails to Specifically and Genuinely Controvert These Statements

Local Rule 56.1 requires the responding party to *specifically* controvert the material facts set forth in an opposing party's statement pursuant to Local Rule 56.1(a) with citations to evidence which would be admissible. Local Rule 56.1(b)-(d). The Southern District of New York adopted Local Rule 56.1(d) for a reason, namely "to supply the Courts with an accurate factual record" and "to prohibit parties from taking ... misleading and unfair 'shortcuts' (i.e. unsupported denials) ..." *Omnipoint Commc'ns, Inc. v. City of White Plains*, 175 F.Supp. 2d 697, 700 (S.D.N.Y. 2001), *rev'd on other grounds*, 430 F.3d 529 (2d Cir. 2005). A response pursuant to Local Rule 56.1(b)-(d) should not contain argument or narrative in an effort to "spin" the impact of the admissions a party is required to make. *Goldstick v. The Hartford, Inc.*, No. 00 Civ. 8577 (LAK), 2002 WL 1906029, at *1 (S.D.N.Y. Aug. 19, 2002) (finding that plaintiff's Rule 56.1 Statement failed to comply with the

rule because the plaintiffs “added argumentative and often lengthy narrative in almost every case[,] the object of which is to ‘spin’ the impact of the admissions plaintiff has been compelled to make”); *U.S. Info. Sys., Inc. v. Int’l Bhd. of Elec. Workers Local Union No. 3*, No. 00 Civ. 4763 RMB JCF, 2006 WL 2136249, at *3 (S.D.N.Y. Aug. 1, 2006) (“*Rule 56.1 statements are not argument. They should contain factual assertions with citation to the record. They should not contain conclusions ...*’ [P]laintiffs cannot evade the impact of accepting a fact by adding legal argument to their counterstatements.”) (internal citations omitted).

Rather than adhering to these requirements, Viacom frequently purports to “controvert” a fact, but then states allegations that are consistent with the asserted fact, relate to an entirely different subject matter, or constitute legal argument in an effort to “spin” the admissions that Viacom is compelled to make. Such responses do not create a material dispute and merely serve to distract from the real issues in the litigation. Courts are free to disregard such denials. *See Holtz v. Rockefeller & Co., Inc.*, 258 F.3d 62, 74 (2d Cir. 2001) (“Where, as here, the record does not support the assertions in a Local Rule 56.1 statement, those assertions should be disregarded and the record reviewed independently.”); *Major League Baseball Props., Inc. v. Salvino, Inc.*, 542 F.3d 290, 314 (2d Cir. 2008) (responses that use the word “disputed” but do not demonstrate that the dispute is genuine cannot defeat summary judgment); *Omnipoint Comm’ns*, 175 F.Supp. 2d at 700 (“The Court is permitted to disregard such general denials when not supported by citations or if cited materials do not support factual assertions.”); *Watt v. N.Y.*

Botanical Garden, No. 98 Civ. 1095 (BSJ), 2000 WL 193626, at *1 n.1 (S.D.N.Y. Feb. 16, 2000) (noting that court has the discretion to deem material facts set forth in support of party's summary judgment motion admitted where the statements are not controverted or where the cited materials do not support the factual statements); *see also UMG Recordings, Inc. v. Veoh Networks Inc.*, 665 F.Supp. 2d 1099, 1101 n.1 & 1103 n.5 (C.D. Cal. 2009) (disregarding plaintiffs' denials where plaintiffs purported to dispute defendants' facts, but then stated allegations that were consistent with or unrelated to the asserted fact).

The Court should disregard these immaterial purported disputes and adopt the facts set forth in the referenced paragraphs as undisputed for purposes of this motion.

(2) YouTube's Replies to Specific Paragraphs

YouTube responds below to select Viacom responses that particularly misconstrue the record or the evidence cited. For the reasons set forth below, Viacom does not succeed in raising a genuine dispute as to any of these facts.³

9. **YouTube's message to the public and to its users consistently has been that users should post only videos that they had created themselves or otherwise had the right to post. *Id.* ¶ 9; Decl. of Zahavah Levine ("Levine Decl.") ¶¶ 5, 7.**

Viacom's Response: Controverted. Defendants' message to users and the public, especially throughout 2005 and 2006, has been that YouTube will do nothing to prevent infringement except respond to takedown notices that identify videos specifically by URL. See e.g., Hohengarten Ex. 356 at ¶¶

³ Set forth below in bold font are the facts listed in YouTube's 56.1 to which YouTube is specifically replying. Viacom's response to each of those facts from the VCS is set forth in italic font, followed by YouTube's reply to Viacom's responses in normal text.

14-18 (publicly filed declaration of YouTube founder Steve Chen); Hohengarten Ex. 28, GOO001-00558783 (email from YouTube to user stating “YouTube does not regularly monitor our members’ videos for instances of copyright videos We remove videos when we receive a complaint from a rights holder.”); Kohlmann Ex. 10, GOO001-00561391 (similar email to YouTube user); Kohlmann Ex. 11, GOO001-00561394 (same); Kohlmann Ex. 12, GOO001-00607526 (same).

This has served as an invitation to millions of users to upload whatever infringing videos they choose, because most content owners will not quickly find the content that infringes their copyrights, a view Steve Chen shared. Accord Viacom SUF ¶ 47 (“what? someone from cnn sees it? he happens to be someone with power? he happens to want to take it down right away. he get in touch with cnn legal. 2 weeks later, we get a cease & desist letter. we take the video down.”).

YOUTUBE’S REPLY: Viacom does not genuinely dispute this fact. The evidence cited does not controvert the fact; it supports it. The cited documents demonstrate that YouTube removes videos from its site in response to DMCA takedown notices and notifies users who upload such videos that YouTube takes copyright issues seriously. Viacom’s argument that YouTube’s removal of videos in response to DMCA takedown notices is an “invitation to millions of users to upload whatever infringing videos they choose” is empty rhetoric. Viacom itself ran user-generated content websites that did not monitor user submissions for copyright violations. See CVSUF at ¶¶ 400-411. And Viacom does not genuinely dispute the many ways in which YouTube communicates to its users that they should not upload unauthorized material. See VCS ¶¶ 10, 11, 12, 13, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 60, 61, 62, 63, 64, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85.

As discussed in more detail below, the documents cited by Viacom do not controvert the proposed fact.

Hohengarten Ex. 356, ¶¶ 14-18: This is a declaration from Steve Chen submitted in *Robert Tur d/b/a Los Angeles News Service v. YouTube, Inc.* (C.D. Cal.). Chen explained why it was not feasible to manually screen all videos uploaded to YouTube and described the many steps YouTube takes to protect copyright, including: (1) requiring users to agree to terms of use that prohibit the uploading of unauthorized materials; (2) reminding users about those terms of use during the video upload process; (3) limiting the length of video uploads to ten minutes for standard accounts; (4) developing a Content Verification Program that allows content owners to send YouTube DMCA notices at the click of a button; (5) using hash

technology to prevent the upload of videos that have been previously removed from the service for copyright reasons; (6) registering a DMCA agent; (7) promptly removing videos in response to DMCA notices; (8) terminating the accounts of users who receive multiple infringement notifications; and (9) repeatedly warning users about the consequences of unauthorized uploads. Hohengarten Ex. 356, ¶¶ 10-18.

Hohengarten Ex. 28: Viacom selectively excerpts this email and omits material context. This document is a response to a user's email about a video that YouTube removed based on a claim of copyright infringement. YouTube told the user that "[w]e remove videos when we receive a complaint from a rights holder," and explained that YouTube takes copyright laws seriously:

You Tube does not regularly monitor our members[] videos for instances of copyright infringement just as we do not under any circumstances assist members in producing their own videos. We do, however, take copyright laws seriously, and so when we are notified that a video uploaded to our site infringes another[]s copyright, we respond promptly.

Please check out the YouTube[]s Copyright Tips at: http://www.youtube.com/t/howto_copyright, where you can learn more about YouTube[]s Terms of Use as well as guidelines that help you determine whether your video infringes someone else[]s copyright.

Hohengarten Ex. 28.

When receiving complaints about user submissions, a Viacom website that accepts user-generated content, Addicting Clips, informed its users that "[a]s a passive conduit, we cannot monitor user clips, but we respond to breaches of our Terms of Service when we learn of such behavior." Schapiro Reply Ex. 70; *see also* Schapiro Reply Ex. 155 (Addicting Clips explaining that "alleged infringement is the responsibility of the user, not Atom. The DMCA limits Atom's liability to cases in which it fails to implement a DMCA-compliant 'notice and takedown' procedure.").

Kohlmann Exs. 10-12: These emails demonstrate that YouTube removes videos that are the subject of DMCA notices and informs its users that it has done so when they inquire about the reasons for removal.

Viacom SUF ¶ 47: Viacom selectively quotes from an email between YouTube's founders and omits material context. In this exchange,

YouTube's founders stated that they would remove "movies/tv shows," but leave up "short news clips" that they assumed were fair use. See CVSUF ¶ 46. Viacom can hardly complain that Chen suggested leaving up a short CNN news clip despite the possibility that YouTube might receive a takedown notice for it given that Viacom's own online service iFilm suggested delaying removal of a video responsible for "one of [its] best days ever in terms of page views" after receiving an actual cease and desist notice. Schapiro Reply Ex. 71 ("No need to respond to c&d very swiftly.").

58. YouTube has never instructed users to engage in copyright infringement. Hurley Decl. ¶ 20.

Viacom's Response: *Controverted. It is undisputed that YouTube's co-founders and employees have uploaded infringing videos to YouTube, have shared infringing YouTube videos with others, and have encouraged users to leave infringing videos on YouTube. See Hohengarten Ex. 229, JK00007423 (Karim responding with laughter to clear infringement); Hohengarten Ex. 218, JK00009595 (Chen chastising Karim for "put[ting] up 20 videos of pornography and obviously copyrighted materials and then link[ing] them from the front page"); Hohengarten Ex. 217, JK00006166 (Chen chastising Karim for "blatantly stealing content from other sites and trying to get everyone to see it"); Viacom SUF ¶ 78 (discussing awarding an infringing user with an iPod Nano); Hohengarten Ex. 197, GOO001-00507331, at 2-3 & at GOO001000507331-32 (Maryrose Dunton starting "5 groups based on copyrighted material"); Hohengarten Ex. 377, GOO001-07169928, at 2 & at GOO001-07169928 (Matt Liu encouraging his friend to leave infringing content on the site); Hohengarten Ex. 32, GOO001-03631419 (Daily Show clip); Hohengarten Ex. 72, GOO001-03383629 (Colbert Report clip); Hohengarten Ex. 73, GOO001-01364485 (South Park clip); Hohengarten Ex. 75, GOO001-00217336 (Daily Show clip); and Hohengarten Ex. 77, GOO001-05154818 (Daily Show clip); Kohlmann Ex. 6, GOO001-00241682 (YouTube engineer Cuong Do urging other YouTube personnel to watch the Lazy Sunday clip, noting that: "[t]his was the original upload that made headlines," and that while it was public "I was too busy keeping the video streaming to our users"); Kohlmann Ex. 33, GOO001-03630988 (Jawed Karim sharing a MTV News clip); Kohlmann Ex. 52, JK00008527 (Jawed Karim sharing a Saturday Night Live clip); Kohlmann Ex. 53, JK00008555 (Jawed Karim sharing a Late Night with Conan O'Brien clip); Kohlmann Ex. 54, JK00008591 (Jawed Karim sharing a Late Night with Conan O'Brien clip); Kohlmann Ex. 55, JK00008595 (Jawed Karim sharing a Late Night with Conan O'Brien clip); Kohlmann Ex. 56 JK00008614 (Jawed Karim sharing a Saturday Night Live clip); Kohlmann Ex. 57, JK00008621 (Jawed Karim sharing a*

60 Minutes clip); *Kohlmann Ex. 58, JK00008631 (Jawed Karim sharing a Daily Show clip)*.

Furthermore, it is undisputed that YouTube encourages users to watch infringing videos through the “related videos” and “suggested search” features, which often direct users to infringing content. See Viacom SUF ¶¶ 332, 335, 339.

YOUTUBE’S REPLY: Nothing in Viacom’s response controverts the asserted fact. As described below, Viacom falsely summarizes the cited documents, which do not support the propositions that YouTube co-founders and employees uploaded unauthorized videos to YouTube, shared unauthorized videos with others, or encouraged users to leave unauthorized videos on YouTube. Viacom has failed to establish a single instance of alleged infringement on YouTube and its allegations to the contrary are supported only by attorney rhetoric.

Hohengarten Ex. 229: Viacom describes this email as Jawed Karim “responding with laughter to clear infringement.” That is wrong. Karim was not responding to anything. As indicated by a preceding angle bracket, his statement “ahaha” was an original message to an unidentified person. *Hohengarten Ex. 229*. That person’s hearsay *response* to Karim’s message stating that clips from the television show *Chappelle’s Show* could be found on YouTube does not say anything about whether those clips were authorized. Viacom distributed “viral” clips from *Chappelle’s Show* on the Internet for marketing purposes, it allowed content from that program to remain on YouTube when uploaded by ordinary users, and YouTube has prevailed on clips from *Chappelle’s Show* that Viacom sued over and then admitted were authorized. *Schapiro Opp. Ex. 285* (listing “viral placements” from *Chappelle’s Show* by Viacom marketer Iced Media); *Rubin Opening Decl. ¶ 17 & Ex. 131* (describing numerous clips-in-suit from *Chappelle’s Show* that are indistinguishable from approved Viacom promotional clips); *Viacom Opp. 57-62* (describing what Viacom calls its “enforcement forbearance” during 2006 and early 2007); *Order Granting Viacom’s Motion to Dismiss Specified Clips With Prejudice* (March 10, 2010) (Viacom dismissing with prejudice clips from *Chappelle’s Show* (rf3BHTB2RAY, Le52xv31TTM, bdRNAUTDBqY and cR5BCbGyTkc)); *Rubin Opening Decl. Ex. 117*.

Hohengarten Ex. 218: Viacom describes this email as Steve Chen “chastising Karim for ‘put[ting] up 20 videos of pornography and obviously copyrighted materials and then linking] them from the front page.’” That is an obvious distortion. Chen admonished Karim for uploading “viral” videos to YouTube and then noted: “**why don't i just** put up 20 videos of

pornography and obviously copyrighted materials and then link them from the front page. **what were you thinking.**” Hohengarten Ex. 218 (emphasis added). Chen was not claiming that Karim had uploaded twenty pornography and obviously copyrighted videos to YouTube and linked them from the front page, but was using hyperbole to express his displeasure with Karim uploading videos that he had found on other websites. *See* YouTube Opp. 15-16.

Hohengarten Ex. 217: Viacom describes this email as Steve Chen “chastising Karim” for uploading infringing videos to YouTube. That ignores the record. The videos that Karim uploaded were not infringing copyrights and were not from movies or television shows. Karim testified: “They were not stolen videos. I would . . . browse on the Web for airplane-related videos on aviation community Web sites, and these were user-generated videos created by aviation enthusiasts. So, for example, this would be like a 10-second shaky video camera clip of a 747 taking off, and these clips were usually already on multiple aviation Web sites.” Schapiro Opp. Ex. 77 (166:8-16). Chen’s response to Karim’s uploading proves that the goal of YouTube’s founders was to create a personal videos site.

Hohengarten Ex. 15: Viacom describes this email as YouTube employees “discussing awarding an infringing user with an iPod Nano.” Viacom distorts the document in two ways: first by claiming that the user was infringing copyrights and then by implying that YouTube employees discussed “awarding” the user an iPod Nano based on that alleged infringement. Neither is true. In November and December 2005, YouTube ran a daily contest in which one user each day won an iPod Nano. In the cited email, YouTube employees were discussing whether a user could win the contest even though he had uploaded “copyrighted” material. Hohengarten Ex. 15. Viacom conflates the term “copyrighted” with the legal conclusion “infringement” to suggest that the user was infringing copyrights. That is wrong. Almost all authorized videos on YouTube – from grainy home movies to professional material uploaded by large media companies – are protected by copyright. *See* 17 U.S.C. § 102 (“Copyright protection subsists . . . in original works of authorship fixed in any tangible medium of expression”). If Viacom is suggesting that professional content on YouTube is necessarily unauthorized, that disregards the myriad circumstances in which professionally produced videos appear on YouTube with authorization. *See* YouTube Br. 6-8, 15-16, 39-55, 63-70. Regardless, the user clearly was not chosen to win the contest *based on* his uploads given that YouTube employees were discussing whether he could win *notwithstanding* them. The debate about whether professional content owners should be treated in the same way as amateur video creators for site contests and promotions was entirely

consistent with YouTube's founding purpose as a personal videos site. *See* Schapiro Reply Ex. 72 (YouTube responding to a Viacom request to feature its content on the YouTube homepage: "Our CEO wants to hold off on featuring any professional video today – we've been doing a lot of that recently and want to keep an even mix with the user generated stuff on the home page.").

Hohengarten Ex. 197: Based on this chat, Viacom claims that Maryrose Dunton started "5 groups based on copyrighted material." That is yet another distortion. The chat describes a "hardcore" presentation in February 2006 in which attorneys alerted YouTube employees about the company's policy that if they "even _see_ copyrighted material on the site, [they were] supposed to report it." Hohengarten Ex. 197. The presentation represents YouTube's policy and the state of mind of its decision makers concerning copyright issues. An informal, after-hours discussion about the presentation between employees who did not work in the department handling copyright enforcement says nothing about YouTube's corporate position. Dunton's statement that "I guess th[e] fact that I started like 5 groups based on copyrighted material probably isn't so great" was a joke. That is why the other employee responded "ha" upon hearing her remark. And that is why Viacom has not offered a shred of evidence to establish that Dunton started five groups based on copyrighted material.

Hohengarten Ex. 377: Viacom claims that this chat shows YouTube employee Matt Liu "encouraging his friend to leave infringing content on the site." Liu was not encouraging the unidentified person using the instant message screen name "amuletp811" to leave content on YouTube. As the chat makes clear, "amuletp811" had not uploaded any videos to YouTube and did not have a YouTube account. Solomon Opening Decl. ¶ 3 (a user must register for a YouTube account to upload videos to YouTube). If Viacom is suggesting that professional content on YouTube is necessarily unauthorized, that disregards the myriad circumstances in which professionally produced videos appear on YouTube with authorization. *See* YouTube Br. 6-8, 15-16, 39-55, 63-70. In any event, if this document reflects a chat between Liu and his friend, as Viacom suggests, that communication necessarily took place outside the scope of Liu's employment and cannot be imputed to YouTube.

Hohengarten Ex. 32: Viacom does not contend that the clip identified in this email is infringing and it is not a clip-in-suit. *See* Solow Opening Decl. Exs. F, G. Viacom was allowing clips from its programs to remain on YouTube when this email was sent. *See* Viacom Opp. 57-62 (describing what Viacom calls its "enforcement forbearance" during 2006 and early

2007); CVSUF No. 130. Viacom's copyright monitoring agent, BayTSP, knew about this clip as early as September 29, 2006. Schapiro Reply Ex. 73 (GOO001-06048929 at 937-38). BayTSP then waited until October 27, 2006 to send a takedown notice to YouTube. *Id.* By that time, the clip was no longer on the service. YouTube proactively removed it on October 3, 2006 when enforcing its repeat infringer policy. Rubin Reply Decl. ¶ 15; Levine Opening Decl. ¶ 30 (describing how YouTube removes all videos uploaded to an account that has been terminated under its repeat infringer policy). Viacom chose not to bring an infringement claim over this clip even though Viacom selected the clips-in-suit from a group of videos that BayTSP had identified. Schapiro Opening Ex. 18 (148:8-18).

Hohengarten Ex. 72: Viacom does not contend that the clip identified in this email is infringing and it is not a clip-in-suit. *See* Solow Opening Decl. Exs. F, G. Greg Clayman, Executive Vice President of Digital Distribution and Business Development at MTV Networks, shared this same clip with Viacom executives on October 16, 2006. Schapiro Opp. Ex. 298. Viacom chose not to bring an infringement claim over this clip even though Viacom selected the clips-in-suit from a group of videos that BayTSP had identified. Schapiro Opening Ex. 18 (148:8-18).

Hohengarten Ex. 73: This clip was uploaded on March 7, 2007. Rubin Reply Decl. ¶ 15. Viacom sent YouTube a takedown notice for it on March 9, 2007. Schapiro Reply Ex. 74. YouTube removed the video that same day. Rubin Reply Decl. ¶ 15. Viacom suggests that all *South Park* content on YouTube is unauthorized. That is wrong. When this clip appeared on YouTube, one of Viacom's websites encouraged the public to watch *South Park* wherever it could be found on the Internet. *See* Schapiro Opp. Ex. 72 (“[South Park creators] Matt [Stone] and Trey [Parker] do not mind when fans download their episodes off the Internet; they feel that it's good when people watch the show no matter how they do it.”); CVSUF ¶ 31. Viacom uploaded *South Park* content to YouTube, allowed content from *South Park* to remain on YouTube when uploaded by ordinary users, and YouTube has prevailed on clips from *South Park* that Viacom sued over and then admitted were authorized. *See* Schapiro Reply Exs. 189A/B (eijhloJjg50), Ex. 190A/B (DkXAFeiZCs0) (clips from *South Park* that Viacom uploaded to the authorized account “ParamountGermany” over which Viacom sued YouTube and then dismissed its claims with prejudice); Rubin Opening Ex. 87 at 19 (Viacom's Response to Request for Admission No. 81: admitting that “ParamountGermany” is an authorized account); Viacom Opp. 57-62 (describing what Viacom calls its “enforcement forbearance” during 2006 and early 2007); Order Granting Viacom's Motion to Dismiss Specified Clips With Prejudice (March 10, 2010) (Viacom dismissing with prejudice

numerous clips from *South Park* (S5pUWE1WgKw, ejhloJjg50, DkXAFeiZCs0, Xo9TWFRIUN8, hSdMtP8qztA, RRrB_hitU-c, CxVxzXCbeOw, 8v8vhNKIAZ4, hhXIVDxYzvg, Vj9rdT-t8Lc, P vz66FuaHso, QrROfhjqPds, sIXfcdZbnUw, uJg2geqHK5U, N-4MT9u6LUs, USds5DhScmg, 29le85Vp8vI, yVUAvm3fvXQ, lz0JZvlMrOA, pl1lwcUpTbU, Ppm3MIsqsK4, L8GYvvm_3bE, 5Esm9Mlt5Xo, 0mZ8VNkSPaU, NdpArPebjFY, Q-VvGxYDGm0, Wqq-lfH3NNc, nyLj0T9EKAo, N0QCkXfxJs4)); Rubin Opening Ex. 117.

Hohengarten Ex. 75: Viacom does not contend that the clip identified in this email is infringing and it is not a clip-in-suit. *See* Solow Opening Decl. Exs. F, G. Viacom employee Jeremy Zweig shared this same clip with Viacom Executive Vice President Carl Folta on March 23, 2007. Schapiro Opp. Ex. 299.

Hohengarten Ex. 77: The clip identified in the email appears to be commentary about Viacom’s lawsuit against YouTube. Schapiro Opp. Ex. 421A/B (NpqgWW0Z7vM). Viacom does not contend that the clip is infringing and it is not a clip-in-suit. *See* Solow Opening Decl. Exs. F, G. Viacom’s copyright monitoring agent, BayTSP, discovered this clip on March 30, 2007 and internally debated whether to request its removal. Schapiro Opp. Ex. 300. BayTSP then reached out to Viacom legal department employee Warren Solow, who evaluated the clip and told BayTSP to “leave it up.” *Id.* Despite Viacom’s internal conclusion that the clip was not infringing, YouTube proactively removed the video on May 21, 2008 when enforcing its repeat infringer policy. Rubin Reply Decl. ¶ 15; Levine Opening Decl. ¶ 30 (describing how YouTube removes all videos uploaded to an account that has been terminated under its repeat infringer policy).

Kohlmann Ex. 6: Viacom describes this email as YouTube engineer Cuong Do “urging other YouTube personnel to watch the Lazy Sunday clip.” Do was not “urging other YouTube personnel” to watch the clip referenced in the email, but providing a single employee with information about YouTube’s history. *See* Schapiro Reply Ex. 75 (contemporaneous email providing historical details about YouTube). Viacom appears to claim that the Lazy Sunday clip from NBC’s *Saturday Night Live* was not authorized to be on YouTube. But Viacom does not own NBC and admits that it could not possibly tell whether content on YouTube from third-party networks like NBC is authorized. *See id.* Ex. 76 (100:14-24) (MTVN Chief Operating Officer: “I probably would have to be a lawyer at NBC to know whether [the appearance of Lazy Sunday on YouTube] was infringing.”); Ex. 77 (270:3-271:23) (Viacom Senior Vice President concerning a clip on YouTube containing a CNBC logo: “I have no way of

knowing whether CNBC uploaded it themselves or if somebody else did.”). Regardless, the story of Lazy Sunday’s appearance on YouTube highlights that major media companies routinely allow their content to remain on YouTube when uploaded by ordinary users. *See* CVSUF ¶ 89; YouTube Opp. 17-18.

Kohlmann Ex. 33: Viacom does not contend that the clip identified in the email is infringing and it is not a clip-in-suit. *See* Solow Opening Decl. Exs. F, G. The clip is a 54-second interview with Jessica Rose, a professional actress who gained worldwide fame by posing as an amateur video diarist using the YouTube account “Lonelygirl15.” Schapiro Reply Ex. 78; Ex. 79; Ex. 191A/B (CKMhcoopYuM). Karim was not employed by or consulting for YouTube when he sent this message. Schapiro Reply Ex. 80 (October 5, 2005 agreement defining Karim’s role as “an independent contractor to perform consulting services”), Ex. 81 (Karim’s consulting agreement with YouTube ended on June 28, 2006).

Kohlmann Exs. 52-57: Karim sent these messages more than three months after he left YouTube. Schapiro Reply Ex. 80 (October 5, 2005 Agreement defining Karim’s role as “an independent contractor to perform consulting services for the Company”), Ex. 82 (19:10-25, 110:17-19, 115:16-24). Viacom speculates that the clips referenced in these emails contained unauthorized content from NBC and CBS. But the messages do not indicate what or how long the clips were, who uploaded them, or whether they were authorized to be on YouTube. And Viacom admits that it could not possibly tell whether content on YouTube from third-party networks like NBC and CBS is authorized. *See* Schapiro Reply Decl. Ex. 76 (100:14-24) (MTVN Chief Operating Officer: “I probably would have to be a lawyer at NBC to know whether [the appearance of Lazy Sunday on YouTube] was infringing.”); Ex. 77 (270:3-271:23) (Viacom Senior Vice President concerning a clip on YouTube containing a CNBC logo: “I have no way of knowing whether CNBC uploaded it themselves or if somebody else did.”).

Kohlmann Ex. 58: Karim sent this message more than four months after he left YouTube. Schapiro Reply Ex. 80 (October 5, 2005 Agreement defining Karim’s role as “an independent contractor to perform consulting services for the Company”); Ex. 82 (19:10-25, 110:17-19, 115:16-25). Viacom speculates that the clip referenced in this email contained content from *The Daily Show*. But the message does not indicate what or how long the clip was, who uploaded it, or whether it was authorized to be on YouTube. To the extent that the clip contained content from *The Daily Show*, Viacom was allowing clips from that program to remain on YouTube when this email was sent. *See* Viacom Opp. 57-62 (describing

what Viacom calls its “enforcement forbearance” during 2006 and early 2007).

VSUF ¶¶ 332, 335, 339: The “related videos” and “suggested search” features do not and cannot distinguish authorized from unauthorized content. *See* CVSUF ¶¶ 332, 334, 335, 339. While those features help YouTube users find videos that might be of interest to them, they in no way favor unauthorized content. *See* June 20, 2008 Opinion & Order at 5 (“plaintiffs offer no evidence that the search function can discriminate between infringing and non-infringing videos”).

- 59. YouTube has never encouraged users to engage in copyright infringement. *Id.***

Viacom Response: *Controverted. See supra* ¶ 58.

YOUTUBE’S REPLY: *See supra* RVCS ¶ 58.

- 64. YouTube removes or disables access to allegedly infringing videos whenever it receives a DMCA-compliant takedown notice. *Id.* ¶ 19; Schaffer Decl. ¶ 10.**

Viacom Response: *Controverted. Ms. Levine’s testimony covers only the period from March 2006 to the present, while she has been at YouTube. Levine Decl. ¶¶ 19, 4. Furthermore, Mr. Schaffer’s testimony is too general to support the proposition that YouTube has removed or disabled access to every infringing video for which YouTube has received a DMCA-compliant takedown notice. Schaffer Decl. ¶ 10. More importantly, it is undisputed that YouTube has not removed or disabled access to infringing videos identified in “representative lists,” as required by 17 U.S.C. § 512(c)(3)(A)(ii), see supra* ¶ 33.

YOUTUBE’S REPLY: Viacom does not genuinely dispute this fact, nor does it present any contradictory evidence. Viacom instead proffers the legal argument that YouTube is required to remove or disable access to videos identified in “representative lists.” As discussed in YouTube’s Reply Brief, Viacom misunderstands the notice-and-takedown regime. YouTube Reply 27-32.

Levine’s and Schaffer’s declarations plainly demonstrate that YouTube promptly removes or disables access to videos identified in a proper DMCA takedown notice. *See* Levine Opening Decl. ¶ 19, Schaffer Opening Decl. ¶ 10. Viacom’s claim that YouTube’s evidence covers its response to takedown notices only from March 2006 onward is incorrect. Schaffer’s

testimony on this point dates back to his arrival at the company in January 2006. Schaffer Opening Decl. ¶ 10; *See also* Hohengarten Ex. 356 (Chen Declaration in *Tur v. YouTube*) at ¶¶ 10, 18 (describing takedown process without time limitation). In any event, there is no evidence that plaintiffs sent any takedown notices before March 2006, or that YouTube failed to honor any valid notices that it received. *See, e.g.*, Schapiro Reply Ex. 83; Ex. 84.

- 76. Since at least October 2005, YouTube has had a policy for terminating the accounts of repeat infringers, which it has posted on its website. Hurley Decl. ¶ 21; Levine Decl. ¶ 27.**

Viacom's Response: *Controverted, to the extent that the asserted fact implies that YouTube had adopted a repeat infringer policy prior to October 2005. Defendants have not proffered any evidence regarding the pre-October 2005 period. Further controverted in that Defendants did not begin applying the policy until early 2006. See Kohlmann Ex. 18, GOO001-00830262 (December 28, 2005 email from Steve Chen stating: "i created a UserAbuse table and it's being used to track each time the user gets a video dinged (there are two types of dings, one is just rejecting the video but doesn't increment the three strikes rule, the other one does increment the three strikes rule), the thing is, this part hasn't been hooked up yet to actually closing the account."); Hohengarten Ex. 22, GOO001-00762173, at GOO001-00762187 (February 17, 2006 YouTube Board presentation, noting that as part of a January 19, 2006 set of site features YouTube released "[a]ccount suspension after 3 video rejections.")*

YOUTUBE'S REPLY: Viacom does not dispute the asserted fact: that as of October 2005, YouTube had a policy of terminating users who engaged in copyright infringement that was posted on its website. Chad Hurley's declaration plainly states that YouTube adopted a policy of terminating infringers in September 2005. Hurley Opening Decl. ¶ 21. YouTube's policy was publicly displayed at that time, and the next month the policy was incorporated into YouTube's Terms of Use with express reference to "repeat infringers." *See* Schapiro Reply Ex. 49 (YouTube "Help" section in September 2005: "If we receive a notice or otherwise have reason to believe that content you submitted infringes another party's copyright, your account may be terminated and the video removed from YouTube."); Ex. 50; Ex. 51 (October 2005 Terms of Use: "YouTube does not permit copyright infringing activities on its Website, and reserves the right to terminate access to the Website and remove all Content submitted, by any persons who are found to be repeat infringers."). YouTube revised its policy in December 2005 to adopt a "three-strikes"

approach to repeat infringers, but that merely refined the existing termination policy.

The documents Viacom cites are not to the contrary. **Hohengarten Ex. 22** is a Board Presentation which indicates that an administrative change to account suspension after 3 videos was pushed out in January 2006. The reference to a “change” in policy leaves no doubt that the 3 strikes approach was merely a modification to an existing procedure. **Kohlmann Ex. 18** is an email exchange from December 2005 between YouTube employees Maryrose Dunton, Steve Chen, Chad Hurley, Dwipal Desai and Yu Pan discussing the technical implementation of a system change that would automatically suspend an account after three strikes. Nothing in this document indicates this was YouTube’s first repeat infringer policy.

77. **Under YouTube’s repeat-infringer policy, a “strike” is issued to a user when YouTube receives a takedown notice for material that the user has uploaded. Levine Decl. ¶ 27.**

Viacom’s Response: *Controverted. Defendants have regularly counted multiple infringing clips uploaded by the same user as a single “strike” against that user. Defendants have counted multiple infringing acts by the same user as a single “strike” as a matter of course in two situations: (a) where multiple infringing clips uploaded by the same user are all identified in the same notice of infringement, and (b) where multiple infringing clips uploaded by the same user are identified in different notices of infringement, but those notices are all received by YouTube within the same two-hour period. See, e.g., Levine Decl. ¶ 28 (“YouTube assesses a single strike per notice, including in circumstances where a DMCA notice identifies more than one allegedly infringing video for the same user”); Hohengarten Decl. Ex. 382, GOO001-08050272 (February 17, 2007 K. Walker email to M. Fricklas, stating: “YouTube’s ‘three strikes’ policy meets this test by banning users after YouTube receives a third infringement notice regarding a user (We currently deem all URL’s processed within any two-hour period to be part of the same ‘notice.’)”).*

Further, for approximately six months in 2007, Defendants failed to adequately inform users - including content owners - of their repeat infringer policy not to give strikes in response to a CYC block. See infra ¶ 83.

YOUTUBE’S REPLY: Viacom does not dispute the asserted fact: that under YouTube’s three-strikes policy, in place since January 2006, a user is issued a “strike” when YouTube receives a takedown notice for material the user has uploaded. Nor does Viacom identify a material dispute with

respect to YouTube's rigorous implementation of its three-strikes policy or the fact that YouTube has applied that policy to terminate thousands of user accounts. *See* VCS ¶¶ 78, 79, 80, 81, 82, 83, 84, 85, 86. Instead, Viacom offers the additional observation that users are not today issued multiple strikes where a DMCA notice lists more than one allegedly infringing videos uploaded by a particular user. That approach is entirely proper given the broad discretion the DMCA confers on service providers to set repeat infringer policies. Viacom's challenge to that approach fails as a matter of law. *See* YouTube Reply 41.

With respect to Viacom's claim about the treatment of CYC matches under YouTube's repeat infringer policy for six months in 2007, *see infra* RVCS ¶ 83.

78. When an account receives three strikes, in virtually all cases YouTube terminates that account. *Id.*

Viacom's Response: *Controverted. YouTube did not begin terminating accounts that received three strikes until at least January 2006. See supra* ¶¶ 76-77.

Further controverted because Defendants have regularly counted multiple infringing clips uploaded by the same user as a single "strike" against that user, as described at supra ¶ 77.

YOUTUBE'S REPLY: Viacom does not dispute the asserted fact, and concedes that YouTube has enforced its three-strikes policy since January 2006. Viacom's challenge to YouTube's manner of recording strikes is wrong as a matter of law. *See supra* RVCS ¶¶ 76-77; YouTube Reply 40-42.

79. When YouTube terminates a user's account, the account can no longer be used for any purpose on the site. Levine Decl. ¶ 30.

Viacom's Response: *Uncontroverted that this is YouTube's current practice. With regard to earlier periods, Viacom lacks knowledge to admit or controvert the alleged fact. In any event, the asserted fact is immaterial, because even after YouTube terminates a repeat infringer, the repeat infringer can sign up for a new account merely by using a different email address. See, e.g., Kohlmann Ex. 80 (Schaffer Dep.) at 127:25-128:17 (testifying that strikes are allocated by email address and that all a user need do to bypass YouTube's repeat infringer policy is "know to create a new e-mail address"). Opening a new email account is very simple and can*

be done using Google's own free email service, Gmail. See supra ¶ 56, infra ¶ 82.

YOUTUBE'S REPLY: Viacom does not dispute the asserted fact: that when YouTube terminates a user's account, the account can no longer be used for any purpose on the site. Nor does Viacom offer evidence to controvert that this was YouTube's practice in "earlier periods." Even if Viacom did genuinely dispute the asserted fact, such dispute is immaterial given that it has no impact on the legal issues before the Court. Viacom does not argue anywhere in its Opposition Brief that the potential for a user to sign-up for a new account using a different email address once his/her account is terminated somehow calls YouTube's repeat infringer policy into question. As a matter of law, it does not. *See Io Group, Inc. v. Veoh Network, Inc.*, 586 F.Supp. 2d 1132, 1143-45 (N.D. Cal. 2008) (failure to track terminated users and prevent them from surreptitiously returning to the service does not raise a genuine issue of material fact as to the reasonableness of Veoh's implementation of its repeat-infringer policy); *Corbis Corp. v. Amazon.com, Inc.*, 351 F.Supp. 2d 1090, 1104 (W.D. Wash. 2004) ("[t]he mere fact that [the repeat infringer] appeared on zShops under a different user name and identity does not, by itself, create a legitimate question of fact regarding the procedural implementation of Amazon's termination policy").

The remainder of Viacom's response is inapplicable; Viacom merely observes that users may be able to sign-up for a new account using a different email address once his/her account is terminated. This is not disputed. But Viacom omits material context, and excludes relevant testimony from Micah Schaffer. In his deposition, Schaffer explains that strikes are issued against a user's email address because email is the only unique, reliable identifier associated with a YouTube account that can identify a specific computer or person. Schapiro Reply Ex. 66 (127:25-131:2). He further testified that when YouTube discovers that someone whose account was previously terminated has created a new account using a new email address, YouTube immediately terminates that new account. *Id.* (129:4-25).

83. YouTube's Terms of Service set forth YouTube's repeat-infringer policy. Levine Decl. Exs. 1, 2.

Viacom's Response: Controverted for the period prior to December 2005. Defendants have not proffered any Terms of Service for period prior to December 2005. Furthermore, YouTube did not apply its repeat infringer policy by terminating repeat infringers until early 2006. See supra ¶ 76.

Further, for approximately six months in 2007, Defendants failed to adequately inform users — including content owners — of their repeat infringer policy. During that period, Defendants secretly implemented a policy of not assigning any copyright strikes to users who uploaded tens of thousands of infringing clips that were blocked by YouTube’s Claim Your Content fingerprinting tool. See, e.g., Kohlmann Ex. 28, GOO001-02604740, at GOO001-02604741 (March 2007 email chain in which Chastagnol says: “currently we do not give user a strike if content is taken down via CYC”); Kohlmann Ex. 49, GOO001-01519246 (June 4, 2007 email from Justin Gupta to Jacob Pruess and others) (“The BBC definitely think that their CYC takedowns are actioning the strikes. . . I’ll hold them at bay until such time that it actually is.”); Kohlmann Ex. 50, GOO001-05611423 (“This is something I would rather not announce to the world.”); Hohengarten Ex. 321 (Chastagnol Dep.) at 97:10-99:15 (testifying that his understanding in March 2007 was that YouTube did not impose strikes for content removed using the CYC tool); Kohlmann Ex. 2, GOO001-00035137 (July 26, 2007 email) (“I understand that we don’t count strikes against users when their videos are taken down through the CYC tool.”).

YOUTUBE’S REPLY: Viacom does not dispute the asserted fact: that YouTube’s Terms of Service set forth YouTube’s repeat-infringer policy. The Terms of Service have been publicly available on YouTube’s service throughout its existence, and has included a repeat infringer policy since October 2005. Schapiro Reply Ex. 51. And Viacom’s claim that YouTube has not demonstrated that its repeat infringer policy was implemented until early 2006 is incorrect. *See supra* RVCS ¶ 76.

Viacom’s accusation about the interaction between YouTube’s repeat infringer policy and videos “matched” using YouTube’s CYC tool is immaterial. *See* YouTube Reply 41-42. Since such matches do not constitute valid DMCA notices (because *inter alia* they do not contain sworn allegations of infringement), they are properly disregarded in a repeat infringer analysis. *Id.* Nevertheless, YouTube has thoughtfully considered the issue of CYC matches and its repeat infringer policy, and has adopted an approach that is more protective of copyright holders than the law requires. *Id.*

While immaterial, Viacom’s account of YouTube’s approach to CYC matches is misleading and merits a response. YouTube first rolled-out its CYC platform in February 2007. King Opening Decl. ¶ 8. For a brief period following that initial roll-out, videos blocked using the tools available to rights holders on CYC did not result in copyright “strikes” under YouTube’s repeat infringer policy. King Reply Decl. ¶ 2. There were two reasons for this. First, CYC was an extremely complex and first-

of-its-kind tool that relied in large part on a third-party service provider, Audible Magic. *Id.* From an engineering standpoint, it took YouTube some time to develop the additional functionality that would integrate CYC with the existing system for tallying copyright “strikes”. *Id.* During this period, copyright owners were always free to send DMCA notices via mail, fax or email, or to use YouTube’s Content Verification Program (“CVP”). *Id.* ¶ 3. Takedowns notices resulted in strikes to users accounts in accordance with YouTube’s policy. *Id.* The documents cited by Viacom support the fact that it took some time for YouTube’s engineers to integrate CYC with its repeat infringer system. **Kohlmann Exs. 49 and 50** consist of two emails that are part of the same email chain. In that chain, several YouTube employees discuss the fact CYC does not yet have the technical capability to assign strikes. The email chain further indicates that once the functionality is available, all strikes for historical claims will be applied. **Kohlmann Ex. 2** is another email discussing the same topic, namely, for a period of time the CYC system was not integrated with YouTube’s admin tool and thus could not technically assign strikes to users until a code change was implemented.

Second, when it launched, CYC was an untested system that for the first time gave rights holders nuanced control over their content, including the ability to automatically block the upload of videos, often without anyone actually looking at those videos and without the submission of a formal DMCA notice. King Reply Decl. ¶ 2. But a “block” claim in CYC does not equate to a DMCA takedown notice. *Id.* ¶¶ 5-6. As a policy matter, YouTube wanted to be certain that (a) the system was being used properly before taking the step of issuing strikes to users’ accounts in the absence of actual review by the content owner and a formal DMCA notice; and (b) the system was technically capable of properly accounting for the various types of “block” claims. *Id.* ¶¶ 2, 4-6. The documents cited by Viacom illustrate these complexities. **Kohlmann Ex. 28** is an email exchange in which certain YouTube employees discuss providing CBS with access to CYC in time for March Madness so that CBS could claim and monetize NCAA content. But those emails also acknowledge the need to remove those same videos after CBS’s exclusive rights to the NCAA content expired. The individuals involved in the exchange grapple with how to technically implement these delayed removals and whether the system would issue a strike to a user upon removal where the video was originally embraced by an owner with rights to the content.

YouTube completed the task of linking CYC to the existing strike-tallying system in or about July or August 2007, a few months after CYC first launched. King Reply Decl. ¶ 4. From that point forward, when rights holders submitted a “block” request using the manual “claiming”

functionality of CYC, YouTube assigned a strike to the account of the user who had uploaded the video, even though that request did not constitute a formal DMCA notice. *Id.* YouTube also decided that a strike would not be assigned when a block resulted exclusively from an automated match using fingerprinting technology. *Id.* This is because a fingerprint match merely indicates that some *portion* of the video overlaps with some portion of a reference file submitted by a content owner who has designated a policy of “block” for videos that match its reference. *Id.* ¶ 5. Under these circumstances, the video is blocked automatically; the copyright owner has never looked at the blocked video and has not provided a statement to YouTube under penalty of perjury that the video is using its copyrighted material in an unauthorized way. *Id.* YouTube’s policy of not assigning strikes based on entirely automated blocks using its fingerprinting tool is not a secret, was publicly-announced in October 2007, and is explained to rights holders who sign-up for Content ID. *Id.* ¶ 7.

84. **YouTube communicates its repeat-infringer policy to its users via its website, including on the “Copyright Tips” page and the “Help” section of the site. *Id.* ¶ 27.**

Viacom’s Response: *Uncontroverted that this is YouTube’s current practice. However, for approximately six months in 2007, during which Defendants failed to adequately inform users — including content owners — of their repeat infringer policy not to give strikes in response to a CYC block. See supra ¶ 83.*

YOUTUBE’S REPLY: Viacom does not controvert this fact. With respect to Viacom’s claim about the interaction between YouTube’s repeat infringer policy and its CYC tool for the first few months of CYC’s existence, see *supra*, RVCS¶ 83. In any event, as a matter of law, a service need not communicate the specific implementation details of its repeat infringer policy to users. YouTube Reply 42 n.31.

85. **Users also are notified of YouTube’s repeat-infringer policy when they receive an email notifying them that a video they uploaded to YouTube has been removed due to alleged copyright infringement. *Id.* ¶ 23 & Ex. 12.**

Viacom’s Response: *Uncontroverted that this is YouTube’s current practice. Controverted because for approximately six months in 2007 Defendants secretly implemented a policy of not assigning any copyright strikes to users who uploaded tens of thousands of infringing clips that were blocked by YouTube’s CYC fingerprinting tool. For each such infringing clip that was not counted as a strike, YouTube did not notify the*

uploading user that a video they uploaded to YouTube was removed due to alleged copyright infringement. See supra ¶ 83.

YOUTUBE’S REPLY: Viacom does not controvert this fact. With respect to Viacom’s claim about the interaction between YouTube’s repeat infringer policy and its CYC tool for the first few months of CYC’s existence, see *supra*, RVCS¶ 83. Viacom’s reference to “users who uploaded tens of thousands of infringing clips” blocked by CYC is mere attorney rhetoric, unsupported by any evidence.

95. CYC used audio-fingerprinting technology to enable participating rights holders to find videos containing their content that users had uploaded to YouTube. Id. ¶ 7.

Viacom’s Response: *Uncontroverted, but Viacom denies any implication that YouTube’s CYC tool was available to Viacom or any other content owner in the absence of a licensing deal. YouTube expressly refused to provide CYC to Viacom in the absence of a licensing deal. See Hohengarten Ex. 382 (February 17, 2007 email Google Vice President and General Counsel Kent Walker). Defendants did not offer any digital fingerprinting technology to Viacom until May 2008. See Viacom SUF ¶¶ 207-222.*

That refusal is not called into doubt by the ambiguous statement in King Decl. ¶ 10 that four content owners used YouTube’s CYC tool to block their content from appearing on YouTube. Defendants do not cite and have not produced evidence showing when those four companies began using CYC. The scant evidence Defendants have produced indicates that none of these companies were offered CYC until well after this action was filed.

YouTube considered offering █████ access to CYC in March 2007, but did not because “[r]ight now we have not been giving the tool to partners without a revenue share contract in place.” Kohlmann Ex. 21 at GOO001-00943107. █████ was offered CYC in August 2007 in exchange for █████ agreement to license content for a YouTube “branded channel,” but no agreement was reached. Kohlmann Ex. 41, GOO001-00850320; Kohlmann Ex. 42, GOO001-00850304.

█████ licensed content to YouTube on a “branded channel” in June 2007, but in September 2007 YouTube had not agreed to use fingerprinting for █████ Kohlmann Ex. 43, GOO001-04500216; Kohlmann Ex. 44, GOO001-01620064, at GOO001-01620082.

There is no evidence that YouTube gave [REDACTED] access to CYC for more than a 3-day test period during which YouTube severely capped their CYC usage, explaining: “If they want to use our tools to help them monitor copyright content . . . , they will have to work with us as a partner.” Kohlmann Ex. 45, GOO001-09612404; Kohlmann Ex. 46, GOO001-06072619. YouTube had not agreed to provide fingerprinting for either as of July 2007. Kohlmann Ex. 46, GOO001-06072619; Kohlmann Ex. 47, GOO001-05944464, GOO001-05944475.

YOUTUBE’S REPLY: Viacom does not dispute, and therefore admits, the fact that “CYC used audio-fingerprinting technology to enable participating rights holders to find videos containing their content that users had uploaded to YouTube.”

Separate from the undisputed fact at issue, Viacom makes argumentative statements alleging that YouTube “refused to provide CYC to Viacom in the absence of a licensing deal” and “did not offer any digital fingerprinting technology to Viacom until May 2008.” YouTube responds fully to those allegations in our Opposition Brief and Counterstatement. See CVSUF ¶¶ 207-222; YouTube Opp. IV.A.2.

Viacom also does not dispute, and therefore admits, that four content owners used YouTube’s CYC tool solely to block their content from appearing on YouTube. Viacom instead claims that those four companies did not receive access to CYC until after this action was filed. That is unsurprising given that YouTube did not launch CYC until February 2007, just one month before Viacom filed suit. King Opening Decl. ¶ 8. If Viacom is trying to imply that its lawsuit caused YouTube to allow content owners to access its fingerprinting tools in the absence of a revenue-sharing agreement, that is false. Google’s CEO Eric Schmidt announced to the world that those tools would be made available to all content owners weeks before Viacom filed this lawsuit. Schapiro Reply Exs. 41-42. And YouTube told the MPAA on January 31, 2007 that it was “willing to prevent the posting of content that is registered with Audible Magic.” Schapiro Opp. Ex. 163.

Viacom also inaccurately describes YouTube’s relationship with the four companies who used CYC solely to block content. Viacom contends that YouTube did not give the [REDACTED] access to CYC in March 2007 because “[r]ight now we have not been giving the tool to partners without a revenue share contract in place.” **Kohlmann Ex. 21.** The cited email does not support that proposition. This email thread discusses the possibility of *providing* [REDACTED] access to CYC even though there was no

revenue-sharing agreement between the parties. *Id.* And YouTube did just that. King Opening Decl. ¶ 10.

For [REDACTED], Viacom implies that YouTube was providing CYC access in connection with “branded channels.” But Viacom recognizes that “branded channels” are not equivalent to a revenue-sharing content license agreement. *See* Wilkens Opp. Decl. ¶¶ 7-17 (listing what Viacom describes as its own “branded channels” on YouTube). Viacom does not controvert the fact that [REDACTED] used CYC solely to block content.


Viacom further asserts that “YouTube gave [REDACTED] access to CYC for . . . a 3-day test period during which YouTube severely capped their CYC usage, explaining: ‘If they want to use our tools to help them monitor copyright content . . . they will have to work with us as a partner.’” That is not supported by any evidence. The quoted exhibit, **Kohlmann Ex. 45**, does not concern [REDACTED] but a separate company, Ligue 1. An employee noted that YouTube could offer Ligue 1 access to CYC on a test basis because “we are quite strained for resources.” *Id.* She went on to state that “[i]f they want to use our tools to help them monitor copyright content **and claim them**, they will have to work with us as a partner.” (emphasis added). Viacom omits the bolded text to change the meaning of the quotation. The concept of “claiming” content generally concerns a decision whether to block, monetize or track content on YouTube using CYC. King Opening Decl. ¶ 7. As would be expected, only content owners who license their content on YouTube may elect the “monetize” option. David King then sent a follow-up email noting that it was *not* YouTube’s policy to only provide CYC access in the context of a revenue-sharing agreement. Viacom does not controvert the fact that [REDACTED] used CYC solely to block content.

115. Certain of Viacom’s clips in suit are fewer than 10 seconds long. *Id.*

Viacom’s Response: Controverted. None of Viacom’s clips in suit is shorter than 10 seconds long. Only one clip is 10 seconds long, 97% of Viacom’s clips in suit are over 30 seconds long, and 55% are over three minutes long. The Declaration of Michael Rubin is incorrect in citing two clips as 3 and 5 seconds long, respectively. In fact, those clips are 226 and 288 seconds long, as reflected in data produced by Defendants, and as reflected in copies of the videos themselves that Viacom obtained prior to issuing takedown notices for them. See Wilkens Decl. ¶ 6

YOUTUBE’S REPLY: Viacom’s response does not raise a genuine dispute of material fact with regard to the length of the Clips in Suit.

There is conflicting data regarding the length of the clips identified in Rubin Opening Decl. ¶ 15 and genuine versions of the videos referenced in that paragraph. But there is no dispute that one Viacom clip in suit is ten seconds long, at least 1,800 are shorter than 30 seconds in length, and the majority are under 4 minutes. Wilkens Opp. Decl. ¶ 3; VCS ¶¶ 114, 115. Each one of these clips is significantly shorter than the entirety of any film or television show that comprises a Works in Suit that Viacom claims to own.



- 122. Viacom has allowed Viacom content uploaded by other users to remain on YouTube. Schapiro Exs. 4 (194:8-11), 51 (VIA 11787096).**

Viacom's Response: *Controverted. Defendants distort the cited evidence to misrepresent decisions to prioritize efforts to take down some content decisions to leave up other content. See infra ¶ 128.*

YOUTUBE'S REPLY: *See infra RVCS¶ 128.*

- 125. Viacom has taken steps to conceal that it was the source of certain videos that it uploaded to YouTube for marketing purposes. Chan Decl. ¶¶ 4, 5, 9; Ostrow Decl. ¶¶ 2, 4, 5, 6; Schapiro Exs. 33, 34, 46, 47 (158:20-22), 48, 49, 50; Rubin Decl.¶ 5(a)-(f) & Exs. 4, 14, 15, 19, 22, 26.**

Viacom's Response: *Controverted. See supra ¶ 123. None of the evidence cited by Defendants shows that YouTube was unaware of any of the authorized uploading of Viacom content. Indeed, the evidence shows that Viacom informed YouTube regarding the six accounts Defendants portray as "stealth." See, e.g., Kohlmann Ex. 84 (Wahtera Dep.) at 32:8-11, 184:16-187:2, Kohlmann Ex. 60, VIA00378149, at VIA00378150, Kohlmann Ex. 63, VIA12603576 (regarding YouTube's knowledge of "MysticalGirl8" account); Rubin Ex. 10 (regarding YouTube's knowledge of "demansr" account). Moreover, none of the cited evidence shows an intent to conceal activity from YouTube. Kohlmann Ex. 82 (Teifeld Dep.) at 47:11-48:2; Kohlmann Ex. 84 (Wahtera Dep.) at 150:12-24, 167:7-168:8.*

YOUTUBE'S REPLY: Viacom's response does not controvert this fact. First, Viacom argues that "[n]one of the evidence cited by Defendants

shows that YouTube was unaware of any of the authorized uploading of Viacom content.” But Viacom misses the point. YouTube agrees that it was generally aware of promotional activities occurring on its service, including that Viacom itself was using YouTube for promotional purposes. *See* YouTube 56.1 ¶ 127. It is precisely because YouTube is generally aware of such activities that it cannot possibly tell whether a particular video appearing on the site is unauthorized. *See* YouTube Br. 39-48, 64-67; YouTube Opp. 4-6. But Viacom does not claim, and could not claim, that it systematically informed YouTube of every one of its thousands of viral marketing clips for purposes of affirming copyright authorization. The contexts in which YouTube employees became aware of specific clips posted by Viacom were usually *ad hoc* communications about such topics as: (1) Viacom marketers imploring YouTube to “feature” a particular Viacom clip on YouTube’s homepage so as to get as much exposure as possible, and giving YouTube effusive thanks and praise when it did so (*see, e.g.*, Schapiro Reply Exs. 86-87; Ex. 88 (Viacom to YouTube: “I LOVE YOU! THANK YOU!!!”); Exs. 89-90); or (2) Viacom marketers asking YouTube to restore a particular clip after Viacom’s copyright enforcement team mistakenly took it down, as Viacom’s own personnel were unable to determine authorization status and frequently made baseless infringement assertions against viral marketing clips (Rubin Opening Decl. ¶ 3, Exs. 42-68; Schaffer Opening Decl. ¶¶ 15-18; Schapiro Opening Ex. 149-150; Schapiro Opp. Ex. 326 (VIA10432652 at VIA10432654); Exs. 327-331, 416; CVSUF ¶ 332; Schapiro Reply Ex. 91).

The fact that Viacom’s own personnel at BayTSP and internally were unable to keep track of all of Viacom’s stealth marketing – even when given “whitelists” of videos to leave up and even with full access to Viacom’s internal records and employees – alone refutes any claim that YouTube could have somehow been able to do so. *See infra* ¶ 127. Viacom admits as uncontroverted that its instructions to BayTSP about leaving up videos were not shared with YouTube. VCS ¶ 130.

Second, Viacom claims that it did not take steps to conceal that it was the source of certain videos it uploaded to YouTube for marketing purposes. This statement is demonstrably incorrect and is not supported by the documents Viacom cites. Viacom went to great lengths to conceal the origin of the stealth accounts identified in YouTube’s 56.1 ¶ 125. For example, with respect to the account “MysticalGirl8”, a Paramount employee registered an anonymous email address, used that address to create a YouTube account with no apparent connection to Paramount (*i.e.*, “mysticalgirl8”), and then went to Kinko’s to upload a clip of its film *The Heartbreak Kid* (a work in suit) for marketing purposes. Schapiro Reply Ex. 92 (148:4-150:24, 158:19-159:5, 166:21-168:22); Ex. 93 (Kang Decl. ¶

2); Ex. 94. It was only when the clip was identified by YouTube's users as containing "racy" content and placed behind an age-gate that Paramount contacted YouTube in order to have the age restriction removed. See **Kohlmann Ex. 60**; **Kohlmann Ex. 63**. Upon receiving a message from Paramount about an "inappropriate clip," YouTube immediately responded and said it would be happy to "escalate to the content team for takedown," thinking it was unauthorized. But Paramount responded "It is not copyrighted... Please do not remove." **Kohlmann Ex. 63**. The evidence demonstrates that Paramount did not contact YouTube to inform YouTube of the video's authorized status as part of some copyright enforcement policy; to the contrary, only the chance occurrence of a "racy" designation by YouTube's users prompted Paramount to contact YouTube at all. **Kohlmann Ex. 60**. And the employee who created the "MysticalGirl8" account and uploaded the clip from Kinko's offered to do it again. Schapiro Reply Ex. 95.

Viacom's assertion that none of the cited evidence supports that YouTube was unaware of Viacom's specific marketing activities is also incorrect. Viacom ignores the "GossipGirl40" account, which was created by MTV's agent Fanscape using a "fake" email address and then used to upload Viacom clips. Schapiro Opening Ex. 33 ("covert operation: Noone can know that Fanscape or MTV is involved in this . . . Huge success with leaks for MTV. MTV will most likely do this more often."); Schapiro Opp. Ex. 55; Schapiro Reply. Ex. 13 (74:20-76:1, 76:22-77:9). The operation was so "covert" that Viacom's copyright enforcement team took down the video (having no reason to know it had been posted at MTV's direction) and Fanscape did not ask to have it restored. Instead, Fanscape noted with approval that users had reposted the video "so the video continues to stay viral." Schapiro Opp. Ex. 55. When Fanscape reported that the clip had received an astonishing 600,000 views before being taken down, MTV Vice President David French was congratulatory: "shows the power of these viral clips when we get the footage and do it right. Good stuff." Schapiro Opp. Ex. 60. MTV's President of Entertainment likewise commented "This is great!!!" (Schapiro Reply Ex. 96) and "FANTASTIC" (Schapiro Reply Ex. 97). Not surprisingly, MTV did in fact continue to use the GossipGirl40 account for "leaked" videos thereafter. For example, Fanscape uploaded a video from MTV's "A Shot at Love" with the title "Tila Tequila Leak – Lesbian Sandwich", where the video had a "timecode" superimposed on it to make it look like it had been leaked from the studio in rough, unfinished form. Schapiro Opp Ex. 62 (also showing another video in this account titled "Tila Tequila Leak – Kristy's Ass"). Pursuant to Fanscape's plan to perform a "covert operation," nothing about the "GossipGirl40" account showed its connection to MTV or Fanscape – the "fake" email address used to create it was "gossipgirl40@yahoo.com".

Schapiro Opp. Ex. 417. Viacom provides no evidence of any communications with YouTube about the true nature of the GossipGirl40 account.

The other evidence cited by Viacom further supports the asserted fact. Viacom cites to **Rubin Ex. 10** as evidence that YouTube was aware of the stealth Viacom account “demansr.” But that email does not evidence any communications with YouTube about the “demansr” account. To the contrary, the email describes SpikeTV’s intention to sign up for an “official” YouTube account in addition to the “fake grassroots” demansr account, and the Viacom employee’s description of the phone conversation with YouTube is clearly referencing the “official” account where “there’s an approval process involved.” Rubin Opening Ex. 10. Viacom decided it would “go both routes, as many places do” – *i.e.*, use an “official” account known to YouTube and a “fake” account hiding its origins. *Id.* Viacom offers no evidence that Viacom ever communicated with YouTube about the true nature of its “fake grassroots” demansr account.

Any suggestion by Viacom that it freely shared with YouTube all information about its stealth marketing practices is also belied by its actions in this litigation. Viacom initially asserted a purported “copyright monitoring privilege” in an effort to avoid producing such documents. YouTube was required to litigate the issue before Viacom finally agreed to production. Then, when YouTube learned about the existence of a previously-unproduced whitelist during a deposition and requested it, Viacom resisted, producing other nonreponsive documents instead, requiring YouTube to repeatedly request the correct document. Rubin Reply Decl. ¶ 27. When Viacom finally did produce it, Viacom marked the document “Highly Confidential” – a designation that does not allow YouTube personnel to view it. Schapiro Opening Ex. 140 (whitelist document including “gossipgirl40” account). When YouTube asked Viacom to confirm that Viacom did not want the document disclosed to YouTube, Viacom replied, “Yes, that is correct.” Rubin Reply Ex. 193. To this day, Viacom considers its whitelist information showing which accounts it uses to upload content to YouTube to be so proprietary and confidential that it refuses to share it with YouTube personnel.

Viacom also employed a variety of other methods to obscure its involvement in promotional uploading activity, including:

- Using third party marketing agents to upload material on its behalf. Schapiro Opening Exs. 35-44, 45 (28:3-8); Chan Opening Decl. ¶ 3-5.

- Deliberately using email addresses that “can’t be traced to [Viacom]” when registering for YouTube accounts. Schapiro Opening Ex. 46; *see also* Rubin Opening Ex. 22 (videos should be “uploaded from [a] personal [account] and not associated with the film”); Rubin Opening Ex. 26; Schapiro Opp. Exs. 4, 417 (lists of accounts used by Viacom or its agents to upload videos to YouTube); Schapiro Reply Ex. 9.
- Altering its own videos to make them appear stolen, like “footage ... from the cutting room floor, so users feel they have found something unique”. Rubin Opening Ex. 4; Ex. 20 (describing how Viacom would “rough up” clips with time codes and other internal studio markings to make them seem illicit, even though the clips were actually part of a carefully crafted marketing initiative); Ex. 14 (“the goal is to make [the video clip] looked ‘hijacked’”); Schapiro Opening Ex. 50 (promotional video “[d]eliberately made to look like it was cut together by a 16 year old”)).
- Otherwise striving to make the posting appear to have been from a fan rather than Viacom. Schapiro Opening Ex. 34 (clip “should definitely not be associated with the studio – should appear as if a fan created and posted it”); Ex. 46 (Paramount employee instructed to use a “NON-PARAMOUNT” YouTube account); Rubin Opening Ex. 15 (VIA00369535) (“THIS MUST BE VIRAL AND NOT DIRECTLY CONNECTED TO US!”); Ex. 19 (instructing that a clip get posted on YouTube but without a Paramount logo or association); Rubin Reply Decl. ¶¶ 2, 4.

Given this activity, while YouTube was generally aware that content owners were using YouTube to post their content for marketing purposes, YouTube could not possibly have known all of the details about the full extent of Viacom’s, or any other content owner’s, marketing activities as Viacom implies. *See* Schaffer Opening Decl. ¶¶ 6-9; Botha Opening Decl. ¶¶ 11-12; Maxcy Opening Decl. ¶¶ 3-7; Rubin Decl. ¶1, Exs. 2, 32-41; Schapiro Opening Ex. 53; *see also infra* RVCS ¶ 126, 127.

- 126. Other media companies have taken steps to conceal that they were the source of certain videos that they uploaded to YouTube for marketing purposes. Ostrow Decl. ¶ 6; *see also* Chan Decl. ¶¶ 3, 4, 9, 10; Rubin Decl. ¶ 2 & Exs. 2, 32-41; Schapiro Ex. 28 (GOO001-05161257-58).**

Viacom’s Response: *Viacom lacks knowledge to admit or controvert this alleged fact, but notes that the alleged fact is unsupported by the cited evidence. The evidence cited shows that other media companies authorized*

the uploading of their copyrighted content to YouTube, but not that these media companies concealed authorized uploads of their content from YouTube. Indeed, many of the documents cited reflect exactly the opposite: content owners explicitly informed YouTube of authorized uploads. E.g., Schapiro Ex. 28, GOO001-05161257 (responding to email from marketing company Wiredset regarding YouTube uploads, YouTube employee Julie Supan writes: “Sounds like another [partnership] opp except paid ;)”); Rubin Ex. 32, GOO001-01021878, at GOO001-01021879 (YouTube document stating to content owners: “If you have questions or would like to discuss a custom marketing solution, please contact us and we’ll be glad to assist you”) & at GOO001-01021880 (describing communications between YouTube and media companies regarding authorized uploads); Rubin Ex. 34, GOO001-09595002 (in email message to YouTube employee Heather Gillette, NBC Universal executive writes: “In order to avoid any confusion or misunderstanding, I wanted to make sure you are aware that NBC is permitting YouTube to host this content . . .”).

Further controverted because Rubin Decl. ¶ 2, Ex. 2, and Exs. 32-41, Ostrow Decl. ¶ 6, and Chan Decl. ¶¶ 4 and 9 contain inadmissible evidence. See Evid. Obj. at 2-3, 5, 7.

YOUTUBE’S REPLY: Viacom does not dispute this fact; instead it claims a lack of knowledge. Moreover, Viacom’s assertions regarding the cited documents do not support its immaterial arguments.

First, Viacom’s assertion that the cited documents do not support a claim that other media companies concealed their stealth uploading “from YouTube” misses the point. Media companies engaging in stealth marketing took steps to conceal their connections to clips from the perspective of a person looking at the website (e.g., a user or a YouTube employee who had not personally communicated with the media company about the clip at issue). Viacom does not claim that other media companies provided YouTube with comprehensive, detailed information about all of their uploaded clips in order to inform YouTube about copyright authorization. Rather, YouTube was generally aware of these activities through *ad hoc* communications with media companies and their marketing agents arising in other contexts, as demonstrated by YouTube’s cited evidence. For example, in Schapiro Opening Ex. 28, an employee of a stealth marketing firm, Wiredset, introduced himself to one person at YouTube who forwarded that email to one other person at YouTube. The email says that Wiredset uploads “many of our clients videos” to YouTube but gives just two examples (a music video for “Flyleaf” and an MTV show, “Call to Greatness”, although without citing specific clip URLs or usernames). Wiredset used a number of usernames for its uploading on

YouTube, including non-obvious ones like “tesderiw.” Rubin Opening Decl. Ex. 47. And even when Wiredset used usernames that Viacom would presumably consider obvious, like “wiredsetassets,” Viacom still could not identify those as its authorized clips. Viacom is *still suing YouTube* in this action on at least two authorized videos uploaded under the wiredsetassets username. Rubin Opening Decl. ¶ 14a. Viacom failed to “withdraw” those videos in October 2009 when it sent YouTube its “revised” list of clips-in-suit, it failed to dismiss those clips with prejudice in February 2010 when it dismissed other authorized clips, and its employee Warren Solow submitted a declaration to the Court swearing that these authorized videos were “infringing” and that they appeared “without authorization”. See Hohengarten Ex. 2 (Solow Decl. ¶ 16, 26). Viacom cannot seriously argue that YouTube employees should have known of the authorized status of these videos when Viacom, even after thorough investigation and review by lawyers, did not. See also Rubin Opening Decl. ¶ 13 (Viacom dismissed with prejudice numerous clips from “Wiredset” username almost three years into this lawsuit).

Moreover, YouTube’s cited documents provide ample support for the use of YouTube by media companies to market content without disclosing their connection. For example, filmmakers created a series of videos that appear to be amateur testimonial from a young woman and posted them to the YouTube account “Lonelygirl15” without revealing their connection to the videos. Rubin Opening Ex. 36. Likewise, the Walt Disney Company’s Hollywood Records was behind videos of Marie Digby, whose “simple, homemade music videos of her performing songs have been viewed more than 2.3 million times on YouTube.” Rubin Opening Ex. 41. Viacom itself believed that YouTube was a “powerful marketing platform that most networks are using for promotion”. See Schapiro Reply Ex. 5; see also Rubin Reply Decl. ¶¶ 2-4.

Indeed, in addition to Viacom, other media companies also used YouTube to promote their content by posting videos that were characterized as “stolen” or “leaked” in order to create “buzz.” Viacom concedes that such practices are “ordinary marketing activities.” Viacom Opp. 57 n.32. For example, A&E Networks authorized its marketing agent, Fanscape, to post videos to YouTube of Gene Simmons titled “Stolen Gene Simmons Home Video” in order to make it appear as if the videos were illicit and exciting. Schapiro Reply Ex. 98; http://www.youtube.com/watch?v=5_Wx-qI4Rs0 (Schapiro Reply Exs. 192A/B); Ex. 99; <http://www.youtube.com/watch?v=ONHxYF2u3gc> (Schapiro Reply Exs. 193A/B); Ex. 100. One of the descriptions of the videos even implies that it should be watched quickly because is likely to be removed soon: “This is candid footage of badass Gene Simmons acting like a softy goofball with

his family. It was shot while filming his new reality show, but left on the cutting room floor where it was leaked. Enjoy it while it lasts!” *Id.*; see also *id.* Ex. 99 (screen shot including video located at http://www.youtube.com/watch?v=5_Wx-qI4Rs0); Ex. 100 (screenshot including video located at <http://www.youtube.com/watch?v=ONHxYF2u3gc>).

127. **YouTube was aware of promotional activities occurring on its service.** Schaffer, Decl. ¶¶ 7-8; Botha Decl. ¶¶ 11-12; Maxcy Decl. ¶¶ 3-7; Schapiro Ex. 53; Rubin Decl. ¶ 1, Exs. 2, 32-41.

Viacom’s Response: *Controverted because Botha Decl. ¶¶ 11-12 Maxcy Decl. ¶¶ 3, 4, and 7, Schapiro Ex. 53, and Rubin Exs. 32-41 contain inadmissible evidence. See Evid. Obj. at 11-12.*

In particular, Defendants’ reliance on Botha Declaration ¶ 11 is misplaced. Mr. Botha’s testimony that “[v]ery early on, professional content creators began to use YouTube as a promotional outlet” has no basis, as he references only a promotional video that Nike (a shoe and athletic company, not a “professional content creator”) uploaded. Mr. Botha testified in deposition that, other than Nike, he could not recall a single other company using YouTube for promotional purposes in 2005. Kohlmann Ex. 65 (Botha Dep.) at 107:3-7. And, YouTube was aware of Nike’s upload and met with Nike personnel about that specific video. Kohlmann Ex. 65 (Botha Dep.) at 106:13-16.

*Further, contrary to Defendants’ suggestions, Botha Decl. ¶ 12 (and related ¶ 13) merely confirm Defendants’ Grokster intent to keep infringing content on the site as long as possible to build up the user base. Mr. Botha claims that “YouTube did not know who held the copyright in the Lazy Sunday clip,” Botha Decl. ¶ 13, and that NBCU (the content owner) “chose simply to leave [the clip] on the service.” But Mr. Botha’s declaration, his deposition testimony, and the documentary evidence belie that claim. YouTube did know that NBCU was the content owner. Mr. Botha testifies clearly that “Chad Hurley wrote to NBC Universal asking whether NBC was aware of the clip” Botha Decl. ¶ 13; see also Kohlmann Ex. 65 (Botha Dep.) at 153:11-12 (“we notified the owners of that show”). Indeed, when Hurley wrote to NBCU, NBCU responded that it believed that the clip was unauthorized but would check further. Hurley Ex. 30. Hurley—illustrating that he understood the benefit of keeping infringing premium content on the site as long as possible—forwarded that response to Chris Maxcy, stating: “this is good. it’s not a yes or a no. we’ll see if they follow up or just ignore the request.” *Id.* See also Hohengarten Ex. 242, JK00006689 (“what? someone from cnn sees it? he happens to be someone*

with power?”; Hohengarten Ex. 17, GOO001-00629474 (“next time we have another lazy sunday hit, it would hurt us if the user suddenly removed the video”).

YOUTUBE’S REPLY: Viacom does not genuinely dispute the asserted fact. This is particularly apparent given that Viacom’s purported dispute is not even consistent with Viacom’s other responses to YouTube’s 56.1. *See* VCS ¶¶ 123-125 (asserting that YouTube was aware of promotional activities on its site). Viacom’s remaining purported “dispute” consists of nothing more than baseless evidentiary objections and Viacom’s distortion of the events surrounding the appearance of the video clip “Lazy Sunday” on YouTube (which, like the posting of the professionally-produced Nike commercial, occurred in 2005). *See* CVSUF ¶¶ 47, 83, 89, 90, 91, 92, 98, 99.

Even disregarding Viacom’s inconsistent responses to YouTube’s 56.1, Viacom misses the point. It is precisely because YouTube is generally aware of the promotional activities of content owners on the site (including Viacom) that it cannot know whether any particular video appearing on the site is unauthorized. *See* YouTube Br. 39-48, 64-67; YouTube Opp. 4-6. That those promotional activities create confusion as to authorization is evidenced by the fact that the content owners themselves—including Viacom—are often unable to distinguish the material they have authorized to be on YouTube from the material they contend is unauthorized, despite concerted efforts to do so. *See* Rubin Opening Ex. 64; Schapiro Opening Ex. 65; Exs. 141-148.

For example, Viacom developed detailed instructions and elaborate record-keeping in an effort to distinguish clips that Viacom wanted to remain on YouTube from those it wished to take down. *See* Schapiro Opening Ex. 57; Ex. 135; Ex. 136 (109:19-112:3); Ex. 137; Ex. 138; Schapiro Opp. Ex. 269 (150:12-151:2); Schapiro Reply Ex. 77 (55:2-56:12, 172:4-173:1, 244:2-19); Ex. 92 (5:14-46:17); Ex. 139 (239:14-242:14); Ex. 143 (159:7-21). Viacom also attempted to maintain internal “whitelists” of approved YouTube user accounts (although Viacom admitted that those internal whitelists were consistently incomplete and unreliable). Schapiro Reply Ex. 17 (414:24-420:6); Ex. 105 (162:6-10, 167:22-168:7); Rubin Opening Decl. ¶ 5(a)-(f) & Exs. 84-116; Schapiro Opening Ex. 140; *see also* Schapiro Reply Ex. 154 (VIA11789373) (“it would be a significant task to keep you updated on each and every clip we post ongoing”). Under Viacom’s theory that it is not just possible but easy to distinguish between authorized and unauthorized material at a glance, there would have been no reason for Viacom to create these elaborate instructions and white lists. But it did, and even then it was not successful in keeping track of

unauthorized vs. authorized material. Viacom and its agents routinely made mistakes in sending DMCA takedown notices, demanding that YouTube remove videos that turned out to be authorized by Viacom. Rubin Opening Decl. ¶ 3, Exs. 42-68; Schaffer Opening Decl. ¶¶ 15-18; Schapiro Opening Ex. 149-150; Schapiro Opp. Ex. 326 (VIA10432652 at VIA10432654); Exs. 327-331, 416; CVSUF ¶ 332; Schapiro Reply Ex. 91. Viacom's mistaken takedown requests have even resulted in the suspension of Viacom's own YouTube accounts or the accounts of its authorized marketing agents. Schaffer Opening Decl. ¶¶ 15-16, Ex. 4; Rubin Opening Decl. ¶ 3 & Exs. 42, 56-67. Other content owners have experienced the same problems. Rubin Opening Decl. ¶ 4 & Exs. 70-83.

Viacom has not even been able to distinguish authorized from unauthorized material on YouTube in this litigation. Viacom mistakenly sued YouTube over hundreds of videos uploaded by Viacom or its marketing agents, despite an elaborate vetting process by its litigation team and multiple attempts to dismiss authorized videos from the lawsuit. VCS ¶¶ 148-152. And Viacom still has not located all the clips in suit that were uploaded by it or its agents.

Even after all of Viacom's efforts to remove from this lawsuit clips that it authorized, Viacom is ***still suing*** YouTube for infringement as to videos that Viacom posted on YouTube or authorized third parties to post on YouTube. In addition to the authorized clips that are still clips-in-suit identified in YouTube's opening motion (*see* Rubin Opening Decl. ¶ 14), there are an untold number of additional authorized clips-in-suit, a non-comprehensive sample of which is listed below. *See* Solow Decl. ¶¶ 16, 26 & Ex. F (list of clips on which Viacom is still suing and that its employee, Warren Solow, averred under oath were "not authorized.")

- UtNKMRNl7r4 (clip introduced by *Jackass 2* movie actors saying "Thank you for watching us on YouTube") Schapiro Opp. Ex. 397A/397B; *see also* Schapiro Reply Ex. 136 (identifying this URL as clip placed on YouTube by Paramount as paid home page advertisement).
- SPEexW7gXMw (clip alleged to be from MTV Jaime Kennedy show uploaded by "fcreetus," a username referenced in Viacom marketer Total Assault's documents as being used in connection with its uploads of Jamie Kennedy videos). *See* Schapiro Reply Exs. 194A/B; Ex. 137; Rubin Reply Decl. ¶ 11 (username for uploader of this clip is fcreetus); *see also* Ostrow Decl. ¶¶ 2-5.

- W4UW2CBWrO4 (Clip alleged to be from *Showbiz Show* with interview of Tila Tequila, an MTV reality show personality, uploaded by Tila Tequila's official account). See Schapiro Reply Exs. 195A/B; Rubin Reply Decl. ¶ 11.
- jlWMBzfmc4 (clip allegedly from *Broken Bridges* film, uploaded by username BrokenBridgesMovie, including description saying "DVD AVAILABLE IN STORES JANUARY 9TH! This is the official music video for "Broken" by Lindsey Haun."). See Schapiro Reply Exs. 196A/B; Rubin Reply Decl. ¶ 11.
- cGrnebuquSk (clip allegedly from *The Daily Show*, uploaded by username NateDernComedy, including description saying "From the June 28, 2007 Daily Show with Jon Stewart, this is a very funny piece done by Rob Riggle on the iPhone. You can see me and some of the other TDS interns spattered throughout the vid. I'm the bearded on playing Jenga. <http://natedern.com>"). See Schapiro Reply Exs. 197A/B; Rubin Reply Decl. ¶ 11.

Viacom's stealth marketing efforts actually misled YouTube users, as Viacom intended them to. For example, Viacom posted on YouTube a video of animated slugs to promote the movie *Flushed Away*. Rubin Opening Decl. Exs. 15-16. Viacom instructed its employees to upload multiple copies of the video, saying "THIS MUST BE VIRAL AND NOT DIRECTLY CONNECTED TO US!" *Id.* Ex. 15. Shortly after the video was posted, YouTube received an email from a user titled "stolen content" about the video. Schapiro Reply Ex. 101. The user informed YouTube that the video was "stolen content or copyright issues or whatever from the new movie 'flushed away'" because "if you watch the previews or see when it comes out that the EXACT SAME SLUGS are in it . . . and in the tags are also that it says 'trailer clip,' AND movie'." *Id.* YouTube responded that if the user was the content owner, he should send a notice meeting DMCA requirements. *Id.* While the user concluded the clip was infringing due to various indicia including the content of the clip and the tags associated with it, as it turns out, the video was not infringing at all: Viacom had uploaded it and heavily promoted it as a marketing vehicle for its movie. This also encapsulates yet another problem with Viacom's "user-flagging" argument: Viacom's efforts to hide its connection to viral marketing clips from users is yet another reason why users would have no ability to distinguish infringing from authorized clips. See YouTube Opp. 51-53.

128. **Viacom has knowingly left up on YouTube thousands of clips containing its content. Schapiro Exs. 57, 62, 75, 76.**

Viacom's Response: Controverted. It is undisputed that Viacom did not grant YouTube an express or implied license to display user uploads of its copyrighted works. See Viacom Opp. at 57-62. From October 2006 through January 2007, while negotiating with Defendants regarding a licensing deal, Viacom enforced its rights only for the most egregious instances of infringement, and the documents Defendants cite show that Viacom worked with its takedown agent BayTSP to implement its enforcement priorities.

BayTSP thus began by issuing takedown notices for full episodes of Viacom television shows, which would not have been covered by the license Viacom was seeking, and subsequently also began taking down clips that were more than several minutes in length. Kohlmann Ex. 73 (Hallie Dep.) at 53:14-54:25; Kohlmann Ex. 66 (Cahan Dep.) at 216:14-217:5. Given the massive volume and scope of infringement of Viacom content on YouTube, there was a "ramp up" period as BayTSP gained more experience and hired and trained more employees. Kohlmann Ex. 73 (Hallie Dep.) at 109:7-17, 118:6-17, 183:24-184:5, 194:13-195:3; Kohlmann Ex. 81 (Solow Dep.) at 113:12-114:5, 341:12-23; Kohlmann Ex. 66 (Cahan Dep.) at 225:10-23.

As negotiations progressed, Viacom continued to expand its efforts to identify infringing content on YouTube, but generally abstained from issuing takedown notices in the expectation that Viacom's infringement claims would be settled as part of an overall licensing deal. See Kohlmann Ex. 72 (Fricklas Dep.) at 25:5-18; Kohlmann Ex. 81 (Solow Dep.) at 148:23-149:22, 196:9-199:11, 206:21-207:10, 226:8-227:17; Kohlmann Ex. 74 (Ishikawa Dep.) at 112:13-113:18, 228:3-229:13. When negotiations reached an impasse, on February 2, 2007, Viacom sent Defendants a takedown notice for all of the infringing content that Viacom had identified on YouTube. Viacom SUF ¶ 210.

YOUTUBE'S REPLY: Viacom does not genuinely dispute this fact; to the contrary, it admits that Viacom knowingly left up on YouTube thousands of clips containing its content and simply offers legal argument about the effect of its leave-ups. Though not material to the disposition of YouTube's motion, Viacom's argument is incorrect.

First, Viacom's claim that it did not grant YouTube an express or implied license to display user uploads of its copyrighted works is incorrect. See CVSUF ¶ 208; YouTube Reply 22-27. Second, Viacom admits in this response that it "generally abstained" from issuing takedown notices

during its negotiations with YouTube through 2006 and into early 2007. But Viacom's purported explanation for its leave-up activity is incomplete. There were numerous reasons for the leave-ups:

- (i) Part of Viacom's negotiation strategy was to withhold takedown notices and allow videos to accumulate on YouTube so that it could threaten a mass takedown as leverage in the negotiations. Schapiro Opening Ex. 10. Viacom expressly told YouTube during those negotiations that it was deliberately leaving up videos. Maxcy Opp. Decl. ¶ 8. *See also*:
 - BayTSP to Viacom: "We believe that with this information you will be able to drive a much better advertising deal with Google/YouTube at the end of the day"; Response from Viacom: "[T]his is not part of a piracy effort and would not involve take-down notices. It is intelligence gathering so that we can be better informed about traffic so we are better positioned for negotiations." Schapiro Reply Ex. 102.
 - BayTSP: Viacom "is interested in getting negotiation leverage as we discussed." Schapiro Reply Ex. 103.
 - Viacom told BayTSP that it was primarily interested in tracking "metrics" information about what material was available on YouTube and only incidentally envisioned "taking down at least some of our material as well". Schapiro Reply Ex. 104; Ex. 105 (59:21-61:8).
- (ii) Viacom wanted to amass takedowns but not send them in order to have a "dramatic" event that would create negative PR for YouTube. Schapiro Opening Ex. 10; Schapiro Reply Ex. 26 (BayTSP004313354 at BayTSP004313355) ("Want to be sure we do not issue any takedowns this week....Would like to amass as much as possible in one go."); Ex. 106 ("the press will be all over YouTube after the announcement tomorrow, so we will no longer be holding back notices."); Ex. 27 (observing that the Viacom executive in charge of the takedowns made commitments "over the volume of infringements and is having a hard time meeting those numbers").
- (iii) During this time period, Viacom was having BayTSP monitor and identify lists of videos purportedly containing Viacom content for Viacom to "approve" or "decline" for takedown. Schapiro Opening Exs. 54-77; Ex. 11 (134:19-136:10, 138:25-139:14, 161:9-21); Schapiro Opp. Ex. 130; Shapiro Reply Ex. 18 (VIA16072901 at VIA16072906) (set of videos for which Viacom declined to send

notices had 3.3 million views); Ex. 107 (Viacom “declined” takedowns for 147,610 videos); Ex. 4 (chart with rules as of 11/22/06 listing numerous shows with no takedowns authorized); *see also* CVSUF ¶ 130. There was no significant “ramp up” time needed to effectuate take-downs; if Viacom had chosen to take down the videos, BayTSP could have accomplished that very quickly by immediately issuing the takedowns rather than holding them. As BayTSP put it, “we are leaving a majority of the content on YouTube” due to Viacom’s decision not to issue takedowns. Schapiro Opening Ex. 75; *see also* Schapiro Reply Ex. 108 (“I can have this ramped up 1 week after you tell me it’s a go”).

- (iv) Viacom wanted to keep its material on YouTube to reap the promotional benefits that free exposure gave to its shows and movies. Schapiro Opening Ex. 58 (Viacom executives felt “very strongly” they didn’t want to stop “the colbert and daily clips”); Schapiro Reply Ex. 76 (132:19-133:24) (“having the content there was valuable in terms of helping the rating of our shows.”); Ex. 109 (“If we pull our content down and sue YouTube with no alternative I bet Jon Stewart and Colbert will have a fit”); Ex. 28 (“please continue pulling full episodes . . . leave random clips up because they are promotional in nature for us”); *see also* Schapiro Opp. Ex. 238 (Viacom personnel formulating the leave-up policy were told “there are A LOT of clips they [VH1] have seeded to YouTube” and SpikeTV posted “a minimum of four clips a week” as YouTube “is a powerful marketing platform that most networks are using for promotion.”); Schapiro Reply Ex. 111 (Viacom marketing personnel reacting to news of mass takedown: “Fuck.” “Horrible.”).
- (v) Viacom was affirmatively using user-uploaded YouTube clips of shows like *Jackass* in its marketing campaigns. Schapiro Opp. Exs. 373; 370 (117:10-23; 61:4-63:4; 119:4-21); Ex. 55 (Viacom agent Fanscape noting with approval that users had reposted a Viacom clip it uploaded “so the video continues to stay viral.”). Such campaigns would have been compromised if Viacom took down the very videos those campaigns relied on.
- (vi) Viacom had trouble distinguishing between the “boatload” of marketing clips it had uploaded to YouTube and other clips. Rubin Opening Ex. 17. So it told BayTSP to “err on the side of leaving up some infringing material rather than being overly aggressive and taking down one of the many approved clips.” Schapiro Opening Ex. 65; *see also* Ex. 64 (directing leave-ups of Paramount clips under 8 minutes in length due to “the problem with the marketing clips”); Schapiro Reply Ex. 30 (Dec. 2006 directive from MTV to

“stop taking down Comedy Central Presents clips immediately” to avoid removing clips posted by “the comedians who performed on the show.”).

- (vii) Viacom’s own video websites were not as robust as YouTube. Viacom was concerned that there would be consumer backlash if clips of its shows disappeared from YouTube while Viacom lacked an adequate, comparable platform where the videos could be alternatively viewed. Schapiro Reply Ex. 112; Ex. 1 (344:2-345:24); *see also* Ex. 109 (predicting that takedown of content would cause Viacom to “suffer consumer, press, and talent backlash for sure”).
- (viii) Even when Viacom did the mass takedown of approximately 100,000 videos on February 2, 2007, it still left up large quantities of videos it believed to contain Viacom material: “There are many, many clips that use material from our shows and movies that have not been removed because it is possible that there could be a fair use claim and we did not have the resources to do the analysis”. Schapiro Reply Ex. 24.
- (ix) Viacom actively encouraged users to share *South Park* clips online and therefore had no motivation to take them down. *See* CVSUF ¶ 31.
- (x) Viacom marketers were pleased when user-uploaded clips appeared on YouTube, and they did not want to take them down. Schapiro Opp. Ex. 28 (“YouTube - Please note that there are a ton of placements being put up by additional users which is fantastic and resulting [in] thousands of views (although Viacom’s lawyers may not think so)”; Ex. 43 (Paramount marketers deemed “a lot of duplicates” of *Transformers* clips uploaded by users to YouTube “a good thing”); Schapiro Reply Ex. 29 (MTV Vice President agreeing that user-uploaded clips of *The Hills* should remain on YouTube because “in the end, its all good for the show”); Ex. 23 (instruction from Paramount to BayTSP to leave up movie clips: “its actually good, we should turn a blind eye”); Ex. 113 (Viacom marketer approvingly notes “crazy” YouTube video from a “user” including *Sweeney Todd* clips; another Viacom marketer responds “You’re funny. We produced this.”); Rubin Opening Ex. 27 (Paramount directing BayTSP to leave up long list of clips relating to *Iron Man*).

129. YouTube gave instructions to its agent, BayTSP, about which clips to take down from YouTube and which clips to leave up on YouTube. Id. Exs. 11 (115:6-118:1), 54 (BAYTSP 001093412), 55 (BAYTSP 003724704), 56 (214:25-215:6), 57 (BAYTSP 001125605-08), 59, 60, 63-64, 65 (BAYTSP 003718201).

Viacom's Response: *Viacom assumes that Defendants intend to state that "Viacom gave instructions to its agent, BayTSP," not that YouTube gave such instructions. Subject to that assumption, Plaintiffs respond:*

Regarding "which clips to take down from YouTube," uncontroverted.

Regarding "which clips to leave up on YouTube," controverted. See supra ¶¶ 122, 128.

YOUTUBE'S REPLY: *See supra RVCS ¶ 128.*

131. Through at least October 2006, Viacom had an internal policy of declining to issue takedown notices for user-submitted clips on YouTube containing MTV Networks ("MTVN") content that were less than five minutes long. Id. Exs. 59, 60.

Viacom's Response: *Controverted. See supra ¶¶ 128-130.*

YOUTUBE'S REPLY: *See supra RVCS ¶ 128.*

132. In October 2006, Viacom told BayTSP to leave up on YouTube any clips containing MTVN content that were shorter than 2.5 minutes in length, regardless of who had posted them. Id. Ex. 54.

Viacom's Response: *Controverted. See supra ¶¶ 128-130.*

YOUTUBE'S REPLY: *See supra RVCS ¶ 128.*

133. Later in October 2006, Viacom told BayTSP that all videos containing MTVN content should be left up on YouTube unless the videos were "full episodes." Id. Exs. 55 (BAYTSP 003724704), 56 (214:25-215:6).

Viacom's Response: *Controverted. See supra ¶¶ 128-130.*

YOUTUBE'S REPLY: *See supra RVCS ¶ 128.*

- 134. Viacom instructed BayTSP to leave up on YouTube “full episodes” of certain of its programs (some of which are works in suit). Id. Exs. 11 (115:6-118:1), Ex. 57 (BAYTSP 001125605-08).**

Viacom’s Reponse: Controverted as well as immaterial. As discussed in detail earlier, see supra ¶ 128, Viacom specified the content BayTSP should identify and take down, but did not explicitly or implicitly authorize the display of other content on the YouTube site. Furthermore, the evidence Defendants cite does not support the proposition that Viacom asked BayTSP to monitor YouTube for its programs but leave up full episodes of those programs; indeed, it shows exactly the opposite. See Schapiro Ex. 11 (Nieman Dep.) at 117:22-23 (as of November 6, 2006, taking down “full assets is the rule for the YouTube page”); Schapiro Ex. 57, BAYTSP 001125563, at BAYTSP 001125605 (indicating that as of November 6, 2006 BayTSP was instructed to take down full episodes of listed shows).

YOUTUBE’S REPLY: *See supra RVCS ¶ 128. Viacom’s response does not create a genuine issue of material fact for the reasons set forth in Paragraph 128, supra, as well as because Viacom itself claims that the fact is “immaterial” and because Viacom fails to controvert the fact in any event.*

The chart at BAYTSP001125605 (Schapiro Opening Ex. 57) has no takedown instructions checked for certain shows – meaning that even full episodes would be left up. The shows where full episodes were to remain included “Hogan Knows Best,” “Breaking Bonaduce” and “VMA Awards”, all of which are works-in-suit. Other charts with takedown instructions provided by Viacom to BayTSP had even broader full episode leave-up rules. Schapiro Reply Ex. 4 (BAYTSP003749923 at BAYTSP 3749925) (no takedown instructions at all for “Chappelle Show”, “Reno 911”, “Comedy Central Presents,” “Drawn Together,” “Mind of Mencia”, “Upright Citizens Brigade” and others).

- 135. Viacom has stated publicly that it was choosing to allow some of its content to remain on YouTube. Id. Ex. 77.**

Viacom’s Response: Controverted. As discussed in detail above, see supra ¶ 128, Defendants falsely portray Viacom’s decision to prioritize the removal of some infringing content as implying authorization to display other infringing content.

Additionally, the fact is unsupported by admissible evidence. The only reference to a public statement in Schapiro Ex. 77, an email exchange

between Viacom employees Michele Ganeless and Jason Witt, is quoted from an unidentified news report, which is inadmissible hearsay not falling within any exception. See Evid. Obj. at 1.

YOUTUBE’S REPLY: *See supra* RVCS ¶ 128. Viacom does not genuinely dispute this fact, both for the reasons set forth in Paragraph 128, *supra*, and because its evidentiary objection is baseless. The email itself is a party admission with statements from Viacom’s employees confirming the content of the news stories (such as “there are still cc clips on youtube that in fact, they were never asked to remove them all”). Moreover, YouTube’s fact also goes to what was announced and reported publicly and its effect on YouTube, not the underlying truth of the matter asserted, and therefore is not hearsay. Viacom cannot seriously controvert the public reporting in the fall of 2006 that it was deliberately leaving short clips on YouTube. *See* Schapiro Reply Ex. 114; Ex. 115; Ex. 118 (Viacom employee commenting on article that it “got the full episodes vs clips thing right”); Ex. 116; Ex. 117. And, in fact, Viacom’s instructions to BayTSP in that time frame directed no takedowns for short clips, including for shows such as the Colbert Report and the Daily Show. Schapiro Opening Ex. 57; *see also supra* RVCS ¶ 134.

167. YouTube does not seek to earn revenue from users’ potentially infringing activities. Id. ¶ 11.

Viacom’s Response: *Controverted. It is undisputed that Defendants sought to build up YouTube’s user base through massive copyright infringement and then monetize that user base through advertising. See Viacom SUF ¶¶ 230-266. Further, Reider Decl. ¶ 11 is inadmissible because it is not based on personal knowledge and contains legal conclusions. See Evid. Obj. at 13.*

YOUTUBE’S REPLY: Viacom does not genuinely controvert this fact, and there is no evidence supporting Viacom’s assertions. As there has never been “massive copyright infringement” on YouTube (indeed, Viacom’s summary judgment motion did not even shown a single infringement of a single Viacom work), there can be no “user base” based on infringement. YouTube is a legitimate service used overwhelmingly for non-infringing uses; its generic advertising programs cannot be equated with a benefit from alleged infringement. YouTube Reply I.E.

YouTube’s desire to avoid seeking to obtain revenue from even potentially unauthorized videos is shown by the fact that it does not allow advertisements to appear on watch pages of videos unless the content owner had entered into a partnership agreement with YouTube and

affirmatively indicated that it wants advertising. Reider Opening Decl. ¶ 9. Even during the short time period in 2006 when YouTube allowed advertising to appear on watch pages of videos generally (approximately April 2006 through December 2006), very few of the clips-in-suit (██████████) had such ads. Schapiro Opp. Ex. 312. For those clips, the advertising revenue from the Google AdSense network was a total of ██████████ (which includes revenue from watch pages of the authorized clips-in-suit on which Viacom mistakenly sued YouTube). *Id.* Indeed, during the entire time period when there were ads on watch pages, Viacom was “forbearing” from taking down videos and authorizing the videos to be left up. *See supra* RVCS ¶¶ 128-135.

II. RESPONSE TO VIACOM’S SUPPLEMENTAL COUNTER-STATEMENT

Pursuant to Local Civil Rule 56.1, YouTube sets forth the following Response to Viacom’s Supplemental Counter-Statement.

A. VIACOM’S SUPPLEMENTAL COUNTER-STATEMENT IS IMPROPER AND SHOULD BE DISREGARDED

Viacom has separately submitted a document that it titles Viacom’s Supplemental Counter-Statement in Response to Facts Asserted in Defendants’ Summary Judgment Memorandum of Law But Omitted From Defendants’ Local Rule 56.1 Statement (“VSCS”). In the document, Viacom pulls out individual assertions not from YouTube’s 56.1, but from YouTube’s brief, and then offers paragraphs of argument and evidence in response. The proper place for Viacom to respond to the assertions in YouTube’s Opening Brief was in Viacom’s opposition. Nothing in Local Rule 56.1 authorizes Viacom to supplement its responsive brief with a separate document that serves the same purpose. *See* Local Rule 56.1. Through the submission of the VSCS, Viacom has effectively arrogated to itself an additional 43 pages of briefing beyond the agreed-upon and Court-ordered page limits for summary judgment. That is improper, and the VSCS should be

disregarded. *See Pacenza v. IBM Corp.*, No. 09-2025-cv, 2010 WL 346810, at *1 (2d Cir. Feb. 2, 2010) (affirming district court decision to strike portions of summary judgment submissions that “constituted an attempt by the Plaintiff to circumvent page-limit requirements placed on legal memoranda submitted to the court.”); *see also Primmer v. CBS Studios, Inc.*, 667 F.Supp. 2d 248, 255 (S.D.N.Y. 2009) (disregarding aspect of Local Rule 56.1 Counterstatement found to be improper under the Rules); *Am. Med. Ass’n v. United Healthcare Corp.*, No. 00 Civ. 2800 (LMM), 2007 WL 1771498, at *2 (S.D.N.Y. June 18, 2007) (district courts are “free to disregard” improper Rule 56.1 statements) (citation omitted).

B. RESPONSE TO CERTAIN STATEMENTS INCLUDED IN THE VSCS

Given the improper nature of the VSCS, YouTube will not endeavor to respond to each statement set forth therein. YouTube sets forth below its reply to select Viacom responses that particularly misconstrue the record or the evidence cited. However, nothing in the VSCS does (or could) raise a genuine issue of material fact for trial. First, Viacom’s gratuitous “responses” to selected statements in YouTube’s *memorandum of law* are immaterial; the facts set forth in YouTube’s Local Rule 56.1 Statement are not genuinely disputed and, on those facts, summary judgment should be granted in YouTube’s favor. Whether Viacom disputes statements in YouTube’s memorandum of law does not bear on the existence of genuine issues of material fact for trial. Second, nothing in the VSCS actually raises a genuine dispute in any event. Viacom outright admits that it does not controvert twenty-nine of the statements it included in the VSCS. *See* VSCS ¶¶ 1.1,

1.2, 1.5, 1.6, 1.7, 1.8, 1.10, 1.12, 1.19, 1.26, 1.28, 1.35, 1.41, 1.51, 1.54, 1.76, 1.80, 1.87, 1.88, 1.92, 1.93, 1.97, 1.98, 1.101, 1.103, 1.110, 1.116, 1.117, 1.118. Other statements are purportedly disputed based solely on meritless evidentiary objections. VSCS ¶¶ 1.9, 1.37, 1.86, 1.94, 1.104, 1.108, 1.115. With respect to all of the remaining statements in the VSCS, Viacom simply offers irrelevant assertions and legal argument, and raises no genuine factual disputes.⁴

1.11 *Under [YouTube’s content partnership agreements], [content owners] make content available to YouTube by uploading it directly Defs. Opening Mem. at p. 8 (citing Walk Decl. ¶ 10).*

Viacom’s Response: *Controverted to the extent that the asserted fact implies that this activity occurred throughout YouTube’s existence. It is undisputed that YouTube did not enter into its first content partnership agreement with any major media company until late in the third quarter of 2006. See Viacom SUF ¶¶ 299, 300.*

YOUTUBE’S REPLY: Viacom’s response does not raise a genuine dispute with this statement and it is therefore not controverted. The agreement that Viacom references in VSUF ¶¶ 299 and 300 was not the first agreement by which a content owner – a “major media company” or otherwise – agreed to make content available to YouTube by uploading it directly. Since its earliest days, content owners agreed to place their content on YouTube in writing and orally, expressly and by implication, by uploading it directly or by knowingly allowing content uploaded by ordinary users to remain there. Maxcy Opening Decl. ¶¶ 3-7, 9-10; Schaffer Opening Decl. ¶¶ 2-3, 5-6; Botha Opening Decl. ¶¶ 11-12; Rubin Opening Decl. Exs. 1-2, 3-14, 33-35.

⁴ YouTube sets forth below in bold font the facts listed in YouTube’s 56.1 as to which YouTube is specifically replying. Viacom’s response to each of those facts from the VSCS is also set forth in italic font, followed by YouTube’s reply to Viacom’s responses in normal text.

- 1.13 In 2006, the Motion Picture Association of America (the anti-piracy association for the major movie studios) told the press: “YouTube has been a good corporate citizen and has taken off copyrighted material.” Defs. Opening Mem. at p. 11 (citing Levine Decl. ¶ 32 & Ex. 14).

Viacom’s Response: *Controverted in that the undisputed evidence shows that, in 2006, YouTube repeatedly refused to work with the MPAA to prevent the infringement of the copyrighted works of MPAA’s members, including Paramount. See Viacom SUF ¶¶ 225-229 (citing deposition testimony of former MPAA President Dean Garfield). The cited evidence is also inadmissible hearsay. See Evid. Obj. at 14.*

YOUTUBE’S REPLY: Viacom does not dispute, and therefore admits, the fact that the Motion Picture Association of America (the anti-piracy association for the major movie studios) told the press: “YouTube has been a good corporate citizen and has taken off copyrighted material.”

Separate from the undisputed fact at issue, Viacom makes argumentative statements regarding YouTube’s interactions with the MPAA. Viacom claims that in 2006 YouTube “repeatedly refused to work with the MPAA.” That is false. As Dean Garfield, MPAA’s Executive Vice President, wrote to Viacom’s General Counsel on January 31, 2007:

We recently contacted YouTube to pick up our file-removal and filtering discussion where we left off last year. YouTube’s position has not changed. ***They are willing to move forward with a pilot*** that would involve YouTube using a list of 1,000 titles to (a) remove any content that we identify as being unlicensed, and (b) using the hash from those titles to create a “blacklist” of files that will not be permitted onto the system in the future.

In addition to removing motion picture and television shows based on a title list and then blacklisting those files, ***YouTube is willing to prevent the posting of content that is registered with Audible Magic. YouTube has an agreement with Audible Magic. Thus, the extent your content is registered with Audible Magic, YouTube will include those registered fingerprints in a directory that is checked before any materials are posted.***

Schapiro Opp. Ex. 163 (emphasis added); *see also* CVSUF ¶¶ 225-229. That email reflects in Garfield's own words that YouTube was willing to collaborate with the MPAA on fingerprinting issues during 2006. YouTube was not only willing to engage in fingerprinting testing with the MPAA, it did so. When YouTube's proprietary system was ready for testing in early June 2007, YouTube reached out to the MPAA. Schapiro Reply Exs. 43, Ex. 44. And the parties then entered into an agreement under which the MPAA evaluated YouTube's fingerprinting technology. Schapiro Reply Ex. 45 (GOO001-06126509, GOO001-06126510). The undisputed evidence shows YouTube's continuing cooperation with the MPAA on copyright issues.

1.17 To the frustration of many within [Viacom], Viacom's efforts to acquire YouTube proved unsuccessful. Defs. Opening Mem. at p. 12 (citing Schapiro Ex. 5).

Viacom's Response: *Controverted. While some Viacom employees briefly considered the idea of exploring a possible acquisition of YouTube, Defendants dramatically overstate the seriousness of Viacom's consideration of such an acquisition. See Resp. to Defs. SUF ¶ 46.*

YOUTUBE'S REPLY: Viacom does not genuinely controvert the asserted proposition, nor could it. Viacom's senior most executives were extraordinarily enthusiastic regarding the prospect of acquiring YouTube. *See e.g.,* Schapiro Opp. Ex. 185 ("We (MTVN/Viacom) have to buy YouTube."); Ex. 186 ("I WANT TO OWN YOUTUBE, I think it's critical"); Ex. 187 ("Help us get YouTube. We cannot see it go to Fox/NBC"), 188 (MTVN Chairman: "If we get UTube....I wanna run it[.] Viacom CEO: "You'll have to kill me to get to it first[.]"); Ex. 189 ("YouTube! I'm banging my shoe"); Schapiro Reply Ex. 119 (Viacom Sr. VP: The more I look at the [Long Range Plan] the more I think we need to buy YouTube"); Ex. 120 ("HIGHLY CONFIDENTIAL – we are now talking with NBC about buying YouTube in a partnership"; "We should just buy YouTube outright"); Ex. 121 ("Let's BUY YOUTUBE"); Ex. 122 (Blair Harrison (Ifilm CEO): "We should just buy YouTube outright"; McGrath: "I couldn't agree more. Let's go get [CEO Tom] Freston's checkbook"; "I ... told [Wade Davis] to figure out a way to buy it, as it will probably take some financial gymnastics.").

Viacom's "best minds" were tasked with doing their "best thinking" about an acquisition, and they unanimously recommended buying YouTube, viewing it as a "transformative acquisition" for Viacom. Schapiro Reply Ex. 76 (65:5-14, 79:20-80:21); Schapiro Opening Ex. 173. This group of Viacom executives (including seven executive or senior vice presidents)

prepared an extensive presentation on the potential acquisition which included a thorough analysis of the service's operations, and a detailed financial assessment. Schapiro Opp. Ex. 216 ("Project Beagle").

After a lengthy meeting about YouTube with Viacom's CEO and other top company executives, a senior vice-president reported: "YouTube – we had a very deep conversation (over an hour) about the potential, the risk and why strategically it is so critical...[T]hey are extremely serious about buying and only want to lose it once we are convinced we cannot make the number work (600m)." Schapiro Reply Ex. 123. But Viacom concluded in July 2006 that it could only afford to pay \$600-800 million for YouTube and could not afford the \$1.5 bones YouTube was seeking. Schapiro Reply Ex. 124 ("How did YT call go? I heard they wanted 1.5 bones."); Ex. 125 (VIA00343418) (Viacom CEO: "I gather that the YouTube valuation from your guys only gets you to \$500-600MM?"); Ex. 126 ("The answer on beagle is not for sale"). Senior executives within Viacom were frustrated. Schapiro Opening Ex. 5 (McGrath: "Probably not buying YouTube, if I had to wager...Because it's our fucking company."); *Id.* (Van Toffler: "It takes 3 months and 58 meetings to get a 1million dollar acquisition done at our company. We're fast becoming those we scorned.").

But in October 2006, when rumors of Google's acquisition of YouTube surfaced, Viacom's desire to acquire an ownership interest in YouTube returned with vigor. Schapiro Opp. Ex. 190 ("Google and YouTube....shouldn't Viacom/MTVN get into this deal? Throw in our ENTIRE library."); Schapiro Reply Ex. 127 (Viacom's Cahan to several Google executives on October 6, 2006: "So the idea would be Viacom and Google buy YouTube"); Ex. 128 (Cahan to MTVN Chairman and MTVN President: "Is there any chance of getting us in the deal meaning a small investment from us....") And Viacom executives were again bitter that they were unable to acquire an interest. Schapiro Reply Ex. 129 ("Are you SURE there is no appetite for Viacom figuring out a play here? A small investment in the Google/YouTube deal?"); Ex. 130 (MTVN Chairman: "What a fucking mess. I pitched Philippe and Tom on getting us in this somehow, or looking at Facebook....nothing.").

- 1.21 During these negotiations, Viacom deliberately allowed its content to remain on YouTube, in part because it thought that "having the content there was valuable in terms of helping the rating of our shows." Defs. Opening Mem. at p. 12 (citing Schapiro Ex. 4 (132:19-133:24)).**

Viacom's Response: *Controverted. Not supported by admissible evidence in light of the witness's testimony that he was speculating. See Evid. Obj.*

at 1. Further, misleading because the purported fact uses a speculative statement by one witness to distort the evidence regarding Viacom's forbearance of enforcement of its rights during the pendency of the parties' licensing negotiations. See Resp. to Defs. *SUF* ¶ 128.

YOUTUBE'S REPLY: See RVCS ¶ 128.

- 1.22 After the negotiations stalled, Viacom developed a plan to send YouTube a large DMCA takedown notice in the hopes of gaining leverage and “provide [Viacom] the economics” it had requested. Defs. Opening Mem. at p. 12 (citing Schapiro Ex. 10).**

Viacom's Response: *Controverted. The cited document refers to the mass takedown Viacom issued to YouTube, which was implemented in an attempt to combat the massive infringement of Viacom's works on YouTube. Viacom opted not to remove all of the clips that it was able to locate on YouTube during the pendency of the negotiations between Viacom and YouTube because of the expectation that Viacom's infringement claims would be settled as part of an overall licensing deal. See Resp. to Defs. SUF* ¶ 128.

YOUTUBE'S REPLY: See RVCS ¶ 128.

- 1.25 Despite Viacom's apparent expectations that YouTube's traffic would decrease and traffic to Viacom's own websites would soar after those videos were removed, neither prediction came true. Defs. Opening Mem. at p. 13 (citing Hurley Decl. ¶ 26; see also Schapiro Exs. 13 (234:17-288:14), 14, 15).**

Viacom's Response: *Controverted. Viacom personnel did believe that once many videos infringing Viacom's copyrights were removed from YouTube, more videos would be viewed on Viacom's own sites. And that is precisely what took place. Indeed, video views did increase on a variety of Viacom online properties in the month following the February 2, 2007 takedown. See, e.g., Kohlmann Ex. 62, VIA01108775. Further controverted to the extent that Defendants have provided no evidence to suggest that Viacom believed that YouTube traffic would decrease following the February 2, 2007 takedown.*

YOUTUBE'S REPLY: The evidence cited does not controvert YouTube's statement. **Kohlmann Ex. 62** compares videos streams on certain Viacom websites in March 2007 with streams in February 2007, March 2006 and the “previous 6 month average”; it does not demonstrate an increase in traffic subsequent to the February 2, 2007 mass takedown

when compared to traffic prior to February 2, 2007. Roughly a month after the mass takedown, Viacom's CEO and COO each made false claims that the traffic to Viacom's sites had increased in the wake of the takedowns. Schapiro Opening Ex. 13 (279:3-282:20) (President of Comedy Central admitting that Viacom's CEO and its COO made misrepresentations about traffic going up after the takedown). Referring to Viacom's CEO, Comedy Central President Michelle Ganeless wrote on March 7, 2007: "He is still out there touting that traffic increased to our sites after the takedown which our data contradicts....Traffic to our sites has been down over the last few weeks.". Schapiro Opening Ex. 15. And Viacom's Executive Vice-President in charge of Viacom's online sites was even more blunt, admitting that the attempt by Viacom's senior-most executives to correlate an increase in traffic on Viacom sites to the YouTube takedown was "specious." Schapiro Reply Ex. 131; Ex. 132 (334:11-335:10).

1.29 [M]any of the clips in suit are under one minute long. Defs. Opening Mem. at p. 15 (citing Rubin Decl. ¶ 15).

Viacom's Response: *Controverted. Less than 14 percent of the clips in suit are under one minute long. See Wilkens Decl. ¶ 3.*

YOUTUBE'S REPLY: Viacom's response does not raise a genuine dispute with this statement and it is therefore not controverted. Viacom admits that that nearly 9,000 Clips in Suit are under one minute long, but takes semantic issue with the word "many." Each one of these thousands of clips is *just a fraction* of the entire film or and television show that comprises a Works in Suit that Viacom claims to own.

1.33 Early in its existence, YouTube created a first-of-its-kind automated tool that lets copyright holders click a button to send electronic DMCA notices directly to YouTube's agent. Defs. Opening Mem. at p. 25 (citing Levine Decl. ¶ 18).

Viacom's Response: *Controverted, but immaterial to any issue before the Court. Plaintiffs deny Defendants' characterization of YouTube's CVP tool as "automatic" insofar as it implies that Defendants lack control over the process. Further, this tool was not available until March 2006 and was not specifically offered to Viacom until February 5, 2007. See Levine Decl. ¶ 18; Hohengarten Ex. 93, GOO001-00751570, at GOO001-00751570. Further controverted to the extent the alleged fact rests on inadmissible testimony in Levine Decl. ¶ 18. See Evid. Obj. at 14.*

YOUTUBE’S REPLY: Viacom’s response does not raise a genuine dispute with this statement and it is therefore not controverted. Viacom falsely asserts that YouTube’s CVP tool “was not specifically offered to Viacom until February 5, 2007.” YouTube offered Viacom’s BET division the CVP tool nearly a year before that in April 2006, and BET accepted and created an account. Schapiro Reply Ex. 133. Soon thereafter, through its agent BayTSP, Viacom created multiple CVP accounts for many of its various entities:

Creation Date	Viacom Entity	Account Name
Apr. 17, 2006	BET	t1e1b
Jun. 21, 2006	Paramount	rapyab
Sep. 8, 2006	MTVN	vlt2m
Sep. 8, 2006	Viacom	mocalilv
Sep. 13, 2006	Atom Entertainment	molt1a
Oct. 9, 2006	Spike	ekilpls
Oct. 9, 2006	Comedy Central	ydem1o1c
Oct. 9, 2006	Country Music Television	t1m1c

Rubin Reply Decl. ¶ 12 & Exs. 82, 83, 84, 85, 86, 87, 88; Schapiro Reply Ex. 134. Viacom’s other contentions about YouTube’s CVP tool are similarly inaccurate.

- 1.38 **The facts concerning how such videos come to be stored on YouTube’s system, and what happens to them once they are there, are undisputed. Defs. Opening Mem. at p. 27 (citing Solomon Decl. ¶¶ 2-10). FN2 YouTube operates a website located on the Internet at <http://www.youtube.com>, where users around the world can upload videos free of charge to computer servers owned or leased by YouTube. YouTube’s systems are capable of simultaneously playing millions of these authorized, user uploaded videos at the same time to YouTube users around the world. The process of uploading a video to YouTube is initiated by YouTube users. As has always been the case since I began working on the YouTube service, the series of events that is triggered by a user’s decision to upload a video to YouTube and ends with the user’s video being made playable on YouTube is fully automated and does not involve the intervention or active involvement of YouTube personnel. Solomon Decl. ¶ 2.**

FN2: Defendants’ Memorandum of Law asserts: “The facts concerning how such videos come to be stored on YouTube’s system, and what happens to them once they are there, are undisputed.” The allegedly undisputed facts YouTube references

are stated only in Mr. Solomon's declaration, not in Defendants' Memorandum of Law or YouTube's Rule 56.1 Statement. For the Court's convenience, Viacom responds separately to Paragraph 2 of Mr. Solomon's declaration in this paragraph, and to Paragraphs 3-10 in ¶¶ 1.39-1.46, *infra*.

Viacom's Response: *Controverted. See Resp. to Defs. SUF ¶¶ 16, 18, 19, and 20.*

YOUTUBE'S REPLY: Viacom has admitted to the proposed facts set forth in YouTube's 56.1 ¶¶ 16, 18, 19, and 20 by failing to identify a material dispute or citing to specific evidence that controverts them. Instead, Viacom included irrelevant assertions about collateral matters and argument about its characterization of the technical operation of the YouTube system. Viacom does not dispute that: (a) YouTube users choose which videos to upload to YouTube (VCS ¶¶ 16, 18), (b) YouTube users use the YouTube system's upload functionality to upload their videos (VCS ¶ 17), (c) it is the users' decision to upload a video that triggers the YouTube system to process and converted the user's video file into other formats that are supported by a variety of viewing devices (VCS ¶¶ 19, 20), or (d) the technical processes involved occur happens automatically without the intervention or active involvement of YouTube personnel (VCS ¶¶ 19, 20.).

- 1.49 YouTube employees have never even seen the overwhelming majority of the more than 500 million videos that have been posted to the service. Defs. Opening Mem. at p. 34 (citing Levine Decl. ¶ 28; Schaffer Decl. ¶ 11; Hurley Decl. ¶ 18).**

Viacom's Response: *Controverted, as Levine Decl. ¶ 28 contains inadmissible generalized and conclusory statements and Hurley Decl. ¶ 18 contains inadmissible lay opinion testimony. See Evid. Obj. at 3, 15. However, the alleged fact is immaterial to any issues before the Court. Whether Defendants viewed most or all videos displayed on the YouTube site is irrelevant to Defendants' culpable intent under Grokster and the DMCA. See, e.g., A&M Records, Inc. v. Napster, Inc., 239 F.3d 1004, 1021-22 (9th Cir. 2001). The alleged fact is also misleading. It is undisputed that, in YouTube's early days, YouTube's founders were among the top six most active viewers of videos on YouTube, having watched nearly 8,000 videos by August 2005. See Viacom SUF ¶ 51. Moreover, only two days before opposition papers were to be filed, Defendants produced non-anonymized YouTube viewing records for certain YouTube employee accounts.*

Although Defendants notably refused to produce any viewing records for YouTube cofounder Jawed Karim beyond October 2005, the newly produced data could show that YouTube's founders and other employees did know of and watch many specific infringing videos. The Viacom Plaintiffs have not yet been able to analyze this data. See Wilkens Decl. ¶ 20.

YOUTUBE'S REPLY: Viacom's response does not controvert the statement. The watch data (which reflects only playback initiations, not full watches, and does not distinguish between personal and work-related viewing) only confirms YouTube's lack of knowledge. [REDACTED]

[REDACTED]

[REDACTED]

Viacom's claim that the watch data could show watches of "infringing" videos is also belied by the deposition testimony of its witnesses: when asked whether videos on YouTube were infringing, they responded uniformly that they simply did not know and could not tell. Schapiro Opp. Ex. 257 (93:20-94:10) (Viacom employee claiming he "could not know" whether videos uploaded by user humangiant were authorized to appear on YouTube); Ex. 258 (36:10-36:18) (Viacom employee claiming she could

not tell whether the content she watched on YouTube was authorized); Schapiro Reply Ex. 138 (86:22-93:7, 93:16-94:11, 99:21-100:12) (Vice President of consumer marketing at MTV did not know which of a long list of MTV shows had been authorized to appear on YouTube, and could not think of any one person who would know, nor did he know about the authorization status of clips uploaded in marketing campaigns in which he was not involved); Schapiro Opp. Ex. 261 (135:6-12) (Viacom executive unable to determine the authorization of content on YouTube); Ex. 262 (84:15-23) (Viacom employee, and content reviewer for AddictingClips, admitting she did not have the information necessary to determine if videos present on AddictingClips were authorized); Schapiro Reply Ex. 139 (238:16-242:14, 243:23-248:25) (MTV marketer admitting that, without speaking to other employees who had been involved in the specific marketing campaign, she could only “guess” as to whether a particular video clip was “leaked” to YouTube at MTV’s direction; and confirming that a long list of MTV content was either authorized to be on YouTube or she was unaware of its authorization status); Schapiro Reply Ex. 132 (95:22-96:3, 259:11-262:2, 265:20-267:15, 303:9-20); Ex. 140 (Viacom executive did not know whether videos he viewed and favorited on YouTube were authorized); Ex. 105 (167:10-169:5) (MTV Counsel unable to determine whether a list of YouTube accounts that were purportedly authorized to upload Viacom content was complete); Ex. 17 (285:7-289:15, 391:14-392:22, 393:7-397:10) (Viacom Vice President of Information and Knowledge Management admitting that merely recognizing Viacom content on a website is not enough to justify sending a takedown notice, and admitting he did not know the authorization status of, nor could he recognize all Paramount, MTVN, BET and Country Music Television content); Ex. 141 (149:9-153:16) (Paramount employee, despite being faced an internal Viacom document referencing the presence of trailer on YouTube in connection with a marketing campaign, could not determine whether that trailer was uploaded to YouTube with Paramount’s permission); Ex. 57; Ex. 92 (54:20-57:9) (Paramount marketer could not be certain whether a trailer on YouTube, purportedly for the Paramount movie “*The Last Kiss*,” was authorized to be on YouTube); Ex. 143 (45:2-47:9) (Viacom employee could not determine whether videos created pursuant to Stephen Colbert’s “Greenscreen Challenge” were authorized to appear on YouTube); Ex. 144 (285:5-286:18, 288:1-290:3) (MTV Chairman and CEO, with more than two decades of experience at MTV, could not determine if certain clips she viewed on YouTube were authorized to be there: “Q: Ms. McGrath, could you, given your vast experience in the television industry, identify which clips are authorized and which clips are not by looking at them? A: No.”); Ex. 145 (308:10-309:22) (President of Entertainment Group at MTV Networks describing

how he had “no idea” whether or not a YouTube clip allegedly containing Viacom content that he linked to from his blog was authorized).

Others proposed complicated analyses that one might engage in to attempt to determine whether content was authorized, most concluding that knowledge of who uploaded the clip and who owns the content is necessary, but not apparent from information present on the YouTube website. Schapiro Reply Ex. 138 (34:23-35:4) (Viacom employee claiming the “best way” to find out all the clips MTV authorized to be on YouTube for promotional purposes would be to “ask all of the individual agencies that [MTV] used”); Ex. 69 (100:17-102:14, 126:11-127:10, 129:3-136:9) (Viacom General Counsel testifying that identifying Viacom content can be difficult, but might be accomplished by looking for a logo or if the reviewer “watched Cross Roads on television the night before, they might well be able to recognize it, and if they’ve never heard of the show, they might not;” and having difficulty determining whether certain video clips were authorized Viacom content); Ex. 145 (19:15-20:17, 301:4-301:24) (Viacom executive claiming he could only determine if content was authorized if he put the video on YouTube personally or knew his company was involved with it: “I wouldn’t know unless it was my video”); Ex. 67 (87:8-25) (Viacom employee stating that a call to action associated with a video does not necessarily indicate the clip is authorized); Ex. 77 (247:24-249:8, 269:24-271:23) (Viacom executive claiming she would need the assistance of Viacom’s publicity department in determining whether certain clips were authorized and stating she could not determine whether a clip with a CNBC logo was authorized to appear on YouTube); Ex. 146 (26:15-28:3) (Viacom Chairman could not identify whether YouTube search results for “SpongeBob” contained any unauthorized content, and suggesting “someone more familiar with the worldwide distribution of SpongeBob” might be able to answer the question); Ex. 1 (314:3-322:25) (Viacom employee unable to determine the authorization of certain clips, but asserting that the presence of a call to action associated with a YouTube clip, or a high view count for that clip, may indicate the clip is authorized; a username alone is not dispositive); Ex. 17 (285:7-289:15, 506:25-510:1, 541:19-542:23) (Viacom Vice President of Information and Knowledge Management stating it took a collaborative investigation by the “communal Viacom legal community” to determine the authorization of certain videos posted by user bullrun, and concluding that he would need to know more than the metadata associated with a video clip to determine if it was authorized, including “the creator of the asset I think it belongs to and person who uploaded it sitting next to me, too”); Ex. 92 (45:24-46:17) (Paramount marketer admitting that she could not confirm that a clip was authorized without reference to Paramount’s “array of approval processes,” both “internal and external”); Ex. 143 (159:7-21,

163:24-165:18) (Viacom employee admitting that he could not know whether Viacom content he viewed on YouTube was authorized without a determination from the legal department); Schapiro Opp. Ex. 269 (147:23-151:2) (BayTSP representative, a Viacom agent, testifying that the username and other information associated with a clip on YouTube is not sufficient to determine whether the clip is authorized: “[t]here is no connection between you [sic] see on YouTube, the person who posted it, and the person who produced it. There is no identifiable link.”).

- 1.56 Viacom sometimes places material on YouTube openly. Defs. Opening Mem. at p. 40 & n.14 (citing Schapiro Exs. 29 (38:10-21), 30, 31 (26:20-27:10), 24 (22:11-22:20), 32 (151:17-152:20)).**

Viacom’s Response: *Uncontroverted that Viacom places material on YouTube openly. Controverted to the extent that “sometimes” is meant to suggest that Viacom uploads clips to YouTube in a manner that conceals their origin from YouTube. See Resp. to Defs. SUF ¶¶ 123-125.*

YOUTUBE’S REPLY: The evidence conclusively demonstrates that Viacom has repeatedly uploaded clips in a manner meant to conceal their origin. *See supra* RVCS ¶ 125.

- 1.57 Viacom and its agents use accounts that lack any discernable connection to Viacom (such as “MysticalGirl8,” “Demansr,” “tesderiw,” “GossipGirl40,” “Snackboard,” and “Keithhn”). Defs. Opening Mem. at p. 41 (citing Ostrow Decl. ¶ 6; Chan Decl. ¶ 4; Rubin Decl. ¶ 5(a)-(f)).**

Viacom’s Response: *Controverted, to the extent it implies that YouTube does not know that such accounts are being used to upload authorized Viacom content. For example, it is undisputed that Viacom informed YouTube the following day that it had uploaded an authorized clip using the account MysticalGirl8. See Kohlmann Ex. 84 (Wahtera Dep.) at 32:8-11. Further controverted to the extent that the asserted fact suggests that numerous clips of Viacom content were uploaded to these accounts. In total, 25 clips were uploaded to the six accounts identified in the asserted fact. See Wilkens Decl. ¶ 19(b). The asserted fact is immaterial to any issues before the Court. Further controverted as Ostrow Decl. ¶ 6 is inadmissible because it contains improper lay opinion testimony and is not based on personal knowledge, and as Chan Decl. ¶ 4 is inadmissible because it is not based on personal knowledge and because there is insufficient evidence to demonstrate its relevance. See Evid. Obj. at 2, 5-6.*

YOUTUBE’S REPLY: Viacom does not dispute that the listed account names lack any discernible connection to Viacom. Rather, Viacom claims,

without support, that anyone and everyone at YouTube must have been aware that material uploaded to those accounts was authorized by Viacom. That is false. Viacom went to great lengths to conceal the origin of such accounts. *See supra* RVCS ¶ 125. Moreover, Viacom ignores that the six accounts cited in this statement were simply *examples* of the numerous accounts that Viacom used for its stealth marketing. There are many more examples that show the extent of marketing by Viacom, both overt and covert. *See* Rubin Reply Decl. ¶¶ 2-6 & Ex. 1, 14, 38, 39. And the Wilkens Declaration does not support the statement that “in total, only 25 clips” were uploaded to those six accounts; instead, Mr. Wilkens declares that there were 140 clips in total uploaded to these accounts. Wilkens Decl. ¶ 19. Mr. Wilkens’s speculation that only 5 of the videos in the “keithhn” account related to Viacom material is without foundation.

- 1.58 Viacom has deliberately used email addresses that “can’t be traced to [Viacom]” when registering for YouTube accounts. Defs. Opening Mem. at p. 41-42 (citing Schapiro Ex. 46, Rubin Exs. 22 & 26).**

Viacom’s Response: *Controverted to the extent that the asserted fact implies that it was Viacom’s general practice to upload clips using such accounts. The cited evidence shows that this practice occurred on one occasion and involved only one clip. Further controverted, to the extent that the asserted fact implies that Viacom’s intent was to conceal the source of the uploads from YouTube, or that YouTube was unaware that the accounts were affiliated with Viacom. In fact, YouTube was well aware of the accounts and the clips uploaded to them. See Resp. to Defs. SUF ¶ 125; see also supra at ¶ 1.57.*

YOUTUBE’S REPLY: Viacom does not genuinely dispute this fact and provides no evidence that controverts it. The evidence demonstrates that when creating YouTube accounts Viacom used email addresses lacking any connection to Viacom on multiple occasions. *See supra* RVCS ¶ 125.

- 1.60 Viacom’s employees have made special trips away from the company’s premises (to places like Kinko’s) to upload videos to YouTube from computers not traceable to Viacom. Defs. Opening Mem. at p. 42 (citing Schapiro Ex. 47 (158:20-22), Schapiro Exs. 48, 49).**

Viacom’s Response: *Controverted as well as immaterial. The cited evidence shows only that one Paramount employee, on one occasion, uploaded a video to YouTube from a Kinko’s copy shop. It is undisputed that the Paramount employee did not attempt to hide the origin of the clip*

from YouTube, and that within a few days of the upload, Paramount informed YouTube that the upload was authorized. See Kohlmann Ex. 84 (Wahtera Dep.) at 32:8-11; see also supra at ¶ 1.57.

YOUTUBE’S REPLY: Viacom does not dispute that Paramount marketer Megan Wahtera deliberately uploaded a clip from *The Heartbreak Kid* (a Work in Suit) to YouTube from Kinko’s, as opposed to doing so from Viacom, using an anonymous YouTube account name (“mysticalgirl8”) created using a fake email account (“mysticalgirl8@yahoo.com”), so that the clip could not be traced back to Viacom. See RVCS ¶ 125; Rubin Opening Decl. ¶ 5(a)-(f) & Exs. 87, 110, 111; Schapiro Opp. Exs. 48, 49. Whether or not Viacom’s intent was to hide the origins of this video from YouTube, from YouTube’s users or from someone else, the effect was the same: Viacom uploaded a clip that is indistinguishable from countless Clips in Suit from an anonymous YouTube account. See, e.g., Rubin Reply Decl. ¶¶ 8, 10 & Exs. 79, 80, 81.

The evidence shows that Viacom contacted YouTube days after Ms. Wahtera created the account and uploaded the clip from Kinko’s, and only because the adult-nature of the clip had resulted in it being placed behind an “age gate,” thus disrupting Viacom’s promotional plan for the clip. Kohlmann Ex. 60; Kohlmann Ex. 63; Schapiro Reply Ex. 92 (32:8-16; 184:16-190:25). Even then, the evidence shows only that Viacom told *one* YouTube employee that that the video was “*not copyrighted*,” not that the video was “authorized” as Viacom asserts. Kohlmann Ex. 63.

Nor does the evidence support Viacom’s claim about the limited nature of this practice. Given the limited extent of the discovery YouTube was able to take of Viacom’s marketing activities, and Viacom’s facially incomplete discovery response to an interrogatory designed to identify the clips it uploaded to YouTube, Viacom is not in a position to controvert this practice and the evidence it cites does not support its contention. Rubin Reply Decl. ¶¶ 20-26 & Exs. 161, 162, 163, 178, 179. Viacom’s document destruction with respect to its marketing documents also prevented discovery of the full extent of Viacom’s stealth marketing practices. For example, Kristina Tipton, a Paramount marketer who was heavily involved in YouTube uploading and who left Viacom in September 2007 (six months after this lawsuit was filed), was never told to preserve documents. Schapiro Opp. Ex. 378 (184:20-24). She testified that she sent over 20,000 emails while employed at Paramount—yet Viacom produced a total of 6 custodial documents from Ms. Tipton. *Id.* (181:22-182:10); Schapiro Opp. Ex. 379; see also Rubin Reply Decl. ¶ 30 & Ex. 72. Todd Apmann, an MTVN marketing employee, likewise never was told to preserve documents, and he deliberately deleted all of his emails when he

left the company in February 2007 – a time when Viacom anticipated filing this lawsuit, which occurred only a month later. Schapiro Opp. Ex. 305 (176:17-20) (Viacom was preparing to file this lawsuit as of November 2006); Schapiro Opp. Ex. 257 (134:3-136:13).

Finally, Ms. Wahtera testified that she only knew of her own actions and could not say one way or the other whether other Viacom employees had gone to similar lengths to hide their connection to Viacom when uploading content to YouTube. Schapiro Reply Ex. 92 (40:13-41:11; 161:15-25).

- 1.62 Viacom has further obscured the line between authorized and unauthorized clips by broadly releasing various videos featuring its content. These videos are designed to spread virally over the Internet to generate publicity for Viacom’s television shows and movies. When users post these videos, as Viacom hopes that they will, on sites like YouTube, Viacom acknowledges that their presence is authorized. Defs. Opening Mem. at p. 42 (citing Schapiro Ex. 27 (205:17-206:2) & (206:4-20)) (internal citation omitted).**

Viacom’s Response: *Controverted as misleading, and in any event immaterial to any issues before the Court. The “broadly releas[ed]” videos Defendants reference are trailers and other carefully selected marketing clips included in the Paramount “Electronic Press Kits” that are prepared for Paramount motion pictures. Kohlmann Ex. 83 (Tipton Dep.) at 16:5-16; see also id. at 28:5-7 (testifying that any distributed clips were approved “through the publicity team, through filmmakers, through the creative team, and through the interactive [team]”); Kohlmann Ex. 84 (Wahtera Dep.) at 101:9-10 (describing “EPK materials” as akin to “trailers”). There is no evidence to suggest that Paramount authorized the online distribution of any clips except these specifically chosen trailers and marketing clips.*

YOUTUBE’S REPLY: Viacom does not raise a genuine dispute with this statement and it is therefore not controverted. Viacom admits that it broadly “authorized the online distribution [of] specifically chosen trailers and marketing clips” of its content. The evidence reflects that whether or not the “marketing clips” are specifically chosen by Viacom, even Viacom finds them indistinguishable from clips it otherwise considers to be infringing. *See* Schapiro Opening Exs. 44, 135, 141, 143, 145, 146, 150; Rubin Opening Exs. 43-45, 49-51, 53, 56-59, 64; Rubin Reply Decl. ¶¶ 2, 8, 10 & Exs. 1, 79, 80, 81.

Moreover, the process Viacom describes is does not occur in the controlled environment that it suggests. Rather, it seizes upon promotion opportunities as they present themselves, even using content uploaded by ordinary users. Paramount has instructed its agent BayTSP to “turn a blind eye” to a video that compiled Paramount “TV spots and trailers” because “its actually good,” and explained that other seemingly unauthorized clips were simply re-postings from Viacom’s Electronic Press Kit for the movie Transformers. Schapiro Reply Ex. 23; *see also* Rubin Opening Ex. 28 (“we will assume audiences will tape the trailer *on their own* and post it on YouTube – we will NOT issue take-down notices”) (emphasis added). BayTSP was also instructed to refrain from taking down “anything reposted by another account that matches something” posted by an approved Paramount account. Schapiro Opening Ex. 63. Viacom’s claims about the limits of the evidence should also be rejected. *See supra* RVSCS ¶ 160.

1.63 Viacom itself was confused when selecting its clips in suit, many of which turned out to be identical to Viacom’s authorized promotional videos. Defs. Opening Mem. at p. 43 (citing Rubin Decl. ¶ 17).

Viacom’s Response: *The evidence submitted by Defendants supports only the claim that 100 clips in suit closely resemble trailers and other marketing videos that Viacom authorized to appear on various websites as part of its marketing strategy. The fact that Viacom authorized a trailer to appear on one website does not mean that Viacom authorized the trailer to appear on YouTube.*

Further controverted because is Rubin Decl. ¶ 17 inadmissible as irrelevant. See Evid. Obj. at 7.

YOUTUBE’S REPLY: Viacom’s admission that 100 Clips in Suit “closely resemble trailers and other marketing videos that Viacom authorized to appear on various websites” is not correct. A review of the clips shows that the “marketing videos” and the Clips in Suit are actually indistinguishable from one another. *See* Rubin Opening Decl. Exs. 131-310. And considering that Viacom has asserted that “every one of [its] clips in suit was a straight steal” of its content, that means that Viacom’s promotional content is literally no different from some of the content over which it suing YouTube. Viacom Opp. 62. Viacom’s claim that Viacom’s authorization for a clip to appear on one website does not mean that Viacom authorized the trailer to appear on YouTube is not consistent with its own admissions: as Viacom’s in-house lawyer stated, Viacom “does feed clips of our programs on to the internet as a marketing strategy, so it

is quite probable that those clips will appear in the P2P realm. Since these are essentially authorized distributions, we would have to develop a mechanism to filter them out of our targets.” Schapiro Reply Ex. 135. Viacom considered the clips it “feeds on to the internet” to be “authorized distributions” wherever they are found, even on P2P networks. See Schapiro Reply Ex. 147 (Viacom marketer reporting that “Viral clips for *The Andy Milonakis Show* has ‘spread’ online to sites including . . . YouTube”).

- 1.64 YouTube knew that the promotional activities of which it was aware were just the tip of the iceberg, and that Viacom and a wide variety of major media companies were extensively using the service for promotional purposes without telling YouTube (or anyone else) what they were doing. Defs. Opening Mem. at p. 43 (citing Schaffer Decl. ¶ 6; Maxcy Decl. ¶¶ 3-7; Schapiro Ex. 53; Botha Decl. ¶¶ 11-12).**

Viacom’s Response: *Controverted. With respect to Viacom’s marketing practices, the evidence shows that YouTube was aware of the overwhelming majority of Viacom clips authorized to appear on YouTube. See Wilkens Decl. ¶ 19; Resp. to Defs. SUF ¶¶ 123-125. With respect both to Viacom’s practices and those of other “major media companies,” this alleged fact is unsupported by admissible evidence. Despite the voluminous discovery in this case from Viacom and third parties, and despite their own analysis of the data that they maintain for every YouTube account and every YouTube video, Defendants have cited no evidence to support their “tip of the iceberg” claim, or to support the claim that they have been unaware of the authorized uploading activities of Viacom and other major media companies. See Resp. to Defs. SUF ¶¶ 123-125. Further controverted because some of the cited evidence is inadmissible. See Evid. Obj. at 1, 3, 9-12.*

YOUTUBE’S REPLY: Viacom’s response does not raise a genuine issue as to this statement. Viacom itself could not keep track of its extensive stealth marketing activity, mistakenly issuing numerous takedown notices for videos it had authorized, and even *suing* YouTube on more than a hundred authorized videos. See RVCS ¶¶ 125-127. Viacom also ignores the stealth clips that Viacom never brought to YouTube’s attention even in a collateral, non-copyright-related context (e.g., GossipGirl40, Demansr). *Id.* And Viacom ignores that the parties agreed to narrow limits on discovery in this case, such that YouTube had no ability to obtain documents from, or depose, the vast majority of Viacom’s marketing personnel. Rubin Reply Decl. ¶ 16-26. And Viacom disregarded its document preservation obligations in this case, failing to

retain the electronic documents of other marketing personnel from whom YouTube did seek discovery. *See supra* ¶ 1.60. The full scope of Viacom’s massive uploads to YouTube will likely never be known; what YouTube has found so far through litigation discovery is certainly the tip of the iceberg.

- 1.65 YouTube routinely received takedown requests that were subsequently withdrawn after the media companies who sent them realized that their notices had been targeted to content that they themselves had uploaded or authorized. Defs. Opening Mem. at p. 44 (citing Rubin Decl. ¶ 4 & Exs. 69-83).**

Viacom’s Response: *Controverted as to “routinely.” Defendants claim that YouTube has removed 4.7 million videos pursuant to takedown requests, see Levine Decl. ¶ 26, and the evidence Defendants cite shows fewer than a hundred mistaken takedowns of authorized content. Even if the number of mistakes was 50 times what Defendants have demonstrated, that would still represent only one tenth of one percent of the total takedowns of infringing material content owners have submitted to YouTube. Given the massive scale of infringement on the YouTube site and the problem content owners face in dealing with a site that refuses to take down infringing content unless it is identified specifically by URL, some mistakes are all but inevitable. Also controverted because Rubin Decl. ¶ 4 and Exs. 69-83 are inadmissible as hearsay. See Evid. Obj. at 7.*

YOUTUBE’S REPLY: Viacom’s response does not raise a genuine dispute with this statement and it is therefore not controverted. Viacom instead takes semantic issue with the word “routinely.” In so doing, Viacom suggests that the evidence YouTube cited was comprehensive when YouTube expressly stated that it was merely a “selection of documents” showing instances in which companies (including Viacom) sent YouTube takedown notices for videos they had uploaded or authorized to appear on the YouTube website. *See* Rubin Opening Decl. ¶¶ 3-4 & Exs. 42-83. Viacom ignores testimony from YouTube employees that shows the regularity of these occurrences. *See, e.g.,* Schaffer Opening Decl. ¶¶ 7-9, 15-16 (“I regularly encountered situations where marketing departments or marketing agencies would upload content to YouTube on behalf of content owners and then representatives from the legal departments of those content owners mistakenly would request the removal of that very content.”).

Contrary to Viacom’s assertion, the mistaken takedowns that Viacom characterizes as “all but inevitable” arise not due to any action or inaction on YouTube’s part, but rather by virtue of the confusion generated by the

promotional and marketing activities engaged in by companies like Viacom:

- Viacom marketer Fanscape to YouTube: “This is the second time in as many months that our channels have been disabled. I do understand that YouTube is not to blame for these disruptions and instead it [sic] more systemic of what occurs in big companies like our clients where one department isn’t aware of what another department is doing” Rubin Opening Decl. Ex. 64.
- CBS to YouTube in email entitled “URGENT Request to Reinstate User due to Mistake in Notice of Infringement”: “Our Notices of Infringement were prepared without the knowledge that these videos were uploaded by Electric Artists, an agency acting on behalf of CBS, which has user account TXCANY.” *Id.* Ex. 70.
- Warner Brothers to YouTube: “Can you please reinstate the YouTube account warnerbrosonline? I believe we sent a notice to YouTube regarding warnerbrosonline and we would like to retract the notice.” *Id.* Ex. 74.
- Roadrunner Records to YouTube in email entitled “Accidental Takedown Notice”: “We accidentally sent notice for a video one of our bands has on their own account”, and asking if YouTube could “please reinstate it?” *Id.* Ex. 75.
- Concord Music Group to YouTube in email entitled “Would like reinstatement of an account ‘GregBass’”: “[W]e directed our Independent Online Marketing Company Special Ops Media Group [sic] post the video under their account ‘GregBass.’ This morning I have learned that their account was deactivated due to their posting this video. PLEASE reinstate their account ‘GregBass.’” *Id.* Ex. 77.
- JibJab Media to YouTube: “I have a bit of an embarrassing situation that I hope you can help us resolve. Due to lack of internal communication, our very own Operations Department filed copyright complaints against the video content in our very own YouTube channel (<http://youtube.com/jibjab>).” *Id.* Ex. 81.

- SONY BMG to YouTube: “We did it yet again! We issued a take-down on a video that was living in one of our channels.” *Id.* Ex. 82.

1.66 [T]he former President of MTV candidly explained: “While we were issuing takedown notices against some of the content, there was other content which we were allowing to continue to be on YouTube.” Defs. Opening Mem. at p. 45 (citing Schapiro Ex. 4 (194:8-11)).

Viacom’s Response: *Controverted. Viacom temporarily abstained from sending takedown notices for some infringing content while negotiating with YouTube regarding a potential licensing deal and compensation for past copyright infringement, but sent those notices when negotiations broke down. Viacom never authorized YouTube to display that infringing content. See Resp. to Defs. SUF ¶ 128.*

YOUTUBE’S REPLY: *See supra* RVCS ¶¶ 128, 135.

1.67 Viacom’s executives felt “very strongly that [they didn’t] want to stop the colbert and daily clips” on YouTube. Defs. Opening Mem. at p. 46 (citing Schapiro Ex. 58 (VIA01676948)).

Viacom’s Response: *Uncontroverted that the one cited document, an email exchange between two Comedy Central executives, includes the quoted language. Controverted insofar as the alleged fact misleadingly suggests this was the view of Viacom as a whole. It is undisputed that Viacom did not authorize YouTube to display user uploaded clips from The Daily Show and The Colbert Report. See Resp. to Defs. SUF ¶ 128.*

YOUTUBE’S REPLY: *See supra* RVCS ¶¶ 128, 135. Viacom’s affirmative decision to leave clips of *The Daily Show* and *The Colbert Report* on YouTube for promotional purposes and for other reasons demonstrates Viacom’s authorization.

1.68 The former President of MTV testified that Viacom did not want to take down “clips from Jon Stewart and Stephen Colbert” because “we were concerned that Jon Stewart and Stephen Colbert believed that their presence on YouTube was important for their ratings as well as for their relationship with their audience.” Defs. Opening Mem. at p. 46 (citing Schapiro Ex. 4 (199:22-201:2)).

Viacom’s Response: *Controverted. First, the cited evidence is inadmissible as it is not based on personal knowledge. See Evid. Obj. at 1. Second, the*

purported fact is misleading insofar as Viacom did send takedown notices for content from The Daily Show and The Colbert Report during the fall of 2006, the period at issue in Mr. Wolf's testimony, and temporarily abstained from sending takedown notices for other infringing content while negotiating with Defendants regarding a licensing deal and compensation for past copyright infringement. See Resp. to Defs. SUF ¶ 128.

YOUTUBE'S REPLY: *See supra* RVCS ¶¶ 128, 135.

- 1.69 Accordingly, through at least October 2006, Viacom had a specific internal policy of declining to issue takedown notices for clips of [The Daily Show and The Colbert Report] that were less than five minutes long. Defs. Opening Mem. at p. 46 (citing Schapiro Exs. 59, 60).**

Viacom's Response: Controverted to the extent that the asserted fact is intended to imply that during the pendency of the parties licensing negotiations in October 2006, Viacom authorized infringing content to appear on YouTube. See Resp. to Defs. SUF ¶¶ 128, 129-133. Immaterial as to any issues before the Court.

YOUTUBE'S REPLY: *See supra* RVCS ¶¶ 128-135.

- 1.70 Viacom later adjusted that rule and confidentially instructed its agent BayTSP to leave up all clips of these shows shorter than three minutes. Defs. Opening Mem. at p. 46 (citing Schapiro Exs. 59, 60).**

Viacom's Response: Controverted and immaterial to any issue before the Court. See Resp. to Defs. SUF ¶ 129.

YOUTUBE'S REPLY: *See supra* RVCS ¶¶ 128-135.

- 1.77 A number of the plaintiffs have signed up for YouTube's automated takedown tool and have used it for years to secure the removal of videos containing their content. Defs. Opening Mem. at p. 56 n.25 (citing Schapiro Exs. 17 (205:25-210:23), 105, 106, 107 (94:13-95:11), 108 (80:22-83:16, 84:8-16, 109).**

Viacom's Response: Controverted to the extent that the asserted fact implies that the CVP tool assists copyright owners in locating infringing clips on YouTube, or that the CVP tool is an adequate means to prevent copyright infringement. See Resp. to Defs. SUF ¶ 92. Indeed, when YouTube offered CVP to Viacom in February 2007, YouTube at the same

time refused to use digital fingerprinting technology to prevent infringement of Viacom's works absent a licensing deal. See, e.g., Viacom SUF ¶¶ 211, 214-217.

YOUTUBE'S REPLY: Viacom's response does not raise a genuine dispute with this statement and it is therefore not controverted. Viacom's contention that YouTube conditioned access to its digital fingerprinting technology on a licensing deal is not supported by the evidence. *See* CVSUF ¶¶ 211, 214-217. And Viacom's claim that YouTube did not offer Viacom the CVP tool until February 2007 is simply false. *See* RVSCS ¶ 1.33 (demonstrating that YouTube offered its CVP tool to Viacom in April 2006 and that Viacom began to widely adopt the tool beginning in June 2006).

- 1.95 YouTube was in no way intended or designed to lure users of any "pirate" service or to encourage any of its own users to infringe. Defs. Opening Mem. at p. 85 (citing Hurley Decl. ¶¶ 11, 16-22, 24-25).**

Viacom's Response: Controverted. Defendants in their earliest communications showed a desire that their site be as big, in terms of usage, as some of the most popular infringing services—"napster," "kazaa," and "bittorrent"—and implemented that plan by turning a blind eye to rampant infringement and removing infringing videos only after receiving DMCA notices from content owners. See Viacom SUF ¶¶ 29-132. That Defendants intended to build their service based on infringement, but may not have intended to lure users of a particular infringing service, is immaterial.

YOUTUBE'S REPLY: Viacom does not genuinely dispute, and therefore admits, the fact that "YouTube was in no way intended or designed to lure users of any 'pirate' service or to encourage any of its own users to infringe." And Viacom's admission is clear from its revised characterization of Hohengarten Exhibit 5. In its opening brief, Viacom cited that exhibit for the proposition that YouTube was consciously trying "to attract users by emulating notorious pirate services like 'napster,' 'kazaa,' and 'bittorrent.'" Viacom Br. 5. The exhibit says nothing of the kind. Jawed Karim actually wrote that "I want an innovation that, at least in the number of users and popularity, would firmly place us among a list like this: ebay paypal bittorrent napster friendster etrade yahoo google winamp kazaa winzip icq jasc paintshop pro match.com [and] wikipedia." Hohengarten Ex. 5. Viacom now abandons its "pirate emulation" theory and states that YouTube did not "intend[] to lure users of a particular infringing service."

Separate from the undisputed fact at issue, Viacom makes argumentative statements alleging that YouTube “turn[ed] a blind eye to rampant infringement and remov[ed] infringing videos only after receiving DMCA notices from content owners.” That is false. In the early days of its operations, YouTube manually reviewed uploads and removed ones that looked suspect on copyright grounds. Hurley Opening Decl. ¶ 17. After installing a DMCA notice-and-takedown regime in the fall of 2005, YouTube removed *millions* of videos for copyright reasons that were never the subject of DMCA takedown notices. *See* Schapiro Opp. Ex. 90 (Defs.’ Am. Resp. to First Set of Interrog.); *see also id.* Ex. 93 (228:6-232:3). Viacom even sent takedown notices for videos that YouTube had already unilaterally removed on copyright grounds. *See* RVCS ¶ 58. In addition, over 1,000 content owners worldwide, including Viacom, use YouTube’s Content ID technology to manage their content on YouTube. King Opening Decl. ¶ 21. Those content owners may automatically “block” any of their content from appearing on YouTube if they do not want it there. *Id.* ¶ 24.

1.105 [P]laintiffs’ own analyses of YouTube suggest that it consists overwhelmingly of user-generated material and videos appearing pursuant to YouTube’s license agreements with its array of content partners. Defs. Opening Mem. at p. 90 n.42 (citing Schapiro Exs. 167 (VIA00316621), 168 (VIA00857223), 180 (¶ 16)).

Viacom’s Response: *Controverted, but immaterial. It is undisputed that Defendants’ own analyses of the volume of infringing content on YouTube put the figure between 54% and 80%. See Viacom SUF ¶¶ 55, 95, 104, 153, 170, 171, 173, 174, 176, 181. The documents cited by Defendants do not create a material dispute on this point. Schapiro Ex. 167 was a presentation prepared in August 2006, stating nearly all of YouTube’s “top 100 viewed clips of all time” were user-generated. Id. at VIA00316621. Because YouTube screened its “most viewed” page to remove infringing clips, see Hohengarten Ex. 128, GOO001-01535521, Hohengarten Ex. 198, GOO001-01931799, at 5 & at GOO001-01931806, this quote does not in any way quantify the volume of infringement on YouTube. Furthermore, Schapiro Ex. 168 says nothing about the quantity of infringement or non-infringement on YouTube. Schapiro Ex. 180 is Robert Tur’s complaint against YouTube; the cited paragraph says that “substantial use of YouTube’s website was and is made by users uploading their own homemade videos,” but it also says that “consumers viewed, millions of times, copyrighted material from major television networks, e.g., NBC, Fox, and cable networks.”*

YOUTUBE’S REPLY: Viacom does not genuinely dispute that “plaintiffs’ own analyses of YouTube suggest that it consists overwhelmingly of user-generated material and videos appearing pursuant to YouTube’s license agreements with its array of content partners.” Schapiro Opening Ex. 167 is a Viacom presentation stating that “[o]f YouTube’s Top 100 viewed clips of all time, nearly ALL are user-generated.” *Id.* (VIA00316621). Viacom claims that presentation “does not in any way quantify the volume of infringement on YouTube” because “YouTube screened its ‘most viewed’ page to remove infringing clips.” Even if it were true, that fact does not help Viacom. If YouTube were removing potentially unauthorized videos from its “most watched” pages, that would send a powerful message to users about the purpose of the service. But Viacom has not proven that fact. *See Hohengarten Ex. 128* (YouTube employee Heather Gillette stating that YouTube “pro-actively screen[s] any videos and/or users that we are highlighting on our ‘honors’ pages (most watched, most subscribed, most discussed, etc.)” in response to a question about how YouTube finds and removes “illegal or inappropriate content” such as “porn, hate, drugs”); *Hohengarten Ex. 198* (chat about not featuring videos with music in the background).

Schapiro Opening Ex. 168 describes a presentation in which Viacom’s “best minds” concluded that YouTube would be a “**transformative acquisition** for MTV Networks/Viacom (price pending) that would enable our company to tap the leader in viral video audience experiencing explosive growth . . . we can help **YouTube become the category-killer for online video search, sharing, and community.**” Schapiro Ex. 168 (VIA00857222). Viacom did not reference copyright concerns when listing “Potential Risks” associated with a potential YouTube acquisition. *Id.* (VIA00857226-27). Viacom would not have made these statements if it believed that YouTube contained a high percentage of unauthorized content.

Schapiro Opening Ex. 180 is a judicial admission from plaintiff Robert Tur stating that “substantial use of YouTube’s website was and is made by users uploading their own homemade videos.” Another statement in Tur’s Complaint that “consumers viewed, millions of times, copyrighted material from major television networks, *e.g.*, NBC, Fox, and cable networks” is an unproven allegation, not a binding judicial admission. Regardless, that allegation does not conflict with the statement that “substantial use of YouTube’s website was and is made by users uploading their own homemade videos.” First, the “millions” of views that Tur attributes to content from “major television networks” is insignificant when compared with total number of views YouTube videos were receiving at the time of the allegation. *See C. Hurley Opp. Decl.* ¶ 7

(average *daily* views for YouTube in January 2007 was approximately 252 million). Second, as we have described in detail in our briefs, content from “major television networks” on YouTube may be authorized in various ways, including by individually negotiated partnership agreements, uploads by employees and marketing agents, decisions by television networks to “leave up” user-submitted videos containing their content, and under the doctrine of fair use. YouTube Br. 6-8, 15-16, 39-55, 63-70.

Viacom also claims that YouTube’s “own analyses of the volume of infringing content on YouTube put the figure between 54% and 80%.” That is not true. The empirical evidence shows that plaintiffs collectively have made infringement allegations with respect to *two hundredths of one percent* of the videos uploaded to YouTube. YouTube Br. 90. And less than *one percent* of the videos on YouTube have been subject to infringement allegations under the DMCA (or through equivalent takedown requests by copyright holders). *Id.* at 91. Viacom’s cited evidence is not to the contrary. See CVSUF ¶¶ 55, 95, 104, 153, 170, 171, 173, 174, 176, 181; YouTube Opp. 89-97.

1.111. In the site’s first months, YouTube’s twenty-something founders grappled with how best to address situations where it seemed that users had uploaded videos in violation of YouTube’s rules. Defs. Opening Mem. at p. 95 (citing Hurley Decl. ¶¶ 15-18).

Viacom’s Response: *Controverted. Defendants’ internal communications make unambiguous their intent to grow the site by turning a blind eye to rampant infringement. See, e.g., Viacom SUF ¶¶ 29-132.*

YOUTUBE’S REPLY: Viacom’s response does not controvert this statement. Moreover, YouTube’s founders were far more conservative in their approach to copyright issues than were Plaintiffs’ senior executives. Schapiro Reply Ex. 148 (VIA 00200735) [REDACTED]

[REDACTED] Ex. 132 (225:22-226:23) (Viacom Executive Vice President recorded performance of Amy Winehouse in concert and uploaded footage to YouTube); Ex. 149 (MTV Chairman getting copies made of NBC’s Saturday Night Live show onto DVDs, along with particular clip she found on YouTube); *see also* Ex. 150 (103:25-106:25) (In-house counsel for plaintiff Carlin Music describing how she uploaded a clip from the television show The View to YouTube without authorization from the copyright holder); Ex. 145 (293:11-295:22) (President of Viacom’s MTVN

Entertainment division annually sent other Viacom executives CDs filled with music that he copied from his own collection, believing his initial purchase of the music entitled him to make and distribute dozens of copies).

After filing this lawsuit, Viacom belatedly realized that its own online services (like iFilm and Atom Films/Addicting Clips) operated no differently than YouTube, and had to make changes to conform to the “stronger than the DMCA’ filtering requirements” it thereafter decided to advocate. Schapiro Reply Ex. 151. As Viacom personnel realized, “it will be very difficult to build a thriving community if we need to monitor every uploaded clip and link for IP issues and are more hard-line than any other site on the web.” *Id.*; see also *id.* Ex. 152 (“we have pulled WAY back on what content is allowed on the site post YouTube lawsuit”). When press commentators noted the irony of Viacom suing YouTube even though it operated Atom Films and iFilm no differently from YouTube, Viacom acknowledged: “Clearly other people are noticing the youtube/ifilm conundrum that’s been created.” *Id.* Ex. 153.

1.114 Quickly realizing that those approaches were flawed, and having secured financial backing from investors, YouTube consulted with outside counsel, installed a formal DMCA program, and brought in an in-house lawyer with a background in copyright law.

Viacom’s Response: *Controverted. Other than self-serving testimony in this litigation, there is no documentary evidence whatsoever in the record to suggest that anybody at YouTube believed that community flagging for copyright infringement was “flawed,” or that any of the numerous approaches considered but never implemented (see Viacom SUF ¶¶ 75-77, 112-115) would have been flawed in practice. Rather, the documentary evidence shows conclusively that community flagging was shut down to avoid putting YouTube on “notice,” see Hohengarten Ex. 232, JK00008043, and that other measures never were taken because YouTube employees “hate[d] making it easier for these a-holes” -- referring to copyright owners - - and were “just trying to cover our asses so we don’t get sued.” Hohengarten Ex. 202, GOO001-00829702, at 4 & at GOO001-00829704.*

Further controverted because Levine ¶¶ 3 and 13 are inadmissible. See Evid. Obj. at 14-15.

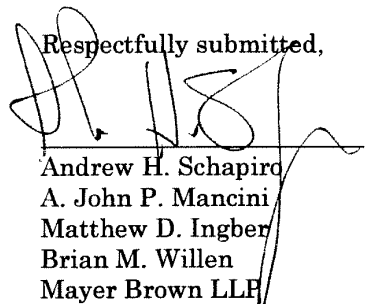
YOUTUBE’S REPLY: The evidence demonstrates that community flagging for copyright was discontinued in September 2005 “when YouTube concluded that users were not in a position to correctly distinguish between authorized and potentially unauthorized material on

the YouTube service, and in light of concerns that users would use the functionality as a means of censorship, to seek removal of content that they found undesirable, regardless of whether it was authorized to be on the service.” See Schapiro Opp. Ex. 90 (Defs.’ Am. Resp. to First Set of Interrog., Resp. to Interrog. No. 2); see also Hurley Opening Decl. ¶ 20. YouTube replaced the user copyright flag with a feature that allowed copyright owners to flag videos and send DMCA takedown notices for those containing their content. Levine Opp. Decl. ¶ 10.

Viacom’s statement that certain features were “never implemented” is false. By March 2006, YouTube had launched a “Subscribe to Tags” feature that allowed users to receive “alerts” of videos uploaded to YouTube matching specified tags. See CVSUF ¶¶ 75-77, 112-115.

Dated: June 14, 2010
New York, New York

Respectfully submitted,



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ORIGINAL*Stanton*

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



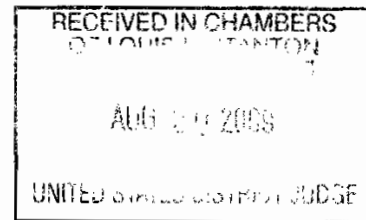
VIACOM INTERNATIONAL INC.,)
 COMEDY PARTNERS,)
 COUNTRY MUSIC TELEVISION, INC.,)
 PARAMOUNT PICTURES CORPORATION,)
 and BLACK ENTERTAINMENT TELEVISION)
 LLC,)
 Plaintiffs,)
 v.)
 YOUTUBE, INC., YOUTUBE, LLC, and)
 GOOGLE INC.,)
 Defendants.)

Civil Action No. 07-CV-2103
 Judge Stanton

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

**STIPULATION & ORDER
REGARDING VIACOM'S
COPYRIGHT MONITORING
PRIVILEGE ASSERTIONS**

Civil Action No. 07-CV-3582
 Judge Stanton



WHEREAS, following a pre-motion conference on July 17 2009, Defendants in the above-captioned action (“YouTube”) filed a motion to compel on July 27, 2009 asking the Court overrule certain of the Viacom Plaintiffs’ (“Viacom”) privilege assertions (“July 27 Motion”) (a true and correct copy of YouTube’s memorandum supporting its July 27 Motion is attached hereto as Exhibit A).

WHEREAS, Viacom has stipulated that the Court may enter the relief Defendants sought in their July 27 Motion.

IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned counsel of record, for the parties hereto, that following terms shall govern the stipulated relief to be entered by the Court concerning the July 27 Motion:

1. **Viacom’s Agreement to Produce Certain Documents.** Subject only to the exception described in paragraph 2 below, Viacom withdraws its claims of privilege and work product as to all documents or portions of documents falling within the three categories described at page 38 of the Memorandum of Law in Support of Defendants’ Motion to Compel (“July 27 Memorandum”) (Ex. A). Accordingly, Viacom will produce documents or portions of documents that reflect: (1) Viacom’s decisions to upload or authorize the uploading of videos to the YouTube service; (2) Viacom’s guidelines or policies for allowing videos to remain on YouTube for marketing, promotional, or other business reasons, including the implementation by Viacom’s agents of Viacom’s decisions not to request (or to delay requesting) the removal of such videos from YouTube; or (3) takedown requests issued to YouTube on Viacom’s behalf regarding material that Viacom authorized to appear on YouTube or otherwise wished to remain on YouTube for marketing, promotional, or other business purposes.

2. **Exception to Paragraph 1.** Viacom will not produce documents or portions of documents described in paragraph 1 only to the extent the document contains communications made for the purpose of seeking or providing legal advice, or otherwise contains such advice, or communications prepared or obtained because of the prospect or pendency of litigation. In applying this exception, the parties agree that an express or implied instruction to allow material to remain on YouTube is not per se legal advice, regardless of whether it comes from a lawyer. If Viacom elects to withhold any of the above documents or portions of such documents based on a claim that it contains communications made for the purpose of seeking or providing legal advice, or otherwise contains such advice, or contains communications prepared or obtained because of the prospect of litigation, Viacom will provide a privilege log identifying such documents and the basis for the claim of privilege with specificity. Both parties agree to meet and confer promptly regarding the entries on any log provided pursuant to this Paragraph prior to seeking a ruling from the Court. YouTube reserves its rights to challenge Viacom's claims that a document contains communications made for the purpose of seeking or providing legal advice, or otherwise contains such advice, or contains communications prepared or obtained because of the prospect of litigation, including by seeking *in camera* review of any documents that Viacom withholds or redacts on this basis.

3. **Other Documents Viacom Agrees to Produce.** Viacom will produce (1) its agreements and statements of work with BayTSP, Auditudo, and any other third-party monitoring agents, (2) documents sufficient to show the costs of the YouTube-related services those agents provide, and (3) documents, if any, reflecting that some of those

costs are attributable to Viacom's decision to instruct its monitoring agents to select for removal from YouTube *only* those videos that Viacom did not upload and that Viacom does not otherwise wish to remain on YouTube.

4. **Exception to Paragraph 3.** Viacom will not produce documents or portions of documents described in paragraph 3 only to the extent the document contains communications made for the purpose of seeking or providing legal advice, or otherwise contains such advice, or communications prepared or obtained because of the prospect of litigation. If Viacom elects to withhold any of the above documents or portions of such documents based on a claim that it contains communications made for the purpose of seeking or providing legal advice, or otherwise contains such advice, or contains communications prepared or obtained because of the prospect of litigation, Viacom will provide a privilege log identifying such documents and the basis for the claim of privilege with specificity. Both parties agree to meet and confer promptly regarding the entries on any log provided pursuant to this Paragraph prior to seeking a ruling from the Court. YouTube reserves its rights to challenge Viacom's claims that a document contains communications made for the purpose of seeking or providing legal advice, or otherwise contains such advice, or contains communications prepared or obtained because of the prospect of litigation, including by seeking *in camera* review of any documents that Viacom withholds or redacts on this basis.

5. **Withdrawal of Privilege Claims Over Specific Documents.** Viacom will not assert any claim of attorney-client privilege or work-product protection with respect to any of the documents attached to the July 27 Memorandum (Ex. A), with the

exception of the document bates stamped VIA00330173-174, which will be produced in redacted form.

6. **General Applicability of Viacom's Production Obligations.** Subject only to the exceptions contained in paragraphs 2 and 4, Viacom shall produce and/or not object to the production of all documents described in paragraphs 1 and 3, including but not limited to: documents appearing on Viacom's August 5, 2009 metadata privilege log; documents from the files of Viacom's Second Set Custodians and Additional Custodians; documents in the possession of BayTSP, documents in the possession of Auditude; documents in the possession of third-party marketing agencies or any other third party that YouTube has subpoenaed in this action. Viacom will allow its witnesses to testify consistent with this Stipulation.

7. **Timing of Viacom's Document Production.** Viacom shall produce documents on the BayTSP privilege log covered by this Stipulation by September 15, 2009. Viacom shall provide a privilege log identifying any documents withheld pursuant to paragraphs 2 and 4 within 7 days of this production. Viacom shall produce the remainder of the documents on a rolling basis to be completed by October 1, 2009. Viacom shall provide a privilege log identifying any documents withheld pursuant to paragraphs 2 and 4 within 7 days of this production.

8. **Non-Waiver Agreement.** Subject to the parties' Non-Waiver Agreement, dated August 3, 2007, the act of producing documents pursuant to this Stipulation shall not be used by YouTube to support an argument that Viacom has waived privilege with respect to any other documents within its possession, custody, or control.

AGREED and STIPULATED

August 19, 2009

*Attorney for Viacom International Inc.,
Comedy Partners, Country Music Television,
Inc., Paramount Pictures Corporation, and
Black Entertainment Television, LLC*

By: 

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

AGREED and STIPULATED

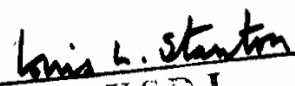

August 19, 2009

*Attorney for YouTube, Inc., YouTube, LLC
and Google Inc.*

By: 

Andrew H. Schapiro
MAYER BROWN LLP
1675 Broadway
New York, NY 10019
(212) 506-2500

SO ORDERED:


U.S.D.J.
8/24/09 

From: Fenton, Frederic D <ffenton@stblaw.com>
Sent: Sunday, October 8, 2006 9:58 PM
To: Scarborough, Chris [REDACTED]
[REDACTED] Hinman, William <WHinman@stblaw.com>
Cc: Boutros, George [REDACTED] Duncan, Storm
[REDACTED] Jensen, Kirsten <kjensen@stblaw.com>; matthew@google.com
Subject: RE: Engagement Letter
Attach: Document.pdf

Chris,

Attached please find an executed copy of the engagement letter. Please email or fax a copy countersigned by Credit Suisse to my attention at your convenience.

If you could also please send me a draft of the fairness opinion for our review once it has been prepared, that would be greatly appreciated.

Regards,
Ric

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

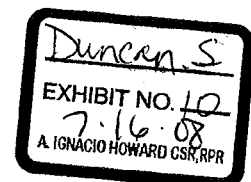
From: Scarborough, Chris [mailto:[REDACTED]]
Sent: Sunday, October 08, 2006 6:45 PM
To: David Drummond [REDACTED]; Fenton, Frederic D; Hinman, William
Cc: Boutros, George; Duncan, Storm
Subject: Engagement Letter

David,

At George's request, attached please find the engagement letter which we believe reflects the final business and legal agreement. You can fax an executed version back to me at [REDACTED]. Please do not hesitate to call me, Storm or George with any questions, and we appreciate the opportunity to work with you and the rest of the "Green" team on this very important transaction.

Best regards,
Chris

Chris Scarborough
Mergers & Acquisitions
Credit Suisse
650 California Street
San Francisco, CA 94108
Tel: [REDACTED]



HIGHLY CONFIDENTIAL

CSSU 002845

Fax: [REDACTED]

**** PLEASE NOTE MY EMAIL ADDRESS HAS CHANGED TO**
[REDACTED]

Please access the attached hyperlink for an important electronic communications disclaimer:

http://www.credit-suisse.com/legal/en/disclaimer_email_ib.html

October 6, 2006

Google Inc.
1600 Amphitheatre Parkway
Mountain View, CA 94043

Attention: David Drummond
Senior Vice President, Corporate Development

Dear David:

This confirms our agreement that Google Inc. (the "Company" or "you") has engaged Credit Suisse Securities (USA) LLC ("Credit Suisse", "we" or "us") to undertake an analysis and render an opinion (the "Opinion") to the Board of Directors of the Company as to the fairness, from a financial point of view, of the consideration to be paid by the Company in the proposed Transaction (as defined below). You agree and acknowledge that the nature and scope of our analysis as well as the form and substance of our Opinion shall be such as we deem appropriate. If requested by you, our Opinion shall be delivered in writing.

You have informed us that the Company is considering a proposed transaction (the "Transaction") providing for the merger of YouTube, Inc. (the "Target") with a subsidiary of the Company pursuant to which the Target will become a wholly owned subsidiary of the Company.

Section 1. Compensation; Expenses.

As compensation for our services hereunder, the Company agrees to pay Credit Suisse a fee of \$2,500,000, payable upon the rendering of our Opinion (regardless of the conclusion reached therein).

In addition to the compensation payable pursuant to this Section 1, the Company agrees, upon request, to reimburse Credit Suisse promptly for reasonable expenses incurred by Credit Suisse, including the fees and expenses of its legal counsel, resulting from or arising out of this engagement or the performance thereof or any other advisory assignments undertaken by Credit Suisse after the date hereof at the Company's request. All fees and expenses payable under this agreement are payable in U.S. dollars in immediately available funds. All fees, expenses and other payments under this agreement shall be paid without giving effect to any withholding or deduction of any tax or similar governmental assessment.

Section 2. Information.

Except as required by law or regulation, no advice or Opinion rendered by Credit Suisse, whether formal or informal, may be disclosed, in whole or in part, or summarized, excerpted from or otherwise referred to without our prior written consent. In addition, neither Credit Suisse nor the terms of this engagement may be otherwise referred to without Credit Suisse's prior written consent. The obligations of the Company pursuant to this paragraph shall survive any expiration or termination of this agreement or Credit Suisse's engagement hereunder. Notwithstanding anything to the contrary contained in this agreement, the Company (and each employee, representative or other agent of the Company) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of any transaction contemplated by this agreement and all materials of any kind (including opinions or other tax analyses) that are provided to the Company relating to such tax treatment and structure.

In connection with Credit Suisse's engagement, the Company will furnish, or cause to be furnished to, Credit Suisse all information concerning the Company and, to the extent available to the Company, Target that Credit Suisse reasonably deems necessary or appropriate and will provide Credit Suisse with access to officers, directors, employees, accountants, counsel and

other representatives (collectively, the "Representatives") of the Company and, as practicable, the Target. In performing our services hereunder, Credit Suisse shall be entitled to rely without investigation upon all available information, including information supplied to us by or on behalf of the Company, the Target or their respective Representatives and shall not be responsible for the accuracy or completeness of, or have any obligation to verify, the same or conduct any appraisal of assets or liabilities. Except as required by law or regulation or judicial process, all non-public information concerning the Company or the Target provided to Credit Suisse will be held confidentially and Credit Suisse shall not disclose such information to any third party (other than legal counsel) without the Company's written consent.

Section 3. Public Announcements.

Credit Suisse may, at its option and expense and after announcement by the Company of a Transaction, place announcements and advertisements or otherwise publicize the Transaction and Credit Suisse's role in it (which may include the reproduction of the Company's logo and a hyperlink to the Company's website on Credit Suisse's Internet Website); provided, however, that the Company consents prior to each use of such publicity; provided, further, that the Company hereby consents to Credit Suisse's use of its customary tombstone announcement in pitch books.

Section 4. Indemnity.

As Credit Suisse will be acting on behalf of the Company in connection with this engagement, the Company and Credit Suisse agree to the indemnity provisions and other matters set forth in Annex A which is incorporated by reference into this agreement and is an integral part hereof. The obligations of the Company pursuant to Annex A shall survive any expiration or termination of this agreement or Credit Suisse's engagement hereunder.

Section 5. Termination.

Credit Suisse's engagement hereunder may be terminated at any time by either Credit Suisse or the Company upon ten days' prior written notice thereof to the other party; *provided, however*, that no termination of Credit Suisse's engagement hereunder shall affect the Company's obligations to pay the fees and expenses payable or incurred hereunder prior to the termination of Credit Suisse's engagement.

Section 6. Acknowledgements.

Credit Suisse is a full service securities firm engaged in securities trading and brokerage activities as well as providing investment banking and other financial services. In the ordinary course of business, Credit Suisse and its affiliates may acquire, hold or sell, for their own accounts and the accounts of customers, equity, debt and other securities and financial instruments (including bank loans and other obligations) of the Company, Target and any other company that may be involved in the transactions and other matters contemplated by this agreement, as well as provide investment banking and other financial services to such companies. In addition, Credit Suisse and its affiliates and certain of their respective employees, including members of the team performing this engagement, as well as certain private equity funds associated or affiliated with Credit Suisse in which they may have financial interests, may from time-to-time acquire, hold or make direct or indirect investments, in or otherwise finance a wide variety of companies, including the Target, other potential purchasers and their respective affiliates. Credit Suisse has adopted policies and procedures designed to preserve the independence of its research analysts whose views may differ from those of Credit Suisse's investment banking division.

Section 7. Miscellaneous.

The Company acknowledges and agrees that Credit Suisse has been retained solely to render the Opinion with respect to the Transaction and that no fiduciary or agency relationship between the Company and Credit Suisse has been created in respect of this agreement or Credit Suisse's engagement hereunder, regardless of whether Credit Suisse has advised or is advising the Company on other matters. In connection with this engagement, Credit Suisse is acting as an independent contractor, with obligations owing solely to the Company and not in any other capacity. Except as contemplated by Annex A, this agreement is not intended to confer rights upon any persons not a party hereto (including security holders, employees or creditors of the Company).

The Company acknowledges and agrees that Credit Suisse and its affiliates may be engaged in a broad range of transactions involving interests that differ from those of the Company and that Credit Suisse has no obligation to disclose such interests and transactions to the Company. The Company waives, to the fullest extent permitted by law, any claims it may have based on any actual or potential conflicts of interest that may arise or result from Credit Suisse's engagement by the Company hereunder or any claims it may have against Credit Suisse for breach of fiduciary duty or alleged breach of fiduciary duty and agrees that Credit Suisse shall have no liability (whether direct or indirect) to the Company in respect of such a fiduciary duty claim or to any person asserting a fiduciary duty claim on behalf of or in right of the Company, including the Company's stockholders, employees or creditors.

The Company understands that Credit Suisse is not undertaking to provide any legal, accounting or tax advice in connection with this agreement. Credit Suisse shall not be responsible for the underlying business decision of the Company to effect a Transaction or for the advice or services provided by any of the Company's other advisors or contractors. The Company shall be solely responsible for the commercial assumptions on which the Opinion or any valuation advice provided by Credit Suisse is based. This agreement shall be binding upon and inure to the benefit of the Company, Credit Suisse and their respective successors. If any term, provision, covenant or restriction herein (including Annex A) is held by a court of competent jurisdiction to be invalid, void or unenforceable or against public policy, the remainder of the terms, provisions and restrictions contained herein shall remain in full force and effect and shall in no way be modified or invalidated.

Section 8. Governing Law; Jurisdiction; Waiver of Jury Trial.

All aspects of the relationship created by this agreement or the engagement hereunder and any other agreements relating to the engagement hereunder shall be governed by and construed in accordance with the laws of the State of New York, applicable to contracts made and to be performed therein and, in connection therewith, the parties hereto consent to the exclusive jurisdiction of the Supreme Court of the State of New York or the United States District Court for the Southern District of New York, in each case sitting in New York County and agrees to venue in such courts. Notwithstanding the foregoing, solely for purposes of enforcing the Company's obligations under Annex A, the Company consents to personal jurisdiction, service and venue in any court proceeding in which any claim relating to or arising out of this agreement or the engagement hereunder is brought by or against any Indemnified Person. CREDIT SUISSE AND THE COMPANY EACH HEREBY AGREES TO WAIVE ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY CLAIM, COUNTER CLAIM OR ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE ENGAGEMENT HEREUNDER.

We are delighted to accept this engagement and look forward to working with you on this assignment. Please confirm that the foregoing is in accordance with your understanding by signing and returning to us the enclosed duplicate of this letter.

Very truly yours,

CREDIT SUISSE SECURITIES (USA) LLC

By: _____

Name:

Title:

Accepted and agreed to as
of the date first written above:

GOOGLE INC.

By: 

Name:

Title:

ANNEX A

In further consideration of the agreements contained in our engagement letter (the "engagement"), Google Inc. (the "Company") agrees to indemnify and hold harmless Credit Suisse Securities (USA) LLC ("Credit Suisse"), its affiliates, the respective members, directors, officers, partners, agents and employees of Credit Suisse and its affiliates, and any person controlling Credit Suisse or any of its affiliates (collectively, "Indemnified Persons") from and against, and the Company agrees that no Indemnified Person shall have any liability to the Company or its owners, parents, affiliates, security holders or creditors for, any losses, claims, damages or liabilities (including actions or proceedings in respect thereof) (collectively, "Losses") (A) related to or arising out of (i) the Company's actions or failures to act (including statements or omissions made or information provided by the Company or its agents) or (ii) actions or failures to act by an Indemnified Person with the Company's express consent or in reasonable reliance on the Company's actions or failures to act or (B) otherwise related to or arising out of the engagement, Credit Suisse's performance thereof or any other services Credit Suisse is asked to provide to the Company (in each case, including related activities prior to the date hereof), except that this clause (B) shall not apply to any Losses to the extent that they are finally determined by a court of competent jurisdiction to have resulted primarily from the bad faith or gross negligence of such Indemnified Person. If such indemnification is for any reason not available or insufficient to hold an Indemnified Person harmless, the Company agrees to contribute to the Losses involved in such proportion as is appropriate to reflect the relative benefits received by the Company, on the one hand, and by Credit Suisse, on the other hand, with respect to the engagement or, if such allocation is determined by a court of competent jurisdiction to be unavailable, in such proportion as is appropriate to reflect other equitable considerations such as the relative fault of the Company on the one hand and of Credit Suisse on the other hand; provided, however, that, to the extent permitted by applicable law, the Indemnified Persons shall not be responsible for expenses and Losses which in the aggregate are in excess of the amount of all fees actually received by Credit Suisse from the Company in connection with the engagement. Relative benefits to the Company, on the one hand, and Credit Suisse, on the other hand, with respect to the engagement shall be deemed to be in the same proportion as (i) the total value paid or proposed to be paid or received or proposed to be received by the Company and its security holders, as the case may be, pursuant to the transaction(s), whether or not consummated, contemplated by the engagement, bears to (ii) all fees actually received by Credit Suisse in connection with the engagement. Without limiting the generality of the foregoing, in no event shall any Indemnified Person have any liability to the Company or any of its affiliates or stockholders for any consequential, special, exemplary or punitive damages arising out of the engagement or their performance thereof. The Company will not permit any settlement or compromise to include, or consent to the entry of any judgment that includes, a statement as to, or an admission of, fault, culpability or a failure to act by or on behalf of an Indemnified Person, without such Indemnified Person's prior written consent. No Indemnified Person seeking indemnification, reimbursement or contribution under this agreement will, without the Company's prior written consent, settle, compromise or consent to the entry of any judgment in or otherwise seek to terminate any action, claim, suit, investigation or proceeding referred to herein. If any Indemnified Person becomes involved in any capacity in any action, claim, suit, investigation or proceeding, actual or threatened, brought by or against any person, including stockholders of the Company, in connection with or as a result of the engagement or any matter referred to in the engagement the Company also agrees to reimburse such Indemnified Persons for their reasonable expenses (including without limitation reasonable legal fees and other costs and expenses incurred in connection with investigating, preparing for and responding to third party subpoenas or enforcing the engagement) as such expenses are incurred. Promptly after receipt by an Indemnified Person of service of any complaint or the commencement of any action or proceeding with respect to which indemnification is being sought hereunder, such Indemnified Person will notify the Company in writing of such complaint or of the commencement of such action or proceeding, but failure to so notify the Company will relieve the Company from the obligation to indemnify such Indemnified Person only if and only to the extent that such failure results in the forfeiture by the Company of substantial rights and defenses that actually and

materially prejudice the Company, and will not in any event relieve the Company from any other obligation or liability that the Company may have to any Indemnified Person otherwise than in accordance with the provisions hereof. If the Company so elects following its acknowledgment of its obligation to indemnify the Indemnified Person or is requested by such Indemnified Person, the Company will assume the defense of such action or proceeding, including the employment of counsel reasonably satisfactory to such Indemnified Person and the payment of the fees and disbursements of such counsel. In the event, however, such Indemnified Person reasonably determines in its judgment that having common counsel would present such counsel with a conflict of interest or if the defendants in or targets of any such action or proceeding include both an Indemnified Person and the Company and such Indemnified Person reasonably concludes that there may be legal defenses available to it or other Indemnified Persons that are different from or in addition to those available to the Company, or if the Company fails to assume the defense of the action or proceeding or to employ counsel reasonably satisfactory to such Indemnified Person in a timely manner, then such Indemnified Person may employ separate counsel to represent or defend it in any such action or proceeding and the Company will pay the reasonable and customary fees and disbursements of such counsel; provided, however that the Company will not be required to pay the fees and disbursements of more than one separate counsel (in addition to local counsel) for such Indemnified Persons in any jurisdiction in any single action or proceeding. In any action or proceeding the defense of which the Company assumes, the Indemnified Person will have the right to participate in such litigation and to retain its own counsel at such Indemnified Person's own expense. The Company will not, without Credit Suisse's prior written consent, settle, compromise, consent to the entry of any judgment in or otherwise seek to terminate any action, claim, suit, investigation or proceeding in respect of which indemnification may be sought hereunder (whether or not any Indemnified Person is a party thereto) unless such settlement, compromise, consent or termination includes a release of each Indemnified Person from any liabilities arising out of such action, claim, suit, investigation or proceeding. The Company's obligations pursuant to this Annex A shall inure to the benefit of any successors, assigns, heirs and personal representatives of each Indemnified Person and are in addition to any rights that each Indemnified Person may have at common law or otherwise. Prior to entering into any agreement or arrangement with respect to, or effecting, any transaction that is reasonably likely to impair the Company's ability to meet its current and potential future obligations pursuant to this Annex A, the Company will notify Credit Suisse in writing thereof and, if requested by Credit Suisse, shall arrange alternative means of providing for the obligation of the Company set forth herein upon terms and conditions reasonably satisfactory to Credit Suisse.

SJA-1295

Rubin Exhibit 25

Subject: RE: film clips for online...
From: "Powell, Amy - Paramount" [REDACTED]
To: [REDACTED]; Andy
Cc: Jorma
Date: Mon, 14 May 2007 00:13:10 +0000

i think a time code cut that is not color corrected, cleared, etc. is the way to go... leak on youtube?

re: hotrodmovie.com, i think we need to use the "official" one-sheet (collage version) so that it is consistent with the offline marketing materials and then use the alternative (web only version) for exclusive downloads on the site- i'm concerned with sending out a scattered marketing message.

what do you think?

From: [REDACTED]
Sent: Sun 5/13/2007 3:14 PM
To: Powell, Amy - Paramount; Andy
Cc: Jorma
Subject: Re: film clips for online...

Nothing has been color corrected and nothing has cleared music. Is this something we'd release with time code on it? And, shouldn't hotrodmovie.com be up before we put this out? Anyway, my vote would be for I party.

Sent via BlackBerry from T-Mobile

-----Original Message-----
From: "Powell, Amy - Paramount" [REDACTED]
Date: Sun, 13 May 2007 15:01:24
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: film clips for online...

"luge" & "i party" would both be great... i would also love the dancing outside the van.

what do you guys think?

From: [REDACTED]
Sent: Fri 5/11/2007 4:04 PM
To: Powell, Amy - Paramount; [REDACTED]
Cc: Jorma; Andy
Subject: Re: film clips for online...

that sounds like a good idea, we need to discuss which to leak. Kiv brought up either "luge" or "i party" since they're already getting used in the trailer. Anything else in mind? we could try and think of more as well. Or even deleted scenes or funny longer takes, etc.

--- "Powell, Amy - Paramount" [REDACTED] wrote:

>

> Hi dudes

>

> I was thinking we should start leaking a couple of
> short clips from the film online... I would love to
> start driving some traffic to StuntmanForever.com.

>

> What do you think?

>

>

>

Moody friends. Drama queens. Your life? Nope! - their life, your story. Play Sims Stories at Yahoo! Games.
<http://sims.yahoo.com/>: <<http://sims.yahoo.com/>>

SJA-1298

Rubin Exhibit 28

Subject: Cloverfield Trailer Plan

From: "Powell, Amy - Paramount" [REDACTED]

To: Arneson, Latham - Paramount; Chiang, Cat - Paramount; Grove, Alyson - Paramount; Hidvegi, Les - Paramount; Keck, Michael - Paramount; Koenig, Paul - Paramount; Lawson, Josh - Paramount; Lester, Judson - Paramount; Morgan, Stephanie - Paramount; Morris, Jamie - Paramount; Powell, Amy - Paramount; Simard, Stephanie - Paramount; Sin, Wayne - Paramount; Springer, Geoffrey - Paramount; Teifeld, Tamar - Paramount; Thurber, Jessica - Paramount; Tipton, Kristina - Paramount; Toth, David - Paramount; Tyldesley, Heath - Paramount; Wahtera, Megan - Paramount; Warman, Bryan - Paramount; Williams, Carrie - Paramount; Worsnup, Mickey - Paramount

Cc: Date: Thu, 08 Nov 2007 18:46:45 +0000

BELOW PLEASE FIND OUR OFFICIAL CLOVERFIELD TRAILER LAUNCH PLAN.

Pls share with PPI & Piracy team.

We will release the trailer exclusively in theaters (with BEOWULF) on Thursday, Nov. 15th

--We will assume audiences will tape the trailer on their own and post it on YouTube - we will NOT issue take-down notices

--We will OFFICIALLY release the trailer on iTunes on Nov. 19 - with an HD version

--We will ship the poster to theaters with the BEOWULF trailer

--We will assume audiences will steal the one-sheet and post it on YouTube - we will NOT issue take-down notices

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

SJA-1300

Rubin Exhibit 30

From: French, David - MTV. Sent: 3/6/2008 5:57 PM.
To: [-] Christy Wise.
Cc: [-]
Bcc: [-]
Subject: RE: MTV Video Uploads - Fanscape PR ONLY.xls

Yeah, we should drive to MTV.com whenever we can as a rule of thumb. It will be interesting to see what VIA says about the youtube... ;)

From: Christy Wise [mailto:christyw@fanscape.com]
Sent: Thursday, March 06, 2008 12:55 PM
To: French, David - MTV
Subject: RE: MTV Video Uploads - Fanscape PR ONLY.xls

We are not posting everything to YouTube. If you tell us that you want us to drive traffic to MTV.com then we will send people there, but otherwise they typically go to YouTube. The only exceptions for us are when we are giving a site an exclusive (i.e. Daily Motion or IFILM) for home page features. If we are trying to be "under the radar" we will not upload videos to the Fanscapevideos YouTube account but will create a different one. We will let you know whenever that happens.

Christy Wise

Sr. Director, Partnership Marketing

Fanscape, Inc.

<http://fanscape.com/>

3201 W. Cahuenga Blvd.

Los Angeles, CA 90068

T: 323.785.7789

F: 323.785.7101

Christyw@fanscape.com

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From: French, David - MTV [mailto:David.French@mtvstaff.com]
Sent: Thursday, March 06, 2008 9:43 AM

To: Christy Wise
Subject: RE: MTV Video Uploads - Fanscape PR ONLY.xls

Also, I assume we are posting everything on YouTube, and then using the YouTube links to get our content embedded elsewhere??

From: Christy Wise [mailto:christyw@fanscape.com]
Sent: Thursday, March 06, 2008 12:37 PM
To: French, David - MTV
Subject: RE: MTV Video Uploads - Fanscape PR ONLY.xls

Yeah I can give you a new grid every Monday with the new video additions. I have sent two already – one last week and one this week. Is Monday okay for the next one?

Christy Wise
Sr. Director, Partnership Marketing
Fanscape, Inc.
<http://fanscape.com/>
3201 W. Cahuenga Blvd.
Los Angeles, CA 90068
T: 323.785.7789
F: 323.785.7101
Christyw@fanscape.com

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From: French, David - MTV [mailto:David.French@mtvstaff.com]
Sent: Thursday, March 06, 2008 9:33 AM
To: Christy Wise
Subject: RE: MTV Video Uploads - Fanscape PR ONLY.xls

Christy, I'm getting answers for you on this. When do you think you could provide your weekly updates on this... Mondays??

thx

D

From: Christy Wise [mailto:christyw@fanscape.com]
Sent: Friday, February 29, 2008 6:30 PM
To: French, David - MTV; DeGuzman, Jennifer
Subject: MTV Video Uploads - Fanscape PR ONLY.xls

Hi Dave & Jenn,

Attached is the excel grid with the UGC upload URL's for the PR team only. As you can imagine, the marketing team has many many more videos uploaded on 30-50 UGC sites and will be sending their list to Amy in a separate grid. The PR team primarily works with YouTube and IFILM when not sending out the direct MTV links, so our list is much more manageable for the time being.

Everything in the attached grid is currently live. I have only included current or recent campaigns. There are additional MTV videos under the user name (fanscapevideos) on YouTube, but they are from last year.

When we update this grid to send to you weekly - do you want me to include additional videos saved under the same user names attached (FanscapeVideos4U, fanscapevideos, and Snackboard), or can you just get clearance from your legal department for those specific profiles? We will of course send you any URL's and video titles for any clips we upload to different (and less obvious) user names, but if our profiles on IFILM and YouTube are "white-listed" by Viacom, I don't want to continue to add any unnecessary information.

Let me know.

Thanks!

-Christy

SJA-1304

Rubin Exhibit 43

From: Mark M. Ishikawa
Sent: Wednesday, May 10, 2006 6:44 PM
To: Alfred_Perry@Paramount.com
Cc: Courtney Nieman; Evelyn Espinosa
Subject: RE: [html] Re: MI3 Daily Report 05/09/06

The remaining links are from the trailer. We have not been sending taker down notices for trailers since we got yelled at by Paramount Marketing for taking down trailers that they posted on youtube. That's one of the things I'd like to discuss on Monday, better coordination between the different departments. If you want us to send take down notices we can do it, just let me know. They are very cooperative when it comes to take down notices..

Mark

From: Alfred_Perry@Paramount.com [mailto:Alfred_Perry@Paramount.com]
Sent: Wednesday, May 10, 2006 11:20 AM
To: Mark M. Ishikawa
Subject: Fw: [html] Re: MI3 Daily Report 05/09/06

Please see below and let me know

Sent from my BlackBerry wireless handheld

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

From: "Alexandra DeNeve" [adeneve@loeb.com]
Sent: 05/10/2006 10:28 AM
To: Alfred Perry
Cc: Scott Martin
Subject: RE: [html] Re: MI3 Daily Report 05/09/06

AI - of the ones in black (which are the ones not taken down yet) each one of them is just the trailer - two english, and 3 are foreign (I think Spanish) - do you care?

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

From: Alfred_Perry@Paramount.com [mailto:Alfred_Perry@Paramount.com]
Sent: Tuesday, May 09, 2006 6:36 PM
To: Alexandra DeNeve
Cc: Scott_Martin@paramount.com
Subject: Fw: [html] Re: MI3 Daily Report 05/09/06

Alexandra, taking down these streamings reportedly on YouTube should be right up your alley.

7/23/2008

Sent from my BlackBerry wireless handheld

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

From: "Courtney Nieman" [courtney@baytsp.com]

Sent: 05/09/2006 03:30 PM

To: Alfred Perry" <alfred.perry@paramount.com>

Cc: Mark M. Ishikawa" <marki@baytsp.com>

Subject: RE: [html] Re: MI3 Daily Report 05/09/06

Al,

I have them all coming from YouTube. Here are the URLs:

1. 5/6/06 <http://www.youtube.com/watch?v=i1xwdwA2Em4&search=MISSION%20IMPOSSIBLE> (MI3 Behind the Scene.)
2. 5/9/06 <http://www.youtube.com/watch?v=i1xwdwA2Em4&search=MISSION%20IMPOSSIBLE> (MI3 30 sec. cut from a CAM) Notice Sent - Down
3. 5/9/06 <http://www.youtube.com/watch?v=i1xwdwA2Em4&search=MISSION%20IMPOSSIBLE> (MI3 30 sec. cut from a CAM) Notice Sent - Down
4. 5/9/06 <http://www.youtube.com/watch?v=PRskl3TBa3s&search=MISSION%20IMPOSSIBLE>
5. 5/9/06 <http://www.youtube.com/watch?v=PRskl3TBa3s&search=MISSION%20IMPOSSIBLE>
6. 5/9/06 <http://www.youtube.com/watch?v=i1xwdwA2Em4&search=MISSION%20IMPOSSIBLE>
7. 5/9/06 http://www.youtube.com/watch?v=_1njc8_x_jA&search=MISSION%20IMPOSSIBLE (MI3 30 sec. cut from a CAM) Notice Sent - Down
8. 5/9/06 <http://www.youtube.com/watch?v=i1xwdwA2Em4&search=MISSION%20IMPOSSIBLE>

Those in Red 2,3,7 have been taken down for content.

Courtney Nieman

Manager Client Services

BayTSP, Inc.

408-341-2314

AIM: BayTSPCanne

Have you checked out BayTSP's Piracy news web log? <http://www.baytsp.com/weblog>

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From: Alfred_Perry@Paramount.com [mailto:Alfred_Perry@Paramount.com]

Sent: Tuesday, May 09, 2006 2:16 PM

To: Armin Parang

Subject: [html] Re: MI3 Daily Report 05/09/06

Where do the two streamings originate?

7/23/2008

HIGHLY CONFIDENTIAL

BAYTSP 002775850

Sent from my BlackBerry wireless handheld

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

From: "Armin Parang" [arminp@baytsp.com]

Sent: 05/09/2006 01:26 PM

To: Alfred Perry" <alfred.perry@paramount.com>

Cc: Evelyn Espinosa" <evelyn@baytsp.com>

Subject: MI3 Daily Report 05/09/06

Attached is your update report for M:I 3 for 05/09/06 :

We have detected 8,611 infringements on P2P networks and 2 on Streaming Video. Of these 8,054 were from the United States and 554 were from International locations.

RADAR Update

Discovered:	50
Verified:	0
Discarded:	50

* Discovered - filename, file size, download activity suggest this to be a valid file, more research required.

* Verified - sufficient download to prove this to be a valid file.

* Discarded - filename, file size, download activity, prior verification suggest this to be an invalid file.

As of 11 AM on Tuesday May 9th, RADAR has detected 6 new valid infringements of Mission: Impossible III.

So far 50 pirate groups have distributed a CAM or Telesync of Mission: Impossible III. Some of these appear to be directly descended from the SaGa release. The major foreign languages for Mission: Impossible III, include Spanish, French, German and English.

Electronic Buys Update

No new Mission: Impossible III electronic buys have been made. Awaiting previous shipping confirmation.

Armin Parang
Client Services Manager
BayTSP, Inc.
408-341-2372
arminp@baytsp.com

Be sure to visit www.baytsp.com/weblog for the latest P2P news...

7/23/2008

HIGHLY CONFIDENTIAL

BAYTSP 002775851

SJA-1308



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7/23/2008

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BAYTSP 002775852

SJA-1309

Rubin Exhibit 62

From: Solow, Warren [Warren.Solow@viacom.com]
Sent: Thursday, February 14, 2008 10:26 PM
To: Andrea Cordone; copyright@youtube.com
Cc: Evelyn Espinosa; Arian Hormozi; Sarah Cruz; Housley, Michael
Subject: RE: Retraction of Notice of Infringement

Can you reach out to youtube to accelerate the reinstatement of this account, our marketing vendor is freaking out as this is down for two days now

From: Andrea Cordone [mailto:andreac@baytsp.com]
Sent: Wednesday, February 13, 2008 5:48 PM
To: copyright@youtube.com
Cc: Evelyn Espinosa; Arian Hormozi; Sarah Cruz
Subject: Retraction of Notice of Infringement

Dear Sir or Madam,

We recently became aware that takedown notices were sent in error and hereby withdraw the takedown of these URLs:

<http://www.youtube.com/watch?v=bl49uLLa674>
<http://www.youtube.com/watch?v=HbE6f4-G82M>
<http://www.youtube.com/watch?v=yY3QOF13IBc>
<http://www.youtube.com/watch?v=bD1GJRiQlrw>

We take the integrity of our data seriously, and have procedures designed to provide reasonable assurance that our takedown notices are accurate. However, no procedure is 100% accurate. We apologize for any inconvenience this may have caused and appreciate the cooperation of your organization. If there is an issue of a similar problem in the future, or you would like to provide feedback, please contact us at the following address:

BayTSP, Inc. (copyright-compliance@baytsp.com)
ISP-Compliance Feedback
PO Box 1314
Los Gatos, California USA 95031
Fax: 1.408.341.2399
Email: VIACOM@baytsp.com
Email: copyright-compliance@baytsp.com.

Best regards,

Compliance Team :: BayTSP Inc.
PO Box 1314 Los Gatos, CA 95031
www.baytsp.com
408-341-2300 - Main
408-341-2399 - Fax

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6/13/2008

HIGHLY CONFIDENTIAL

BAYTSP 001090016

SJA-1311

Rubin Exhibit 86

From: Deana Arizala
Sent: Wednesday, January 03, 2007 5:45 PM
To: Morales, Cindy
Cc: Michelena.hallie@mtvn.com; Courtney Nieman; Evelyn Espinosa; Mark M. Ishikawa
Subject: Approved links and user
Attachments: Approved Links and User.doc

Cindy,

Enclosed are the approved links and user and I had put together with the appropriate channel. Please let me know if you have any questions. Thanks.

Logo

Noah's Arc

<http://profile.myspace.com/index.cfm?fuseaction=user.viewprofile&friendid=113996991>
<http://profile.myspace.com/index.cfm?fuseaction=user.viewprofile&friendid=94946165>
<http://profile.myspace.com/index.cfm?fuseaction=user.viewprofile&friendid=94945456>
<http://profile.myspace.com/index.cfm?fuseaction=user.viewprofile&friendid=94426519>
<http://profile.myspace.com/index.cfm?fuseaction=user.viewprofile&friendid=96584384>
<http://profile.myspace.com/index.cfm?fuseaction=user.viewprofile&friendid=94945771>
<http://profile.myspace.com/index.cfm?fuseaction=user.viewprofile&friendid=94945108>

MTV

The Hills

www.myspace.com/thehillsonmtv

Run's House

www.myspace.com/runshousemtv

Meaty the Dog

www.myspace.com/meatythedog

24/7

www.myspace.com/mtvtwentyfourseven

Making the Band

www.myspace.com/makingthebandonmtv

Meet the Barkers

www.myspace.com/meetthebarkers

Yo Momma

www.myspace.com/therealyomomma

Moonman

www.myspace.com/mtvmoonman

Blowin' Up

www.myspace.com/blowinupmtv

6/11/2008

www.myspace.com/mtvblowinup

51

Flavor of Love

<http://www.youtube.com/watch?v=uXnx5QxpIRc>
<http://www.youtube.com/watch?v=ynJmXSht2jI>
http://www.youtube.com/watch?v=ia_pl6rVg_k
<http://www.youtube.com/watch?v=BRbM2qfD08U>
<http://www.youtube.com/watch?v=QQxyhtYk3CI>
<http://www.youtube.com/watch?v=kihSHIoW-Tg>
<http://www.youtube.com/watch?v=4CtHP6Ut-zM>
<http://www.youtube.com/watch?v=hFoCygnKOaA>
http://www.youtube.com/watch?v=pAkp_Hr5rN4
http://www.youtube.com/watch?v=yZ1SEDh_JPc
<http://www.youtube.com/watch?v=PjiZqOOAipw>

VH1

Freestyle59

<http://www.youtube.com/watch?v=zlbL-zhMK8k>
<http://www.youtube.com/watch?v=zgB11BKpwjQ>

Totally Awesome

<http://www.youtube.com/watch?v=qvUzUOSbs9Y>
http://www.youtube.com/watch?v=M-G_NQZb1lI
<http://www.youtube.com/watch?v=5vjL2stAz0>
<http://www.youtube.com/watch?v=jFoQNdwaGys>
<http://www.youtube.com/watch?v=3saVMo96328>
<http://www.youtube.com/watch?v=xPfTPn-eGKk>

Wendy William Experience

<http://www.youtube.com/watch?v=qVVG7Rfrvk>

New York Hospitality

<http://www.youtube.com/watch?v=Dy9IYAELqlE>

Hogan Knows Best

<http://www.youtube.com/watch?v=x1ycbHjePjM>

Spike TV

<http://www.youtube.com/spiketv>

6/11/2008

TV Land

Mr. T

<http://www.youtube.com/watch?v=fYOjF4RtBPU>
http://www.youtube.com/watch?v=u_bRnbx_osM
<http://www.youtube.com/watch?v=OXLA8bzK0oo>
<http://www.youtube.com/watch?v=IBdbE9dtFnQ>
http://www.youtube.com/watch?v=xx5p_wv_izo
<http://www.youtube.com/watch?v=76cCpNtOLJM>
<http://www.youtube.com/watch?v=DEZlhn9TKB0>
http://www.youtube.com/watch?v=uA_JxuelTtA
<http://www.youtube.com/watch?v=U921abH7jIk>
<http://www.youtube.com/watch?v=Eisa5AZ20W0>
<http://www.youtube.com/watch?v=iBMibtdJp0>
<http://www.youtube.com/watch?v=ZaeMJ7oMf94>

Username	Channel
vh1staff	VH1
spiketv	SpikeTV
reaction2006	51
Wiredset	
Isitfridayyet	MTV
Snackboard	
Damonjohnson	MTV
jerseymouth1	MTV

Best Regards,
Deana Arizala

Deana Arizala
Client Services Manager. BayTSP, Inc
408.341.2365 (direct)
408.341.2300 (voice)
408.341.2399 (fax)

6/11/2008

SJA-1315

Rubin Exhibit 96

Subject: Paramount / Bay TSP - Content & Profiles
From: "Tipton, Kristina - Paramount" <EX:/O=VIACOM/OU=PARAMOUNT/CN=RECIPIENTS/CN=TIPTONKR>
To: 'courtney@baytsp.com'
Cc: Perry, Alfred - Paramount; 'marki@baytsp.com'; 'evelyn@baytsp.com'; Salter, John - Paramount; Powell, Amy - Paramount; Teifeld, Tamar - Paramount
Date: Wed, 28 Feb 2007 21:14:58 +0000

Hi Courtney,

As discussed, here's all our current content syndication information:

- 1.) Profile Names – below you'll find profile names, some specific Paramount Official ones, and others that are more viral names that our online street team has used on multiple sites (sites listed below as well)
- 2.) Videos we're currently syndicating - I've attached our streaming links and a couple quicktime files of videos we're currently working on syndicating. In addition, this featurette just debuted exclusively on IGN (we don't yet have streaming links):

Shooter Featurette: http://media.movies.ign.com/media/034/034419/vids_1.html

And there are also a couple pieces of content I don't have streaming links handy for, but I think you should have anyways (let me know if you'd like me to find):

Zodiac Theatrical Trailer

Disturbia Theatrical Trailer

Shrek the Third – Trailer 2

Transformers – Teaser Trailer

- 3.) Lastly, at the end of this email I pasted direct links to some of the more viral original content we've posted.

As discussed, I've also added you to our webmaster blast syndication (in addition to Mark and Evelyn), so you will get all these links as they come out. Let me know if you ever have any questions about the content of the webmaster blasts, or about anything else you come across online.

Let us know if you have any questions at all. Thanks, Courtney!

Kristina Tipton

Paramount Pictures

Interactive Coordinator, Promotions & Publicity

323-956-8453

Official Profile Names

YouTube: Paraccount

Revver: Paramount

Veoh: ParamountPictures

Break.com: Paramount Pictures

MySpace.com: Myspace.com/themoviemonkey

General Profile Names (used on multiple sites)

Thatsfunny

Thatisalsofunny

Thatsnotfunny

BroadwayJoe

BroadwayJoe415

PinkStrawberry

PinkStrawberry1

ParkMyVibe

FiveChemical

Sites

AddictingClips

Bolt

Break

Clevver

ClipShack

DailyMotion

Drisas

Ebaum's World

ExByte

FileCow

Flurl

Grouper

Google Videos

Live Video

MetaCafe

MySpace

Putfile

Revver

Sharkle

Smart Video Channel

SpikedHumor

StreamDump

Stupid Videos

Veoh

Vidiac

VidLife

Vimeo

Vmix

VSocial

YouTube

ZippyVideos

Norbit Viral Featurette - "Meet Rasputia":

AddictingClips

<http://www.addictingclips.com/Clip.aspx?key=123ED23BA2273C25>

Bolt

http://www.bolt.com/Thatsfunny/video/Norbit__Meet_Rasputia/2952924

Break

<http://my.break.com/media/view.aspx?ContentID=214548>

Clevver

<http://viralvideo.clevver.com/video/b67ef87e-2139-4a57-ad40-98c20108b863.htm>

ClipShack

<http://www.clipshack.com/Clip.aspx?key=21BA26DFCCFB712A>

DailyMotion

http://www.dailymotion.com/video/x12fuh_norbit-meet-rasputia

Flurl

http://www.flurl.com/item/Norbit____Meet_Rasputia_u_223040

Grouper

<http://www.grouper.com/video/MediaDetails.aspx?id=1742674> <<http://www.grouper.com/video/MediaDetails.aspx?id=1742674&ml=f1%3d%26fu%3d1743955&>> &ml=f1%3d%26fu%3d1743955&

Live Video

<http://www.livevideo.com/video/E8498AFB66CC4742825F76DD1BBC6B32/norbit-meet-rasputia.aspx>

Putfile

<http://media.putfile.com/Norbit---Meet-Rasputia>

Sharkle

<http://www.sharkle.com/video/116366/>

StreamDump

<http://www.streamdump.com/?d5ed30>

Stupid Videos

http://www.stupidvideos.com/video/just_plain_stupid/Norbit__Meet_Rasputia/

Vidiac

<http://www.vidiac.com/video/ad51d735-fb11-487c-9ded-98c200d1d318.htm>

VidLife

<http://www.vidLife.com/index.cfm?f=media.play> <<http://www.vidLife.com/index.cfm?f=media.play&vchrMediaProgramIDCryp=BE705058-803E-4C81-9B1E-1>> &vchrMediaProgramIDCryp=BE705058-803E-4C81-9B1E-1

Norbit Viral Video: Lloyd the Dog Clip

Addicting Clips <http://www.addictingclips.com/Clip.aspx?key=F2858FEE9EA2395F>

Bolt

http://www.bolt.com/broadwayjoe415/video/Talking_Dog_from_Norbit/2972312

Clevver

<http://viralvideo.clevver.com/video/92e63450-d19c-4e0d-828b-98c700f43968.htm>

ClipShack

<http://www.clipshack.com/Clip.aspx?key=DBFE15A50C2ED2DD>

DailyMotion

http://www.dailymotion.com/video/x13qod_talking-dog-from-norbit

Ebaum's World

<http://emuse.ebaumsworld.com/watch/11295>

Flurl

http://www.flurl.com/item/Talking_Dog_from___Norbit___u_224451

Grouper

<http://www.grouper.com/video/MediaDetails.aspx?id=1749819> <<http://www.grouper.com/video/MediaDetails.aspx?id=1749819&ml=fi%3d%26fu%3d1896951&>> &ml=fi%3d%26fu%3d1896951&

LiveDigital

<http://livedigital.com/content/1451355/>

LiveVideo

<http://www.livevideo.com/video/BD6FA70BDFDE40889B1C335911449BE2/talking-dog-from-norbit-.aspx>

MetaCafe

http://www.metacafe.com/watch/410789/talking_dog_from_quot_norbit_quot/

Putfile

<http://media.putfile.com/Talking-Dog-from--Norbit->

Shackle

<http://www.shackle.com/video/116846/>

Smart Video Channel

<http://comedy.smartvideochannel.com/media/PlayVideo.aspx?cid=F2A47C35FD6443CE90AF31CF6C20BE33>

StreamDump

<http://www.streamdump.com/?a41665>

Stupid Videos

http://www.stupidvideos.com/video/just_plain_stupid/Talking_Dog_from_Norbit/

Veoh

<http://www.veoh.com/videos/v227252YqMm3gZE>

Vidiac

<http://www.vidiac.com/video/9e4fc6b1-0649-4fee-9d03-98c700ecc5fa.htm>

Vidilife

<http://www.vidiLife.com/index.cfm?f=media.play> <<http://www.vidiLife.com/index.cfm?f=media.play&vchrMediaProgramIDCryp=4034E3FC-3DF8-4155-A7AD-B>>
&vchrMediaProgramIDCryp=4034E3FC-3DF8-4155-A7AD-B

Vimeo

<http://www.vimeo.com/clip:134860>

Youtube

<http://www.youtube.com/watch?v=afuhSi13YAs>

Norbit Viral Video: Donald vs. Rasputia

Addicting Clips

<http://www.addictingclips.com/Clip.aspx?key=6E71646DBE228787>

Bolt

http://www.bolt.com/parkmyvibe/video/Donald_Trump_vs_Rasputia/2971836

Clevver

<http://viralvideo.clevver.com/video/edb63288-ba08-4e75-a8fd-98c700c48542.htm>

ClipShack

<http://www.clipshack.com/Clip.aspx?key=47F6ED1FEB59770E>

DailyMotion

http://www.dailymotion.com/video/x13pc2_donald-trump-vs-rasputia

Ebaum's World

<http://emuse.ebaumsworld.com/watch/11285>

Flurl

http://www.flurl.com/item/Donald_Trump_v_s_Rasputia_u_224417

Grouper

<http://www.grouper.com/video/MediaDetails.aspx?id=1749790> <<http://www.grouper.com/video/MediaDetails.aspx?id=1749790&ml=fi%3d%26fu%3d1896949&>> &ml=fi%3d%26fu%3d1896949&

LiveDigital

<http://livedigital.com/content/1451300/>

LiveVideo

<http://www.livevideo.com/video/35A98E8098624EFDBF2AA581B7044A24/donald-trump-vs-rasputia.aspx>

Metacafe

http://www.metacafe.com/watch/410781/donald_trump_vs_rasputia/

Putfile

<http://media.putfile.com/Donald-Trump-vs-Rasputia>

Sharkle

<http://www.sharkle.com/video/116838/>

Smart Video Channel

<http://comedy.smartvideochannel.com/media/PlayVideo.aspx?cid=D505619EBA5841B2AE7708BCC08E7549>

StreamDump

<http://www.streamdump.com/?5b3003>

Stupid Videos

http://www.stupidvideos.com/video/just_plain_stupid/Donald_Trump_vs_Rasputia/

Veoh

<http://www.veoh.com/videos/v221878JXknbYjS>

Vidiac

<http://www.vidiac.com/video/765b7ad2-2528-44f5-abfd-98c700d84a83.htm>

Vidilife

<http://www.vidiLife.com/index.cfm?f=media.play> <<http://www.vidiLife.com/index.cfm?f=media.play&vchrMediaProgramIDCryp=8CE0111C-EB1F-48ED-AE70-9>> &vchrMediaProgramIDCryp=8CE0111C-EB1F-48ED-AE70-9

Vimeo

<http://www.vimeo.com/clip:134834>

Youtube

<http://www.youtube.com/watch?v=ltXNBOTmZE4>

Flushed Away - Dancing Slugs

Sim and Sim - <http://video.simandsim.com/video/826be4fe-9d94-4037-be4f-985900f1681a.htm> 41

Crack Muffin: <http://www.crackmuffin.com/html/Dancing-Worms.html> 1233

Veoh: <http://www.veoh.com/videoDetails.html?v=e131049prwsh5ws> 142

Vidilife: <http://www.vidiLife.com/index.cfm?f=media.play> <<http://www.vidiLife.com/index.cfm?f=media.play&vchrMediaProgramIDCryp=7045F650-4810-4A93-90BF-6>>

&vchrMediaProgramIDCryp=7045F650-4810-4A93-90BF-6 780

Vsocial: <http://www.vsocial.com/video/?d=49076> 135

Clevver: <http://viralvideo.clevver.com/video/a90e2fe2-81ce-4844-add4-985001584e3d.htm> 19,049

Eyespot: <http://eyespot.com/search?word=Slugs> <<http://eyespot.com/search?word=Slugs&t=1160083420942>> &t=1160083420942 12

Google Video: <http://video.google.com/videoplay?docid=-8716239627937852835> <<http://video.google.com/>

videoplay?docid=-8716239627937852835&q=dancing+slugs&hl=en> &q=dancing+slugs&hl=en 515
 Revver: http://one.revver.com/find/video/slugs#_show_video_73517 588
 Vmix: <http://www.vmix.com/viewVideo.php?ID=1499761> 68
 Addicting Clips: <http://addictingclips.com/Clip.aspx?key=13BFAC21761CCA0F> 177,279
 Grouper: <http://grouper.com/video/MediaDetails.aspx?u=kwyfb> <<http://grouper.com/video/MediaDetails.aspx?u=kwyfb&f=-l&vt=1>> &f=-l&vt=1 349
 Free video blog: <http://www.vidiac.com/video/342684e4-66e6-455a-85aa-98500143b10b.htm> 192
 YouTube: <http://www.youtube.com/watch?v=32pbKQAaFI0> 3,409
 Clip Shack: <http://clipshack.com/Clip.aspx?key=C44A554D3D2EDC56> 51,960
 Sharkle: <http://sharkle.com/video/103890/> 1,958
 Daily Motion: <http://www.dailymotion.com/video/782041> 6145
 Zippy Videos: http://www.zippyvideos.com/6232367566082176/fa_slugs_dancenow/ 92
 Stream Dump (UGO): <http://www.streamdump.com/?f9b0ec> 103
 Putfile: <http://media.putfile.com/gonna-make-you-sweat> 14
 Bolt: <http://www.bolt.com/thatissalsofunny/video/2353346?cn=STREAM_thatisalsofunny_video_large_PAGE1>
http://www.bolt.com/thatissalsofunny/video/Dancing_Slugs/2353346 115
 Stupid Videos: http://stupidvideos.com/video/Dancing_Disco_Slugs/ 65,958
 Flurl: <http://www.flurl.com/search?q=dancing+slugs> <http://www.flurl.com/search?q=dancing+slugs&type=all_types>
 &type=all_types 510,229
 File Cow: <http://filecow.com/download/411>

 Ifilm: <http://www.ifilm.com/ifilmdetail/2776534> 11,434

 Break.com: <http://my.break.com/Media/View.aspx?ContentID=164280> 265

 LiveDigital: <http://livedigital.com/content/1022074/> 390
 Vloguea.freevideoblog.com (en espanol) :<http://www.vidiac.com/video/30f14488-b244-4491-90f6-985700c89eef.htm>
 525

 Drisas: <http://www.drisas.com/archives/555> 5519

 Metacafe: http://www.metacafe.com/watch/263989/gonna_make_you_sweat/ 8
 Spiked Humor: http://www.spikedhumor.com/articles/59132/Gonna_Make_You_Sweat.html 107 link not working

 Indian Thriller with the Dancing Slugs:

 YouTube: <http://www.youtube.com/watch?v=MA6EV89EP_Q> http://www.youtube.com/watch?v=MA6EV89EP_Q 4,927

 Bolt: <http://www.bolt.com/crazyk8ff/video/Indian_Thriller_and_Danci/2444850> http://www.bolt.com/crazyk8ff/video/Indian_Thriller_and_Danci/2444850 197

 Clevver: <<http://viralvideo.clevver.com/video/1f1b0bcd-b1da-4c50-afa6-985d00d6f4e5.htm>> <http://viralvideo.clevver.com/video/1f1b0bcd-b1da-4c50-afa6-985d00d6f4e5.htm> 39,373

 YouTube: <<http://www.youtube.com/watch?v=kvCAnwcbFlg>> <http://www.youtube.com/watch?v=kvCAnwcbFlg> 38

 vSocial: <<http://www.vsocial.com/video/?l=51159>> <http://www.vsocial.com/video/?l=51159> 41

 Clevver: <<http://viralvideo.clevver.com/video/ea31b596-5eb1-4f00-b4d5-985d00d7a10f.htm>> <http://viralvideo.clevver.com/video/ea31b596-5eb1-4f00-b4d5-985d00d7a10f.htm> 30

 YouTube: <<http://www.youtube.com/watch?v=vK00wgK8Bn4>> <http://www.youtube.com/watch?v=vK00wgK8Bn4> 8,902

 vSocial: <<http://www.vsocial.com/video/?l=51156>> <http://www.vsocial.com/video/?l=51156> 13

Bolt: <http://www.bolt.com/ultrasloppyjoe/video/Dancing_Slugs_and_the_Ind/2444974> http://www.bolt.com/ultrasloppyjoe/video/Dancing_Slugs_and_the_Ind/2444974 56

StreamDump: <<http://www.streamdump.com/?d5f37d>> <http://www.streamdump.com/?d5f37d> 13

StreamDump: <<http://www.streamdump.com/?8204a1>> <http://www.streamdump.com/?8204a1> 12

Flurl: <http://www.flurl.com/item/indian_thriller_with_dancing_slugs_u_194463> http://www.flurl.com/item/indian_thriller_with_dancing_slugs_u_194463 54

Addicting Clips: <http://www.addictingclips.com/Clip.aspx?key=9B0D1C061CA332B7> 58,930

Metacafe: http://www.metacafe.com/watch/269013/indian_thriller/ - 1,021

Clevver: <<http://viralvideo.clevver.com/video/15af7975-1e17-4b40-81e1-9858014d590d.htm>> <http://viralvideo.clevver.com/video/15af7975-1e17-4b40-81e1-9858014d590d.htm> - 60,146

Veoh: <<http://www.veoh.com/videoDetails.html?v=e134837tsWyJnSF>> <http://www.veoh.com/videoDetails.html?v=e134837tsWyJnSF> 89

YouTube: <http://www.youtube.com/watch?v=U3fJz2Sgl_g> http://www.youtube.com/watch?v=U3fJz2Sgl_g - 19,967

Dailymotion: <http://www.dailymotion.com/rock4stumpy/video/xhspw_indian-thriller-with-the-dancing-sl> http://www.dailymotion.com/rock4stumpy/video/xhspw_indian-thriller-with-the-dancing-sl 16,773

Grouper: <<http://grouper.com/video/MediaDetails.aspx?id=1585775&ml=fi%3d%26fu%3d1895073&>> <http://grouper.com/video/MediaDetails.aspx?id=1585775&ml=fi%3d%26fu%3d1895073&> - 4,232

Putfile: <<http://media.putfile.com/indian-thriller-with-the-dancing-slugs>> <http://media.putfile.com/indian-thriller-with-the-dancing-slugs> 6

Sharkle: <<http://sharkle.com/video/104808/>> <http://sharkle.com/video/104808/> 211

Clipshack: <<http://clipshack.com/Clip.aspx?key=D1065C3ED5F9AFFC>> <http://clipshack.com/Clip.aspx?key=D1065C3ED5F9AFFC> - 7,358

Vsocial: <<http://www.vsocial.com/video/?d=50338>> <http://www.vsocial.com/video/?d=50338> - 23

Eyespot: <<http://eyespot.com/share?cmd=permalink&r=338f45bb57c5d73508f5a123a04b96479ae3f0a93eb60c51a361b03c3016148f05a19f759e03940ce6f7d2798d02d760>>

<http://eyespot.com/share?cmd=permalink&r=338f45bb57c5d73508f5a123a04b96479ae3f0a93eb60c51a361b03c3016148f05a19f759e03940ce6f7d2798d02d760>
- 19

Bolt: <http://www.bolt.com/rock4stumpy/video/indian_thriller_with_the_/2415633> http://www.bolt.com/rock4stumpy/video/indian_thriller_with_the_/2415633 - 112

Break.com: <<http://view.break.com/165321>> <http://view.break.com/165321> - 160

Exbyte: <http://www.exbyte.net/media/videos/2704/indian_thriller_with_the_dancing_slugs.html> http://www.exbyte.net/media/videos/2704/indian_thriller_with_the_dancing_slugs.html - 154

Flurl: <http://www.flurl.com/item/indian_thriller_with_the_dancing_slugs_u_193474> http://www.flurl.com/item/indian_thriller_with_the_dancing_slugs_u_193474 - 7340

LiveDigital: <<http://rock4stumpy.livedigital.com/content/1032801/>> <http://rock4stumpy.livedigital.com/content/1032801/> - 98

Vsocial: <<http://www.vsocial.com/video/?l=50492>> <http://www.vsocial.com/video/?l=50492> - 21 (2 Remote)

ZippyVideos: <http://www.zippyvideos.com/6011329586127026/indianthriller2_extend/> http://www.zippyvideos.com/6011329586127026/indianthriller2_extend/ 33

Vmix: <http://www.vmix.com/view.php?id=1566470¤t_resourceid=1566470&type=video> http://www.vmix.com/view.php?id=1566470¤t_resourceid=1566470&type=video - 470

StreamDump: <<http://www.streamdump.com/videos/display.php?h=c17302>> <http://www.streamdump.com/videos/display.php?h=c17302> - 28

Spiked Humor: http://www.spikedhumor.com/articles/60493/Indian_Thriller_along_w_Dancing_Slugs.html

Chicken noodle soup:

Grouper: <http://grouper.com/video/MediaDetails.aspx?id=1587019> <<http://grouper.com/video/MediaDetails.aspx?id=1587019&ml=f%3d%26fu%3d1897292&>> &ml=f%3d%26fu%3d1897292& 75

Google: <http://video.google.com/videoplay?docid=-6365071709506794595> <<http://video.google.com/videoplay?docid=-6365071709506794595&hl=en>> &hl=en 234

Addicting clips: <http://www.addictingclips.com/Clip.aspx?key=FD41A107701CF77D> 1404

Daily Motion: http://www.dailymotion.com/checkmystash2/video/xi1gf_chicken-noodle-soup 2127

YouTube: <http://youtube.com/watch?v=ROz2VD9nD4o> 69

Clevver: <http://viralvideo.clevver.com/video/3d09e963-404d-46fa-aa19-985b00eb7b69.htm> 4197

Sharkle: <http://sharkle.com/video/105172/> 132

ClipShack: <http://clipshack.com/Clip.aspx?key=E2E381AAFDDE3D1F> 332

VSocial: <http://www.vsocial.com/video/?d=50798> 20

Bolt: http://www.bolt.com/checkmystash2/video/chicken_noodle_slugs/2431494 127

Break: <http://my.break.com/Media/View.aspx?ContentID=166168> 147

Vmix: <http://www.vmix.com/view.php?id=1581343> <http://www.vmix.com/view.php?id=1581343¤t_resourceid=1581343&type=video> ¤t_resourceid=1581343&type=video 22

Metacafe: http://www.metacafe.com/watch/268960/chicken_noodle_soup/ 592

Putfile: <http://media.putfile.com/Chicken-Noodle-Slugs> <<http://media.putfile.com/Chicken-Noodle-Slugs%20%20%20%20%203>> 3

StreamDump: <http://www.streamdump.com/?0eed32> 14

Veoh: <http://www.veoh.com/videoDetails.html?v=e137176McM69CAz> 50

Vidiac: <http://www.vidiac.com/video/89b70f1e-2180-40f6-834e-985c00d06b9f.htm> 52

Exbyte: http://www.exbyte.net/media/videos/2720/Chicken_Noodle_Slugs.html

Eyespot: <http://eyespot.com/search?word=slugs> <<http://eyespot.com/search?word=slugs&t=1161027102216>> &t=1161027102216 3

Spiked Humor: http://www.spikedhumor.com/articles/60160/Chicken_Noodle_Slugs.html 42

Bolt: http://www.bolt.com/broadwayjoe415/video/Chicken_Noodle_Soup_and_S/2452708 61

Mr. T

Bolt: http://www.bolt.com/broadwayjoe415/video/Mr_T_rapping_with_dancing/2438050 41

Clevver: <http://viralvideo.clevver.com/video/ced855d7-e8b6-4465-8dfe-985c00da63be.htm> 11,790

Daily Motion: http://www.dailymotion.com/video/xick3_mr-t-rapping-with-dancing-slugs 783

Clip Shack: <http://www.clipshack.com/Clip.aspx?key=8DCA466088D3DD2A> 85

Google: <http://video.google.com/videoplay?docid=-2988739931668629075> <<http://video.google.com/videoplay?docid=-2988739931668629075&hl=en>> &hl=en 16

Live Digital: <http://livedigital.com/content/1048202/> 102

Putfile: <http://media.putfile.com/Mr-T-w-the-Dancing-Slugs> 3

Metacafe: http://www.metacafe.com/watch/269039/mr_t_and_the_dancing_slugs_rapping/ DELETED

Stream Dump: <http://www.streamdump.com/?1eb1c3> 15

Veoh: <http://www.veoh.com/videoDetails.html?v=e137217q77THyNb> 34

vSocial: <http://www.vsocal.com/video/?d=50997> 28

Vmix: <http://www.vmix.com/view.php?id=1587939> <http://www.vmix.com/view.php?id=1587939¤t_resourceid=1587939&type=video> ¤t_resourceid=1587939&type=video 14

YouTube: <http://www.youtube.com/watch?v=2WXZlwxmypo> 1,759

Zippy Videos: http://www.zippyvideos.com/8183050546142776/mrt_02_1/ 24

Exbyte: http://www.exbyte.net/media/videos/2722/Mr_T_rapping_w_dancing_slugs.html

Eyespot: <http://eyespot.com/search?word=slugs> <<http://eyespot.com/search?word=slugs&t=1161027102216>> &t=1161027102216 3

Addicting Clips: <http://addictingclips.com/Clip.aspx?key=072A7DE05B2CDBBD> 3343

Grouper: <http://grouper.com/video/MediaDetails.aspx?id=1589507> <<http://grouper.com/video/MediaDetails.aspx?id=1589507&ml=fi%3d%26fu%3d1896951&>> &ml=fi%3d%26fu%3d1896951& 17

Free Video Blog: <http://www.vidiac.com/video/ce9ee4ab-4340-432f-afd6-985b014937d0.htm> 732

Spiked Humor: http://www.spikedhumor.com/articles/60501/Mr_T_Rapping_w_Dancing_Slugs.html 15

Dancing Guy

Zippy Videos: http://www.zippyvideos.com/3386380256142096/billy_jean_slugs_sor/ 24

Bolt: http://www.bolt.com/mrthomas323/video/Dancing_Guy_with_Slugs/2438575 55

Addicting Clips: <http://www.addictingclips.com/Clip.aspx?key=68A5D5DAEAC989DB> 492

Clevver: <http://viralvideo.clevver.com/video/408e4bfd-b9bf-459e-8e8d-985c00f5ffb1.htm> 690

Clip Shack: <http://www.clipshack.com/Clip.aspx?key=AA46A49008AC2190> 105

Grouper: <http://www.grouper.com/video/MediaDetails.aspx?id=1590669> <<http://www.grouper.com/video/MediaDetails.aspx?id=1590669&ml=fi%3d%26fu%3d1897288&>> &ml=fi%3d%26fu%3d1897288& 19

Daily Motion: <http://www.dailymotion.com/mrthomas323/video/857026> 43

YouTube: <http://www.youtube.com/watch?v=B4FRNFuypXA> 17

Flurl: http://www.flurl.com/item/Dancing_Guy_with_Slugs_u_194383 935

Google: <http://video.google.com/videoplay?docid=4812300400845156663> 19

Live Digital: <http://livedigital.com/content/1049089/> 13

Metacafe: http://www.metacafe.com/watch/269237/guy_dancing_with_slugs/ 1,076

Putfile: <http://media.putfile.com/Dancing-Guy-wslugs> 2

Vidiac: <http://www.vidiac.com/video/443470a6-c3db-440a-b12b-985c011c8b8c.htm> 51

Veoh: <http://www.veoh.com/videoDetails.html?v=e137355ztWtxRgc> 34

vSocial: <http://www.vsocial.com/video/?l=51015>

Sharkle: <http://www.sharkle.com/video/105546/>

Stream Dump: <http://www.streamdump.com/?70da75>

Spiked Humor: http://www.spikedhumor.com/articles/60178/Guy_Dances_w_Dancing_Slugs.html

Hasselhof:

Addicting Clips <<http://www.addictingclips.com/Clip.aspx?key=6BA6735EB40A799B>> <http://www.addictingclips.com/Clip.aspx?key=6BA6735EB40A799B>

Bolt <http://www.bolt.com/gooddruy/video/David_Hasselhoff_with_the/2459410> http://www.bolt.com/gooddruy/video/David_Hasselhoff_with_the/2459410

Clevver <http://viralvideo.clevver.com/video/e02282cd-a149-4b7c-a130-985f01049a74.htm>

Clip Shack <<http://www.clipshack.com/Clip.aspx?key=6E4741F8BDA2C3E0>> <http://www.clipshack.com/Clip.aspx?key=6E4741F8BDA2C3E0>

Daily Motion http://www.dailymotion.com/video/xisxk_david-hasselhoff-wdancing-slugs

Exbyte.net <http://www.exbyte.net/media/videos/2748/Hasselhoff_and_Slugs.html> http://www.exbyte.net/media/videos/2748/Hasselhoff_and_Slugs.html

Google <<http://video.google.com/videoplay?docid=-2228078678183364810>> <http://video.google.com/videoplay?docid=-2228078678183364810>

Grouper <<http://grouper.com/video/MediaDetails.aspx?id=1594408&ml=o%3d7%26fk%3dslugs%26fx%3d&>> <http://grouper.com/video/MediaDetails.aspx?id=1594408&ml=o%3d7%26fk%3dslugs%26fx%3d&>

Live Digital <http://livedigital.com/content/1062782/>

Metacafe http://www.metacafe.com/watch/272228/dancing_slugs_and_david_hasselhoff/

Sharkle: <http://www.sharkle.com/video/106047/>

Spiked Humor: http://www.spikedhumor.com/articles/60807/David_Hasselhoff_w_Dancing_Slugs.html

Stream Dump: <http://www.streamdump.com/?1814b8>

Veoh: <http://www.veoh.com/videoDetails.html?v=e139848DFPAen2C>

Vidiac: <http://www.vidiac.com/video/0b29028c-7cf1-4a85-8295-986000e92f8c.htm>

VidLife: <http://www.vidLife.com/index.cfm?f=media.play> <<http://www.vidLife.com/index.cfm?f=media.play&vchrMediaProgramIDCryp=48413CDA-AC43-42E1-90A7-4>> &vchrMediaProgramIDCryp=48413CDA-AC43-42E1-90A7-4

vSocial: <http://www.vsocial.com/video/?l=51602>

YouTube: <http://www.youtube.com/watch?v=8YHM9dzRkRk>

Flukiest: <http://www.flukiest.com/picture/427433>

List of attachments:

- Bee Movie Trailer 1.txt
- BOG_webisode1_links.txt
- BOG_trailer2_links.txt
- BOG_trailer1_links.txt
- BOG_webisode2_links.txt
- zodiac_gyllenhal_links.txt
- zodiac_films_clip_links.txt
- zodiac_tv_spot_links.txt
- transformers_trailer2_links.txt
- shrek3_the_wait_is_ogre_links.txt
- shrek3_trailer1_links.txt
- Shooter Trailer.txt
- norbit_gag_reel_links.txt
- disturbia_trailer1_links.txt
- blades5.mov
- Viral Videos

Schapiro Exhibit 7

Subject: YouTube business development
From: "Cahan, Adam" <EX:/O=VIACOM/OU=MTVUSA/CN=RECIPIENTS/CN=CAHANA>
To: McGrath, Judy; Wolf, Michael
Cc: Bakish, Robert
Date: Thu, 13 Jul 2006 20:51:24 +0000

Judy/Michael -

Just got off the phone with the head of YouTube business development. We have an innovative deal with them on the table - still in negotiation. While it clearly needs to be vetted in terms of all the other options on the table, here is the basic construct. The good part is that we will be seen as an innovator/first to market. The realistic part is that it is highly unlikely to involve equity, but we shall see...

Components-

- * Advertising: we would be the first video provider to sell ads on their site. We would own 100% of the inventory on our content pages/views, rev share - they opened at 50/50 we are likely to end either 80/20 or 70/30 depending upon other sweeteners. No pre-roll video ads - rich media banners
- * Skinning/branding: we would be the first content provider to skin/brand a player. We convinced them that this was due to rights issues
- * Filtering: They are working on an audio filtering process whereby any content we contribute would have an audio tag they would automatically match to user submitted content, if there is a match they will tag the content as ours and we can determine 3 options - claim it as ours and gets into the rev share model, take it down, or simply allow it as UGC and ignore
- * Exclusivity: none
- * User information: attempting for user information under the umbrella that it makes the sales better on our end (they collect some behavioral and registration but early in their development)

What we are hoping to get in addition:

- * Promotional credit/guarantee: as part of the deal we are looking for some inventory to promote our content/ shows on their homepage
- * Equity - we have not opened this in the discussion yet but our return offer will be to try for some form of warrants/ equity in the company as part of a guarantee for content. Not sure this will be on the table but will look for it

Additional informational learned on the call:

- * Premium advertising: They claim to be working with the studios, Sony, Panasonic among others. Claim the advertising is premium, and have had little pushback from advertisers given the perception of YouTube brand as "cool"
- * International: claim for now that advertisers have not been demanding separation - clearly a very big driver of our model
- * Homepage/navigation pages - claim for now that up to 33% is in navigation/homepage. Not sure we agree but our model was at 5% - would swing value
- * Sun Valley - Chad Hurley, YouTube CEO, is in Sun Valley at the Allen & Company event. We are very likely in a new zipcode unfortunately

Next steps:

- * Should get a term sheet early next week - negotiate our split into a 70/30 deal (in our favor)
- * Will engage with ad sales to go over terms and ability to sell/ what inventory etc

Schapiro Exhibit 8

From: "Toffler, Van" <Van.Toffler@mtvstaff.com>
Date: Sat, 7 Oct 2006 15:32:57 -0400
To: "Cahan, Adam" <Adam.Cahan@mtvn.com>, "McGrath, Judy" <Judy.McGrath@mtvstaff.com>
Subject: Re: Youtube and google

How can we be a spoiler?

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

From: Cahan, Adam
To: Toffler, Van; McGrath, Judy
Sent: Sat Oct 07 15:13:15 2006
Subject: Re: Youtube and google

He's doing it. We need to play the spoiler now and see if we can extract value here.

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

From: Toffler, Van
To: Cahan, Adam; McGrath, Judy
Sent: Sat Oct 07 15:01:44 2006
Subject: Re: Youtube and google

He fuckin better-that's an epic transaction that could harsh our collective buzz

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

From: Cahan, Adam
To: Toffler, Van; McGrath, Judy
Sent: Sat Oct 07 14:51:38 2006
Subject: Re: Youtube and google

Michael's going to call eric today.

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

From: Cahan, Adam
To: Toffler, Van; McGrath, Judy
Sent: Sat Oct 07 14:44:28 2006
Subject: Re: Youtube and google

I would characterize it as early discussions - we've met to see where we can take a commercial relationship. if there is a business model that would work. Nothing committed to but wanted to understand how they would want to work together.

The youtube proposal comes down to a 70/30 for us and we sell the ads, they are looking for some way to set a minimum on that 30 which we have continued to say no to. In addition they will provide us with a tool to "claim" user generated content with the right to take it down or have it be a part of the overall monetization. Their hope is that the ugc component will grow the pie for us. They have also proposed branded channel pages, and promotion that will go with the deal.

Frankly if their name was yahoo we likely would have taken it but on the ad sales side there is concern about the ability to achieve a high cpm on their site. Also the deal is an easier fit where we own the majority of the content eg comedy central v. Mtv.

My perspective would be that if youtube/google does happen we need to act very quickly to say "now that there is money involved we are taking down content and demanding a payment". Need to have a bit of a strong arm approach to the negotiations and push for significantly better terms while we have them worried.

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

From: Toffler, Van
To: Cahan, Adam; McGrath, Judy
Sent: Sat Oct 07 14:31:54 2006
Subject: Re: Youtube and google

Sorry, what relationship are we working with you tube?

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

From: Cahan, Adam
To: McGrath, Judy; Toffler, Van
Sent: Sat Oct 07 14:23:11 2006
Subject: Youtube and google

May have spoken too soon. Apparently the ad deal broke down late last night and potential acquisition is back on the table.

You never know with google because larry page really makes the final call. So can go either way.

If this does go through, we may need to revisit the wiki in light of the broader commercial relationship that we have been working on with youtube.

Let's see where things end up but we'll need to move very quickly if the acquisition happens.

Schapiro Exhibit 9

Subject: FW: Google
From: "Dooley, Tom" <EX:/O=VIACOM/OU=CORPUSA/CN=RECIPIENTS/CN=DOOLEYT>
To: Dauman, Philippe
Cc: Date: Wed, 29 Nov 2006 20:09:29 +0000

I think we should cut off the heads of Adam and Michael (and perhaps Judy) and send them to Eric in a box wrapped in a printed copy of their latest term sheet.

With a note that says "Before you respond - Remember our heritage - we are the people that brought you the Godfather."

>
>From: Cahan, Adam
>Sent: Wednesday, November 29, 2006 2:16 PM
>To: Dauman, Philippe; Dooley, Tom
>Cc: McGrath, Judy; Wolf, Michael; Stirratt, Nada
>Subject: Google
>
>Philippe -
>
>In the off chance that you want to resurrect the negotiations with Google, there is an opportunity to structure this in a manner that works, to provide us with \$48.4M/Year (non-recoupable fee) and 70/30 advertising protecting our accounts. It would be better than any of the alternatives we have seen.
>
>That said, as you rightly point out, they have returned a document that does not reflect any of our discussions. My sense is that this is a negotiating tactic on their part (albeit a very poor choice) to provide them with leverage to "trade off" components they never expected to get.
>
>Overall our message to Google:
>* Current deal does not reflect any of our discussions, and is much further reaching than discussed prior and not on the table - ie "all content" at Viacom sites, Television promotion, etc.
>* Guarantee in "commitment fee" is non-recoupable (believe this was the intent) and needs a mechanism for growth based on content and/or usage because Google controls the advertising inventory (ie design, units, etc), audience via promotion and navigation - ie all the monetization. The platform puts our existing digital businesses at risk that represent \$400M/Year. E.g. Google can decide no "video ads" which makes the yield/ value on our content much lower.
>* Major deal issues: Content must be 3 minutes or under, no MFN against MTVN sites - MTVN not Viacom, commitment fee non recoupable (believe this was the intent), Ad sales sub 400 (against all content), no recouping of Google costs.
>
>DETAILED POINTS
>VIDEO COMMITMENT
>* Commitment Fee - \$242M is a non-recoupable commitment fee. Need a mechanism to grow annually based on a "content usage" or "volume" true up. ie. Establish a threshold on usage, the minimum is our \$242M, if we exceed the number of streams globally, or the content pool itself is of a certain scale our "guarantee" grows on an annual basis. Aligns our incentives to give them more content and have it be used.
>* Net advertising - Will not agree to Google's operating costs - have always said it was net of our agency fees. The purpose of the 30% is to cover their costs, they can monetize against all the other assets (ie search pages, homepage, navigation page, music videos, user generated, etc)
>PERFORMANCE OBLIGATION (CONTENT):
>* Point 1 (USER UPLOADED) - All uploaded content 3 minutes not 10 minutes for User uploaded. Not sure what "affiliates" means here - potentially opens redistribution issues
>* Point 2 (VIACOM SITES) - Not possible and never discussed, the point here is that we are enabling vast amounts of user upload which far outweigh the number of clips we currently have - ie 7800 results for South Park, we do not have 7800 clips. We cannot agree to MFN against our sites as this triggers other MFNs with our cable operators.
>* POINT 3 (VIACOM CONTENT) - Viacom content - never discussed. This would mean Paramount.
>AD SALES CONDITION:

SJA-1336

-
- >* Top 400 Advertisers - Fall back is potentially 300. Against all content, brands, etc
 - >* Ad formats - must include approval by MTVN>

Schapiro Exhibit 10

Subject: Thoughts on final steps, strategy with GT
From: "Cahan, Adam" <EX:/O=VIACOM/OU=MTVUSA/CN=RECIPIENTS/CN=CAHANA>
To: McGrath, Judy; Wolf, Michael
Cc: Date: Sat, 23 Dec 2006 00:27:34 +0000

Judy/Michael -

As you know we are gearing up for a very significant takedown at YouTube by January 2/3 - by last count the number was ~50-70K clips. I suspect that number will grow before we are complete.

While I certainly don't want us to expect it, my suspicion is that faced with a dramatic takedown of this scale Google will provide us the economics we have requested.

That said it is absolutely critical that we play two facets of this strategy. 1. The takedowns in one dramatic event (as opposed to drips..) and 2. The story for consumers/ popular press.

Everyone seems prepared to take a very "defensive" position for popular press, I am really uncomfortable with this. We need to completely flip this on its head - use it as offense and make this about consumers. While we may have looked the bullies with YouTube, this is clearly not the case with Google. The time has really come to call them out on their own game.... the consumers...

At last count, Google is a \$140B market cap company with 10k employees, and \$10B in cash. We are the underdog here not the big bad media company. We have to control this spin to create an "I Want My MTV" with Google as Echostar... We need a campaign that resembles "We are really saddened that Google could not come up with a reasonable offer to enable consumers to access the content they are seeking. That a company with \$10B in cash cannot find a way to work with a content company seems crazy." We follow with a plea to consumers to "email Google and tell them Bring The Clips Back."

Trust me more than anything we can do, challenging Google as a Microsoft-like evil-doer will get the founders enraged and want to solve this. They won't be able to tolerate a consumer perception shift.

This clearly requires a significant amount of coordination on our part... Would need Carol and others deeply involved to ensure we look the rebel again.

Wanted to check with both on your thoughts about this approach. I think it is the most powerful thing we can do here. If we play defense we will look like big media company goes after the consumer.

Thoughts?

Schapiro Exhibit 20

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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

Plaintiffs,)

vs.)

NO. 07-CV-2103

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

Defendants.)

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

Plaintiffs,)

vs.)

NO. 07-CV-3582

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

Defendants.)

VIDEOTAPED DEPOSITION OF THEODORA MICHAELS
SAN FRANCISCO, CALIFORNIA
SEPTEMBER 24, 2009

JOB NO. 17764

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A P P E A R A N C E S:

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Attorneys for Plaintiff and Witness

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New York, New York 10013-1413

BY: ANNIKA K. MARTIN, ESQ.

MAYER BROWN, LLP

Attorneys for Defendant

1675 Broadway

New York, New York 10019-5820

BY: CHRISTINE M. HERNANDEZ, ESQ.

AND

JASON KIRSCHNER, ESQ.

ALSO PRESENT:

NICHOLAS GUZMAN, Videographer

1 11:53:38 Q. The second page of Exhibit 4, you will
2 11:53:41 notice that the YouTube URL to the allegedly
3 11:53:44 infringing video is listed; do you see that?
4 11:53:47 It is on the second page of Exhibit 4?
5 11:53:49 A. Yes.
6 11:53:49 Q. At the end of that paragraph?
7 11:53:51 Okay. And then if you compare that to
8 11:53:53 Exhibit 5, the URL that you give in your e-mail of
9 11:53:59 August 22nd, at 6:14 p.m., is that same URL,
10 11:54:04 correct?
11 11:54:05 A. Yes.
12 11:54:05 Q. And, to be clear, it's the only URL that
13 11:54:08 you include in this takedown notice to YouTube, is
14 11:54:14 Exhibit 5, right?
15 11:54:16 A. Yes.
16 11:54:20 Q. So in Exhibit 4, where you say, "Should
17 11:54:22 I include some of the other YouTube infringements
18 11:54:26 of this song," you do not, in fact, list any
19 11:54:27 additional infringements in Exhibit 5, in the
20 11:54:27 takedown notice; is that right?
21 11:54:38 A. Yes.
22 11:54:55 Q. With respect to the takedown notices
23 11:54:56 that Carlin directly sent to YouTube, did you ever
24 11:54:59 issue a retraction of any of those notices?
25 11:55:03 A. No.

1 11:55:03 Q. Did you ever receive a
2 11:55:04 counter-notification to any of those notices?
3 11:55:08 A. No.
4 11:55:23 Q. Setting aside the concept of a formal
5 11:55:26 counter-notice, have you ever received any
6 11:55:29 complaint, at all, from an individual, with
7 11:55:32 respect to a takedown notice you issued?
8 11:55:34 A. No.
9 11:55:35 Q. Approximately how many takedown notices
10 11:56:22 has Carlin sent directly to YouTube?
11 11:56:25 A. Fewer than one dozen.
12 11:56:34 Q. And generally, how quickly does YouTube
13 11:56:37 respond to that takedown notice?
14 11:56:39 A. Very quickly.
15 11:56:42 Q. Less than one day?
16 11:56:45 A. I don't remember specifically. I -- I
17 11:56:47 just recall that it was quickly.
18 11:56:50 Q. Well, if we take a look at Exhibit 5,
19 11:56:52 you will see that -- you will see that your
20 11:57:11 original notification -- excuse me, scratch that.
21 11:57:18 MS. MARTIN: Exhibit 3 is the original.
22 11:57:21 MS. HERNANDEZ: Thank you.
23 11:57:21 MS. MARTIN: You are welcome.
24 11:57:22 MS. HERNANDEZ: I knew I was looking at
25 11:57:27 the wrong exhibit.

1 11:57:28 BY MS. HERNANDEZ:
2 11:57:38 Q. Do you have Exhibit 3 in front of you?
3 11:57:41 A. Exhibit 3; yes, I do.
4 11:57:47 Q. You will see that your e-mail to the
5 11:57:49 copyright team at YouTube is from May 15th,
6 11:57:52 at 4:46 p.m.; is that right?
7 11:57:56 A. My original takedown notice?
8 11:57:59 MS. MARTIN: Objection.
9 11:58:04 Q. Around the middle of the first page?
10 11:58:07 A. Yes.
11 11:58:08 Q. Tuesday, May 15th, at 4:46 p.m.?
12 11:58:12 A. Yes. Mine shows 4:32.
13 11:58:15 MS. MARTIN: Yes.
14 11:58:25 MS. HERNANDEZ: I am actually going to
15 11:58:26 go ahead -- I apologize for the confusion. I
16 11:58:30 will enter another exhibit.
17 11:58:31 We will start over, and it will be
18 11:58:43 clear. I just can't get the right document
19 11:58:47 in front.
20 11:58:48 So Exhibit 6, and that is a document
21 11:58:51 Bates stamped CA-00025185386.
22 11:58:55 (Document bearing Bates
23 10:16:23 No. CA-00025185386 marked Carlin Exhibit 6
24 10:16:23 for identification.)
25

1 13:19:13 an extensive colloquy with counsel on the
2 13:19:13 record, but, in terms of supplementation, I
3 13:19:13 mean, we have some takedown notices from the
4 13:19:14 Carlin production from July 2009, and from
5 13:19:14 December 2008.

6 13:19:14 MS. MARTIN: As we got them, we sent
7 13:19:14 them, so I don't know that, but --

8 13:19:14 MS. HERNANDEZ: Dated July 13th, 2009,
9 13:19:14 the document is dated.

10 13:19:14 MS. MARTIN: I understand it is after
11 13:19:14 the regular collection, we have been sending
12 13:19:14 takedown notices to you producing takedown
13 13:19:14 notices, even though there is no
14 13:19:14 supplementation, sort of overall. I mean,
15 13:19:14 takedown notices for the Second Amended Class
16 13:19:14 Action Complaints may not have been produced,
17 13:19:14 yet, but they have been taken down, that is
18 13:19:14 my representation.

19 13:19:15 So what I mean is, we were under no
20 13:19:15 obligation to continue producing them because
21 13:19:15 there was no supplementation discussions. So
22 13:19:15 the fact that we produced them afterwards is,
23 13:19:15 we just wanted the record to be complete.
24 13:19:15 And if we haven't gotten to the Second
25 13:19:15 Amended Class Action URL takedown notices,

1 13:19:15 then we haven't gotten to it yet, the
2 13:19:15 production of them, not the takedown of them.

3 13:19:15 MS. HERNANDEZ: Okay.

4 13:19:15 BY MS. HERNANDEZ:

5 13:19:15 Q. And, Miss Michaels, after that extensive
6 13:19:16 colloquy among counsel, let me just make sure that
7 13:19:16 I have the record clear.

8 13:19:16 With respect to Carlin's actions, Carlin
9 13:19:16 has not sent any takedown notices for any of the
10 13:19:16 allegedly infringed clips asserted in this action,
11 13:19:16 right?

12 13:19:16 A. Well, I have not reviewed the URLs in
13 13:19:16 this list because today's the first day I am
14 13:19:16 seeing it. But, to my understanding, that is
15 13:19:16 correct. I can't say with certainty, with respect
16 13:19:17 to any particular URLs, because I haven't reviewed
17 13:19:17 them.

18 13:19:17 Q. Because you didn't review the complaints
19 13:19:17 prior to today's deposition?

20 13:19:17 A. That's right.

21 13:19:17 Q. Miss Michaels, who, at Carlin,
22 13:19:17 communicated with counsel in this case about this
23 13:19:17 action?

24 13:19:17 A. Robert Bienstock, possibly Caroline
25 13:19:18 Bienstock. I am not sure.

1 13:19:18 Well -- and I have provided documents to
2 13:19:18 Lieff Cabraser.

3 13:19:18 Q. Okay. When you say, "provided
4 13:19:18 documents," are they documents that were in your
5 13:19:18 possession for potential production in this
6 13:19:18 litigation?

7 13:19:18 A. Correct.

8 13:19:18 Q. Okay. Who does Mr. Bienstock
9 13:19:18 communicate with at counsel, with respect to
10 13:19:18 prospective litigation?

11 13:19:18 A. I don't know.

12 13:19:18 Q. Do you know how often Mr. Bienstock
13 13:19:18 communicates with counsel about litigation?

14 13:19:18 A. I don't know.

15 13:19:18 Q. Do you know what subjects Mr. Bienstock
16 13:19:18 communicates with counsel on?

17 13:19:18 A. I don't know.

18 13:19:18 Q. Did you discuss with Mr. Bienstock,
19 13:19:19 prior to this deposition, the communications that
20 13:19:19 he has with counsel concerning management of the
21 13:19:19 litigation?

22 13:19:19 A. No.

23 13:19:19 Q. If you could turn back to Exhibit 1,
24 13:19:19 miss Martin can hand it to you, if you could take
25 13:19:19 a look at Topic 8.

1 13:19:19 A. Yes.

2 13:19:19 Q. You will see the reference in Topic 8,

3 13:19:19 to Carlin's role in monitoring the action and

4 13:19:19 responsibilities for managing counsel.

5 13:19:19 A. I am sorry?

6 13:19:19 Q. Sure. Paragraph 8, do you see that?

7 13:19:19 A. Yes.

8 13:19:19 Q. Carlin's role in monitoring the action

9 13:19:19 and responsibilities for managing counsel, do you

10 13:19:19 see that?

11 13:19:19 A. Yes.

12 13:19:19 Q. Did you prepare to testify on that

13 13:19:19 particular subject matter?

14 13:19:19 A. Briefly.

15 13:19:20 Q. Okay. And did that preparation involve

16 13:19:20 just talking with Mr. Bienstock?

17 13:19:20 A. Yes.

18 13:19:20 Q. And you said Mr. Bienstock is the

19 13:19:20 primary person communicating with counsel about

20 13:19:20 this action, is that right?

21 13:19:20 A. Yes.

22 13:19:20 Q. But you don't have any knowledge as to

23 13:19:20 the subjects or the frequency of Mr. Bienstock's

24 13:19:20 conversations with counsel, in terms of managing

25 13:19:20 this action?

1 13:22:49 A. It would have been Robert Bienstock.
2 13:22:51 Q. Would you assume that to be the case?
3 13:23:00 A. Well, that would be the case for any
4 13:23:01 class action. If we -- just in terms of class
5 13:23:06 action law, in general, my understanding is that
6 13:23:08 class representatives are required to actually be
7 13:23:11 representative of the class, so I am sure that is
8 13:23:13 something we would have considered.
9 13:23:14 Q. Miss Michaels, you said before that you
10 13:23:24 are familiar with the YouTube web site, right?
11 13:23:27 A. Yes.
12 13:23:28 Q. Have you watched videos on YouTube?
13 13:23:30 A. Yes.
14 13:23:31 Q. About how many videos do you believe you
15 13:23:33 watched?
16 13:23:34 A. Oh, I couldn't put a number on it, quite
17 13:23:37 a few, 100, 200.
18 13:23:38 MS. MARTIN: I just want to make a quick
19 13:23:40 statement: This is a portion where she is
20 13:23:42 testifying as personal, and not Carlin.
21 13:23:45 MS. HERNANDEZ: Sure.
22 13:23:45 MS. MARTIN: All right, great.
23 13:23:47 BY MS. HERNANDEZ:
24 13:23:47 Q. Have you posted videos to YouTube?
25 13:23:49 A. Yes.

1 13:23:49 Q. And what user name did you use when you
2 13:23:52 posted videos?
3 13:23:54 A. My poster name is Theodora Michaels.
4 13:23:57 Q. That is one name?
5 13:23:58 A. (No response.)
6 13:23:59 Q. What videos did you post?
7 13:24:01 A. Most of videos that I posted are of
8 13:24:06 videos I took of my baby niece.
9 13:24:07 Q. You said "most," what other sorts of
10 13:24:10 videos do you post?
11 13:24:11 A. It's, other videos are videos which are
12 13:24:14 excerpts of a talk that I gave which was
13 13:24:18 videotaped by my husband. It is called "Tolkien
14 13:24:27 v. Newline, The Overview of the Recent Lawsuit in
15 13:24:38 Plain English." It is excerpts of that talk.
16 13:24:40 Then there is one video of me
17 13:24:44 introducing the actor, Sean Astin, at an event;
18 13:24:48 there is one, rather poor quality, video that I
19 13:24:55 took of a bird in my backyard; and there is one
20 13:25:02 video which is a 40-second compilation of clips
21 13:25:09 from the TV show, "The View." There was one
22 13:25:12 episode where my husband was in the audience, and
23 13:25:16 I excerpted the 40 seconds where he is visible,
24 13:25:21 zoomed in on him and set it to different music and
25 13:25:24 posted that.

1 13:25:25 Q. Approximately how frequently do you post
2 13:25:34 videos?

3 13:25:34 A. It is in spurts, so I would say, of the
4 13:25:39 ones that I have posted, it was in about three
5 13:25:42 groupings.

6 13:25:42 Q. And you mentioned a video of you
7 13:25:45 introducing Sean Astin, I guess?

8 13:25:48 A. Yes.

9 13:25:49 Q. Who shot that video?

10 13:25:50 A. My husband.

11 13:25:51 Q. Okay.

12 13:25:51 MS. HERNANDEZ: I am going to mark, as
13 13:26:18 Exhibit 10, some printouts from the YouTube
14 13:26:21 web site of Miss Michaels' channel.

15 13:26:26 (Printouts of Miss Michaels' channel on
16 10:16:23 YouTube marked Carlin Exhibit 10 for
17 10:16:23 identification.)

18 13:26:27 MS. HERNANDEZ: And just for the record,
19 13:26:56 the date on which these documents were
20 13:26:59 printed from the YouTube web site is on the
21 13:27:01 bottom of the first two pages, were printed
22 13:27:03 on September 18th, and the third page was
23 13:27:06 printed on September 24th.

24 13:27:08 BY MS. HERNANDEZ:

25 13:27:08 Q. Did you get a chance to review it?

1 13:27:17 A. Yes.

2 13:27:18 Q. Okay.

3 13:27:18 Is this a true and correct copy of the
4 13:27:25 way the Theodora Michaels YouTube channel appears
5 13:27:29 on YouTube?

6 13:27:29 A. Yes. With the exception that my baby
7 13:27:32 niece looks such cuter on the original.

8 13:27:36 Q. Fair enough, fair enough.

9 13:27:38 And then, if you look on the third page
10 13:27:40 of this exhibit --

11 13:27:41 A. Yes.

12 13:27:41 Q. -- it says, "Videos (11)," and then
13 13:27:47 there is 11, sort of thumbnail images of videos.

14 13:27:52 Have you ever posted any videos to
15 13:27:55 YouTube -- first -- let me strike that.

16 13:27:58 The videos that are shown here on the
17 13:28:01 third page of this exhibit, are they, in fact, all
18 13:28:04 the videos that you uploaded?

19 13:28:05 A. Yes.

20 13:28:05 Q. Have you ever hosted any videos to
21 13:28:08 YouTube that are not shown on the third page of
22 13:28:10 this exhibit?

23 13:28:10 A. No.

24 13:28:10 Q. And you see the thumbnail image and the
25 13:28:20 title, "Best of the View"; do you see that?

1 13:28:23 A. Yes.

2 13:28:23 Q. And it states, "one month ago," is that

3 13:28:28 correct, in indicating that you posted that video

4 13:28:31 about a month ago?

5 13:28:32 A. Yes.

6 13:28:33 Q. And is this video, "Best of the View",

7 13:28:39 the one you referenced earlier, with your husband

8 13:28:42 in the audience?

9 13:28:43 A. Yes.

10 13:28:43 Q. Okay.

11 13:28:44 MS. HERNANDEZ: I am going to mark as

12 13:28:59 Exhibit 11, again, two pages printed from the

13 13:29:02 YouTube web site, of a video posted by user

14 13:29:07 name Theodora Michaels, the user name for

15 13:29:11 Miss Michaels, and these were printed on

16 13:29:12 September 18th.)

17 13:29:14 (Printouts of Miss Michael's channel on

18 10:16:23 YouTube marked Carlin Exhibit 11 for

19 10:16:23 identification.)

20 13:29:14 THE WITNESS: Okay.

21 13:29:49 BY MS. HERNANDEZ:

22 13:29:49 Q. Have you had a chance to look at it?

23 13:29:51 A. Yes.

24 13:29:51 Q. And Miss Michaels, is this a true and

25 13:29:53 correct copy of the YouTube web page for the "Best

1 13:29:57 of The View" video that you testified you
2 13:30:00 uploaded?
3 13:30:00 A. Yes.
4 13:30:00 Q. Okay.
5 13:30:01 And this is a clip from the TV show,
6 13:30:05 "The View," from an episode that aired on
7 13:30:09 August 5th, 2009; that is right?
8 13:30:11 A. Yes.
9 13:30:13 Q. And "The View" plays on the network ABC,
10 13:30:16 right?
11 13:30:16 A. Yes.
12 13:30:16 Q. How did you come to have, in your
13 13:30:19 possession, the video clip that you uploaded as
14 13:30:22 "Best of the View"?
15 13:30:22 A. I downloaded it from -- from either the
16 13:30:29 official ABC web site or the official web site for
17 13:30:32 "The View." I forget which one.
18 13:30:35 Q. And you write, in the top right-hand
19 13:30:46 box, "I've never seen the show, but that is my
20 13:30:49 Kevin in the red shirt, dancing with the cast of
21 13:30:52 Hair, on 8/5/09."
22 13:30:57 A. I zoomed in on him as much as iMovie
23 13:31:06 allows.
24 13:31:06 Q. "Smiley Face," did you write that?
25 13:31:11 A. Yes.

SJA-1355

Schapiro Exhibit 22

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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

Plaintiff,

v.

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

Defendants.

Case No. 07 Civ. 3582 (LLS)

**THE RODGERS & HAMMERSTEIN
ORGANIZATION'S RESPONSES AND
OBJECTIONS TO DEFENDANTS' FIRST
SET OF REQUESTS FOR ADMISSION TO
THE RODGERS & HAMMERSTEIN
ORGANIZATION**

Pursuant to Rule 36(a) of the Federal Rules of Civil Procedure, Named Plaintiff The Rodgers & Hammerstein Organization ("RHO") hereby responds and objects to the Requests for Admission (the "Requests") propounded by Defendants YouTube, Inc., YouTube LLC and Google, Inc. ("YouTube" or "Defendants").

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GENERAL OBJECTIONS

The following general objections and statements (“General Objections”) apply to each of the particular Requests propounded by Defendants and are hereby incorporated within each response set forth below. All of the responses set forth below are subject to and do not waive the General Objections:

1. RHO objects to the Requests on the ground that RHO is still in the process of gathering and analyzing information relevant to these Requests. RHO has not completed its review and analysis of all discovery obtained by the parties in this and the related *Viacom* action. Additionally, defendants and non-parties have produced more than 1.5 million pages of documents since October 13, 2009. RHO has not yet examined each document produced by defendants or otherwise in this action for the purpose of determining which individual allegations of the Second Amended Class Action Complaint (“Complaint”) it might support, nor has RHO completed depositions that may more fully reveal facts and information relevant to these Requests. As discovery is not yet closed, including deposition and expert discovery, and the production of remaining data and/or documents, RHO’s responses to these Requests are preliminary and tentative subject to completion of discovery and following an adequate opportunity to review and analyze all discovery in this action.

2. In responding to these Requests, RHO does not concede the relevance, materiality or admissibility of any of the admissions or responses sought herein. RHO’s responses are made subject to and without waiving any objections as to relevancy, materiality, admissibility, vagueness, ambiguity, competency or privilege.

3. RHO does not waive any of its rights to object on any ground to the use of its responses herein.

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4. RHO objects to the Requests to the extent that they set forth compound, conjunctive or disjunctive statements.
5. RHO objects to each request, instruction or definition to the extent that they seek to impose obligations beyond those imposed or authorized by the Federal Rules of Civil Procedure, the Civil Local Rules of the United States District Court for the Southern District of New York ("Civil Local Rules"), or the applicable standing orders and orders of this Court.
6. RHO objects to each request, instruction or definition to the extent that it would require the disclosure of information that is outside the scope of information relevant to this case or that is otherwise improper.
7. RHO objects to each request, instruction or definition to the extent that it would require the disclosure of information protected by the attorney-client privilege, the work product doctrine, or any other applicable privilege or immunity.
8. RHO objects to each request, instruction or definition to the extent that it would require the disclosure of information generated or compiled by or at the direction of RHO's counsel.
9. RHO objects to each request, instruction or definition to the extent that it would require the compilation or review of information otherwise within Defendants' possession, custody or control or more easily accessible to Defendants.
10. RHO objects to each request, instruction or definition to the extent that they are vague, ambiguous, overly broad or unduly burdensome.
11. RHO objects to each request, instruction or definition to the extent that they purport to require separate responses for each "Accused Clip" as compound and unduly burdensome.

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12. RHO objects to each request to the extent that they fail to specify an applicable time period and are thereby vague, ambiguous and overbroad.

13. RHO objects to each request as premature to the extent that it calls for expert opinion.

14. RHO objects to each request to the extent that it calls for a legal conclusion.

15. RHO objects to each request, instruction or definition to the extent that they purport to require RHO to respond to Defendants' characterizations of legal contentions or call for the application of law to fact to the extent such request seeks disclosure of privileged information.

16. RHO objects to the definitions of "RHO", "RHO's", "you" and "your" as overly broad and unduly burdensome, and further objects to the extent it seeks to impose obligations broader than those specified by Federal Rules of Civil Procedure 26, and Civil Local Rule 26.3(c)(5). RHO further objects on the grounds that the definition includes an unknown and unknowable number of "present and former agents, employees, representatives, accountants, investigators, attorneys," "person[s] acting or purporting to act on its behalf", and "other person[s] otherwise subject to its control, which controls it, or is under common control with them." Moreover, this definition includes "affiliates," "divisions," and "units" without any explanation of those terms' meaning. RHO further objects to the extent these definitions call for privileged information and to the extent they seek information outside of Plaintiffs' possession, custody or control. In responding to the Interrogatories, Plaintiffs will construe the terms "RHO", "RHO's", "you" and "your" to mean Named Plaintiff RHO.

17. RHO objects to the definitions of "Work(s) In Suit" and "Accused Clip(s)" as compound, vague and ambiguous. RHO further objects to the extent these definitions call for

privileged information. RHO further objects to the definitions of “Work(s) In Suit” and “Accused Clip(s)” to the extent such definitions attempt to limit the number or identity of infringed works or instances of infringement for which RHO seeks recovery. As set forth at paragraph 74 of the Second Amended Complaint, the infringed works specified by RHO in this litigation are “representative of Protected Works that are and have been infringed by Defendants and/or YouTube’s users.” Similarly, the infringements identified in Exhibit A to the Complaint and within the Complaint are representative and not an exhaustive list of the ongoing and massive infringement by Defendants. RHO reserves all rights to identify additional infringements and infringed works.

18. RHO objects to the definition of “substantially DMCA-compliant takedown notice” as vague and ambiguous as it requires a qualitative judgment and lacks common or ready definition.

19. Where RHO indicates a lack of information or knowledge sufficient to admit or deny a specific request, this lack of information or knowledge follows a reasonable inquiry by RHO, and the information known or readily obtainable by RHO is insufficient to enable the party to admit or deny.

20. RHO reserves the right to supplement or amend these responses. These responses should not be construed as, and do not constitute, a waiver of RHO’s right to prove additional facts at summary judgment or trial or any other rights.

21. These general objections are continuing and are incorporated by reference in RHO’s answers to each of the Requests set forth below. Any objection or lack of objection to any portion of these Requests is not an admission. RHO reserves the right to amend, supplement, modify, or correct these responses and objections as appropriate.

**RHO'S RESPONSES AND OBJECTIONS
TO SPECIFIC REQUESTS FOR ADMISSION**

REQUEST FOR ADMISSION NO. 1:

Admit that at all relevant times YouTube was a “service provider” as that term is used in 17 U.S.C. § 512(k)(1)(B).

RESPONSE TO REQUEST FOR ADMISSION NO. 1:

RHO objects to this Request on the grounds that it is vague and ambiguous, including the term “at all relevant times.” RHO further objects to this Request to the extent it calls for a legal conclusion. Subject to and without waiving the foregoing objections, RHO admits that the YouTube website in part, provides or operates facilities for, among other things, “online services or network access” as those terms are used in 17 U.S.C. § 512(k)(1)(B), and otherwise denies the request.

REQUEST FOR ADMISSION NO. 2:

Admit that at all relevant times, YouTube stored material “at the direction of a user” as that phrase is used in 17 U.S.C. § 512(c)(1).

RESPONSE TO REQUEST FOR ADMISSION NO. 2:

RHO objects to this Request as vague and overbroad, including with respect to the terms “at all relevant times” and “material,” which are undefined terms. RHO further objects to this Request to the extent it calls for a legal conclusion. YouTube is a media entertainment enterprise that engages in an array of directly and secondarily infringing activities that are neither storage nor at the direction of a user, such as, without limitation, transforming, copying and distributing material without the direction of a user. Subject to and without waiving the foregoing objections, RHO denies this Request.

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REQUEST FOR ADMISSION NO. 3:

Admit that the material you allege to infringe your copyrights in this case was stored on the youtube.com service “at the direction of a user” as that phrase is used in 17 U.S.C. § 512(c)(1).

RESPONSE TO REQUEST FOR ADMISSION NO. 3:

RHO objects to this Request for Admission as vague and overbroad, including with respect to the term “material,” which is an undefined term. RHO further objects to this Request to the extent it calls for a legal conclusion. Subject to and without waiving the foregoing objections, RHO denies this Request.

REQUEST FOR ADMISSION NO. 4:

Admit that all of your copyright infringement claims in this action allege infringement of copyrights “by reason of the storage at the direction of a user” of material that resides on a system or network controlled or operated by or for YouTube, as set forth in 17 U.S.C. § 512(c)(1).

RESPONSE TO REQUEST FOR ADMISSION NO. 4:

RHO objects to this Request for Admission as vague and overbroad, including with respect to the term “material,” which is an undefined term. RHO further objects to this Request to the extent it calls for a legal conclusion. Subject to and without waiving the foregoing objections, RHO denies this Request.

REQUEST FOR ADMISSION NO. 5:

Admit that at all relevant times, YouTube had “designated an agent to receive notifications of claimed infringement” as set forth in 17 U.S.C. § 512(c)(2).

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RESPONSE TO REQUEST FOR ADMISSION NO. 5:

RHO objects to this Request on the grounds that it is vague and ambiguous, including the term “at all relevant times.” Subject to and without waiving the foregoing objections, RHO denies this Request.

REQUEST FOR ADMISSION NO. 6:

Admit that on every occasion that you sent YouTube a DMCA takedown notice relating to an accused clip, YouTube responded “expeditiously,” as that phrase is used in 17 U.S.C. § 512(c)(1)(A)(iii), to remove or disable access to the material claimed to be infringing.

RESPONSE TO REQUEST FOR ADMISSION NO. 6:

RHO objects to this Request on the grounds that it is vague and ambiguous, including the term “material”. RHO further objects to this Request to the extent it calls for a legal conclusion. Subject to and without waiving the foregoing objections, RHO denies this Request.

REQUEST FOR ADMISSION NO. 7:

Admit that on every occasion that you sent YouTube a DMCA takedown notice relating to an accused clip, YouTube responded within seventy-two business hours to remove or disable access to the material claimed to be infringing.

RESPONSE TO REQUEST FOR ADMISSION NO. 7:

RHO objects to this Request on the grounds that it is vague and ambiguous, including the term “material.” Subject to and without waiving the foregoing objections, RHO denies this Request.

REQUEST FOR ADMISSION NO. 8:

Admit that for all of the accused clips, prior to receiving a DMCA takedown notice from you identifying those specific clips, YouTube did not have “actual knowledge” that the material

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was infringing, as described in 17 U.S.C. § 512(c)(1)(A)(i).

RESPONSE TO REQUEST FOR ADMISSION NO. 8:

RHO objects to this Request to the extent it calls for a legal conclusion. Subject to and without waiving the foregoing objections, RHO denies this Request.

REQUEST FOR ADMISSION NO. 9:

Admit that on no occasion did YouTube fail to expeditiously remove or disable access to an accused clip to the extent YouTube became aware of facts or circumstances from which infringing activity was apparent, as described in 17 U.S.C. § 512(c)(1)(A)(ii).

RESPONSE TO REQUEST FOR ADMISSION NO. 9:

RHO objects to this Request as compound. RHO further objects to this Request to the extent it calls for a legal conclusion. Subject to and without waiving the foregoing objections, RHO denies this Request.

REQUEST FOR ADMISSION NO. 10:

Admit that YouTube lacked the right and ability to control the infringing activity alleged by you in this case, as described in 17 U.S.C. § 512(c)(1)(B).

RESPONSE TO REQUEST FOR ADMISSION NO. 10:

RHO objects to this Request to the extent it calls for a legal conclusion. Subject to and without waiving the foregoing objections, RHO denies this Request.

REQUEST FOR ADMISSION NO. 11:

Admit that YouTube did not receive a financial benefit directly attributable to the infringing activity alleged by you in this case, as described in 17 U.S.C. § 512(c)(1)(B).

RESPONSE TO REQUEST FOR ADMISSION NO. 11:

RHO objects to this Request to the extent it calls for a legal conclusion. Subject to and

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without waiving the foregoing objections, RHO denies this Request.

REQUEST FOR ADMISSION NO. 12:

Admit that at all relevant times, access to and use of the youtube.com service was provided to users by YouTube free and without charge.

RESPONSE TO REQUEST FOR ADMISSION NO. 12:

RHO objects to the request as compound. RHO further objects to the terms “at all relevant times”, “access” and “use” as vague and ambiguous. For example, “use” of and “access” to the youtube.com website includes various activities, such as advertising. Subject to and without waiving the foregoing objections, RHO denies that “use” of the youtube.com website was provided free and without charge.

REQUEST FOR ADMISSION NO. 13:

Admit that at all relevant times YouTube had adopted and reasonably implemented, and informed its subscribers and account holders of, a policy that provides for the termination in appropriate circumstances of subscribers and account holders of YouTube who were repeat infringers, as described in 17 U.S.C. § 512(i)(1)(A).

RESPONSE TO REQUEST FOR ADMISSION NO. 13:

RHO objects to this Request as vague and ambiguous, including the terms “at all relevant times”, “reasonably implemented” and “appropriate circumstances”. RHO further objects to this Request to the extent it calls for a legal conclusion. Subject to and without waiving the foregoing objections, RHO denies this Request.

REQUEST FOR ADMISSION NO. 14:

Admit that at no time relevant to this lawsuit have there been any “standard technical measures” in existence as that term is defined in 17 U.S.C. §§ 512(i)(1)(B) and 512(i)(2).

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RESPONSE TO REQUEST FOR ADMISSION NO. 14:

RHO objects to this Request as vague and ambiguous, including the term “in existence”. RHO further objects to this Request to the extent it calls for a legal conclusion. RHO further objects to this Request on the ground that the requested matter is outside the scope of information relevant to this case. Subject to and without waiving the foregoing objections, RHO denies this Request.

REQUEST FOR ADMISSION NO. 15:

Admit that you do not claim in this case that YouTube failed to comply with 17 U.S.C. §§ 512(i)(1)(B) (i.e., YouTube accommodates and not interfere with “standard technical measures” to the extent any exist).

RESPONSE TO REQUEST FOR ADMISSION NO. 15:

RHO objects to this Request to the extent it calls for a legal conclusion. Subject to and without waiving the foregoing objections, RHO denies this Request.

REQUEST FOR ADMISSION NO. 16:

Admit that some of the accused clips were uploaded or authorized to be uploaded by you onto the youtube.com service.

RESPONSE TO REQUEST FOR ADMISSION NO. 16:

RHO denies this Request.

REQUEST FOR ADMISSION NO. 17:

Admit that some of the accused clips were uploaded or authorized to be uploaded by you onto the youtube.com service for marketing or promotional purposes.

RESPONSE TO REQUEST FOR ADMISSION NO. 17:

Subject to and without waiving the foregoing objections, RHO denies this Request.

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REQUEST FOR ADMISSION NO. 18:

Admit that you have uploaded videos or authorized videos to be uploaded onto the youtube.com service.

RESPONSE TO REQUEST FOR ADMISSION NO. 18:

RHO objects to this Request on the grounds that it is vague and ambiguous, including the term “service”. RHO further objects to this Request on the ground that the requested matter is outside the scope of information relevant to this case. RHO further objects to this Request on the ground that it requires the compilation or review of information otherwise within Defendants’ possession, custody or control and more easily accessible to Defendants. Subject to and without waiving the foregoing objections, RHO admits that it uploaded one video presentation to YouTube that was at all times kept “private” by RHO and was viewable only by certain executives at RHO and Imagem, and denies that the video contained any work-in-suit or any of RHO's licensed works.

REQUEST FOR ADMISSION NO. 19:

Admit that you have uploaded videos or authorized videos to be uploaded onto the youtube.com service for marketing and promotional purposes.

RESPONSE TO REQUEST FOR ADMISSION NO. 19:

RHO objects to this Request on the grounds that it is vague and ambiguous, including the terms “service”, “marketing”, and “promotional”. RHO further objects to this Request on the ground that the requested matter is outside the scope of information relevant to this case. RHO further objects to this Request on the ground that it requires the compilation or review of information otherwise within Defendants’ possession, custody or control and more easily accessible to Defendants. Subject to and without waiving the foregoing objections, RHO denies

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this Request.

REQUEST FOR ADMISSION NO. 20:

Admit that, with respect to some videos or accused clips uploaded or authorized to be uploaded by you to the youtube.com service, you concealed the fact that the uploading of the clips or videos was done by you or at your direction.

RESPONSE TO REQUEST FOR ADMISSION NO. 20:

RHO objects to this Request on the grounds that it is vague and ambiguous, including the terms “service” and “concealed.” Subject to and without waiving the foregoing objections, RHO denies this Request.

REQUEST FOR ADMISSION NO. 21:

Admit that you agreed to YouTube’s Terms of Service when you uploaded videos and the accused clips, or authorized videos and the accused clips to be uploaded onto the youtube.com service.

RESPONSE TO REQUEST FOR ADMISSION NO. 21:

RHO objects to this Request on the grounds that it is vague and ambiguous, including the terms “service” Subject to and without waiving the foregoing objections, RHO admits this Requests only insofar as the Terms of Service are legally enforceable and that RHO would not have been permitted to upload videos without accepting Defendants’ non-negotiable terms. Subject to and without waiving the foregoing objections, RHO admits that it uploaded one video presentation to YouTube that was at all times kept “private” by RHO and was viewable only by certain executives at RHO and Imagem, and denies that the video contained any work-in-suit or any of RHO's licensed works. RHO denies this Request in all other respects.

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REQUEST FOR ADMISSION NO. 22:

Admit that you expressly licensed YouTube under your copyrights as to all accused clips and videos that you or your agent uploaded onto the youtube.com service.

RESPONSE TO REQUEST FOR ADMISSION NO. 22:

RHO objects to this Request to the extent it calls for a legal conclusion and not the admission or denial of a fact. RHO further objects to this Request on the ground that the requested matter is outside the scope of information relevant to this case. Subject to and without waiving the foregoing objections, RHO denies this Request, but admits that YouTube's terms of service on the YouTube website purport to claim a "worldwide, non-exclusive, royalty-free, sublicenseable and transferable license to use, reproduce, distribute, prepare derivative works of, display, and perform the User Submissions in connection with the YouTube Website and YouTube's (and its successors' and affiliates') business, including without limitation for promoting and redistributing part or all of the YouTube Website (and derivative works thereof) in any media formats and through any media channels" with respect to all videos uploaded to the YouTube website..

REQUEST FOR ADMISSION NO. 23:

Admit that you have issued licenses that grant the licensee the right to exhibit and distribute the work on websites, including YouTube.com.

RESPONSE TO REQUEST FOR ADMISSION NO. 23:

RHO objects to this Request on the grounds that it is vague and ambiguous, including the terms "exhibit", "distribute", "the work" and "on websites". RHO further objects to this Request on the ground that the requested matter is outside the scope of information relevant to this case. RHO further objects to this Request on the ground that any rights extended to a licensee of RHO

content do not extend to parties such as unauthorized uploaders of content or YouTube, neither of whom derive any rights under such license. Subject to and without waiving the foregoing objections, RHO denies that language granting rights in a license can be read in isolation, and states that it must be read in light of other terms and restrictions in that license. RHO admits that it has granted a limited number of licenses that grant certain rights, subject to various limitations, including without limitation, limitations on duration, territory, and use of musical compositions only in connection with particular video footage and in some cases, limitations to particular websites; among such licenses, there are an even smaller number that have granted licensees the right to use certain musical compositions on YouTube in combination with certain specified footage and in exchange for the payment of a license fee, subject to such additional restrictions, such as duration, territory and other restrictions of the type described above.

REQUEST FOR ADMISSION NO. 24:

Admit that you have issued licenses for works-in-suit that grant the licensee the right to exhibit and distribute the work on websites, including YouTube.com.

RESPONSE TO REQUEST FOR ADMISSION NO. 24:

RHO objects to this Request on the grounds that it is vague and ambiguous, including the terms “exhibit”, “distribute”, “the work” and “on websites”. RHO further objects to this Request on the ground that the requested matter is outside the scope of information relevant to this case. RHO further objects to this Request on the ground that any rights extended to a licensee of RHO content do not extend to parties such as unauthorized uploaders of content or YouTube, neither of whom derive any rights under such license. Subject to and without waiving the foregoing objections, RHO denies that language granting rights in a license can be read in isolation, and states that it must be read in light of other terms and restrictions in that license. RHO admits that

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it has granted a limited number of licenses that grant certain rights, subject to various limitations, including without limitation, limitations on duration, territory, and use of musical compositions only in connection with particular video footage and in some cases, limitations to particular websites; among such licenses, there are an even smaller number that have granted licensees the right to use certain musical compositions on YouTube in combination with certain specified footage and in exchange for the payment of a license fee, subject to such additional restrictions, such as duration, territory and other restrictions of the type described above. RHO admits that there are some licenses that have granted the licensee the right to exploit a work-in-suit in certain specific and identifiable contexts on certain specified websites, including youtube.com, subject to the various restrictions identified above. See also RHO's responses to Requests nos. 26-29.

REQUEST FOR ADMISSION NO. 25:

Admit that on no occasion did you inform YouTube of the presence of any authorized videos on the YouTube.com site.

RESPONSE TO REQUEST FOR ADMISSION NO. 25:

RHO objects to this Request on the ground that it is vague and ambiguous, including the terms "inform" and "any authorized videos." RHO further objects to this Request on the ground that the requested matter is outside the scope of information relevant to this case. Subject to and without waiving the foregoing objections, RHO denies this Request to the extent it implies that RHO has an obligation to inform YouTube of the presence of "any authorized videos" on the YouTube website and further denies this Request to the extent it implies that YouTube is not on active or constructive notice whether it is authorized to exploit the videos on its own website, and further denies this request to the extent it implies that YouTube does not have access to information furnished by RHO that would allow YouTube to determine if the presence of videos

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containing RHO content are authorized. As a business practice, it is ordinarily incumbent upon the party exploiting content, i.e. YouTube, to seek and obtain appropriate license as well as information concerning the owner and/or administrator of which it is exploiting. Such information is readily and publicly available including through public databases identifying RHO as the administrator of and/or owner of the works in suit and other RHO content.

REQUEST FOR ADMISSION NO. 26:

Admit that the license agreement produced at RH00063998-64003 grants the licensee the right to exhibit and distribute the work on websites, including YouTube.com.

RESPONSE TO REQUEST FOR ADMISSION NO. 26:

RHO objects to this Request on the grounds that it is vague and ambiguous, including the terms "exhibit", "distribute", "the work" and "on websites". RHO objects to this Request on the grounds that the requested matter is not relevant to this case, because there is no evidence that Defendants or the uploader of any infringing clip has represented that they have a license to post RHO content on YouTube. RHO further objects on the ground that any rights extended to a licensee of RHO content do not extend to parties such as unauthorized uploaders of content or YouTube, neither of whom derive any rights under such license. Subject to and without waiving the foregoing objections, RHO states that the license produced at the Bates numbers above grants certain rights to exploit RHO's content on the Internet subject to the express terms of the agreement, including the fee paid by the licensee. In the case of the license listed above, the use of the work is limited to a 35-second portion of the composition, synchronized with the described video, for use in-context only during a two-year term only.

REQUEST FOR ADMISSION NO. 27:

Admit that the license agreement discussed in the email chain produced at RH00064869-

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907 grants the licensee the right to exhibit and distribute the work on websites, including YouTube.com.

RESPONSE TO REQUEST FOR ADMISSION NO. 27:

RHO objects to this Request on the grounds that it is vague and ambiguous, including the terms “exhibit”, “distribute”, “the work” and “on websites”. RHO objects to this Request on the grounds that the requested matter is not relevant to this case, because there is no evidence that Defendants or the uploader of any infringing clip has represented that they have a license to post RHO content on YouTube. RHO further objects on the ground that any rights extended to a licensee of RHO content do not extend to parties such as unauthorized uploaders of content or YouTube, neither of whom derive any rights under such license. Subject to and without waiving the foregoing objections, RHO states that the license produced at the Bates numbers above grants certain rights to exploit RHO’s content on the Internet subject to the express terms of the agreement, including the fee paid by the licensee. In the case of the license listed above, the use of the work is limited to a 60-second portion of the composition, synchronized with the described video, for use in-context only during a nine-month term.

REQUEST FOR ADMISSION NO. 28:

Admit that the license agreement produced at RH00066694-98 grants the licensee the right to exhibit and distribute the work on websites, including YouTube.com

RESPONSE TO REQUEST FOR ADMISSION NO. 28:

SRHO objects to this Request on the grounds that it is vague and ambiguous, including the terms “exhibit”, “distribute”, “the work” and “on websites”. RHO objects to this Request on the grounds that the requested matter is not relevant to this case, because there is no evidence that Defendants or the uploader of any infringing clip has represented that they have a license to

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post RHO content on YouTube. RHO further objects on the ground that any rights extended to a licensee of RHO content do not extend to parties such as unauthorized uploaders of content or YouTube, neither of whom derive any rights under such license. Subject to and without waiving the foregoing objections, RHO states that the license produced at the Bates numbers above grants certain rights to exploit RHO's content on the Internet subject to the express terms of the agreement, including the fee paid by the licensee. In the case of the license listed above (which is a duplicate of the license listed in Request 27), the use of the work is limited to a 60-second portion of the composition, in synchronization with the described video, for use in-context only during a nine-month term.

REQUEST FOR ADMISSION NO. 29:

Admit that the license agreement produced at RH00064614-16 grants the licensee the right to exhibit and distribute the work on websites, including YouTube.com

RESPONSE TO REQUEST FOR ADMISSION NO. 29:

RHO objects to this Request on the grounds that it is vague and ambiguous, including the terms "exhibit", "distribute", "the work" and "on websites". RHO objects to this Request on the grounds that the requested matter is not relevant to this case, because there is no evidence that Defendants or the uploader of any infringing clip has represented that they have a license to post RHO content on YouTube. RHO further objects on the ground that any rights extended to a licensee of RHO content do not extend to parties such as unauthorized uploaders of content or YouTube, neither of whom derive any rights under such license. Subject to and without waiving the foregoing objections, RHO states that the license produced at the Bates numbers above grants certain rights to exploit RHO's content on the Internet subject to the express terms of the agreement, including the fee paid by the licensee. In the case of the license listed above, the use

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of the work is limited to a 7-, 16- or 30-second portion of the composition, in synchronization with the described video, for use in-context only.

REQUEST FOR ADMISSION NO. 30:

Admit that you never informed YouTube of the existence of the license agreements set forth in Requests 26-29.

RESPONSE TO REQUEST FOR ADMISSION NO. 30:

RHO objects to this Request on the grounds that the requested matter is outside the scope of information relevant to this case. Subject to and without waiving the foregoing objections, RHO denies this Request to the extent it implies that RHO has any obligation to inform YouTube of the existence of these license agreements. As a business practice, it is ordinarily incumbent upon the party exploiting content, i.e. YouTube, to seek and obtain appropriate license as well as information concerning the owner and/or administrator of which it is exploiting. Such information is readily and publicly available including through public databases identifying RHO as the administrator of and/or owner of the works in suit and other RHO content. RHO further denies this Request for the reasons set forth in Requests nos. 26-29.

REQUEST FOR ADMISSION NO. 31:

Admit that the presence on the youtube.com website of videos embodying the works in suit can have the effect of increasing consumer demand for those works.

RESPONSE TO REQUEST FOR ADMISSION NO. 31:

RHO objects to this Request on the grounds that it is vague and ambiguous, including the phrases “can have the effect” and “consumer demand.” RHO further objects to this Request on the ground that the requested matter is outside the scope of information relevant to this case. RHO further objects to this request on the ground that it seeks RHO’s opinion regarding an

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incomplete hypothetical question, not the admission or denial of a fact. Subject to and without waiving the foregoing objections, RHO denies that the presence of videos on Youtube.com has the effect of increasing consumer demand, including, without limitation, when the works are being made available for free on youtube.com and are a substitution of the products sold or licensed by RHO to third parties for a fee and/or otherwise damage RHO's business.

REQUEST FOR ADMISSION NO. 32:

Individually for each accused clip, admit that you did not send a DMCA takedown notice to YouTube within one week of becoming aware of that clip's presence on YouTube.

RESPONSE TO REQUEST FOR ADMISSION NO. 32:

RHO objects to this Request on the grounds that it is vague and ambiguous, including the term "becoming aware." RHO further objects to this Request on the ground that it calls for the disclosure of information protected by the attorney-client privilege and/or the work-product doctrine. RHO further objects to this Request on the ground that the requested matter is outside the scope of information relevant to this case. RHO further objects to this request on the ground that it misconstrues the parties' respective obligations under applicable law. Subject to and without waiving the foregoing objections, RHO denies this Request to the extent that many DMCA takedown notices were sent to YouTube within one week of RHO discovering the infringing content. RHO states that, because of the huge volume of infringements of its works on the YouTube website, it notified YouTube in a manner compliant with the DMCA as expeditiously as possible after determining that each YouTube video that it claims as infringing in the Complaints in this action infringed its content.

REQUEST FOR ADMISSION NO. 33:

Individually for each accused clip, admit that you did not send a DMCA takedown notice

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to YouTube within one month of becoming aware of that clip's presence on YouTube.

RESPONSE TO REQUEST FOR ADMISSION NO. 33:

RHO objects to this Request on the grounds that it is vague and ambiguous, including the term "becoming aware." RHO further objects to this Request on the ground that it calls for the disclosure of information protected by the attorney-client privilege and/or the work-product doctrine. RHO further objects to this Request on the ground that the requested matter is outside the scope of information relevant to this case. RHO further objects to this Request on the ground that the requested matter is outside the scope of information relevant to this case. RHO further objects to this request on the ground that it misconstrues the parties' respective obligations under applicable law. Subject to and without waiving the foregoing objections, RHO denies this Request to the extent that many DMCA takedown notices were sent to YouTube within one month of RHO discovering the infringing content. RHO states that, because of the huge volume of infringements of its works on the YouTube website, it notified YouTube in a manner compliant with the DMCA as expeditiously as possible after determining that each YouTube video that it claims as infringing in the Complaints in this action infringed its content.

REQUEST FOR ADMISSION NO. 34:

Individually for each accused clip, admit that you did not send a DMCA takedown notice to YouTube within two months of becoming aware of that clip's presence on YouTube.

RESPONSE TO REQUEST FOR ADMISSION NO. 34:

RHO objects to this Request on the grounds that it is vague and ambiguous, including the term "becoming aware." RHO further objects to this Request on the ground that it calls for the disclosure of information protected by the attorney-client privilege and/or the work-product doctrine. RHO further objects to this Request on the ground that the requested matter is outside

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the scope of information relevant to this case. RHO further objects to this Request on the ground that the requested matter is outside the scope of information relevant to this case. RHO further objects to this request on the ground that it misconstrues the parties' respective obligations under applicable law. Subject to and without waiving the foregoing objections, RHO denies this Request to the extent that many DMCA takedown notices were sent to YouTube within two months of RHO discovering the infringing content. RHO states that, because of the huge volume of infringements of its works on the YouTube website, it notified YouTube in a manner compliant with the DMCA as expeditiously as possible after determining that each YouTube video that it claims as infringing in the Complaints in this action infringed its content.

REQUEST FOR ADMISSION NO. 35:

Admit that, to date, RHO has not sent DMCA takedown notices to YouTube for all of the accused clips.

RESPONSE TO REQUEST FOR ADMISSION NO. 35:

RHO states that it sent DMCA takedown notices for all of the infringing clips identified to Defendants in the April 30, 2009 letter, and further states that upon information and belief, infringing URLs that were listed in the First and Second Amended Complaint were taken down by Defendants pursuant to the information provided in the Complaints, which fulfilled the requirements of a DMCA notice. For all other accused clips, RHO denies this Request.

REQUEST FOR ADMISSION NO. 36:

Admit that some of your works in suit are co-owned by third parties.

RESPONSE TO REQUEST FOR ADMISSION NO. 36:

RHO objects to this Request on the grounds that it is vague and ambiguous, including the terms and "third party" and "co-owned". Subject to and without waiving the foregoing

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objections, RHO denies this Request.

REQUEST FOR ADMISSION NO. 37:

Admit that for the works in suit co-owned by third parties, the co-owners are not required to consult with you or seek your permission before licensing the work.

RESPONSE TO REQUEST FOR ADMISSION NO. 37:

RHO objects to this Request on the grounds that it is vague and ambiguous, including the terms and “third party” and “co-owned”. Subject to and without waiving the foregoing objections, RHO denies this Request.

REQUEST FOR ADMISSION NO. 38:

Individually for each accused clip, admit that you did not consult with your sub-publishers to ensure that the clip was unauthorized appear on the YouTube.com site.

RESPONSE TO REQUEST FOR ADMISSION NO. 38:

RHO objects to this request on the grounds that it is vague and ambiguous, including the terms “consult” and “ensure”. RHO further objects to this Request on the ground that the requested matter is outside the scope of information relevant to this case. RHO further objects to this Request on the ground that it calls for the disclosure of information protected by the attorney-client privilege and/or the work-product doctrine. Subject to and without waiving the foregoing objections, RHO denies this Request to the extent it implies that RHO is obligated to consult with its sub-publishers to establish that each accused clip was unauthorized to appear on the YouTube website, and admits that in certain cases it did not contact its sub-publisher prior to requesting that YouTube take down an infringing clip, because in those cases RHO’s sub-publishers either do not have authority under the express terms of the agreements between them and RHO to post content to youtube.com or to authorize third parties to posts clips containing

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RHO content on youtube.com, a website that is available worldwide, or the sub-publisher is required to seek permission from RHO before issuing a license to grant the right to exploit RHO content on the internet. Only RHO's Italian sub-publisher has the authority to grant licenses for the use of RHO works on the internet, but that authority is limited to the territory of Italy *only*, and thus excludes YouTube and other worldwide web sites unless the content is geo-blocked to Italy.

REQUEST FOR ADMISSION NO. 39:

Individually for each accused clip, admit that you did not consult with the co-owner(s) of the work-in-suit to ensure that the clip was unauthorized appear on the YouTube.com site.

RESPONSE TO REQUEST FOR ADMISSION NO. 39:

RHO objects to this request on the grounds that it is vague and ambiguous, including the terms "consult", "ensure" and "co-owner". RHO further objects to this Request on the ground that the requested matter is outside the scope of information relevant to this case. RHO further objects to this Request on the ground that it calls for the disclosure of information protected by the attorney-client privilege and/or the work-product doctrine. Subject to and without waiving the foregoing objections, RHO denies this request, because there are no co-owners for the works in suit and RHO controls the administrative rights for each of the works in suit.

REQUEST FOR ADMISSION NO. 40:

Individually for each accused clip, admit that you did not consult with the writer of the work-in-suit to ensure that the clip was authorized to appear on the YouTube.com site.

RESPONSE TO REQUEST FOR ADMISSION NO. 40:

RHO objects to this request on the grounds that it is vague and ambiguous, including the terms "consult", "ensure" and "writer". RHO further objects to this Request on the ground that

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the requested matter is outside the scope of information relevant to this case. Subject to and without waiving the foregoing objections, RHO denies this Request to the extent it implies that RHO is obligated to consult with the “writer” to ensure that each accused clip was unauthorized to be on the YouTube website, and admits that, with respect to each accused clip, RHO has no obligation to consult with the “writer” of the work prior to taking action against Defendants for infringements of RHO’s works.

REQUEST FOR ADMISSION NO. 41:

Individually for each accused clip, admit that you did not consult with any of your licensees to ensure that the clip was not authorized to appear on the YouTube.com site.

RESPONSE TO REQUEST FOR ADMISSION NO. 41:

RHO objects to this Request on the grounds that it is vague and ambiguous, including the word “consult” and “ensure”. RHO further objects to this Request on the ground that the requested matter is outside the scope of information relevant to this case. Subject to and without waiving the foregoing objections, RHO denies that, with respect to each accused clip, any of the infringing clips involved licensed materials within the scope of the license.

REQUEST FOR ADMISSION NO. 42:

Admit that you have not signed up to use YouTube’s Content Verification Program.

RESPONSE TO REQUEST FOR ADMISSION NO. 42:

RHO objects on the grounds that it is vague and ambiguous and that YouTube has used several euphemisms to refer to a number of “tools” that it offers to content owners. RHO further objects to this Request on the ground that it calls for the disclosure of information protected by the attorney-client privilege and/or the work-product doctrine. RHO further objects to this Request on the ground that the requested matter is outside the scope of information relevant to

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this case. To the extent that the Content Verification Program “tool” is an electronic substitute for a DMCA takedown notice, RHO admits that it has not used this “tool”, and otherwise denies the Request.

REQUEST FOR ADMISSION NO. 43:

Admit that you have not signed up to use YouTube’s Content ID tool.

RESPONSE TO REQUEST FOR ADMISSION NO. 43:

RHO objects on the grounds that that it is vague and ambiguous and YouTube has used several euphemisms to refer to a number of “tools” that it offers to content owners. RHO further objects to this Request on the ground that it calls for the disclosure of information protected by the attorney-client privilege and/or the work-product doctrine. RHO further objects to this Request on the ground that the requested matter is outside the scope of information relevant to this case. To the extent that Content ID is a tool that refers to digital fingerprinting technology, RHO states that Defendants have not made their digital fingerprinting technology readily available to Plaintiffs on reasonable terms.

REQUEST FOR ADMISSION NO. 44:

Admit that your writers (i.e. writers signed by RHO) have posted videos on YouTube.

RESPONSE TO REQUEST FOR ADMISSION NO. 44:

RHO objects to this request on the grounds that it is vague and ambiguous, including the terms “post” and “writer”. Subject to and without waiving the foregoing objections, RHO admits that one of its writers has posted videos of his own compositions on YouTube. None of that writer’s compositions are works-in-suit.

REQUEST FOR ADMISSION NO. 45:

Admit that on no occasion prior to November 7, 2007 did you inform YouTube of the

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presence and location of any video on the YouTube.com site that allegedly infringed your copyrights.

RESPONSE TO REQUEST FOR ADMISSION NO. 45:

RHO objects to this Request on the ground that it requires the compilation or review of information otherwise within Defendants' possession, custody or control and more easily accessible to Defendants. Subject to and without waiving the foregoing objections, RHO denies this Request.

REQUEST FOR ADMISSION NO. 46:

Admit that on no occasion prior to November 7, 2007 did you inform YouTube of the presence of any accused clip on the YouTube.com site.

RESPONSE TO REQUEST FOR ADMISSION NO. 46:

RHO objects to this Request on the ground that it requires the compilation or review of information otherwise within Defendants' possession, custody or control and more easily accessible to Defendants. Subject to and without waiving the foregoing objections, RHO denies this Request, and states that a copy of the Amended Complaint, listing video clips on the YouTube website that infringed RHO's works, was submitted to YouTube's counsel on October 8, 2007, and that the Amended Complaint, containing the same list of video clips, was filed with the Court on November 7, 2007.

REQUEST FOR ADMISSION NO. 47:

Admit that you retracted DMCA takedown notices sent to YouTube for one or more of your works.

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RESPONSE TO REQUEST FOR ADMISSION NO. 47:

Subject to and without waiving the foregoing objections, RHO denies this Request.

Dated: January 12, 2010

Respectfully submitted,

LIEFF, CABRASER, HEIMANN &
BERNSTEIN, LLP
250 Hudson Street, 8th Floor
New York, New York 10013-1413
Phone: (212) 355-9500
Facsimile: (212) 355-9592

By: 

Annika K. Martin

Schapiro Exhibit 43

From: Apmann, Todd <Todd.Apmann@mtvstaff.com>
Date: Fri, 4 Aug 2006 13:01:04 -0400
To: Zan, Koethi <Koethi.Zan@mtvstaff.com>, Shaw, Daniel <Daniel.Shaw@mtvstaff.com>
Cc: Kauffman, Stuart <Stuart.Kauffman@mtvstaff.com>, Dolnick, Randy <Randy.Dolnick@mtvstaff.com>, Horwitz, Julie <Julie.Horwitz@mtvstaff.com>
Subject: RE: Draft to YOUTUBE

yes absolutely.

From: Zan, Koethi
Sent: Friday, August 04, 2006 1:01 PM
To: Apmann, Todd; Shaw, Daniel
Cc: Kauffman, Stuart; Dolnick, Randy; Horwitz, Julie
Subject: RE: Draft to YOUTUBE

All of BALA will need this info – I have already had 3-4 instances of this happening. Will you be our go-to person so that when anyone gets this call from the clients, we can check in with you?

From: Apmann, Todd
Sent: Friday, August 04, 2006 12:53 PM
To: Zan, Koethi; Shaw, Daniel
Cc: Kauffman, Stuart; VanPelt, Elizabeth; Dolnick, Randy; Horwitz, Julie
Subject: RE: Draft to YOUTUBE

yes. and i can give you a heads up of specific projects when they happen so you are all aware of everything.

From: Zan, Koethi
Sent: Friday, August 04, 2006 12:52 PM
To: Apmann, Todd; Shaw, Daniel
Cc: Kauffman, Stuart; VanPelt, Elizabeth; Dolnick, Randy; Horwitz, Julie
Subject: RE: Draft to YOUTUBE

So this means that if our client groups tell us that they see their shows on Youtube & we find out from Youtube that they got the content from these individuals/companies, then we know it is authorized?

From: Apmann, Todd
Sent: Friday, August 04, 2006 12:49 PM
To: Shaw, Daniel; Zan, Koethi
Cc: Kauffman, Stuart; VanPelt, Elizabeth; Dolnick, Randy; Horwitz, Julie
Subject: RE: Draft to YOUTUBE

Thanks everyone. Sorry this has taken so long to get to you, but here are the people who are OK to upload MTV content to YouTube (we'll obviously make sure that everything is cleared):

Promotion Companies

Wired Set

Special Ops

Cornerstone Promotion

Total Assault

Filter Creative Group

Fanscape

ADD Marketing

Individuals

Damon Johnson

Marissa Grasso

Stephanie Snodgrass

I'll make sure to add anyone who's doing promotions for us in the future. Let me know if you have any questions.

Thanks!

From: Shaw, Daniel
Sent: Monday, June 19, 2006 4:08 PM
To: Zan, Koethi
Cc: Kauffman, Stuart; VanPelt, Elizabeth; Apmann, Todd; Dolnick, Randy; Horwitz, Julie
Subject: RE: Draft to YOUTUBE

Hello,

These two Hills trailers were uploaded at MTV's request by Wiredset. Todd Apman from promotions has confirmed this. Todd is going to send us a list of other clips that were also uploaded to various sites at our request.

Hope this helps.

From: Shaw, Daniel
Sent: Monday, June 19, 2006 4:01 PM
To: Zan, Koethi
Cc: Kauffman, Stuart; VanPelt, Elizabeth
Subject: RE: Draft to YOUTUBE

I checked with Randy Dolnick and she's never heard of Wiredset. I have a call into our program promotions department to see if they know. I'll get back to you with what I find out.

From: Shaw, Daniel

Sent: Monday, June 19, 2006 4:00 PM
To: Zan, Koethi
Cc: Kauffman, Stuart; VanPelt, Elizabeth
Subject: RE: Draft to YOUTUBE

From: Zan, Koethi
Sent: Monday, June 19, 2006 3:51 PM
To: Shaw, Daniel
Cc: Kauffman, Stuart; VanPelt, Elizabeth
Subject: FW: Draft to YOUTUBE

Who can tell us whether we've licensed any rights to this footage to wiredset? I doubt we have licensed any at all. This is for The Hills & 8th & Ocean.

From: heather gillette [mailto:heather@youtube.com]
Sent: Friday, June 16, 2006 7:04 PM
To: Kauffman, Stuart
Cc: Zan, Koethi
Subject: RE: Draft to YOUTUBE

Dear Mr. Kauffman,

I removed all of the videos that appeared to be that of MTV's using the search link provided, other than two. Two of the videos in the search link are hosted by a marketing company called: Wiredset

Do they have the rights to post this content? The two videos in question are here:

<http://www.youtube.com/watch?v=XUURN3-LXh4>

<http://www.youtube.com/watch?v=Gg7K91wP5gE>

Please let me know whether you are claiming infringement for the above videos.

Thank you!

Heather Gillette

Copyright Agent

YouTube, Inc.

From: Kauffman, Stuart [mailto:Stuart.Kauffman@mtvstaff.com]
Sent: Friday, June 16, 2006 9:46 AM
To: copyright@youtube.com
Cc: Zan, Koethi
Subject: FW: Draft to YOUTUBE

June 16, 2006

Via Email (copyright@youtube.com)

DMCA Complaints and/or Heather Gillette
Youtube.com
71 E. Third Avenue
2nd Floor
San Mateo CA 94401

Re: URGENT – Notice of Infringement
"The Hills" and "8th and Ocean"

To Whom It May Concern:

I write to notify you of an infringement of MTV Networks' ("MTVN") intellectual property rights on youtube.com, and to insist that you take immediate action to cease such infringement.

MTVN owns and operates the television programming service MTV, and is the owner of exclusive rights protected under copyright law and other intellectual property rights in the MTV television series "The Hills" and "8th and Ocean" (the "Series").

We have become aware that unauthorized versions of recent episodes of the Series are available on your website at the following links: [http://www.youtube.com/results?search=mtv+the+hills+ <http://www.youtube.com/results?search=mtv+the+hills+&search_type=search_videos>&search_type=search_videos; http://www.youtube.com/profile?user=Raze71](http://www.youtube.com/results?search=mtv+the+hills+<http://www.youtube.com/results?search=mtv+the+hills+&search_type=search_videos>&search_type=search_videos; http://www.youtube.com/profile?user=Raze71).

MTVN did not authorize the distribution of this material, and as a result, such distribution is infringing and unlawful.

MTVN insists that you immediately remove and disable access to the above-referenced material – whether at the above referenced links or elsewhere. MTVN further insists that you immediately destroy any and all unauthorized reproductions of such within your possession, custody or control. Please confirm your compliance with these demands within one day of your receipt of this correspondence.

The undersigned has a good faith belief that use of the material in the manner described herein is not authorized by MTVN, its agents or the law. The information in this notice is accurate. And, under penalty of perjury, the undersigned is authorized to act on behalf of MTVN with respect to this matter.

Please note that this letter is not intended as a full statement of the facts, and is without waiver of any rights and remedies – all of which are expressly reserved.

Very truly yours,

/s/

Stuart Kauffman
Senior Counsel, Intellectual Property
& Litigation
MTV Networks
1515 Broadway, 34-55
New York, NY 10036
T. 212.846-3543
F. 646.688.6849
E. stuart.kauffman@mtvstaff.com

Privileged & Confidential Attorney Client Communication. Do Not Disclose.

Click to add my contact info to your organizer:
<<http://my.infotriever.com/vh6gt1sl>> <http://my.infotriever.com/vh6gt1sl>

Schapiro Exhibit 46

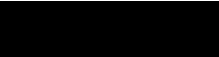
Subject: Disturbia / Paris
From: "Tipton, Kristina - Paramount" <EX:/O=VIACOM/OU=PARAMOUNT/CN=RECIPIENTS/CN=TIPTONKR>
To: Bonnici, Kyle - Paramount
Cc: Teifeld, Tamar - Paramount; Wahtera, Megan - Paramount
Date: Mon, 11 Jun 2007 20:57:34 +0000

Hi Kyle,

As soon as your back, we need help with uploading the below video to viral video sites.

- please create NON-PARAMOUNT accounts using email that can't be traced to Paramount (ie create an account)
- Upload video with following info:
 - o Title: Paris Hilton on house arrest
 - o Description: Ankle bracelets are hot
 - o Tags: Paris Hilton jail house arrest hot funny disturbia
 - o Post as video response to:
 - * <http://youtube.com/watch?v=k66epna2Sss>
 - * <http://youtube.com/watch?v=4yjRLrZfln8>
 - * <http://youtube.com/watch?v=EXFsxuUjGM>

Link:
<http://secure.wiredrive.com/clients/buddhajonestrailers/wd/folder/55341/list>



This is top priority, so please do this before media meeting prep. Thanks, Kyle!

Kristina Tipton

Interactive Marketing

Paramount Pictures

323-956-8453

Schapiro Exhibit 47

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

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

Plaintiffs,

vs.

No. 07-CV-2103

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

Defendants.

-----X

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

Plaintiffs,

vs.

No. 07-CV-3582

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

Defendants.

-----X

HIGHLY CONFIDENTIAL
VIDEOTAPED DEPOSITION OF MEGAN WAHTERA
SAN FRANCISCO, CALIFORNIA
FRIDAY, DECEMBER 4, 2009

JOB NO. 18262

MEGAN WAHTERA - HIGHLY CONFIDENTIAL

2

MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

DECEMBER 4, 2009

10:27 A.M.

HIGHLY CONFIDENTIAL VIDEOTAPED DEPOSITION OF MEGAN
WAHTERA, at WILSON SONSINI GOODRICH & ROSATI, 1 Market
Plaza, San Francisco, California, pursuant to notice,
before me, KATHERINE E. LAUSTER, CLR, CRR, RPR, CSR
License No. 1894.

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212)705-8585

MEGAN WAHTERA - HIGHLY CONFIDENTIAL

3

MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

A P P E A R A N C E S:

FOR THE PLAINTIFFS, VIACOM INTERNATIONAL, INC., and
the WITNESS:

JENNER & BLOCK, LLP
By: SCOTT B. WILKENS, ESQ.
1099 New York Avenue, NW
Suite 900
Washington, DC 20001
T.202.639.6000
F.202.661.4832
swilkens@jenner.com

and

PARAMOUNT PICTURES MOTION PICTURE GROUP
INTERACTIVE MARKETING
By: PAUL KOENIG, ESQ.
5555 Melrose Avenue
Hollywood, California 90038-3197
T.323.956.5882
F.323.862.2875
paul_koenig@paramount.com

FOR THE DEFENDANTS YOUTUBE, INC., YOUTUBE, LLC, and
GOOGLE, INC.:

WILSON, SONSINI, GOODRICH & ROSATI
By: MICHAEL H. RUBIN, ESQ.
CAROLINE WILSON, ESQ.
650 Page Mill Road
Palo Alto, California 94304-1050
T.650.493.9300
F.650.493.6811
mrubin@wsgr.com
cwilson@wsgr.com

Also Present: JOSEPH SKORMAN, Videographer

MEGAN WAHTERA - HIGHLY CONFIDENTIAL

44

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009
2 11:03:15 BY MR. RUBIN:
3 11:03:16 Q. And that is what happened here; right?
4 11:03:17 A. It appears so, from the e-mail, but I'm
5 11:03:19 not sure, because I just can't remember the piece of
6 11:03:22 content.
7 11:03:25 Q. Can you imagine any piece of content that
8 11:03:28 you could have provided to Real Pie Media that
9 11:03:33 wouldn't have been authorized?
10 11:03:36 A. No.
11 11:03:36 MR. WILKENS: Objection to the form, calls
12 11:03:37 for speculation.
13 11:03:38 BY MR. RUBIN:
14 11:03:39 Q. So is there any conclusion to draw from
15 11:03:40 this e-mail, other than the fact the content was
16 11:03:42 authorized to be on YouTube?
17 11:03:45 MR. WILKENS: Objection to the form.
18 11:03:45 THE WITNESS: No, I don't -- from reading
19 11:03:47 this e-mail, I can't think of any reason why it
20 11:03:50 wouldn't be approved content, but I can't recall
21 11:03:54 this -- I cannot recall what happened on this
22 11:03:58 e-mail. I can only read the e-mail.
23 11:04:00 BY MR. RUBIN:
24 11:04:06 Q. Do you doubt the authenticity or the
25 11:04:08 accuracy of your words in Exhibit 1?

MEGAN WAHTERA - HIGHLY CONFIDENTIAL

45

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

2 11:04:12 A. No, I don't.

3 11:04:13 Q. Do you have any reason to question what

4 11:04:15 you wrote in Exhibit 1?

5 11:04:16 A. I don't.

6 11:04:17 Q. Do you have any reason to question what

7 11:04:19 Amy Powell wrote in Exhibit 1?

8 11:04:20 A. I don't.

9 11:04:22 Q. Do you have any reason to question what

10 11:04:24 Zach Braff wrote in Exhibit 1?

11 11:04:26 A. No, except for that Zach Braff had a

12 11:04:29 history of uploading content himself that was not

13 11:04:32 always approved.

14 11:04:33 Q. So if Zach Braff uploaded content to

15 11:04:37 YouTube --

16 11:04:38 A. Uh-huh.

17 11:04:38 Q. -- it was not authorized content?

18 11:04:40 A. I'd have to -- to definitively say yes or

19 11:04:43 no, I'd have to know the circumstance, but there was

20 11:04:46 an occasion that I can recall, I just can't remember

21 11:04:49 exactly what it was, but he did upload content, as

22 11:04:52 he had access to the film that had not gone through

23 11:04:54 the normal approval process.

24 11:04:56 Q. What would you need to know --

25 11:04:57 A. Uh-huh.

MEGAN WAHTERA - HIGHLY CONFIDENTIAL

46

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

2 11:04:58 Q. -- about the video clip that Zach Braff

3 11:05:00 uploaded --

4 11:05:01 A. Uh-huh.

5 11:05:02 Q. -- to determine whether or not it was

6 11:05:04 approved content?

7 11:05:05 A. In what I just described or in this

8 11:05:06 e-mail?

9 11:05:07 Q. What you just described.

10 11:05:09 A. Music licensing rate, whether the talent

11 11:05:11 had agreed that they could be featured in a clip for

12 11:05:15 promotional uses, and whether it had just internal

13 11:05:18 sign-off from higher executives. Or -- there's an

14 11:05:22 array of approval processes that usually take place.

15 11:05:26 Q. An array of internal Paramount approval

16 11:05:29 processes that take place?

17 11:05:31 A. Internal and external, yes.

18 11:05:33 Q. But to a third party --

19 11:05:34 A. Uh-huh.

20 11:05:34 Q. -- how would a third party distinguish

21 11:05:37 between a clip that you, Megan Wahtera, or --

22 11:05:42 A. Uh-huh.

23 11:05:43 Q. -- another Paramount individual authorized

24 11:05:45 for upload and one that Zach Braff selected for the

25 11:05:49 film and uploaded.

MEGAN WAHTERA - HIGHLY CONFIDENTIAL

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1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

2 11:05:51 MR. WILKENS: Objection to the form.

3 11:05:52 THE WITNESS: What third party?

4 11:05:53 BY MR. RUBIN:

5 11:05:54 Q. YouTube, for example.

6 11:05:55 MR. WILKENS: Objection to the form, calls

7 11:05:56 for speculation.

8 11:05:57 THE WITNESS: I don't know YouTube -- I

9 11:05:58 don't know their practices and how they

10 11:06:00 differentiate between what's approved and what's

11 11:06:03 not.

12 11:06:04 BY MR. RUBIN:

13 11:06:04 Q. I'm asking, though, if YouTube doesn't

14 11:06:06 have access to the internal policies that Paramount

15 11:06:09 has to distinguish between an -- one approved clip

16 11:06:11 from another --

17 11:06:13 A. Uh-huh.

18 11:06:13 Q. -- how would YouTube be in a position to

19 11:06:15 even make the decision?

20 11:06:16 MR. WILKENS: Objection to the form, calls

21 11:06:17 for speculation.

22 11:06:19 THE WITNESS: Again, it's just my opinion,

23 11:06:20 but we were in contact with YouTube pretty

24 11:06:24 regularly. We had a long-standing relationship with

25 11:06:27 them, so I would just call and ask about it.

MEGAN WAHTERA - HIGHLY CONFIDENTIAL

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1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

2 13:27:02 A. I'm just giving you my opinion. I don't

3 13:27:04 know how YouTube figures out what is and isn't

4 13:27:07 authorized.

5 13:27:08 Q. Do you think it's YouTube's job to figure

6 13:27:10 out what is and isn't authorized?

7 13:27:12 A. I don't know. It's not my place to say.

8 13:27:15 Q. What is your opinion?

9 13:27:17 MR. WILKENS: Objection to the form.

10 13:27:17 THE WITNESS: I don't have an opinion.

11 13:27:18 BY MR. RUBIN:

12 13:27:18 Q. You don't have an opinion?

13 13:27:19 A. I really don't. I would prefer not to

14 13:27:21 have an opinion. I don't -- I -- I do not work at

15 13:27:23 YouTube. I do not police content. It's not in my

16 13:27:26 responsibility.

17 13:27:27 Q. This isn't -- this -- I don't mean to be

18 13:27:29 argumentative --

19 13:27:29 A. I understand.

20 13:27:30 Q. -- and I'm not trying to be, but today is

21 13:27:32 not about whether you choose to have an opinion or

22 13:27:35 not. I'm asking what your opinion is.

23 13:27:38 A. I don't have one.

24 13:27:39 Q. Do you believe it's YouTube's ob- --

25 13:27:41 YouTube's obligation to police the content on that

MEGAN WAHTERA - HIGHLY CONFIDENTIAL

158

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009
2 13:27:45 service?
3 13:27:45 MR. WILKENS: Objection to the form of the
4 13:27:45 question.
5 13:27:45 THE WITNESS: I do not have an opinion. I
6 13:27:47 do not know if it is their responsibility. I have
7 13:27:47 no idea.
8 13:27:48 BY MR. RUBIN:
9 13:27:48 Q. Do you think they should?
10 13:27:49 A. I have no idea, don't have an opinion.
11 13:27:53 Q. Do you think Paramount should police the
12 13:27:55 content on the YouTube service?
13 13:27:57 MR. WILKENS: Objection to the form.
14 13:27:58 THE WITNESS: I don't know. It's not my
15 13:28:00 job to say so.
16 13:28:01 BY MR. RUBIN:
17 13:28:01 Q. And you have no opinion on it?
18 13:28:02 A. I do not have an opinion.
19 13:28:12 Q. From where did you upload this video?
20 13:28:15 A. I uploaded this video off site, so off
21 13:28:19 lot, Paramount, to -- from an IP address. I believe
22 13:28:23 it was like a FedEx, or a Kinko's, or one of those
23 13:28:24 types of places.
24 13:28:25 Q. Why would you have done that?
25 13:28:27 A. For the same reason I just referenced with

MEGAN WAHTERA - HIGHLY CONFIDENTIAL

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1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

2 13:28:29 registering an e-mail account. Often, I have heard,

3 13:28:32 or -- I can't prove that -- but that there's ways to

4 13:28:35 tell different IP addresses in uploading a clip,

5 13:28:38 where it's coming from.

6 13:28:40 Q. Is there any evidence in your possession

7 13:28:41 that you can think of -- any documents, any e-mails,

8 13:28:44 anything that would support your belief -- your

9 13:28:47 statement that you believe that third parties can

10 13:28:49 discern the e-mail address or the IP address from

11 13:28:52 which a video is uploaded --

12 13:28:54 A. I don't know.

13 13:28:55 Q. -- by simply viewing the video?

14 13:28:57 A. I don't know.

15 13:28:58 Q. You don't know.

16 13:28:59 A. I don't know if I've ever gotten e-mail on

17 13:29:03 that.

18 13:29:04 Q. You don't know whether you've ever

19 13:29:06 discussed it with anyone else?

20 13:29:08 A. I don't know.

21 13:29:09 Q. It's a rumor you heard?

22 13:29:15 A. I work in an interac- -- interactive

23 13:29:17 marketing, so I know like my tech team can tell me

24 13:29:20 what IP address is -- stuff is being uploaded from

25 13:29:23 all the time. So it's just something -- a practice

Schapiro Exhibit 50

Subject: Re: Casting.
From: Kadetsky, Deborah <EX:/O=VIACOM/OU=MTVUSA/CN=RECIPIENTS/CN=USER
ACCOUNTS/CN=USER/CN=KADETSKD>
To: Perta, Micah
Cc: Date: Fri, 30 Jun 2006 17:04:29 +0000

You can leave it on my chair - I'm in a mtg. Have a fun wknd!!!

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

From: Perta, Micah
To: Kadetsky, Deborah; Kelly, Kristen; Maxwell, Tony
Sent: Fri Jun 30 12:44:18 2006
Subject: Re: Casting.

I will have a CD to you with the qt compressed as sorensen 3 in 5 minutes!

On 6/30/06 12:43 PM, "Kadetsky, Deborah" <Deborah.Kadetsky@vh1staff.com> wrote:

> Just watched it micah, it's great!
>
> <http://www.micahperta.com/vh1/flav.mov>
>
> Just gotta work on getting the file converted to something uploadable to
> our friends at youtube.
>
>
> -----Original Message-----
> From: Perta, Micah
> Sent: Friday, June 30, 2006 12:41 PM
> To: Kelly, Kristen; Kadetsky, Deborah; Maxwell, Tony
> Subject: Casting.
>
> Hey Kristen,
>
> So here is the link to the casting tape cut down. Deliberately made to
> look like it was cut together by a 16 year old, so don't hold me too
> accountable for quality (although the heart transition truly deserves an
> emmy). Nigel and Tony love it, and if you all are OK with it, let Deb
> and us know so that we can start seeding it to utube etc...
>
> Thanks!
>
> Micah
>

SJA-1406

Schapiro Exhibit 79

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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

Plaintiffs,

-against-

Case No.
07-CV-3582

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

Defendants.

CONTINUED VIDEOTAPED DEPOSITION OF
VICTORIA G. TRAUBE
NEW YORK, NEW YORK
Friday, December 18, 2009

JOB NO: 18329
Reported by:
AYLETTE GONZALEZ

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December 18, 2009
Time: 10:12 a.m.

CONTINUED VIDEOTAPED DEPOSITION
OF VICTORIA G. TRAUBE, held at the
offices of Mayer Brown, LLP., 1675
Broadway, New York, New York 10019,
pursuant to notice, before Aylette
Gonzalez, Certified LiveNote Reporter
and Notary Public of the State of New
York.

A P P E A R A N C E S:

FOR THE PLAINTIFFS and WITNESS:

LIEFF, CABRASER, HEIMANN &
BERNSTEIN, LLP.

BY: DAVID STELLINGS, ESQ.

EMAIL: dstellings@lchb.com

BY: ANNIKA MARTIN, ESQ.

EMAIL: akmartin@lchb.com

250 Hudson Street, 8th floor
New York, New York 10013-1413

PHONE NUMBER: (212) 355-9500

FOR THE DEFENDANTS:

MAYER BROWN, LLP.

BY: GREGORY A. FRANTZ, ESQ.

EMAIL: grantz@mayerbrown.com

BY: FIDELIS I. AGBAPURUONWU, ESQ.

EMAIL: fagbapuruonwu@mayerbrown.com

1675 Broadway
New York, New York 10016

PHONE NUMBER: (212) 506-2296

A P P E A R A N C E S: (Continued)

ALSO PRESENT:

TOM KRAUSE, Videographer

KATHRYN E. WAGNER,

National Music

Publishers' Association

1 VICTORIA G. TRAUBE

2 managed to read it.

3 Q. Oh, great. So earlier,

4 Ms. Traube, you testified about a clip that

5 had been uploaded to YouTube for 10:17:24

6 "Do-Re-Mi", that was uploaded with

7 authorization; is this the clip that you

8 were referring to?

9 MR. STELLINGS: Object to the

10 form of the question. 10:17:35

11 A. It appears to be the clip I

12 referred to. It's not -- it was not

13 uploaded with authorization.

14 Q. When you say it was not

15 uploaded with authorization, is your 10:17:52

16 testimony that it was uploaded without

17 authorization?

18 A. It was.

19 Q. And if I could just direct your

20 attention again to the top right-hand box, 10:18:01

21 I'm not sure if it's a bit difficult to

22 read, but it appears that the username who

23 uploaded it is -- and I don't know how to

24 pronounce this, it says

25 S-A-I-H-T-T-A-M-1988; do you see where I'm 10:18:15

1 VICTORIA G. TRAUBE

2 looking?

3 A. I see where you're looking.

4 Q. Do you know who the user that I

5 just spelled out the name, do you know who 10:18:26

6 that user is?

7 A. No.

8 Q. Do you know who actually

9 uploaded the clip?

10 A. No. This clip, no, I do not 10:18:32

11 know who uploaded this specific clip you're

12 showing me in this specific instance.

13 Q. As far as a certain clip of the

14 same performance, it doesn't necessarily

15 need to be this very clip, realizing of 10:18:55

16 course that the same clip could be uploaded

17 more than once, are you aware of any party

18 that uploaded a clip of this performance?

19 A. It was my understanding that

20 the clip was uploaded by the television 10:19:10

21 station who created the clip as publicity

22 for the Maria Star Search program.

23 Q. Did there come a time when this

24 clip that you just referred to ultimately

25 became licensed? 10:19:42

1 VICTORIA G. TRAUBE

2 A. Yes.

3 Q. Who issued that license?

4 A. It was licensed by EMI Belgium

5 and the actual person is Guy Vanderhoven. 10:19:57

6 Q. What, if anything, is the
7 relationship between EMI Belgium and R&H?

8 A. They're our subpublisher.

9 Q. Was R&H aware that EMI licensed
10 the clip at the time the license was 10:20:21
11 issued?

12 A. Yes.

13 Q. Did the license issue before or
14 after or at the same time as the clip was
15 uploaded? 10:20:36

16 A. After.

17 Q. Do you have a sense of how long
18 after the clip was uploaded, the license
19 was issued?

20 A. You know, it took some period 10:20:45
21 of time, months perhaps.

22 Q. At the time the license was
23 issued by EMI Belgium, was R&H aware of it
24 immediately?

25 MR. STELLINGS: Object to the 10:21:11

1 VICTORIA G. TRAUBE

2 form of the question.

3 A. What's it in that sentence?

4 Q. It is the fact that the license

5 has been issued; was R&H aware that the 10:21:18

6 license had been issued at the time that

7 the license was issued?

8 A. Yes, but I need to take a break

9 to discuss a privilege question.

10 Q. Okay. 10:21:40

11 THE VIDEOGRAPHER: The time is

12 10:21 a.m. and we're going off the

13 record.

14 (Whereupon, an off-the-record

15 discussion was held.) 10:25:47

16 THE VIDEOGRAPHER: The time is

17 10:25 a.m. We're back on the record.

18 Q. I'm not sure if there was a

19 question pending, but you said you wanted

20 to consult with Counsel. Is there 10:25:59

21 something you wanted to add to the last

22 answer?

23 A. No, I believe I answered the

24 last question by saying yes.

25 Q. Now, if I could read back some 10:26:11

1 VICTORIA G. TRAUBE
2 of your earlier testimony from the first
3 part of the deposition. I'm referring to
4 page 50, starting at line 24, are you there
5 yet?

10:26:36

6 A. Yeah.

7 Q. So question: Has R&H ever had
8 difficulty in determining whether
9 particular use of license on the internet.
10 Mr. Stellings objects to the form of the
11 question. You can answer.

10:26:43

12 Answer: Not really a
13 difficulty. It is just -- let me give an
14 example. A clip from the television show
15 in Holland had turned up on the internet.
16 We had to determine -- first, we had to
17 determine if the television show was
18 licensed. That meant we had to go to the
19 foreign subpublisher and to the stage
20 producer, too and to our foreign subagent.
21 And ultimately, it just took a few steps to
22 discover that the use was in fact properly
23 licensed for television. So it's not
24 just -- it just sometimes takes a little
25 bit of work to determine whether a subagent

10:26:53

10:27:01

10:27:12

1 VICTORIA G. TRAUBE
2 has issued a license, that's what I meant
3 by difficulty.

4 Is this testimony in reference
5 to the same clip of a performance in the 10:27:20
6 train station in Belgium?

7 A. Yeah, yes.

8 Q. In the testimony, you seem to
9 suggest, do you not, that R&H was not
10 immediately aware of the license having 10:27:35
11 been issued; is that correct?

12 MR. STELLINGS: Object to the
13 form of the question; misstates the
14 witness' testimony. You can answer.

15 A. No, here's what happened. We 10:27:42
16 became aware that the clip was up on
17 YouTube. It was an unlicensed use. What
18 was licensed was the television program,
19 the name of which I cannot pronounce in
20 Dutch, but it was the Star Search program 10:28:09
21 for Maria, which had been licensed
22 previously through the London producers of
23 "The Sound of Music" and we had granted a
24 stage license for a production of "The
25 Sound of Music" and the television program 10:28:32

1 VICTORIA G. TRAUBE

2 was intended to choose the Maria for the

3 stage production.

4 We -- when we became aware of

5 the clip, what we had to find out was 10:28:44

6 whether it was related to the television

7 show. The television show was licensed.

8 The format was licensed by the really

9 useful group in London that created the

10 format for the Star Search program and the 10:29:13

11 right to use music from the show on the

12 Dutch television program is covered by what

13 is called a blanket license.

14 The blanket license belongs to

15 the Dutch television station. That was 10:29:28

16 what I had to figure out. It didn't -- it

17 took a little doing, not that much doing.

18 But what became clear is that the use of

19 that clip had not been licensed for

20 appearance on YouTube. 10:29:49

21 Q. Did there come a time that it

22 was licensed to be on YouTube?

23 A. Yes.

24 Q. That license was issued by EMI?

25 A. Yes. 10:30:01

1 VICTORIA G. TRAUBE

2 Q. And we've requested a copy of
3 the license, but we haven't received it.
4 Do you know if such a copy exist?

5 A. I do not have a copy of the 10:30:10
6 license. It is possible that all there was
7 was an invoice as opposed to a formal
8 license.

9 Q. Do you know the terms under
10 which it was licensed? 10:30:27

11 A. Yes.

12 Q. What were the terms?

13 A. Five hundred euros.

14 Q. Were there any restrictions on
15 the ability to use on YouTube? 10:30:36

16 A. The right granted was the right
17 to show what I will call the Antwerp video
18 on YouTube.

19 Q. Did EMI consult with R&H in
20 issuing this license? 10:30:54

21 A. Yes.

22 Q. Do you know what the date of
23 the license was, approximately?

24 MR. STELLINGS: If you know,
25 you can answer. I don't want you to 10:31:08

1 VICTORIA G. TRAUBE

2 document production, we'll produce
3 additional documents, but as of now,
4 without that agreement for the
5 bilateral document production
6 supplementation, we will not be
7 unilaterally supplementing our
8 document production.

10:40:51

9 MR. FRANTZ: I obviously

10 disagree with that. It clearly calls
11 for several document requests and
12 clear rather than in the scope and
13 rather than go on and on on the
14 record, we agree to talk about that
15 after the deposition.

10:41:01

10:41:11

16 MR. STELLINGS: Sure.

17 TO BE FURNISHED: _____

18 _____

19 Q. In this instance you just
20 referred to, why was it that you decided to
21 authorize this use on YouTube?

10:41:14

22 A. Because the theater really
23 wanted to be able to leave the clips up and
24 made a special plea.

25 Q. Did they express that they

10:41:43

1 VICTORIA G. TRAUBE
2 really wanted to leave these clips up to
3 you?
4 A. Not directly to me, through one
5 of my colleagues. 10:41:52
6 Q. Which colleague was that?
7 A. I think it may have been Bruce
8 Pammerhacker, our music director that was
9 down there for music rehearsals.
10 Q. Was anyone else involved in the 10:42:11
11 discussions regarding this requested
12 license for YouTube?
13 A. No.
14 Q. Did -- I can't say the last
15 name, so I'll say Bruce. Did Bruce express 10:42:26
16 a view to you as to whether this license,
17 this view should be authorized?
18 A. Not -- no, he didn't really
19 express a view. He simply conveyed to me a
20 message that the theater wanted the ability 10:42:40
21 to leave these clips up.
22 Q. Other than the instance we've
23 just been discussing, can you recall any
24 other instances in which R&H has authorized
25 it's contents to appear on YouTube? 10:42:58

1 VICTORIA G. TRAUBE

2 A. Yes.

3 Q. Can you describe that?

4 A. Fairly recently, a theater in

5 Philadelphia posted clips from it's 10:43:09

6 production of "Light in the Piazza" on

7 YouTube, again, not permitted by the

8 license.

9 The licensing agent at R&H

10 instructed the theater on the telephone 10:43:31

11 that they didn't have the right to do this

12 and that the clips needed to come down, but

13 the theater, as I understand it, and this

14 is just reported to me by Michelle who is

15 the licensing agent, the theater wanted to 10:43:50

16 leave the clips up and they -- and once

17 again, when a customer wants something, I

18 determine that it was all right to allow --

19 to actually license the usage.

20 Q. Did R&H issue a written license 10:44:10

21 in this instance?

22 A. Yes.

23 MR. FRANTZ: We request a copy

24 of that license. I know what you're

25 going to say. 10:44:21

1 VICTORIA G. TRAUBE

2 MR. STELLINGS: I'm not going
3 to say anything.

4 TO BE FURNISHED: _____

5 _____ 10:44:25

6 Q. Other than the two instances
7 we've just discussed, were there any other
8 instances in which R&H has authorized its
9 contents to appear on YouTube?

10 A. Well, we previously discussed 10:44:34
11 in my last deposition the Young Vic,
12 "Annie, Get Your Gun" use.

13 Q. Right. Just to be clear, I'm
14 excluding the five that we've discussed.

15 A. Okay. There is a current tour, 10:44:47
16 a first class tour of "South Pacific". It
17 was brought to my attention that the
18 promoter, that is to say the theater owner
19 in San Francisco where the show opened, had
20 links from its own page to YouTube where 10:45:19
21 they were showing clips from the show.

22 When I looked at the license
23 that we had issued, I discovered that the
24 license did not include what I considered
25 to be a customary clause for these kinds of 10:45:46

1 VICTORIA G. TRAUBE
2 first class licenses authorizing
3 promotional use of elements from the show
4 and radio television and the internet.
5 Accordingly, I am in the process of 10:45:57
6 amending the "South Pacific" license
7 agreement to permit use of clips from the
8 show for promotional purposes on radio,
9 television and the internet.
10 Q. And the internet would include 10:46:20
11 YouTube, correct?
12 A. It would.
13 Q. Do you have any concerns about
14 this or any of the other clips we've just
15 been discussing being on YouTube? 10:46:31
16 MR. STELLINGS: Object to the
17 form of the question. You can
18 answer.
19 A. Do I have any concerns, no.
20 MR. FRANTZ: Let's do the next 10:46:49
21 exhibit, please. This is an exhibit
22 that was previously marked as Exhibit
23 8, so we don't need to mark it, I
24 don't think.
25 Q. You have in front of you, 10:47:24

1 VICTORIA G. TRAUBE

2 Ms. Traube, a document previously marked as

3 Exhibit 8; do you recall this document?

4 A. I do.

5 Q. SP in this e-mail chain refers 10:47:32

6 to "South Pacific"; is that correct?

7 A. That's correct.

8 Q. You see in this e-mail chain,

9 Mr. Gaden is suggesting that "South

10 Pacific", that he might want to promote 10:47:51

11 "South Pacific" on YouTube; is that

12 correct?

13 A. That is correct.

14 Q. Did R&H, in fact, promote

15 "South Pacific" on YouTube in this 10:48:02

16 instance?

17 A. No.

18 Q. Did R&H promote it on any other

19 websites in connection with this e-mail?

20 A. Not in connection with this 10:48:08

21 e-mail.

22 Q. To clarify, I'm saying in

23 connection with this e-mail just to

24 distinguish from the previous testimony,

25 where you said that you're currently in the 10:48:19

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VICTORIA G. TRAUBE

A F T E R N O O N S E S S I O N

(Time noted: 12:50 p.m.)

V I C T O R I A G . T R A U B E ,

resumed and testified as follows:

EXAMINATION BY (Cont'd.)

MR. FRANTZ:

THE VIDEOGRAPHER: The time is

12:51:15

12:50 p.m. and this is tape number

three of the videotaped deposition of

Victoria Traube.

Q. Welcome back, Ms. Traube.

A. Thank you.

12:51:56

Q. I wanted to actually read back

some testimony not from today, but from

October 8th. I'm referring to page 139,

line ten, starting there. If you're ready,

just look up?

12:52:19

A. How far am I supposed to read?

Q. I'm just going to do to the top

of the next page.

A. Okay, I'll just listen to you

read.

12:52:32

1 VICTORIA G. TRAUBE

2 Q. So, the testimony was,

3 Question: Besides that, are there other

4 third-party websites that sometimes R&H

5 permits works to be posed on. Answer: I'm

12:52:39

6 not sure. Let me give you a specific.

7 When synchronization rights are granted for

8 the use of a musical composition in a

9 commercial, the advertising agency or the

10 sponsor acquiring that's acquiring the

12:52:51

11 rights may want the right to post the

12 commercial on the internet as well as

13 showing it on the television and typically,

14 we have to agree. Well, we don't have to

15 agree, but we choose to agree to it and I

12:53:02

16 just plain don't know whether there are

17 ever third-party websites involved.

18 I was reading back that

19 testimony, because I was hoping it might

20 refresh your recollection as to sync

12:53:15

21 licenses for use in commercials and having

22 heard that earlier testimony, can you

23 recall any sync licenses for commercials

24 which R&H works were authorized to appear

25 on YouTube?

12:53:28

1 VICTORIA G. TRAUBE

2 A. There was a U.K. promotional
3 piece for Turner Classic Television and
4 that promotional piece, it was an
5 advertisement/promotional piece, but the
6 purpose was to promote the Turner service
7 and that it was my understanding that that
8 promotional piece was to appear on websites
9 including YouTube.

12:54:09

10 Q. And when was that; when did
11 that event occur?

12:54:26

12 A. I'm pretty sure that it was
13 recently, over the summer of 2009.

14 Q. In that Turner promotional
15 piece that appeared on YouTube, were there
16 any R&H musical compositions included in
17 the piece?

12:54:53

18 A. Yes.

19 Q. Do you know which ones?

20 A. I think -- I just can't
21 remember exactly. It was one song from
22 "The Sound of Music".

12:55:05

23 Q. Do you know whether it was
24 "Do-Re-Mi"?

25 A. I want to say it was "My

12:55:19

1 VICTORIA G. TRAUBE
2 Favorite Thing", but I could be wrong.
3 Q. Did you -- do you recall
4 issuing the license in this instance that
5 we're talking about right now? 12:55:41
6 A. I do not know whether the
7 license was ever, in fact, issued.
8 Q. Do you consider this particular
9 use to be authorized?
10 A. I don't know whether the use 12:55:57
11 actually took place. What I was telling
12 you about -- you know what, well, okay.
13 It's not -- I was consulted in my capacity
14 as Counsel about the possibility of this
15 particular promotional use, that is where 12:56:20
16 my knowledge of it comes from.
17 Q. Did R&H ultimately authorize
18 the promotional use?
19 A. I don't know.
20 Q. You don't know whether R&H 12:56:39
21 authorized it?
22 A. I don't know.
23 Q. Did you authorize it
24 personally?
25 A. Are we getting into privilege? 12:56:46

1 VICTORIA G. TRAUBE

2 MR. STELLINGS: You can testify
3 whether you authorized it or not.

4 A. I did not object to it.

5 Q. Who were you discussing this 12:57:02
6 with?

7 A. It would have been Nancy DeToro
8 who was doing sync licensing.

9 Q. Was the licensee or the party
10 that would have been the licensee, was that 12:57:21
11 party Turner Classic?

12 A. I don't know whether it was
13 Turner Classic or an advertising agency.

14 Q. Why is it that you did not
15 object to this particular use or 12:57:32
16 contemplated use?

17 MR. STELLINGS: You should
18 answer only to the extent that your
19 answer would not implicate work
20 product. 12:57:41

21 A. I can't answer without
22 implicating work product.

23 Q. The answer is simply because
24 the licensee was interested in it and R&H
25 seeks to please its licensee? 12:57:54

1 VICTORIA G. TRAUBE
2 exhibit, please.
3 (Defendants' Exhibit 29,
4 agreement, marked for identification,
5 as of this date.) 13:20:10
6 (Whereupon, at this time, a
7 short break was taken.)
8 THE VIDEOGRAPHER: The time is
9 1:19 p.m. and we're back on the
10 record. 13:20:15
11 Q. I believe you have Exhibit 28
12 in front of you?
13 A. 29.
14 Q. This is a subpublisher
15 agreement between Williamson Music and Cafe 13:20:27
16 Concerto, correct?
17 A. Um-hum.
18 Q. Williamson Music is affiliated
19 with R&H; correct?
20 A. They're the subpublisher for 13:20:36
21 Italy.
22 Q. Williamson Music is the
23 subpublisher?
24 A. No, Cafe Concerto is.
25 Q. My question is Williamson 13:20:44

1 VICTORIA G. TRAUBE
2 Music, what is the relationship between
3 Williamson Music and R&H?

4 A. Williamson Music is a division
5 of the Rodgers and Hammerstein 13:20:53
6 Organization, it's a nominee.

7 Q. If you look at the agreement,
8 looking at the Grant of Right, clause 1B,
9 does that include internet use?

10 A. Well, you can read it as well 13:21:26
11 as I can. It includes reproductions by
12 downloads through electronic media such as
13 internet, but only to the extent authorized
14 by SIAE, which is the Italian licensing
15 society. 13:21:47

16 Q. Do you know what it means only
17 to the extent authorized by SIAE?

18 A. I do not.

19 Q. Also looking at paragraph 1C,
20 again, does that indicate internet 13:22:01
21 authorization to you?

22 A. Only to the extent authorized
23 by the society and I do not know what that
24 extent is.

25 Q. Earlier you testified that 13:22:15

1 VICTORIA G. TRAUBE
2 subpublishers do not have the right to
3 authorize internet use, does anything in
4 this agreement make you question your
5 earlier testimony?

13:22:35

6 A. Obviously, but I don't. Number
7 one, I don't think I've actually ever read
8 the Cafe Concerto agreement before and
9 number two, I don't know what to the extent
10 authorized by SIAE means and I don't want
11 to speculate. I could find out.

13:23:01

12 Q. Earlier you testified that you
13 were not certain whether your Counsel had
14 checked with all of the subpublishers for
15 the works in suit before asserting these
16 clips in this action; is that correct?

13:23:17

17 MR. STELLINGS: Object to the
18 form of the question. You can
19 answer.

20 A. I was not -- I testified that I
21 was not certain that my Counsel had checked
22 with our subpublishers; I do not believe
23 our Counsel checked with our subpublishers.

13:23:25

24 Q. Did R&H itself or anyone else
25 acting on behalf of R&H consult with all of

13:23:42

1 VICTORIA G. TRAUBE

2 A. I don't know.

3 Q. What about the clip we

4 discussed earlier at length, the train

5 station in Belgium, would that be an

13:37:56

6 example of a clip that included R&H

7 contents, but R&H could not immediately

8 determine whether it was authorized or not?

9 MR. STELLINGS: Object to the

10 form. You can answer.

13:38:08

11 A. It did take me a couple of

12 e-mails and a couple of phone calls to

13 determine that that clip was not

14 authorized.

15 Q. Who did you send those e-mails

13:38:30

16 to?

17 A. Probably --

18 MR. STELLINGS: Don't

19 speculate, please.

20 A. Okay. I honestly don't

13:39:01

21 remember with any specificity.

22 Q. Have there been any instances

23 where a DMCA Takedown Notice sent on behalf

24 of R&H has been challenged or otherwise the

25 subject of dispute?

13:39:30

1 VICTORIA G. TRAUBE

2 A. No.

3 MR. FRANTZ: Why don't we take
4 a short break. I think I'm almost
5 done.

13:39:43

6 THE VIDEOGRAPHER: The time is
7 1:39 p.m. We're going off the
8 record.

9 (Whereupon, at this time, a
10 short break was taken.)

14:04:39

11 THE VIDEOGRAPHER: The time is
12 2:04 p.m. and this is tape number
13 four of the videotaped deposition of
14 Victoria Traube.

15 Q. I just wanted to do some
16 cleanup as to the authorized uses on
17 YouTube that I think I may have gotten it
18 wrong. Let me try to clarify it for the
19 record.

14:04:57

20 On October 8th, we talked about
21 three authorized uses on YouTube, "White
22 Christmas", the musical, Young Vic's
23 production of "Annie, Get Your Gun" and
24 "Do-Re-Mi" and the Belgium train station;
25 is that correct?

14:05:08

14:05:22

1 VICTORIA G. TRAUBE

2 A. Yes.

3 Q. Today, I believe, we talked
4 about an additional three, if not four.

5 Let me try to run through them, make sure I 14:05:28
6 have them right.

7 First new one was the June 2009
8 Lyric Stage Production in Texas; is that
9 correct?

10 A. Correct. 14:05:36

11 Q. Second new one was the
12 production of "Light in the Piazza" in
13 Philadelphia; is that correct?

14 A. Yes.

15 Q. Third new one was "The Tour of 14:05:44
16 South Pacific" in San Francisco that you
17 said was currently -- the paperwork is
18 currently being revised; is that correct?

19 A. Correct.

20 Q. A fourth one that you 14:05:53
21 referenced, which was Turner Classic, but I
22 think the testimony was that you weren't
23 certain if a license was ultimately issued;
24 is that correct?

25 A. Yes. 14:06:02

1 VICTORIA G. TRAUBE

2 Q. Starting with the 2009 Lyric

3 Stage Production in Texas, do you know what

4 compositions were included in the

5 particular use on YouTube?

14:06:12

6 A. No, they were from the King and

7 I.

8 Q. Do you know if any of the

9 compositions are works in suit?

10 A. I don't know.

14:06:31

11 Q. Do you know if any of them were

12 "Getting to Know You"?

13 A. I don't know.

14 Q. When did R&H first become aware

15 of this particular use on YouTube?

14:06:57

16 A. The Lyric Stages?

17 Q. Correct.

18 A. It was June of 2009.

19 Q. Approximately, when did R&H

20 issue the license?

14:07:09

21 A. In July of 2009.

22 Q. Does R&H ever inform YouTube of

23 this license?

24 A. No.

25 MR. FRANTZ: To the extent we

14:07:27

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VICTORIA G. TRAUBE

haven't already, we request
production of all documents relating
to this particular subject.

TO BE FURNISHED: _____

14:07:32

Q. The second, I'll call new use
for today, was the production of "Light in
the Piazza" in Philadelphia and I believe I
asked you if you could recall the
composition and I believe your testimony
was that you could not?

14:07:42

A. I can't, but I can tell you
they're not the works in suit.

Q. Do you recall when R&H first
became aware of this use on YouTube?

14:07:52

A. Recently, November possibly.

Q. November of 2009?

A. Yes.

Q. Has a license been issued
already?

14:08:11

A. It has.

Q. That license was issued by R&H
itself; is that right?

A. R&H Theatricals, the

14:08:27

1 VICTORIA G. TRAUBE

2 theatricals division.

3 MR. FRANTZ: We also call for
4 production for all documents relating
5 to this appearance of an R&H
6 composition on YouTube.

14:08:36

7 TO BE FURNISHED: _____

8 _____

9 Q. The third new use from today
10 was "The Tour of South Pacific" in San
11 Francisco, can you tell me when you became
12 aware of that existence of those clips on
13 YouTube?

14:08:45

14 A. Sometime in the summer.

15 Q. You're in the process of
16 issuing a license, but it hasn't happened
17 yet; is that correct?

14:09:04

18 A. It's been drafted and sent, but
19 not signed.

20 Q. Do you know which compositions
21 appear in the clips on YouTube?

14:09:13

22 A. I do not know.

23 Q. The compositions would be
24 compositions from the --

25 A. From the musical "South

14:09:24

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VICTORIA G. TRAUBE

Pacific".

Q. Do you know if any of those compositions are works in suit?

A. I don't know. 14:09:30

MR. FRANTZ: We'll call for production of all documents relating to this use on YouTube.

TO BE FURNISHED: _____

_____ 14:09:41

Q. The last new use that we learned about today is the Turner Classic use and again the same question, do you recall which composition or compositions from R&H are involved?

14:09:55

A. I'm pretty sure it was "My Favorite Things".

Q. Do you know whether there are other compositions involved?

A. I believe there was only one. 14:10:12

Q. When did R&H become aware of the use?

A. Sometime this summer -- well, no, I'm sorry, I take that back. This was not a pre-existing use. This was a request 14:10:30

1 VICTORIA G. TRAUBE
2 for a license for use that had not yet
3 occurred.

4 Q. Do you know whether the clips
5 are currently on YouTube? 14:10:44

6 A. I do not -- I don't know. I
7 also don't know whether the license was in
8 fact issued.

9 MR. FRANTZ: We'll also request
10 production of all documents relating 14:10:54
11 to this particular use on YouTube or
12 contemplated use on YouTube.

13 TO BE FURNISHED: _____
14 _____

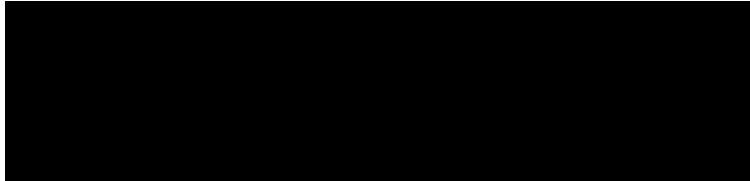
15 Q. With respect to all seven of 14:11:00
16 the instances of uses on YouTube or at
17 least contemplated uses on YouTube, in any
18 of those cases, did R&H inform YouTube of
19 the licenses?

20 A. No. 14:11:19

21 MR. STELLINGS: Objection,
22 asked and answered.

23 Q. I think we're going to talk
24 about the purchase agreement briefly. The
25 purchase agreement, I believe, was 14:11:33

1 VICTORIA G. TRAUBE
2 previously marked as Exhibit 19. You have
3 it in front of you.



14:12:21

7 A. Yes, I do.

8 Q. Was that, in fact, the purchase
9 price for this transaction?

10 A. By contract, yes.

14:12:30

11 Q. Did this purchase price account
12 at all for the valuation of the R&H
13 copyrights?

14 MR. STELLINGS: Objection,
15 vague. You can answer.

14:12:47

16 A. Sure.

17 Q. How was, if at all, valuation
18 performed on the R&H copyrights?

19 MR. STELLINGS: Objection. You
20 can answer.

14:13:09

21 A. The custom in the industry is
22 to use a multiple of average earnings.

23 Q. Is that the process by which
24 the works were valued in this case?

25 A. That's my understanding.

14:13:30

Schapiro Exhibit 81



808 19th Avenue South • Nashville, TN 37203
Tel: 615 321-2700 • Fax: 615 321-3222

RECEIVED FEB 17 2006

Date: August 18, 2005
License No.: 10442

SYNCHRONIZATION LICENSE AGREEMENT: Motion Picture

LICENSOR:

Cal IV Entertainment, LLC
d/b/a Cal IV Songs and Hope-N-Cal Music
808 19th Avenue South
Nashville, TN 37203 USA
FIN: 62-1807079

LICENSEE:

Universal Pictures
a div. of Universal City Studios, LLP
100 Universal City Plaza
Bldg 1320W/3
Universal City, CA 91608

FOR AND IN CONSIDERATION OF THE SUM OF [REDACTED] for synchronization rights hereinafter set forth and performing rights and other rights set forth in Paragraphs 5 and 6 below, said sums payable upon the execution and delivery hereof and in consideration of all the other promises and agreements contained herein, Licensor, for and on behalf of the publisher(s) referred to herein, does hereby give and grant unto Licensee and its successors and assigns the non-exclusive, irrevocable right, license, privilege and authority to record in any manner, medium or form, whether now known or hereafter devised, the music and words of the musical composition set forth below only in connection with the motion picture entitled below in any language, to make copies of the recording in any and all gauges of film and to import the recording and/or copies of the recording into any country within the territory covered by this license, subject to the terms, conditions and limitations set forth below:

1. **MUSICAL COMPOSITION:**

"Sharing The Night Together" written by Eddie Struzick and Ava Aldridge.
Percentage controlled by Cal IV Entertainment, LLC d/b/a Cal IV Songs (ASCAP) and Hope-N-Cal Music (BMI): 100.00%

2. **MOTION PICTURE:**

Production: *The 40 Year-Old Virgin*
Type/Length of Use: Background/Vocal; 2:09 in duration
Theatrical Release Date: August 19, 2005

3. **TERRITORY:** This license is granted for the territory of: The Entire World.

4. **RIGHTS:** Licensor hereby grants to Licensee broad rights in perpetuity for any and all linear media, whether now known or hereafter devised, including, without limitation, for theatrical, non-theatrical, Internet (whether downloading, streaming or otherwise) and television film release; free, pay, cable and subscription television, CATV, closed circuit television; uses in air, screen, in-context audio/visual, in-context television and radio advertising and in-context trailers; and the right to fix and distribute the composition in and as part of the Production in all forms of linear audio/visual devices, whether now known or hereafter devised, (including, but not limited to video cassettes and discs) throughout the universe.

5. **PERFORMANCE LICENSE - UNITED STATES:** Licensor grants to Licensee the non-exclusive right and license in the United States and its possessions to perform publicly, either for profit or non-profit, and to authorize others so to perform the Musical Composition only in synchronization or timed relationship to the Motion Picture and trailers thereof as follows:

- (a) **Theatrical Performance:** in the exhibition of the Motion Picture to audiences in theatres and other public places where motion pictures are customarily exhibited, and where admission fees are charged, including but not limited to, the right to perform the Musical Composition by transmission of the Motion Picture to audiences in theatres and such other public places for the duration of United States copyright of the Musical Composition.
- (b) **Public Television Performance:** In the exhibition of the Motion Picture by free television, pay television, networks, local stations, pay cable, closed circuit, satellite transmission, and all other types or methods of television or electronic reproduction and transmissions ("Television Performance") to audiences not included in Subparagraph 5(a) only by entities having performance licenses therefore from the appropriate performing rights societies. Television Performance of the Motion Picture by anyone not licensed for such performing rights by ASCAP or BMI is subject to clearance of the performing right either from Licensor or ASCAP or BMI or from any other agent acting for or on behalf of Licensor and to payment of an additional license fee therefore.

6. **FOREIGN PERFORMING LICENSE:** It is understood that the performance of the Musical Composition in connection with the exhibition of the Motion Picture in countries or territories within the Territory but outside of the United States and its possessions shall be subject to clearance by performing rights societies in accordance with their customary practice and the payment of their customary fees. Licensor agrees that to the extent it controls said performing rights, it will license an appropriate performing rights society in the respective countries to grant such performing right.

7. **LIMITED VIDEOGRAM LICENSE:** Licensor hereby further grants to Licensee, in each country or the Territory, the non-exclusive right to cause or authorize the fixing of the Musical Composition in and as part of the Motion Picture on audio-visual contrivances such as video cassettes, video tapes, video discs and similar compact audiovisual devices reproducing the entire Motion Picture in substantially its original form ("Videogram") only for the purposes, uses, and performances hereinabove set forth.

8. **RESTRICTIONS:** This license does not include any right or authority (a) to make any change in the original lyrics or in the fundamental character of the music of the Music Composition; (b) to use the title, the subtitle or any portion of the lyrics of the Musical Composition as the title or subtitle of the Motion Picture; (c) to dramatize or to use the plot or any dramatic content of the lyrics of the Musical Composition; or (d) to make any other use of the Musical Composition not expressly authorized herein.



808 19th Avenue South • Nashville, TN 37203
Tel: 615 321-2700 • Fax: 615 321-3222

9. **WARRANTY:** Licensor warrants only that it has the right to grant this license and this license is given and accepted without any other representations, warranty or recourse, express or implied, except for Licensor's agreement to repay the consideration for this license if said warranty shall be breached with respect thereto. Notwithstanding anything to the contrary herein contained, in no event shall the total liability of Licensor in any case exceed the amount of consideration received by it hereunder.
10. **LICENSOR'S RESERVATION OF RIGHTS:** Subject only to the non-exclusive rights herein-above granted to Licensee all rights of every kind and nature in the Musical Composition are reserved to said Licensor together with all rights of use thereof.
11. **ADVERTISING:** The recording and performing rights hereinabove granted include such rights for in-context air, screen and television trailers solely for the advertising and exploitation of the Motion Picture.
12. **CUE SHEET:** Licensee agrees to furnish Licensor a cue sheet of the Motion Picture within thirty (30) days after the first public exhibition of the Motion Picture at which admission is charged (except so-called "sneak" previews).
13. **REMEDIES:** In the event that Licensee, or its assigns, licensees or sub-licensees, breaches this Agreement by, among other things, failing to pay timely any license fees required hereunder, and fails to cure such breach within thirty (30) days after notice of such breach given by Licensor to Licensee, then this license will automatically terminate. Such termination shall render the distribution, licensing, or use of the Music Composition as unauthorized uses, subject to the rights and remedies provided by the laws, including copyright, and equity of the various countries within the Territory.
14. **NOTICES:** All notices, demands or requests provided for or desired to be given pursuant to this Agreement must be in writing. All such documents shall be deemed to have been given when served by personal delivery or three days following their deposit in the United States mail, postage prepaid, certified or registered addressed as follows:

(a) To Licensor:
Cal IV Entertainment, LLC
Attn: Director, Administration
808 19th Avenue South
Nashville, TN 37203

and

(b) To Licensee:
Universal Pictures, a div. of Universal City Studios, LLLP
100 Universal City Plaza
Bldg 1320W/3
Universal City, CA 91608

or to such other address in the United States as either party may hereafter designate in writing delivered in the manner aforesaid.

15. **ENTIRE AGREEMENT:** This is the entire agreement between Licensor and Licensee pertaining to the subject matter hereof, and no amendment, waiver, discharge or termination shall be binding, unless reduced to writing and signed by the party sought to be bound, except as otherwise specifically contained herein. This license is binding upon and shall inure to the benefit of the respective successors and/or assigns of the parties hereto but in no event shall Licensee be relieved of its obligations hereunder without the express written consent of Licensor. This Agreement shall be construed in all respects in accordance with the laws of the State of Tennessee applicable to agreements entered into and to be wholly performed therein. In the event of a dispute between Licensor and Licensee arising out of, connected with or related to this Agreement, the state and federal courts located in Nashville, Davidson County, Tennessee shall have the exclusive jurisdiction to adjudicate such dispute, both Licensor and Licensee irrevocably submit to the jurisdiction of said courts, and the prevailing party shall be entitled to recover from the other its reasonable attorneys' fees and other costs incurred in connection with such dispute in addition to any other relief to which the prevailing party may be entitled. The recording and performing and other rights hereinabove granted shall endure for the periods of all copyrights in and to the Musical Composition, and any and all renewals or extensions thereof that Licensor may now own or control or hereafter own or control without Licensee having to pay any additional consideration therefore.

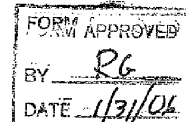
IN WITNESS WHEREOF, the parties have caused the foregoing to be executed as of the 18th day of August 2005:

LICENSOR:
CAL IV ENTERTAINMENT, LLC
d/b/a Cal IV Songs and Hope-N-Gai Music

By: 
An Authorized Signatory

LICENSEE:
UNIVERSAL PICTURES
a div. of Universal City Studios, LLLP

By: 
An Authorized Signatory



SJA-1445

Schapiro Exhibit 82

From: Brian Bradford
Sent: Friday, June 08, 2007 6:12 PM
To: Gary Taylor
Cc: Daniel Hill; carey ott
Subject: FW: carey/ you tube
Hi Gary:

I haven't received a response from you yet. I can get you the appropriate promotional use licenses once I have all of the information I need.

BB

From: Brian Bradford
Sent: Monday, June 04, 2007 10:03 AM
To: 'Gary Taylor'
Cc: Daniel Hill; carey ott
Subject: RE: carey/ you tube

Gary:

We understand the promotional value that these uses can afford Carey and his career, and we are willing to grant certain promotional licenses for the YouTube platform. However, our license agreements must be specific to each use. In this case, the URL of each video posting needs to be listed in the license agreement.

What I need you to do is re-post the videos and send me the URL's that go with each song. I also need you to specify the videos that you and/or Carey put together and control.

IMPORTANT: **We can only issue licenses to you for videos that you and/or Carey put together and control.** We cannot issue a license to you for the Grey's Anatomy clips or any third party "collage" or "montage" uses. You should also be aware that those uses not only infringe on our copyrights, they also infringe on the copyrights to the video clips that the production company for Grey's Anatomy owns. As you can see, this becomes a multi-layered issue.

Please note that the business model that YouTube operates under enables users to post unauthorized copyrighted content, which in turn drives tremendous ad revenue for YouTube. The vast majority of copyright holders don't see a dime of this ad revenue. It is very important to Cal IV that we protect our copyrights...and that especially includes protecting the copyrights created by Carey Ott.



Regards,

BRIAN K. BRADFORD | Director, Administration
Cal IV Entertainment, LLC | 808 19th Avenue South, Nashville, TN 37203

Tel: 615.321.2700 | Fax: 615.321.3222 | eMail: brian.bradford@cal4.com
Visit us on the web: www.cal4.com

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From: Gary Taylor [mailto:gary_taylor@shaw.ca]
Sent: Sunday, June 03, 2007 11:31 AM
To: Brian Bradford
Cc: carey ott
Subject: Re: carey/ you tube

Hi Brian!

Could you please issue the license for "DAYLIGHT" as quick as immediately. Also is it not possible to issue a blanket license for promotional uses only. "AM I JUST ONE" is part of a Grey's Anatomy collage. We didn't put it together but we love it for marketing and now that is gone also. So issue a license on that song also. "LUCID DREAM", "I WOULDN'T DO THAT TO YOU." and "MOTHER MADAM."

Because of this action without our knowledge it has inhibited our ability to book gigs etc. besides which it is down right embarrassing when people go to access our links etc. and it's just a message that Cal 4 is not allowing the usage. So Brian if you could react to this as requested we totally appreciate. I may have a couple of other titles in another email coming forthwith. Thank You! gt

P.S. what about other video sites like google etc. Hopefully no more surprises. gt

On 17-May-07, at 10:35 AM, Brian Bradford wrote:

Gary:

In order to address each specific video use, I need a list of each song that is used and the URL they were linked to on YouTube. It is possible that they may require you to resubmit the videos. I would assume that they have deleted them from their server.

In order to cover all of our bases, I will need to issue a gratis promotional use license for the videos; therefore I need specific song and use information to put the licenses together. Also, if there are multiple uses of a particular song (i.e. Am I Just One used as a music video and then used as a live concert video) I would need to issue separate gratis licenses for each.

The only question I have is who should I issue the licenses to? Dualtone? Carey?

<image001.jpg>

Regards,

BRIAN K. BRADFORD | Director, Administration

Cal IV Entertainment, LLC | 808 19th Avenue South, Nashville, TN 37203

Tel: 615.321.2700 | Fax: 615.321.3222 | eMail: brian.bradford@cal4.com

Visit us on the web: www.cal4.com

This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you have received this email in error please notify the system manager. This message contains confidential information and is intended only for the individual named. If you are not the named addressee you should not disseminate, distribute or copy this e-mail. Please notify the sender immediately by e-mail if you have received this e-mail by mistake and delete this e-mail from your system. If you are not the intended recipient you are notified that disclosing, copying, distributing or taking any action in reliance on the contents of this information is strictly prohibited.

From: Gary Taylor [mailto:gary_taylor@shaw.ca]

Sent: Thursday, May 17, 2007 12:26 PM

To: Daniel Hill

Cc: Scott Robinson (Scott Robinson); Paul Roper 23; Brian Bradford; Billy Lynn; Dan Herrington; carey ott

Subject: Re: carey/ you tube

Big Thanks Daniel and I understand how things can get convoluted. It sure would be great to get them to pay royalties. I agree 100% with your drive to make them pay. It's a runaway train but it does serve the purpose as a promotional vehicle for up and comers. Could you let me know when it would be back up. Cheers! GT

On 17-May-07, at 9:38 AM, Daniel Hill wrote:

Hey Gary,

SJA-1449

Sorry for the problem. This is one of the truly promotional uses that got caught up in our fight against YouTube's flagrant policy to infringe on our protected property. We'll get it back up asap.

Thanks,
Daniel

From: Dan Herrington [<mailto:danh@dualtone.com>]
Sent: Thursday, May 17, 2007 11:29 AM
To: 'Gary Taylor'
Cc: 'Scott Robinson (Scott Robinson)'; paulroper@dualtone.com; Daniel Hill
Subject: FW: carey/ you tube

Gary, please get with brian at cal 4 regarding gratis licenses for the youtube videos. We're all good.

From: Daniel Hill [<mailto:Daniel.Hill@cal4.com>]
Sent: Thursday, May 17, 2007 11:25 AM
To: Dan Herrington
Cc: Scott Robinson (Scott Robinson); paulroper@dualtone.com; Brian Bradford; Billy Lynn
Subject: RE: carey/ you tube

Yes, this is part of the YouTube situation. We will need to issue a gratis use for the specific promotional instances for Carey, and get those permitted videos back up. Please send the links and any other info to Carey's videos that need to be on YouTube and we will notify them.

No virus found in this incoming message.
Checked by AVG Free Edition.
Version: 7.5.467 / Virus Database: 269.7.1/807 - Release Date: 5/16/2007 6:05 PM

No virus found in this outgoing message.
Checked by AVG Free Edition.
Version: 7.5.467 / Virus Database: 269.7.1/807 - Release Date: 5/16/2007 6:05 PM

SJA-1450

SJA-1451

Schapiro Exhibit 83

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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

Plaintiff,

v.

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

Defendants.

Case No. 07 Civ. 3582 (LLS)

**STAGE THREE MUSIC (US), INC.'S
RESPONSES AND OBJECTIONS TO
DEFENDANTS' FIRST SET OF REQUESTS
FOR ADMISSION TO STAGE THREE
MUSIC (US), INC.**

Pursuant to Rule 36(a) of the Federal Rules of Civil Procedure, Named Plaintiff Stage Three Music (US), Inc.'s ("Stage Three") hereby responds and objects to the Requests for Admission (the "Requests") propounded by Defendants YouTube, Inc., YouTube LLC and Google, Inc. ("YouTube" or "Defendants").

GENERAL OBJECTIONS

The following general objections and statements (“General Objections”) apply to each of the particular Requests propounded by Defendants and are hereby incorporated within each response set forth below. All of the responses set forth below are subject to and do not waive the General Objections:

1. Stage Three objects to the Requests on the ground that Stage Three is still in the process of gathering and analyzing information relevant to these Requests. Stage Three has not completed its review and analysis of all discovery obtained by the parties in this and the related *Viacom* action. Additionally, defendants and non-parties have produced more than 1.5 million pages of documents since October 13, 2009. Stage Three has not yet examined each document produced by defendants or otherwise in this action for the purpose of determining which individual allegations of the Second Amended Class Action Complaint (“Complaint”) it might support, nor has Stage Three completed depositions that may more fully reveal facts and information relevant to these Requests. As discovery is not yet closed, including deposition and expert discovery, and the production of remaining data and/or documents, Stage Three’s responses to these Requests are preliminary and tentative subject to completion of discovery and following an adequate opportunity to review and analyze all discovery in this action.

2. In responding to these Requests, Stage Three does not concede the relevance, materiality or admissibility of any of the admissions or responses sought herein. Stage Three’s responses are made subject to and without waiving any objections as to relevancy, materiality, admissibility, vagueness, ambiguity, competency or privilege.

3. Stage Three does not waive any of its rights to object on any ground to the use of its responses herein.

4. Stage Three objects to the Requests to the extent that they set forth compound, conjunctive or disjunctive statements.

5. Stage Three objects to each request, instruction or definition to the extent that they seek to impose obligations beyond those imposed or authorized by the Federal Rules of Civil Procedure, the Civil Local Rules of the United States District Court for the Southern District of New York ("Civil Local Rules"), or the applicable standing orders and orders of this Court.

6. Stage Three objects to each request, instruction or definition to the extent that it would require the disclosure of information that is outside the scope of information relevant to this case or that is otherwise improper.

7. Stage Three objects to each request, instruction or definition to the extent that it would require the disclosure of information protected by the attorney-client privilege, the work product doctrine, or any other applicable privilege or immunity.

8. Stage Three objects to each request, instruction or definition to the extent that it would require the disclosure of information generated or compiled by or at the direction of Stage Three's counsel.

9. Stage Three objects to each request, instruction or definition to the extent that it would require the compilation or review of information otherwise within Defendants' possession, custody or control or more easily accessible to Defendants.

10. Stage Three objects to each request, instruction or definition to the extent that they are vague, ambiguous, overly broad or unduly burdensome.

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11. Stage Three objects to each request, instruction or definition to the extent that they purport to require separate responses for each “Accused Clip” as compound and unduly burdensome.

12. Stage Three objects to each request to the extent that they fail to specify an applicable time period and are thereby vague, ambiguous and overbroad.

13. Stage Three objects to each request as premature to the extent that it calls for expert opinion.

14. Stage Three objects to each request to the extent that it calls for a legal conclusion.

15. Stage Three objects to each request, instruction or definition to the extent that they purport to require Stage Three to respond to Defendants’ characterizations of legal contentions or call for the application of law to fact to the extent such request seeks disclosure of privileged information.

16. Stage Three objects to the definitions of “Stage Three”, “Stage Three’s”, “you” and “your” as overly broad and unduly burdensome, and further objects to the extent it seeks to impose obligations broader than those specified by Federal Rules of Civil Procedure 26, and Civil Local Rule 26.3(c)(5). Stage Three further objects on the grounds that the definition includes an unknown and unknowable number of “present and former agents, employees, representatives, accountants, investigators, attorneys,” “person[s] acting or purporting to act on its behalf”, and “other person[s] otherwise subject to its control, which controls it, or is under common control with them.” Moreover, this definition includes “affiliates,” “divisions,” and “units” without any explanation of those terms’ meaning. Stage Three further objects to the extent these definitions call for privileged information and to the extent they seek information

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outside of Plaintiffs' possession, custody or control. In responding to the Interrogatories, Plaintiffs will construe the terms "Stage Three", "Stage Three's", "you" and "your" to mean Named Plaintiff Stage Three.

17. Stage Three objects to the definitions of "Work(s) In Suit" and "Accused Clip(s)" as compound, vague and ambiguous. Stage Three further objects to the extent these definitions call for privileged information. Stage Three further objects to the definitions of "Work(s) In Suit" and "Accused Clip(s)" to the extent such definitions attempt to limit the number or identity of infringed works or instances of infringement for which Stage Three seeks recovery. As set forth at paragraph 74 of the Second Amended Complaint, the infringed works specified by Stage Three in this litigation are "representative of Protected Works that are and have been infringed by Defendants and/or YouTube's users." Similarly, the infringements identified in Exhibit A to the Complaint and within the Complaint are representative and not an exhaustive list of the ongoing and massive infringement by Defendants. Stage Three reserves all rights to identify additional infringements and infringed works.

18. Stage Three objects to the definition of "substantially DMCA-compliant takedown notice" as vague and ambiguous as it requires a qualitative judgment and lacks common or ready definition.

19. Where Stage Three indicates a lack of information or knowledge sufficient to admit or deny a specific request, this lack of information or knowledge follows a reasonable inquiry by Stage Three, and the information known or readily obtainable by Stage Three is insufficient to enable the party to admit or deny.

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20. Stage Three reserves the right to supplement or amend these responses. These responses should not be construed as, and do not constitute, a waiver of Stage Three's right to prove additional facts at summary judgment or trial or any other rights.

21. These general objections are continuing and are incorporated by reference in Stage Three's answers to each of the Requests set forth below. Any objection or lack of objection to any portion of these Requests is not an admission. Stage Three reserves the right to amend, supplement, modify, or correct these responses and objections as appropriate.

**STAGE THREE'S RESPONSES AND OBJECTIONS
TO SPECIFIC REQUESTS FOR ADMISSION**

REQUEST FOR ADMISSION NO. 1:

Admit that at all relevant times YouTube was a "service provider" as that term is used in 17 U.S.C. § 512(k)(1)(B).

RESPONSE TO REQUEST FOR ADMISSION NO. 1:

Stage Three objects to this Request on the grounds that it is vague and ambiguous, including the term "at all relevant times." Stage Three further objects to this Request to the extent it calls for a legal conclusion. Subject to and without waiving the foregoing objections, Stage Three admits that the YouTube website in part, provides or operates facilities for, among other things, "online services or network access" as those terms are used in 17 U.S.C. § 512(k)(1)(B), and otherwise denies the request.

REQUEST FOR ADMISSION NO. 2:

Admit that at all relevant times, YouTube stored material "at the direction of a user" as that phrase is used in 17 U.S.C. § 512(c)(1).

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RESPONSE TO REQUEST FOR ADMISSION NO. 2:

Stage Three objects to this Request as vague and overbroad, including with respect to the terms “at all relevant times” and “material,” which are undefined terms. Stage Three further objects to this Request to the extent it calls for a legal conclusion. YouTube is a media entertainment enterprise that engages in an array of directly and secondarily infringing activities that are neither storage nor at the direction of a user, such as, without limitation, transforming, copying and distributing material without the direction of a user. Subject to and without waiving the foregoing objections, Stage Three denies this Request.

REQUEST FOR ADMISSION NO. 3:

Admit that the material you allege to infringe your copyrights in this case was stored on the youtube.com service “at the direction of a user” as that phrase is used in 17 U.S.C. § 512(c)(1).

RESPONSE TO REQUEST FOR ADMISSION NO. 3:

Stage Three objects to this Request for Admission as vague and overbroad, including with respect to the term “material,” which is an undefined term. Stage Three further objects to this Request to the extent it calls for a legal conclusion. Subject to and without waiving the foregoing objections, Stage Three denies this Request.

REQUEST FOR ADMISSION NO. 4:

Admit that all of your copyright infringement claims in this action allege infringement of copyrights “by reason of the storage at the direction of a user” of material that resides on a system or network controlled or operated by or for YouTube, as set forth in 17 U.S.C. § 512(c)(1).

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RESPONSE TO REQUEST FOR ADMISSION NO. 4:

Stage Three objects to this Request for Admission as vague and overbroad, including with respect to the term “material,” which is an undefined term. Stage Three further objects to this Request to the extent it calls for a legal conclusion. Subject to and without waiving the foregoing objections, Stage Three denies this Request.

REQUEST FOR ADMISSION NO. 5:

Admit that at all relevant times, YouTube had “designated an agent to receive notifications of claimed infringement” as set forth in 17 U.S.C. § 512(c)(2).

RESPONSE TO REQUEST FOR ADMISSION NO. 5:

Stage Three objects to this Request on the grounds that it is vague and ambiguous, including the term “at all relevant times.” Subject to and without waiving the foregoing objections, Stage Three denies this Request.

REQUEST FOR ADMISSION NO. 6:

Admit that on every occasion that you sent YouTube a DMCA takedown notice relating to an accused clip, YouTube responded “expeditiously,” as that phrase is used in 17 U.S.C. § 512(c)(1)(A)(iii), to remove or disable access to the material claimed to be infringing.

RESPONSE TO REQUEST FOR ADMISSION NO. 6:

Stage Three objects to this Request on the grounds that it is vague and ambiguous, including the term “material”. Stage Three further objects to this Request to the extent it calls for a legal conclusion. Subject to and without waiving the foregoing objections, Stage Three denies this Request.

REQUEST FOR ADMISSION NO. 7:

Admit that on every occasion that you sent YouTube a DMCA takedown notice relating

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to an accused clip, YouTube responded within seventy-two business hours to remove or disable access to the material claimed to be infringing.

RESPONSE TO REQUEST FOR ADMISSION NO. 7:

Stage Three objects to this Request on the grounds that it is vague and ambiguous, including the term “material.” Subject to and without waiving the foregoing objections, Stage Three denies this Request.

REQUEST FOR ADMISSION NO. 8:

Admit that for all of the accused clips, prior to receiving a DMCA takedown notice from you identifying those specific clips, YouTube did not have “actual knowledge” that the material was infringing, as described in 17 U.S.C. § 512(c)(1)(A)(i).

RESPONSE TO REQUEST FOR ADMISSION NO. 8:

Stage Three objects to this Request to the extent it calls for a legal conclusion. Subject to and without waiving the foregoing objections, Stage Three denies this Request.

REQUEST FOR ADMISSION NO. 9:

Admit that on no occasion did YouTube fail to expeditiously remove or disable access to an accused clip to the extent YouTube became aware of facts or circumstances from which infringing activity was apparent, as described in 17 U.S.C. § 512(c)(1)(A)(ii).

RESPONSE TO REQUEST FOR ADMISSION NO. 9:

Stage Three objects to this Request as compound. Stage Three further objects to this Request to the extent it calls for a legal conclusion. Subject to and without waiving the foregoing objections, Stage Three denies this Request.

REQUEST FOR ADMISSION NO. 10:

Admit that YouTube lacked the right and ability to control the infringing activity alleged

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by you in this case, as described in 17 U.S.C. § 512(c)(1)(B).

RESPONSE TO REQUEST FOR ADMISSION NO. 10:

Stage Three objects to this Request to the extent it calls for a legal conclusion. Subject to and without waiving the foregoing objections, Stage Three denies this Request.

REQUEST FOR ADMISSION NO. 11:

Admit that YouTube did not receive a financial benefit directly attributable to the infringing activity alleged by you in this case, as described in 17 U.S.C. § 512(c)(1)(B).

RESPONSE TO REQUEST FOR ADMISSION NO. 11:

Stage Three objects to this Request to the extent it calls for a legal conclusion. Subject to and without waiving the foregoing objections, Stage Three denies this Request.

REQUEST FOR ADMISSION NO. 12:

Admit that at all relevant times, access to and use of the youtube.com service was provided to users by YouTube free and without charge.

RESPONSE TO REQUEST FOR ADMISSION NO. 12:

Stage Three objects to the request as compound. Stage Three further objects to the terms “at all relevant times”, “access” and “use” as vague and ambiguous. For example, “use” of and “access” to the youtube.com website includes various activities, such as advertising. Subject to and without waiving the foregoing objections, Stage Three denies that “use” of the youtube.com website was provided free and without charge.

REQUEST FOR ADMISSION NO. 13:

Admit that at all relevant times YouTube had adopted and reasonably implemented, and informed its subscribers and account holders of, a policy that provides for the termination in appropriate circumstances of subscribers and account holders of YouTube who were repeat

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infringers, as described in 17 U.S.C. § 512(i)(1)(A).

RESPONSE TO REQUEST FOR ADMISSION NO. 13:

Stage Three objects to this Request as vague and ambiguous, including the terms “at all relevant times”, “reasonably implemented” and “appropriate circumstances”. Stage Three further objects to this Request to the extent it calls for a legal conclusion. Subject to and without waiving the foregoing objections, Stage Three denies this Request.

REQUEST FOR ADMISSION NO. 14:

Admit that at no time relevant to this lawsuit have there been any “standard technical measures” in existence as that term is defined in 17 U.S.C. §§ 512(i)(1)(B) and 512(i)(2).

RESPONSE TO REQUEST FOR ADMISSION NO. 14:

Stage Three objects to this Request as vague and ambiguous, including the term “in existence”. Stage Three further objects to this Request to the extent it calls for a legal conclusion. Stage Three further objects to this Request on the ground that the requested matter is outside the scope of information relevant to this case. Subject to and without waiving the foregoing objections, Stage Three denies this Request.

REQUEST FOR ADMISSION NO. 15:

Admit that you do not claim in this case that YouTube failed to comply with 17 U.S.C. §§ 512(i)(1)(B) (*i.e.*, YouTube accommodates and not interfere with “standard technical measures” to the extent any exist).

RESPONSE TO REQUEST FOR ADMISSION NO. 15:

Stage Three objects to this Request to the extent it calls for a legal conclusion. Subject to and without waiving the foregoing objections, Stage Three denies this Request.

REQUEST FOR ADMISSION NO. 16:

Admit that you have issued licenses that grant the licensee the right to exhibit and distribute the work on websites, including YouTube.com.

RESPONSE TO REQUEST FOR ADMISSION NO. 16:

Stage Three objects to this Request on the grounds that it is vague and ambiguous, including the terms “exhibit”, “distribute”, “the work” and “on websites”. Stage Three further objects to this Request on the ground that the requested matter is outside the scope of information relevant to this case. Stage Three further objects to this Request on the ground that any rights extended to a licensee of Stage Three content do not extend to parties such as unauthorized uploaders of content or YouTube, neither of whom derive any rights under such license. Subject to and without waiving the foregoing objections, Stage Three denies that language granting rights in a license can be read in isolation, and states that it must be read in light of other terms and restrictions in that license. Stage Three admits that it has granted a limited number of licenses that grant certain rights, subject to various limitations, including without limitation, limitations on duration, territory, and use of musical compositions only in connection with particular video footage and in some cases, limitations to particular websites; among such licenses, there are an even smaller number that have granted licensees the right to use certain musical compositions on YouTube in combination with certain specified footage and in exchange for the payment of a license fee, subject to such additional restrictions, such as duration, territory and other restrictions of the type described above.

REQUEST FOR ADMISSION NO. 17:

Admit that you have issued licenses for works-in-suit that grant the licensee the right to exhibit and distribute the work on websites, including YouTube.com.

RESPONSE TO REQUEST FOR ADMISSION NO. 17:

Stage Three objects to this Request on the grounds that it is vague and ambiguous, including the terms “exhibit”, “distribute”, “the work” and “on websites”. Stage Three further objects to this Request on the ground that the requested matter is outside the scope of information relevant to this case. Stage Three further objects to this Request on the ground that any rights extended to a licensee of Stage Three content do not extend to parties such as unauthorized uploaders of content or YouTube, neither of whom derive any rights under such license. Subject to and without waiving the foregoing objections, Stage Three denies that language granting rights in a license can be read in isolation, and states that it must be read in light of other terms and restrictions in that license. Stage Three admits that it has granted a limited number of licenses that grant certain rights, subject to various limitations, including without limitation, limitations on duration, territory, and use of musical compositions only in connection with particular video footage and in some cases, limitations to particular websites; among such licenses, there are an even smaller number that have granted licensees the right to use certain musical compositions on YouTube in combination with certain specified footage and in exchange for the payment of a license fee, subject to such additional restrictions, such as duration, territory and other restrictions of the type described above. Stage Three admits that there are some licenses that have granted the licensee the right to exploit a work-in-suit in certain specific and identifiable contexts on certain specified websites, including youtube.com, subject to the various restrictions identified above. See also Stage Three’s responses to Requests nos. 21-58.

REQUEST FOR ADMISSION NO. 18:

Admit that you have issued licenses for works-in-suit after November 7, 2007, that grant

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the licensee the right to exhibit and distribute the work on websites, including YouTube.com.

RESPONSE TO REQUEST FOR ADMISSION NO. 18:

Stage Three objects to this Request on the grounds that it is vague and ambiguous, including the terms “exhibit”, “distribute”, “the work” and “on websites”. Stage Three further objects to this Request on the ground that the requested matter is outside the scope of information relevant to this case. Stage Three further objects to this Request on the ground that any rights extended to a licensee of Stage Three content do not extend to parties such as unauthorized uploaders of content or YouTube, neither of whom derive any rights under such license. Subject to and without waiving the foregoing objections, Stage Three denies that language granting rights in a license can be read in isolation, and states that it must be read in light of other terms and restrictions in that license. Stage Three admits that it has granted a limited number of licenses that grant certain rights, subject to various limitations, including without limitation, limitations on duration, territory, and use of musical compositions only in connection with particular video footage and in some cases, limitations to particular websites; among such licenses, there are an even smaller number that have granted licensees the right to use certain musical compositions on YouTube in combination with certain specified footage and in exchange for the payment of a license fee, subject to such additional restrictions, such as duration, territory and other restrictions of the type described above. Stage Three admits that there are some licenses that have granted the licensee the right to exploit a work-in-suit in certain specific and identifiable contexts on certain specified websites, including youtube.com subject to the various restrictions identified above, since November 7, 2007. See also Stage Three’s responses to Requests nos. 21-58.

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REQUEST FOR ADMISSION NO. 19:

Admit that you have issued licenses for works-in-suit after November 26, 2008, that grant the licensee the right to exhibit and distribute the work on websites, including YouTube.com.

RESPONSE TO REQUEST FOR ADMISSION NO. 19:

Stage Three objects to this Request on the grounds that it is vague and ambiguous, including the terms “exhibit”, “distribute”, “the work” and “on websites”. Stage Three further objects to this Request on the ground that the requested matter is outside the scope of information relevant to this case. Stage Three further objects to this Request on the ground that any rights extended to a licensee of Stage Three content do not extend to parties such as unauthorized uploaders of content or YouTube, neither of whom derive any rights under such license. Subject to and without waiving the foregoing objections, Stage Three denies that language granting rights in a license can be read in isolation, and states that it must be read in light of other terms and restrictions in that license. Stage Three admits that it has granted a limited number of licenses that grant certain rights, subject to various limitations, including without limitation, limitations on duration, territory, and use of musical compositions only in connection with particular video footage and in some cases, limitations to particular websites; among such licenses, there are an even smaller number that have granted licensees the right to use certain musical compositions on YouTube in combination with certain specified footage and in exchange for the payment of a license fee, subject to such additional restrictions, such as duration, territory and other restrictions of the type described above. Stage Three admits that there have been some licenses that have granted the licensee the right to exploit a work-in-suit in certain specific and identifiable contexts on certain specified websites, including youtube.com subject to the various restrictions identified above, since November 26, 2008. See also Stage

Three's responses to Requests nos. 21-58.

REQUEST FOR ADMISSION NO. 20:

Admit that on no occasion did you inform YouTube of the presence of any authorized videos on the YouTube.com site.

RESPONSE TO REQUEST FOR ADMISSION NO. 20:

Stage Three objects to this Request on the ground that it is vague and ambiguous, including the terms "inform" and "any authorized videos." Stage Three further objects to this Request on the grounds that it seeks information that is neither relevant to any claim or defense of any party nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections, Stage Three denies this Request to the extent it implies that Stage Three has an obligation to inform YouTube of the presence of "any authorized videos" on the YouTube website and further denies this Request to the extent it implies that YouTube is not on active or constructive notice whether it is authorized to exploit the videos on its own website, and further denies this Request to the extent it implies that YouTube does not have access to information furnished by Stage Three that would allow YouTube to determine if the presence of videos containing Stage Three content are authorized. As a business practice, it is ordinarily incumbent upon the party exploiting content, i.e. YouTube, to seek and obtain appropriate license as well as information concerning the owner and/or administrator of which it is exploiting. Such information is readily and publicly available including through public databases identifying Stage Three as the administrator of and/or owner of the works in suit and other Stage Three content.

REQUEST FOR ADMISSION NO. 21:

Admit that the license agreement produced at ST00000801-03 grants the licensee the

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right to exhibit and distribute the work on websites, including YouTube.com.

RESPONSE TO REQUEST FOR ADMISSION NO. 21:

Stage Three objects to this Request on the grounds that it is vague and ambiguous, including the terms “exhibit”, “distribute”, “the work” and “on websites”. Stage Three objects to this Request on the grounds that the requested matter is not relevant to this case, because there is no evidence that Defendants or the uploader of any infringing clip has represented that they have a license to post Stage Three content on YouTube. Stage Three further objects on the ground that any rights extended to a licensee of Stage Three content do not extend to parties such as unauthorized uploaders of content or YouTube, neither of whom derive any rights under such license. Subject to and without waiving the foregoing objections, Stage Three states that the license produced at the Bates numbers above grants certain rights to exploit Stage Three’s content on the Internet subject to the express terms of the agreement, including the fee paid by the licensee and the term of the license, which limits the use to one year.

REQUEST FOR ADMISSION NO. 22:

Admit that the license agreement produced at ST00000391-94 grants the licensee the right to exhibit and distribute the work on websites, including YouTube.com.

RESPONSE TO REQUEST FOR ADMISSION NO. 22:

Stage Three objects to this Request on the grounds that it is vague and ambiguous, including the terms “exhibit”, “distribute”, “the work” and “on websites”. Stage Three objects to this Request on the grounds that the requested matter is not relevant to this case, because there is no evidence that Defendants or the uploader of any infringing clip has represented that they have a license to post Stage Three content on YouTube. Stage Three further objects on the ground that any rights extended to a licensee of Stage Three content do not extend to parties such

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as unauthorized uploaders of content or YouTube, neither of whom derive any rights under such license. Subject to and without waiving the foregoing objections, Stage Three states that the license produced at the Bates numbers above grants certain rights to exploit Stage Three's content on the Internet subject to the express terms of the agreement, including the fee paid by the licensee and the term of the license, which limits the use to two years. Additionally, the license limits internet rights to streaming of Television and/or radio commercials.

REQUEST FOR ADMISSION NO. 23:

Admit that the license agreement produced at ST00099175-77 grants the licensee the right to exhibit and distribute the work on websites, including YouTube.com.

RESPONSE TO REQUEST FOR ADMISSION NO. 23:

Stage Three objects to this Request on the grounds that it is vague and ambiguous, including the terms "exhibit", "distribute", "the work" and "on websites". Stage Three objects to this Request on the grounds that the requested matter is not relevant to this case, because there is no evidence that Defendants or the uploader of any infringing clip has represented that they have a license to post Stage Three content on YouTube. Stage Three further objects on the ground that any rights extended to a licensee of Stage Three content do not extend to parties such as unauthorized uploaders of content or YouTube, neither of whom derive any rights under such license. Subject to and without waiving the foregoing objections, Stage Three states that the license produced at the Bates numbers above grants certain rights to exploit Stage Three's content on the Internet subject to the express terms of the agreement, including the fee paid by the licensee. In the case of the license produced at the Bates numbers above, the use is limited to no more than 30 seconds of the composition, in context of the advertisement only, for a term of 15 weeks.

REQUEST FOR ADMISSION NO. 24:

Admit that the license agreement produced at ST00102531-33 grants the licensee the right to exhibit and distribute the work on websites, including YouTube.com.

RESPONSE TO REQUEST FOR ADMISSION NO. 24:

Stage Three objects to this Request on the grounds that it is vague and ambiguous, including the terms “exhibit”, “distribute”, “the work” and “on websites”. Stage Three objects to this Request on the grounds that the requested matter is not relevant to this case, because there is no evidence that Defendants or the uploader of any infringing clip has represented that they have a license to post Stage Three content on YouTube. Stage Three further objects on the ground that any rights extended to a licensee of Stage Three content do not extend to parties such as unauthorized uploaders of content or YouTube, neither of whom derive any rights under such license. Subject to and without waiving the foregoing objections, Stage Three states that the above-referenced license grants certain rights to exploit Stage Three’s content on the Internet subject to the express terms of the agreement, including the fee paid by the licensee. In the case of the above-referenced license, the use is limited to 1:15 of the composition used in-context only and limited to the United States. Additionally, the license prohibited the Licensee from using the work in any device or on any website for which the viewer is invited to manipulate the image and/or audio Motion Picture Trailer material in a non-linear progression.

REQUEST FOR ADMISSION NO. 25:

Admit that the license agreement produced at ST00102537-39 grants the licensee the right to exhibit and distribute the work on websites, including YouTube.com.

RESPONSE TO REQUEST FOR ADMISSION NO. 25:

Stage Three objects to this Request on the grounds that it is vague and ambiguous,

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including the terms “exhibit”, “distribute”, “the work” and “on websites”. Stage Three objects to this Request on the grounds that the requested matter is not relevant to this case, because there is no evidence that Defendants or the uploader of any infringing clip has represented that they have a license to post Stage Three content on YouTube. Stage Three further objects on the ground that any rights extended to a licensee of Stage Three content do not extend to parties such as unauthorized uploaders of content or YouTube, neither of whom derive any rights under such license. Subject to and without waiving the foregoing objections, Stage Three states that the license produced at the Bates numbers above grants certain rights to exploit Stage Three’s content on the Internet subject to the express terms of the agreement, including the fee paid by the licensee and the term of the license, which limits the use to 45 seconds of the composition used in context only.

REQUEST FOR ADMISSION NO. 26:

Admit that the license agreement produced at ST00098806-08 grants the licensee the right to exhibit and distribute the work on websites, including YouTube.com.

RESPONSE TO REQUEST FOR ADMISSION NO. 26:

Stage Three objects to this Request on the grounds that it is vague and ambiguous, including the terms “exhibit”, “distribute”, “the work” and “on websites”. Stage Three objects to this Request on the grounds that the requested matter is not relevant to this case, because there is no evidence that Defendants or the uploader of any infringing clip has represented that they have a license to post Stage Three content on YouTube. Stage Three further objects on the ground that any rights extended to a licensee of Stage Three content do not extend to parties such as unauthorized uploaders of content or YouTube, neither of whom derive any rights under such license. Subject to and without waiving the foregoing objections, Stage Three states that the

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license produced at the Bates numbers above grants certain rights to exploit Stage Three's content on the Internet subject to the express terms of the agreement, including the fee paid by the licensee and the term of the license, which limits the use to no more than 45 seconds of the composition used in synchronization with the film. Additionally, the license prohibited the Licensee from using the work in any device or on any website for which the viewer is invited to manipulate the image and/or audio Motion Picture Trailer material in a non-linear progression.

REQUEST FOR ADMISSION NO. 27:

Admit that the license agreement produced at ST00102527-29 grants the licensee the right to exhibit and distribute the work on websites, including YouTube.com.

RESPONSE TO REQUEST FOR ADMISSION NO. 27:

Stage Three objects to this Request on the grounds that it is vague and ambiguous, including the terms "exhibit", "distribute", "the work" and "on websites". Stage Three objects to this Request on the grounds that the requested matter is not relevant to this case, because there is no evidence that Defendants or the uploader of any infringing clip has represented that they have a license to post Stage Three content on YouTube. Stage Three further objects on the ground that any rights extended to a licensee of Stage Three content do not extend to parties such as unauthorized uploaders of content or YouTube, neither of whom derive any rights under such license. Subject to and without waiving the foregoing objections, Stage Three admits that the license produced at the Bates numbers above grants certain rights to exploit Stage Three's content on the Internet subject to the express terms of the agreement, including the fee paid by the licensee and the term of the license. In the case of the license produced at the Bates numbers above, the use is limited to 30 or 60 seconds of the composition, in synchronism or timed relation with the described advertisement, used in context, and limited to a term of one month

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only. Additionally, the license limited internet rights to streaming only.

REQUEST FOR ADMISSION NO. 28:

Admit that the license agreement produced at ST00098675-77 grants the licensee the right to exhibit and distribute the work on websites, including YouTube.com.

RESPONSE TO REQUEST FOR ADMISSION NO. 28:

Stage Three objects to this Request on the grounds that it is vague and ambiguous, including the terms “exhibit”, “distribute”, “the work” and “on websites”. Stage Three objects to this Request on the grounds that the requested matter is not relevant to this case, because there is no evidence that Defendants or the uploader of any infringing clip has represented that they have a license to post Stage Three content on YouTube. Stage Three further objects on the ground that any rights extended to a licensee of Stage Three content do not extend to parties such as unauthorized uploaders of content or YouTube, neither of whom derive any rights under such license. Subject to and without waiving the foregoing objections, Stage Three states that the license produced at the Bates numbers above grants certain rights to exploit Stage Three’s content on the Internet subject to the express terms of the agreement, including the fee paid by the licensee and the duration of the use, which in this case is a 2:00 portion of the work.

REQUEST FOR ADMISSION NO. 29:

Admit that the license agreement produced at ST00102461-63 grants the licensee the right to exhibit and distribute the work on websites, including YouTube.com.

RESPONSE TO REQUEST FOR ADMISSION NO. 29:

Stage Three objects to this Request on the grounds that it is vague and ambiguous, including the terms “exhibit”, “distribute”, “the work” and “on websites”. Stage Three objects to this Request on the grounds that the requested matter is not relevant to this case, because there is

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no evidence that Defendants or the uploader of any infringing clip has represented that they have a license to post Stage Three content on YouTube. Stage Three further objects on the ground that any rights extended to a licensee of Stage Three content do not extend to parties such as unauthorized uploaders of content or YouTube, neither of whom derive any rights under such license. Subject to and without waiving the foregoing objections, Stage Three states that the license produced at the Bates numbers above grants certain rights to exploit Stage Three's content on the Internet subject to the express terms of the agreement, including the fee paid by the licensee. In the case of the license produced at the Bates numbers above, only 2:00 of the composition in context with the program may be used.

REQUEST FOR ADMISSION NO. 30:

Admit that the license agreement produced at ST00098659-61 grants the licensee the right to exhibit and distribute the work on websites, including YouTube.com.

RESPONSE TO REQUEST FOR ADMISSION NO. 30:

Stage Three objects to this Request on the grounds that it is vague and ambiguous, including the terms "exhibit", "distribute", "the work" and "on websites". Stage Three objects to this Request on the grounds that the requested matter is not relevant to this case, because there is no evidence that Defendants or the uploader of any infringing clip has represented that they have a license to post Stage Three content on YouTube. Stage Three further objects on the ground that any rights extended to a licensee of Stage Three content do not extend to parties such as unauthorized uploaders of content or YouTube, neither of whom derive any rights under such license. Subject to and without waiving the foregoing objections, Stage Three states that the license produced at the Bates numbers above grants certain rights to exploit Stage Three's content on the Internet subject to the express terms of the agreement, including the fee paid by

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the licensee. In the case of the license produced at the Bates numbers above, the use is limited to in-context use of a 6-second portion of the composition.

REQUEST FOR ADMISSION NO. 31:

Admit that the license agreement produced at ST00104331-34 grants the licensee the right to exhibit and distribute the work on websites, including YouTube.com.

RESPONSE TO REQUEST FOR ADMISSION NO. 31:

Stage Three objects to this Request on the grounds that it is vague and ambiguous, including the terms “exhibit”, “distribute”, “the work” and “on websites”. Stage Three objects to this Request on the grounds that the requested matter is not relevant to this case, because there is no evidence that Defendants or the uploader of any infringing clip has represented that they have a license to post Stage Three content on YouTube. Stage Three further objects on the ground that any rights extended to a licensee of Stage Three content do not extend to parties such as unauthorized uploaders of content or YouTube, neither of whom derive any rights under such license. Subject to and without waiving the foregoing objections, Stage Three states that the license produced at the Bates numbers above grants certain rights to exploit Stage Three’s content on the Internet subject to the express terms of the agreement, including the fee paid by the licensee. In the case of the license produced at the Bates numbers above, limited portions of the compositions may be used in context only for eight consecutive months. Additionally, the license limited internet rights to streaming only.

REQUEST FOR ADMISSION NO. 32:

Admit that the license agreement produced at ST00102547-49 grants the licensee the right to exhibit and distribute the work on websites, including YouTube.com.

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RESPONSE TO REQUEST FOR ADMISSION NO. 32:

Stage Three objects to this Request on the grounds that it is vague and ambiguous, including the terms “exhibit”, “distribute”, “the work” and “on websites”. Stage Three objects to this Request on the grounds that the requested matter is not relevant to this case, because there is no evidence that Defendants or the uploader of any infringing clip has represented that they have a license to post Stage Three content on YouTube. Stage Three further objects on the ground that any rights extended to a licensee of Stage Three content do not extend to parties such as unauthorized uploaders of content on YouTube, neither of whom derive any rights under such license. Subject to and without waiving the foregoing objections, Stage Three states that the license produced at the Bates numbers above grants certain rights to exploit Stage Three’s content on the Internet subject to the express terms of the agreement, including the fee paid by the licensee and the term of the license. In the case of the license produced at the Bates numbers above, the use is limited to no more than 59 seconds of the composition used in context with the program.

REQUEST FOR ADMISSION NO. 33:

Admit that the license agreement produced at ST00102476-78 grants the licensee the right to exhibit and distribute the work on websites, including YouTube.com.

RESPONSE TO REQUEST FOR ADMISSION NO. 33:

Stage Three objects to this Request on the grounds that it is vague and ambiguous, including the terms “exhibit”, “distribute”, “the work” and “on websites”. Stage Three objects to this Request on the grounds that the requested matter is not relevant to this case, because there is no evidence that Defendants or the uploader of any infringing clip has represented that they have a license to post Stage Three content on YouTube. Stage Three further objects on the

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ground that any rights extended to a licensee of Stage Three content do not extend to parties such as unauthorized uploaders of content or YouTube, neither of whom derive any rights under such license. Subject to and without waiving the foregoing objections, Stage Three states that the license produced at the Bates numbers above grants certain rights to exploit Stage Three's content on the Internet subject to the express terms of the agreement, including the fee paid by the licensee and use of the composition in context with the program only.

REQUEST FOR ADMISSION NO. 34:

Admit that the license agreement produced at ST00099209-11 grants the licensee the right to exhibit and distribute the work on websites, including YouTube.com.

RESPONSE TO REQUEST FOR ADMISSION NO. 34:

Stage Three objects to this Request on the grounds that it is vague and ambiguous, including the terms "exhibit", "distribute", "the work" and "on websites". Stage Three objects to this Request on the grounds that the requested matter is not relevant to this case, because there is no evidence that Defendants or the uploader of any infringing clip has represented that they have a license to post Stage Three content on YouTube. Stage Three further objects on the ground that any rights extended to a licensee of Stage Three content do not extend to parties such as unauthorized uploaders of content or YouTube, neither of whom derive any rights under such license. Subject to and without waiving the foregoing objections, Stage Three states that the license produced at the Bates numbers above grants certain rights to exploit Stage Three's content on the Internet subject to the express terms of the agreement, including the fee paid by the licensee and the term of the license. In the case of the license produced at the Bates numbers above, the use is limited to 1:30 of the composition used in context with media trailers only. Additionally, the license prohibited the Licensee from using the work in any device or on any

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website for which the viewer is invited to manipulate the image and/or audio Motion Picture Trailer material in a non-linear progression.

REQUEST FOR ADMISSION NO. 35:

Admit that the license agreement produced at ST00102431-33 grants the licensee the right to exhibit and distribute the work on websites, including YouTube.com.

RESPONSE TO REQUEST FOR ADMISSION NO. 35:

Stage Three objects to this Request on the grounds that it is vague and ambiguous, including the terms “exhibit”, “distribute”, “the work” and “on websites”. Stage Three objects to this Request on the grounds that the requested matter is not relevant to this case, because there is no evidence that Defendants or the uploader of any infringing clip has represented that they have a license to post Stage Three content on YouTube. Stage Three further objects on the ground that any rights extended to a licensee of Stage Three content do not extend to parties such as unauthorized uploaders of content or YouTube, neither of whom derive any rights under such license. Subject to and without waiving the foregoing objections, Stage Three states that the license produced at the Bates numbers above grants certain rights to exploit Stage Three’s content on the Internet subject to the express terms of the agreement, including the fee paid by the licensee and the term of the license. In the case of the license produced at the Bates numbers above, the use is limited to no more than 30 seconds of the composition used in the United States only and limited to a term of one week.

REQUEST FOR ADMISSION NO. 36:

Admit that the license agreement produced at ST00099147-50 grants the licensee the right to exhibit and distribute the work on websites, including YouTube.com.

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RESPONSE TO REQUEST FOR ADMISSION NO. 36:

Stage Three objects to this Request on the grounds that it is vague and ambiguous, including the terms “exhibit”, “distribute”, “the work” and “on websites”. Stage Three objects to this Request on the grounds that the requested matter is not relevant to this case, because there is no evidence that Defendants or the uploader of any infringing clip has represented that they have a license to post Stage Three content on YouTube. Stage Three further objects on the ground that any rights extended to a licensee of Stage Three content do not extend to parties such as unauthorized uploaders of content on YouTube, neither of whom derive any rights under such license. Subject to and without waiving the foregoing objections, Stage Three states that the license produced at the Bates numbers above grants certain rights to exploit Stage Three’s content on the Internet subject to the express terms of the agreement, including the fee paid by the licensee and the term of the license. In the case of the license produced at the Bates numbers above, the use is limited to no more than 31 seconds of the composition used in context with the film or in a specially made music video. Additionally, the license prohibited the Licensee from using the Composition in any device which does not embody the Picture substantially, as generally released or for which the viewer is invited to manipulate the image and/or audio program material in a non-linear progression.

REQUEST FOR ADMISSION NO. 37:

Admit that the license agreement produced at ST00099102-04 grants the licensee the right to exhibit and distribute the work on websites, including YouTube.com.

RESPONSE TO REQUEST FOR ADMISSION NO. 37:

Stage Three objects to this Request on the grounds that it is vague and ambiguous, including the terms “exhibit”, “distribute”, “the work” and “on websites”. Stage Three objects

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to this Request on the grounds that the requested matter is not relevant to this case, because there is no evidence that Defendants or the uploader of any infringing clip has represented that they have a license to post Stage Three content on YouTube. Stage Three further objects on the ground that any rights extended to a licensee of Stage Three content do not extend to parties such as unauthorized uploaders of content on YouTube, neither of whom derive any rights under such license. Subject to and without waiving the foregoing objections, Stage Three states that the license produced at the Bates numbers above grants certain rights to exploit Stage Three's content on the Internet subject to the express terms of the agreement, including the fee paid by the licensee and the term of the license. In the case of the license produced at the Bates numbers above, the use is limited to 2:58 of the composition used in context with the program, and limited to a term of one year only.

REQUEST FOR ADMISSION NO. 38:

Admit that the license agreement produced at ST00099099-101 grants the licensee the right to exhibit and distribute the work on websites, including YouTube.com.

RESPONSE TO REQUEST FOR ADMISSION NO. 38:

Stage Three objects to this Request on the grounds that it is vague and ambiguous, including the terms "exhibit", "distribute", "the work" and "on websites". Stage Three objects to this Request on the grounds that the requested matter is not relevant to this case, because there is no evidence that Defendants or the uploader of any infringing clip has represented that they have a license to post Stage Three content on YouTube. Stage Three further objects on the ground that any rights extended to a licensee of Stage Three content do not extend to parties such as unauthorized uploaders of content on YouTube, neither of whom derive any rights under such license. Subject to and without waiving the foregoing objections, Stage Three states that the

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license produced at the Bates numbers above grants certain rights to exploit Stage Three's content on the Internet subject to the express terms of the agreement, including the fee paid by the licensee. In the case of the license produced at the Bates numbers above, the use is limited to no more than 1:30 of the composition used in context with the advertisement.

REQUEST FOR ADMISSION NO. 39:

Admit that the license agreement produced at ST00099089-92 grants the licensee the right to exhibit and distribute the work on websites, including YouTube.com.

RESPONSE TO REQUEST FOR ADMISSION NO. 39:

Stage Three objects to this Request on the grounds that it is vague and ambiguous, including the terms "exhibit", "distribute", "the work" and "on websites". Stage Three objects to this Request on the grounds that the requested matter is not relevant to this case, because there is no evidence that Defendants or the uploader of any infringing clip has represented that they have a license to post Stage Three content on YouTube. Stage Three further objects on the ground that any rights extended to a licensee of Stage Three content do not extend to parties such as unauthorized uploaders of content or YouTube, neither of whom derive any rights under such license. Subject to and without waiving the foregoing objections, Stage Three states that the license produced at the Bates numbers above grants certain rights to exploit Stage Three's content on the Internet subject to the express terms of the agreement, including the fee paid by the licensee. In the case of the license produced at the Bates numbers above, the use is limited to up to 57 seconds of the composition used in context with the program. Additionally, the license prohibited the Licensee from using the Composition in any device or on any website for which the viewer is invited to manipulate the image and/or audio Motion Picture material in a non-linear progression.

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REQUEST FOR ADMISSION NO. 40:

Admit that the license agreement produced at ST00099020-23 grants the licensee the right to exhibit and distribute the work on websites, including YouTube.com.

RESPONSE TO REQUEST FOR ADMISSION NO. 40:

Stage Three objects to this Request on the grounds that it is vague and ambiguous, including the terms “exhibit”, “distribute”, “the work” and “on websites”. Stage Three objects to this Request on the grounds that the requested matter is not relevant to this case, because there is no evidence that Defendants or the uploader of any infringing clip has represented that they have a license to post Stage Three content on YouTube. Stage Three further objects on the ground that any rights extended to a licensee of Stage Three content do not extend to parties such as unauthorized uploaders of content or YouTube, neither of whom derive any rights under such license. Subject to and without waiving the foregoing objections, Stage Three states that the license produced at the Bates numbers above grants certain rights to exploit Stage Three’s content on the Internet subject to the express terms of the agreement, including the fee paid by the licensee. In the case of the license produced at the Bates numbers above, the use is limited to no more than 59 seconds of the composition used in context with the program. Additionally, the license excludes out-of-context and/or non-sequential/non-linear uses.

REQUEST FOR ADMISSION NO. 41:

Admit that the license agreement produced at ST00099009-11 grants the licensee the right to exhibit and distribute the work on websites, including YouTube.com.

RESPONSE TO REQUEST FOR ADMISSION NO. 41:

Stage Three objects to this Request on the grounds that it is vague and ambiguous, including the terms “exhibit”, “distribute”, “the work” and “on websites”. Stage Three objects

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to this Request on the grounds that the requested matter is not relevant to this case, because there is no evidence that Defendants or the uploader of any infringing clip has represented that they have a license to post Stage Three content on YouTube. Stage Three further objects on the ground that any rights extended to a licensee of Stage Three content do not extend to parties such as unauthorized uploaders of content on YouTube, neither of whom derive any rights under such license. Subject to and without waiving the foregoing objections, Stage Three states that the license produced at the Bates numbers above grants certain rights to exploit Stage Three's content on the Internet subject to the express terms of the agreement, including the fee paid by the licensee and the term of the license. In the case of the license produced at the Bates numbers above, the use is limited to 1:30 of the composition used in context with the program, and limited to a term of five years only. Additionally, the license grants a streaming only internet right.

REQUEST FOR ADMISSION NO. 42:

Admit that the license agreement produced at ST00098621-23 grants the licensee the right to exhibit and distribute the work on websites, including YouTube.com.

RESPONSE TO REQUEST FOR ADMISSION NO. 42:

Stage Three objects to this Request on the grounds that it is vague and ambiguous, including the terms "exhibit", "distribute", "the work" and "on websites". Stage Three objects to this Request on the grounds that the requested matter is not relevant to this case, because there is no evidence that Defendants or the uploader of any infringing clip has represented that they have a license to post Stage Three content on YouTube. Stage Three further objects on the ground that any rights extended to a licensee of Stage Three content do not extend to parties such as unauthorized uploaders of content on YouTube, neither of whom derive any rights under such license. Subject to and without waiving the foregoing objections, Stage Three states that the

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license produced at the Bates numbers above grants certain rights to exploit Stage Three's content on the Internet subject to the express terms of the agreement, including the fee paid by the licensee. In the case of the license produced at the Bates numbers above, the use is limited to no more than 2:30 of the composition used in context with the film. Additionally, the license prohibited the Licensee from using the Composition in any device or on any website for which the viewer is invited to manipulate the image and/or audio Motion Picture material in a non-linear progression and provided further that no such website shall invite the end user to alter or manipulate the Composition or the time-relation image synchronization of the Composition in and as part of the Motion Picture.

REQUEST FOR ADMISSION NO. 43:

Admit that the license agreement produced at ST00098559-62 grants the licensee the right to exhibit and distribute the work on websites, including YouTube.com.

RESPONSE TO REQUEST FOR ADMISSION NO. 43:

Stage Three objects to this Request on the grounds that it is vague and ambiguous, including the terms "exhibit", "distribute", "the work" and "on websites". Stage Three objects to this Request on the grounds that the requested matter is not relevant to this case, because there is no evidence that Defendants or the uploader of any infringing clip has represented that they have a license to post Stage Three content on YouTube. Stage Three further objects on the ground that any rights extended to a licensee of Stage Three content do not extend to parties such as unauthorized uploaders of content or YouTube, neither of whom derive any rights under such license. Subject to and without waiving the foregoing objections, Stage Three states that the license produced at the Bates numbers above grants certain rights to exploit Stage Three's content on the Internet subject to the express terms of the agreement, including the fee paid by

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the licensee and the term of the license. In the case of the license produced at the Bates numbers above, the use is limited to 30 seconds of the composition in context with the advertisement and limited to a term of six months only. Additionally, the license grants a streaming only internet right.

REQUEST FOR ADMISSION NO. 44:

Admit that the license agreement produced at ST00098521-24 grants the licensee the right to exhibit and distribute the work on websites, including YouTube.com.

RESPONSE TO REQUEST FOR ADMISSION NO. 44:

Stage Three objects to this Request on the grounds that it is vague and ambiguous, including the terms “exhibit”, “distribute”, “the work” and “on websites”. Stage Three objects to this Request on the grounds that the requested matter is not relevant to this case, because there is no evidence that Defendants or the uploader of any infringing clip has represented that they have a license to post Stage Three content on YouTube. Stage Three further objects on the ground that any rights extended to a licensee of Stage Three content do not extend to parties such as unauthorized uploaders of content or YouTube, neither of whom derive any rights under such license. Subject to and without waiving the foregoing objections, Stage Three states that the license produced at the Bates numbers above grants certain rights to exploit Stage Three’s content on the Internet subject to the express terms of the agreement, including the fee paid by the licensee. In the case of the license produced at the Bates numbers above, the use is limited to 1:31 of the composition used in context with the program. Additionally, the license excludes out-of-context and/or non-sequential/non-linear uses.

REQUEST FOR ADMISSION NO. 45:

Admit that the license agreement produced at ST00001074-77 grants the licensee the

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right to exhibit and distribute the work on websites, including YouTube.com.

RESPONSE TO REQUEST FOR ADMISSION NO. 45:

Stage Three objects to this Request on the grounds that it is vague and ambiguous, including the terms “exhibit”, “distribute”, “the work” and “on websites”. Stage Three objects to this Request on the grounds that the requested matter is not relevant to this case, because there is no evidence that Defendants or the uploader of any infringing clip has represented that they have a license to post Stage Three content on YouTube. Stage Three further objects on the ground that any rights extended to a licensee of Stage Three content do not extend to parties such as unauthorized uploaders of content or YouTube, neither of whom derive any rights under such license. Subject to and without waiving the foregoing objections, Stage Three states that the license produced at the Bates numbers above grants certain rights to exploit Stage Three’s content on the Internet subject to the express terms of the agreement, including the fee paid by the licensee. In the case of the license produced at the Bates numbers above, the use is limited to no more than 28 seconds of the composition used in context with the film. Additionally, the license prohibited the Licensee from using the work in any device or on any website which does not embody the Motion Picture Trailer substantially as generally released or for which the viewer is invited to manipulate the image and/or audio program material in a non-linear progression, and provided further that no such website shall permit alteration of the Motion Picture Trailer.

REQUEST FOR ADMISSION NO. 46:

Admit that the license agreement produced at ST00001047-49 grants the licensee the right to exhibit and distribute the work on websites, including YouTube.com.

RESPONSE TO REQUEST FOR ADMISSION NO. 46:

Stage Three objects to this Request on the grounds that it is vague and ambiguous,

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including the terms “exhibit”, “distribute”, “the work” and “on websites”. Stage Three objects to this Request on the grounds that the requested matter is not relevant to this case, because there is no evidence that Defendants or the uploader of any infringing clip has represented that they have a license to post Stage Three content on YouTube. Stage Three further objects on the ground that any rights extended to a licensee of Stage Three content do not extend to parties such as unauthorized uploaders of content on YouTube, neither of whom derive any rights under such license. Subject to and without waiving the foregoing objections, Stage Three states that the license produced at the Bates numbers above grants certain rights to exploit Stage Three’s content on the Internet subject to the express terms of the agreement, including the fee paid by the licensee. In the case of the license produced at the Bates numbers above, the use is limited to no more than three seconds of the composition used in context with the program, is limited to a term of ten years and allows streaming only internet rights. Additionally, the license prohibited the Licensee from using the Composition in any device for which the viewer is invited to manipulate the image and/or audio program material in a non-linear progression, and provided further that no such website shall invite the end user to alter or manipulate the Composition or the time-relation image synchronization of the Composition in and as part of the Program.

REQUEST FOR ADMISSION NO. 47:

Admit that the license agreement produced at ST00000952-54 grants the licensee the right to exhibit and distribute the work on websites, including YouTube.com.

RESPONSE TO REQUEST FOR ADMISSION NO. 47:

Stage Three objects to this Request on the grounds that it is vague and ambiguous, including the terms “exhibit”, “distribute”, “the work” and “on websites”. Stage Three objects to this Request on the grounds that the requested matter is not relevant to this case, because there

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is no evidence that Defendants or the uploader of any infringing clip has represented that they have a license to post Stage Three content on YouTube. Stage Three further objects on the ground that any rights extended to a licensee of Stage Three content do not extend to parties such as unauthorized uploaders of content or YouTube, neither of whom derive any rights under such license. Subject to and without waiving the foregoing objections, Stage Three states that the license produced at the Bates numbers above grants certain rights to exploit Stage Three's content on the Internet subject to the express terms of the agreement, including the fee paid by the licensee and the term of the license. In the case of the license produced at the Bates numbers above, the use is limited to 30 seconds of the composition used in context with the advertisement, and limited to the United States, and for a term of six months only. Additionally, the license restricts internet rights to streaming only on United States based websites.

REQUEST FOR ADMISSION NO. 48:

Admit that the license agreement produced at ST00000823-26 grants the licensee the right to exhibit and distribute the work on websites, including YouTube.com.

RESPONSE TO REQUEST FOR ADMISSION NO. 48:

Stage Three objects to this Request on the grounds that it is vague and ambiguous, including the terms "exhibit", "distribute", "the work" and "on websites". Stage Three objects to this Request on the grounds that the requested matter is not relevant to this case, because there is no evidence that Defendants or the uploader of any infringing clip has represented that they have a license to post Stage Three content on YouTube. Stage Three further objects on the ground that any rights extended to a licensee of Stage Three content do not extend to parties such as unauthorized uploaders of content or YouTube, neither of whom derive any rights under such license. Subject to and without waiving the foregoing objections, Stage Three states that the

license produced at the Bates numbers above grants certain rights to exploit Stage Three's content on the Internet subject to the express terms of the agreement, including the fee paid by the licensee. In the case of the license produced at the Bates numbers above, the use is limited to no more than 1:19 of the composition used in context with the film. Additionally, the license prohibited the Licensee from using the Composition in any device which does not embody the Picture substantially as generally released or for which the viewer is invited to manipulate the image and/or audio program material in a non-linear progression.

REQUEST FOR ADMISSION NO. 49:

Admit that the license agreement produced at ST00000747-50 grants the licensee the right to exhibit and distribute the work on websites, including YouTube.com.

RESPONSE TO REQUEST FOR ADMISSION NO. 49:

Stage Three objects to this Request on the grounds that it is vague and ambiguous, including the terms "exhibit", "distribute", "the work" and "on websites". Stage Three objects to this Request on the grounds that the requested matter is not relevant to this case, because there is no evidence that Defendants or the uploader of any infringing clip has represented that they have a license to post Stage Three content on YouTube. Stage Three further objects on the ground that any rights extended to a licensee of Stage Three content do not extend to parties such as unauthorized uploaders of content or YouTube, neither of whom derive any rights under such license. Subject to and without waiving the foregoing objections, Stage Three states that the license produced at the Bates numbers above grants certain rights to exploit Stage Three's content on the Internet subject to the express terms of the agreement, including the fee paid by the licensee. In the case of the license produced at the Bates numbers above, the use is limited to 35 seconds of the composition used in context with the program. Additionally, the license grants

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a streaming only internet right.

REQUEST FOR ADMISSION NO. 50:

Admit that the license agreement produced at ST00000421-24 grants the licensee the right to exhibit and distribute the work on websites, including YouTube.com.

RESPONSE TO REQUEST FOR ADMISSION NO. 50:

Stage Three objects to this Request on the grounds that it is vague and ambiguous, including the terms “exhibit”, “distribute”, “the work” and “on websites”. Stage Three objects to this Request on the grounds that the requested matter is not relevant to this case, because there is no evidence that Defendants or the uploader of any infringing clip has represented that they have a license to post Stage Three content on YouTube. Stage Three further objects on the ground that any rights extended to a licensee of Stage Three content do not extend to parties such as unauthorized uploaders of content or YouTube, neither of whom derive any rights under such license. Subject to and without waiving the foregoing objections, Stage Three states that the license produced at the Bates numbers above grants certain rights to exploit Stage Three’s content on the Internet subject to the express terms of the agreement, including the fee paid by the licensee. In the case of the license produced at the Bates numbers above, the use is limited to 60 seconds of the composition used in context with the media trailer only. Additionally, the license prohibited the Licensee from using the Composition in any device or on any website for which the viewer is invited to manipulate the image and/or audio program material in a non-linear progression, and provided further that no such website shall invite the end user to alter or manipulate the Composition or the time-relation image synchronization of the Composition in and as part of the Motion Picture Trailer.

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REQUEST FOR ADMISSION NO. 51:

Admit that the license agreement produced at ST00000323-26 grants the licensee the right to exhibit and distribute the work on websites, including YouTube.com.

RESPONSE TO REQUEST FOR ADMISSION NO. 51:

Stage Three objects to this Request on the grounds that it is vague and ambiguous, including the terms “exhibit”, “distribute”, “the work” and “on websites”. Stage Three objects to this Request on the grounds that the requested matter is not relevant to this case, because there is no evidence that Defendants or the uploader of any infringing clip has represented that they have a license to post Stage Three content on YouTube. Stage Three further objects on the ground that any rights extended to a licensee of Stage Three content do not extend to parties such as unauthorized uploaders of content or YouTube, neither of whom derive any rights under such license. Subject to and without waiving the foregoing objections, Stage Three states that the license produced at the Bates numbers above grants certain rights to exploit Stage Three’s content on the Internet subject to the express terms of the agreement, including the fee paid by the licensee. Additionally, the license prohibited the Licensee from using the Composition in any device or on any website for which the viewer is invited to manipulate the image and/or audio program material in a non-linear progression, and provided further that no such website shall invite the end user to alter or manipulate the Composition or the time-relation image synchronization of the Composition in and as part of the Motion Picture and Trailer.

REQUEST FOR ADMISSION NO. 52:

Admit that the license agreement produced at ST00000049-52 grants the licensee the right to exhibit and distribute the work on websites, including YouTube.com.

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RESPONSE TO REQUEST FOR ADMISSION NO. 52:

Stage Three objects to this Request on the grounds that it is vague and ambiguous, including the terms “exhibit”, “distribute”, “the work” and “on websites”. Stage Three objects to this Request on the grounds that the requested matter is not relevant to this case, because there is no evidence that Defendants or the uploader of any infringing clip has represented that they have a license to post Stage Three content on YouTube. Stage Three further objects on the ground that any rights extended to a licensee of Stage Three content do not extend to parties such as unauthorized uploaders of content on YouTube, neither of whom derive any rights under such license. Subject to and without waiving the foregoing objections, Stage Three states that the license produced at the Bates numbers above grants certain rights to exploit Stage Three’s content on the Internet subject to the express terms of the agreement, including the fee paid by the licensee and the limitation of the use to no more than 40 seconds of the composition. Additionally, the license prohibited the Licensee from using the Composition in any device or on any website for which the viewer is invited to manipulate the image and/or audio program material in a non-linear progression, and provided further that no such website shall invite the end user to alter or manipulate the Composition or the time-relation image synchronization of the Composition in and as part of the Motion Picture.

REQUEST FOR ADMISSION NO. 53:

Admit that the license agreement produced at ST00102489-91 grants the licensee the right to exhibit and distribute the work on websites, including YouTube.com.

RESPONSE TO REQUEST FOR ADMISSION NO. 53:

Stage Three objects to this Request on the grounds that it is vague and ambiguous, including the terms “exhibit”, “distribute”, “the work” and “on websites”. Stage Three objects

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to this Request on the grounds that the requested matter is not relevant to this case, because there is no evidence that Defendants or the uploader of any infringing clip has represented that they have a license to post Stage Three content on YouTube. Stage Three further objects on the ground that any rights extended to a licensee of Stage Three content do not extend to parties such as unauthorized uploaders of content on YouTube, neither of whom derive any rights under such license. Subject to and without waiving the foregoing objections, Stage Three states that the license produced at the Bates numbers above grants certain rights to exploit Stage Three's content on the Internet subject to the express terms of the agreement, including the fee paid by the licensee and the term of the license. In the case of the license produced at the Bates numbers above, the use is limited to no more than 1:31 of the composition in context with the program for streaming only digital downloads of the entire episode (linear only) for a term of one year.

REQUEST FOR ADMISSION NO. 54:

Admit that the license agreement produced at ST00102544-46 grants the licensee the right to exhibit and distribute the work on websites, including YouTube.com.

RESPONSE TO REQUEST FOR ADMISSION NO. 54:

Stage Three objects to this Request on the grounds that it is vague and ambiguous, including the terms "exhibit", "distribute", "the work" and "on websites". Stage Three objects to this Request on the grounds that the requested matter is not relevant to this case, because there is no evidence that Defendants or the uploader of any infringing clip has represented that they have a license to post Stage Three content on YouTube. Stage Three further objects on the ground that any rights extended to a licensee of Stage Three content do not extend to parties such as unauthorized uploaders of content on YouTube, neither of whom derive any rights under such license. Subject to and without waiving the foregoing objections, Stage Three states that the

license produced at the Bates numbers above grants certain rights to exploit Stage Three's content on the Internet subject to the express terms of the agreement, including the fee paid by the licensee and the term of the license. In the case of the license produced at the Bates numbers above, the use is limited to 1:11 of the composition in context with the program for streaming only digital downloads of the entire episode (linear only) for a term of one year.

REQUEST FOR ADMISSION NO. 55:

Admit that the license agreement discussed in the email chain produced at ST00097906-11 grants the licensee the right to exhibit and distribute the work on websites, including YouTube.com.

RESPONSE TO REQUEST FOR ADMISSION NO. 55:

Stage Three objects to this Request on the grounds that it is vague and ambiguous, including the terms "exhibit", "distribute", "the work" and "on websites". Stage Three objects to this Request on the grounds that the requested matter is not relevant to this case, because there is no evidence that Defendants or the uploader of any infringing clip has represented that they have a license to post Stage Three content on YouTube. Stage Three further objects on the ground that any rights extended to a licensee of Stage Three content do not extend to parties such as unauthorized uploaders of content or YouTube, neither of whom derive any rights under such license. Subject to and without waiving the foregoing objections, Stage Three states that the license produced at the Bates numbers above grants certain rights to exploit Stage Three's content on the Internet subject to the express terms of the agreement, including the fee paid by the licensee and the term of the license. In the case of the license discussed at the Bates numbers above, the use is limited to 2:00 in context.

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REQUEST FOR ADMISSION NO. 56:

Admit that the license agreement discussed in the email chain produced at ST00003889-95 grants the licensee the right to exhibit and distribute the work on websites, including YouTube.com.

RESPONSE TO REQUEST FOR ADMISSION NO. 56:

Stage Three objects to this Request on the grounds that it is vague and ambiguous, including the terms “exhibit”, “distribute”, “the work” and “on websites”. Stage Three objects to this Request on the grounds that the requested matter is not relevant to this case, because there is no evidence that Defendants or the uploader of any infringing clip has represented that they have a license to post Stage Three content on YouTube. Stage Three further objects on the ground that any rights extended to a licensee of Stage Three content do not extend to parties such as unauthorized uploaders of content or YouTube, neither of whom derive any rights under such license. Stage Three denies this Request; no license was issued for the use discussed in the email chain produced at the Bates numbers above.

REQUEST FOR ADMISSION NO. 57:

Admit that the license agreement discussed in the email chain produced at ST00081262-83 grants the licensee the right to exhibit and distribute the work on websites, including YouTube.com.

RESPONSE TO REQUEST FOR ADMISSION NO. 57:

Stage Three objects to this Request on the grounds that it is vague and ambiguous, including the terms “exhibit”, “distribute”, “the work” and “on websites”. Stage Three objects to this Request on the grounds that the requested matter is not relevant to this case, because there is no evidence that Defendants or the uploader of any infringing clip has represented that they

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have a license to post Stage Three content on YouTube. Stage Three further objects on the ground that any rights extended to a licensee of Stage Three content do not extend to parties such as unauthorized uploaders of content or YouTube, neither of whom derive any rights under such license. Subject to and without waiving the foregoing objections, Stage Three states that the license produced at the Bates numbers above grants certain rights to exploit Stage Three's content on the Internet subject to the express terms of the agreement, including the fee paid by the licensee and the term of the license. In the case of the license discussed at the Bates numbers above, the use is limited to 20 seconds of the composition in context with the advertisement for a term of one year, and internet use is limited to streaming only on the named websites, which do not include YouTube. Additionally, the license excludes all interactive and/or non-linear forms of exploitation.

REQUEST FOR ADMISSION NO. 58:

Admit that the license agreement discussed in the email chain produced at ST00096555-59 grants the licensee the right to exhibit and distribute the work on websites, including YouTube.com.

RESPONSE TO REQUEST FOR ADMISSION NO. 58:

Stage Three objects to this Request on the grounds that it is vague and ambiguous, including the terms "exhibit", "distribute", "the work" and "on websites". Stage Three objects to this Request on the grounds that the requested matter is not relevant to this case, because there is no evidence that Defendants or the uploader of any infringing clip has represented that they have a license to post Stage Three content on YouTube. Stage Three further objects on the ground that any rights extended to a licensee of Stage Three content do not extend to parties such as unauthorized uploaders of content or YouTube, neither of whom derive any rights under such

license. Subject to and without waiving the foregoing objections, Stage Three states that the license produced at the Bates numbers above grants certain rights to exploit Stage Three's content on the Internet subject to the express terms of the agreement, including the fee paid by the licensee and the term of the license. In the case of the license discussed at the Bates numbers above, the use is limited to 20 seconds of the composition in context with the advertisement for a term of one year, and internet use is limited to streaming only on the named websites, which do not include YouTube. Additionally, the license excludes all interactive and/or non-linear forms of exploitation.

REQUEST FOR ADMISSION NO. 59:

Admit that you never informed YouTube of the existence of the license agreements set forth in Requests 21-58.

RESPONSE TO REQUEST FOR ADMISSION NO. 59:

Stage Three objects to this Request on the grounds that the requested matter is outside the scope of information relevant to this case. Subject to and without waiving the foregoing objections, Stage Three denies this Request to the extent it implies that Stage Three has any obligation to inform YouTube of the existence of these license agreements. As a business practice, it is ordinarily incumbent upon the party exploiting content, i.e. YouTube, to seek and obtain appropriate license as well as information concerning the owner and/or administrator of which it is exploiting. Such information is readily and publicly available including through public databases identifying Stage Three as the administrator of and/or owner of the works in suit and other Stage Three content. Stage Three further denies this Request for the reasons set forth in Requests nos. 21-58.

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REQUEST FOR ADMISSION NO. 60:

Admit that the presence on the youtube.com website of videos embodying the works in suit can have the effect of increasing consumer demand for those works.

RESPONSE TO REQUEST FOR ADMISSION NO. 60:

Stage Three objects to this Request on the grounds that it is vague and ambiguous, including the phrases “can have the effect” and “consumer demand.” Stage Three further objects to this Request on the ground that the requested matter is outside the scope of information relevant to this case. Stage Three further objects to this request on the ground that it seeks Stage Three’s opinion regarding an incomplete hypothetical question, not the admission or denial of a fact. Subject to and without waiving the foregoing objections, Stage Three denies that the presence of videos on Youtube.com has the effect of increasing consumer demand, including, without limitation, when the works are being made available for free on youtube.com and are a substitution of the products sold or licensed by Stage Three to third parties for a fee and/or otherwise damage Stage Three’s business.

REQUEST FOR ADMISSION NO. 61:

Individually for each accused clip, admit that you did not send a DMCA takedown notice to YouTube within one week of becoming aware of that clip’s presence on YouTube.

RESPONSE TO REQUEST FOR ADMISSION NO. 61:

Stage Three objects to this Request on the grounds that it is vague and ambiguous, including the term “becoming aware.” Stage Three further objects to this Request on the ground that it calls for the disclosure of information protected by the attorney-client privilege and/or the work-product doctrine. Stage Three further objects to this Request on the ground that the requested matter is outside the scope of information relevant to this case. Stage Three further

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objects to this request on the ground that it misconstrues the parties' respective obligations under applicable law. Subject to and without waiving the foregoing objections, Stage Three denies this Request to the extent that many DMCA takedown notices were sent to YouTube within one week of Stage Three discovering the infringing content. Stage Three states that, because of the huge volume of infringements of its works on the YouTube website, it notified YouTube in a manner compliant with the DMCA as expeditiously as possible after determining that each YouTube video that it claims as infringing in the Complaints in this action infringed its content.

REQUEST FOR ADMISSION NO. 62:

Individually for each accused clip, admit that you did not send a DMCA takedown notice to YouTube within one month of becoming aware of that clip's presence on YouTube.

RESPONSE TO REQUEST FOR ADMISSION NO. 62:

Stage Three objects to this Request on the grounds that it is vague and ambiguous, including the term "becoming aware." Stage Three further objects to this Request on the ground that it calls for the disclosure of information protected by the attorney-client privilege and/or the work-product doctrine. Stage Three further objects to this Request on the ground that the requested matter is outside the scope of information relevant to this case. Stage Three further objects to this Request on the ground that the requested matter is outside the scope of information relevant to this case. Stage Three further objects to this request on the ground that it misconstrues the parties' respective obligations under applicable law. Subject to and without waiving the foregoing objections, Stage Three denies this Request to the extent that many DMCA takedown notices were sent to YouTube within one month of Stage Three discovering the infringing content. Stage Three states that, because of the huge volume of infringements of its works on the YouTube website, it notified YouTube in a manner compliant with the DMCA

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as expeditiously as possible after determining that each YouTube video that it claims as infringing in the Complaints in this action infringed its content.

REQUEST FOR ADMISSION NO. 63:

Individually for each accused clip, admit that you did not send a DMCA takedown notice to YouTube within two months of becoming aware of that clip's presence on YouTube.

RESPONSE TO REQUEST FOR ADMISSION NO. 63:

Stage Three objects to this Request on the grounds that it is vague and ambiguous, including the term "becoming aware." Stage Three further objects to this Request on the ground that it calls for the disclosure of information protected by the attorney-client privilege and/or the work-product doctrine. Stage Three further objects to this Request on the ground that the requested matter is outside the scope of information relevant to this case. Stage Three further objects to this Request on the ground that the requested matter is outside the scope of information relevant to this case. Stage Three further objects to this request on the ground that it misconstrues the parties' respective obligations under applicable law. Subject to and without waiving the foregoing objections, Stage Three denies this Request to the extent that many DMCA takedown notices were sent to YouTube within two months of Stage Three discovering the infringing content. Stage Three states that, because of the huge volume of infringements of its works on the YouTube website, it notified YouTube in a manner compliant with the DMCA as expeditiously as possible after determining that each YouTube video that it claims as infringing in the Complaints in this action infringed its content.

REQUEST FOR ADMISSION NO. 64:

Individually for each accused clip, admit that you did not consult with your sub-publishers to ensure that the clip was unauthorized to appear on the YouTube.com site.

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RESPONSE TO REQUEST FOR ADMISSION NO. 64:

Stage Three objects to this request on the grounds that it is vague and ambiguous, including the terms “consult” and “ensure”. Stage Three further objects to this Request on the ground that the requested matter is outside the scope of information relevant to this case. Stage Three further objects to this Request on the ground that it calls for the disclosure of information protected by the attorney-client privilege and/or the work-product doctrine. Subject to and without waiving the foregoing objections, Stage Three denies this Request to the extent it implies that Stage Three is obligated to consult with its sub-publishers to establish that each accused clip was unauthorized to appear on the YouTube website, and admits that in certain cases it did not contact its sub-publisher prior to requesting that YouTube take down an infringing clip, because in those cases Stage Three’s sub-publishers either do not have authority under the express terms of the agreements between them and Stage Three to post content to youtube.com or to authorize third parties to upload clips containing Stage Three content on youtube.com, a website that is available worldwide, or the sub-publisher is required to seek permission from Stage Three before issuing a license to grant the right to exploit Stage Three content on the internet.

REQUEST FOR ADMISSION NO. 65:

Individually for each accused clip, admit that you did not consult with the co-owner(s) of the work-in-suit to ensure that the clip was unauthorized appear on the YouTube.com site.

RESPONSE TO REQUEST FOR ADMISSION NO. 65:

Stage Three objects to this request on the grounds that it is vague and ambiguous, including the terms “consult”, “ensure” and “co-owner”. Stage Three further objects to this Request on the ground that the requested matter is outside the scope of information relevant to this case. Stage Three further objects to this Request on the ground that it calls for the disclosure

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of information protected by the attorney-client privilege and/or the work-product doctrine.

Subject to and without waiving any of the foregoing objections, Stage Three denies this Request to the extent it implies that Stage Three is obligated to consult with a co-owner (if any) to ensure that each accused clip was unauthorized to be on the YouTube website, and admits that, with respect to each accused clip, it either has the right to take legal action without consulting with a co-owner (if any), or it obtained approval from a co-owner (if any) to take legal action against Defendants.

REQUEST FOR ADMISSION NO. 66:

Individually for each accused clip, admit that you did not consult with the writer (i.e. a writer signed by Stage Three) of the work-in-suit to ensure that the clip was authorized to appear on the YouTube.com.

RESPONSE TO REQUEST FOR ADMISSION NO. 66:

Stage Three objects to this request on the grounds that it is vague and ambiguous, including the terms “consult”, “ensure” and “writer”. Stage Three further objects to this Request on the ground that the requested matter is outside the scope of information relevant to this case. Subject to and without waiving the foregoing objections, Stage Three denies this Request to the extent it implies that Stage Three is obligated to consult with the “writer” to ensure that each accused clip was unauthorized to be on the YouTube website, and admits that, with respect to each accused clip, Stage Three has no obligation to consult with the “writer” of the work prior to taking action against Defendants for infringements of Stage Three’s works.

REQUEST FOR ADMISSION NO. 67:

Individually for each accused clip, admit that you did not consult with any of your licensees to ensure that the clip was not authorized to appear on the YouTube.com site.

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RESPONSE TO REQUEST FOR ADMISSION NO. 67:

Stage Three objects to this Request on the grounds that it is vague and ambiguous, including the word “consult” and “ensure”. Stage Three further objects to this Request on the ground that the requested matter is outside the scope of information relevant to this case. Subject to and without waiving the foregoing objections, Stage Three denies that, with respect to each accused clip, any of the infringing clips involved licensed materials within the scope of the license.

REQUEST FOR ADMISSION NO. 68:

Admit that some of your works-in-suit are co-owned by third parties.

RESPONSE TO REQUEST FOR ADMISSION NO. 68:

Stage Three objects to this Request to the extent it implies that Stage Three is obligated to consult with a co-owner (if any) to ensure that each accused clip was unauthorized to be on the YouTube website, and states that, with respect to each accused clip, it either has the right to take legal action without consulting with a co-owner (if any), or it obtained approval from a co-owner (if any) to take legal action against Defendants. Subject to and without waiving the foregoing objections, Stage Three states that three works in suit are co-owned by third parties.

REQUEST FOR ADMISSION NO. 69:

Admit that for the works-in-suit co-owned by third parties, the co-owners are not required to consult with you or seek your permission before licensing the work.

RESPONSE TO REQUEST FOR ADMISSION NO. 69:

Subject to and without waiving the foregoing objections, Stage Three denies this Request.

REQUEST FOR ADMISSION NO. 70:

Admit that you have not signed up to use YouTube’s Content Verification Program.

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RESPONSE TO REQUEST FOR ADMISSION NO. 70:

Stage Three objects on the grounds that it is vague and ambiguous and that YouTube has used several euphemisms to refer to a number of “tools” that it offers to content owners. Stage Three further objects to this Request on the ground that it calls for the disclosure of information protected by the attorney-client privilege and/or the work-product doctrine. Stage Three further objects to this Request on the ground that the requested matter is outside the scope of information relevant to this case. To the extent that the Content Verification Program “tool” is an electronic substitute for a DMCA takedown notice, Stage admits that it has not used this “tool”, and otherwise denies the Request.

REQUEST FOR ADMISSION NO. 71:

Admit that you have not signed up to use YouTube’s Content ID tool.

RESPONSE TO REQUEST FOR ADMISSION NO. 71:

Stage Three objects on the grounds that it is vague and ambiguous and that YouTube has used several euphemisms to refer to a number of “tools” that it offers to content owners. Stage Three further objects to this Request on the ground that it calls for the disclosure of information protected by the attorney-client privilege and/or the work-product doctrine. Stage Three further objects to this Request on the ground that the requested matter is outside the scope of information relevant to this case. To the extent that Content ID is a tool that refers to digital fingerprinting technology, Stage Three states that Defendants have not made their digital fingerprinting technology readily available to Plaintiffs on reasonable terms.

REQUEST FOR ADMISSION NO. 72:

Admit that your writers (i.e. writers signed by Stage Three) have posted videos on YouTube.

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RESPONSE TO REQUEST FOR ADMISSION NO. 72:

Stage Three objects to this Request as vague, overbroad and burdensome. To the extent that this Request seeks information about Stage Three writers' personal use of YouTube, Stage Three objects to this Request as seeking information outside of Stage Three's possession or control, and is invasive to the writers' privacy. Subject to and without waiving the foregoing objections, Stage Three denies this Request.

REQUEST FOR ADMISSION NO. 73:

Admit that you retracted DMCA takedown notices sent to YouTube for one or more of your works.

RESPONSE TO REQUEST FOR ADMISSION NO. 73:

Subject to and without waiving the foregoing objections, Stage Three denies this Request.

REQUEST FOR ADMISSION NO. 74:

Admit that on no occasion prior to November 7, 2007 did you inform YouTube of the presence and location of any video on the YouTube.com site that allegedly infringed your copyrights.

RESPONSE TO REQUEST FOR ADMISSION NO. 74:

Stage Three objects to this Request on the ground that it requires the compilation or review of information otherwise within Defendants' possession, custody or control and more easily accessible to Defendants. Subject to and without waiving the foregoing objections, Stage Three denies this Request.

REQUEST FOR ADMISSION NO. 75:

Admit that on no occasion prior to November 7, 2007 did you inform YouTube of the presence of any accused clip on the YouTube.com site.

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RESPONSE TO REQUEST FOR ADMISSION NO. 75:

Stage Three objects to this Request on the ground that it requires the compilation or review of information otherwise within Defendants' possession, custody or control and more easily accessible to Defendants. Subject to and without waiving the foregoing objections, Stage Three denies this Request, and states that a copy of the Amended Complaint, listing video clips on the YouTube website that infringed Stage Three's works, was submitted to YouTube's

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counsel on October 8, 2007, and that the Amended Complaint, containing the same list of video clips, was filed with the Court on November 7, 2007.

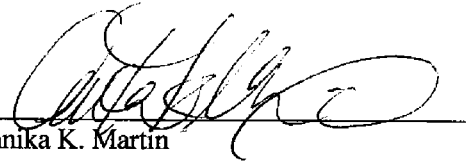
Dated: January 11, 2010

Respectfully submitted,

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Facsimile: (212) 355-9592

By: _____

Annika K. Martin

A handwritten signature in black ink, appearing to read 'Annika K. Martin', is written over a horizontal line. The signature is fluid and cursive.