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 VII OF IX (Pages SJA-1508 to SJA-1787) – 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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Schapiro Exhibit 84

From: Mary Ann Slim
Sent: Friday, August 17, 2007 10:37 AM
To: ian neil
Subject: RE: "Rock & Roll Queen" (Morgan/Cooper/Morgan) - "RocknRolla" film Approval
I just lifted the Rights from your request! Of course you may have In-Context Trailer usage.

Please don't forget to ask Mark for directions to gig for our road trip together next week!

xx

Mary Ann Slim
Head of Film, TV & Media
Stage Three Music Ltd
13A Hillgate Street
London W8 7SP
Tel: 020 7792 6060
Fax: 020 7792 6061

From: ian neil [mailto:ianneil1@mac.com]
Sent: 17 August 2007 09:25
To: Mary Ann Slim
Subject: Re: "Rock & Roll Queen" (Morgan/Cooper/Morgan) - "RocknRolla" film Approval
Importance: High

i'll need in context trailer use here....

Ian Neil
Music Supervision
The Blue Building | 8-10 Basing St | London | W11 1ET
Tel: +44 20 7229 1229
Mob: +44 7832 241160
http://www.imdb.com/name/nm1250117/
http://www.hot-house-music.com/
http://www.myspace.com/ianneilmusic

CONTROL in cinemas Oct 5th
http://www.controlthemovie.com/
ST.TRINIAN'S in cinemas 21st Dec
http://www.sttriniansmovie.com/

On 16 Aug 2007, at 16:28, Mary Ann Slim wrote:

Subject To Contract

Hi Ian

I approve the attached request to use "Rock & Roll Queen" in the Guy Ritchie film, "RocknRolla" as per the terms and fees below which are subject to the standard Terms and Conditions of our Licence :

SONG TITLE:	**"ROCK & ROLL QUEEN"**
COMPOSERS:	MORGAN/COOPER/MORGAN
STAGE THREE MUSIC %:	100% Stage Three Music
FILM TITLE:	"ROCKNROLLA"
SYNOPSIS:	Definition: "A man who derives his living off the streets by using his wits and raw drive." The film is a social commentary on London becoming the leading global city both culturally and financially. The impact of the new class of Russian billionaires and how the old crime lords are being left behind by the new international breed. Within the changing city we follow the journey of three young men, who are trying to keep their heads above rising water in a city that was once familiar. The rules have changed, the drugs, the tricks, the crime, the slime, the

	characters, and the shenanigans of the new world. Welcome to the world of the ROCKNROLLA.
DIRECTOR:	Guy Ritchie
PRODUCER:	Steve Clark-Hall
MUSIC SUPERVISOR:	Ian Neil
SCENE DESCRIPTION:	As per the attached script pages from Scene 73 – Scene 85 with The Subways performing live in the Nightclub. The scenes cut between the live performance in the Nightclub; Roman & Mickey in the Nightclub office and Johnny Story, Pete & Bouncer outside the Nightclub – the later two have been filmed separately.
FEATURED/BACKGROUND:	FEATURED LIVE PERFORMANCE
TERRITORY:	World
TERM:	Perpetuity
RIGHTS:	Theatrical and non-theatrical exhibition, analogue and digital radio, all forms of broadcasting to any platform (including terrestrial, cable and satellite television and whether analogue or digital, "free" or "pay" (by any means) and whether "standard" or "non-standard" television and any other fixed or portable device capable of receiving broadcast signals), by means of the internet or similar by way of both downloading and streaming and by means of videocassettes, videodiscs, DVDs and other physical formats now or hereafter designed for home use by the consumer, and to distribute such formats by sale or otherwise in each country of the Territory. Licence as per our Standard Terms and Conditions.
MUSIC DURATION:	Up to TWO (2) MINUTES ONLY

FEES:	[redacted]
MISCELLANEOUS:	1. The Subways will have the right to use the footage shot at the gig at Bournemouth Fire Station on Wednesday 22nd August 2007 on the internet via their own website, MySpace, YouTube etc. as well as the final scene from the film once the film has been released. 2. Stage Three Music will have the right to use footage shot at the gig at Bournemouth Fire Station on Wednesday 22nd August 2007 on their website, www.stagethreemusic.com, as well as the final scene from the film once the film has been released – streamed only non-downloadable. 3. Ten (10) tickets to the UK premiere and party of the film will be supplied to Stage Three Music. 4. Three (3) copies of the film will be provided to Stage Three Music once the film is released on DVD. All the above points will form a material part of the agreement.
END TITLE CREDIT:	**"Rock And Roll Queen"** **Written by Billy Lunn, Charlotte Cooper & Joshua Morgan** **Published by Stage Three Music Ltd**
LICENSEE:	**TBC**
WHICH RECORDING: **Original or re-recording**	Either filmed live recording or original Master by The Subways
RELEASE DATE:	**TBC**

I look forward to seeing you next week at the gig and let me know if you need anything else in the meantime.

Best wishes,

Mary Ann x

Mary Ann Slim
Head of Film, TV & Media
Stage Three Music Ltd
13A Hillgate Street
London W8 7SP
Tel: 020 7792 6060
Fax: 020 7792 6061

From: ianneil [mailto:ian@ianneil.demon.co.uk]
Sent: 03 August 2007 13:03
To: Mary Ann Slim
Cc: Mark Mostyn; Skaritchie@aol.com; Steve Clark-Hall
Subject: Re: The Subways - Bournemouth filming

Dear Mary Ann,

So here's the lowdown for the shoot.

They will come with 4 cameras = 8 people, 3 sound, 4 production and few others so maximum 20 people. Mark will come down and recce the venue next week and sort out parking etc with the owners. Please can you let him have a contact at the venue for him to liaise.

We will need to film 'rock n roll queen' twice at the sound check and ideally the lighting should be used to reflect the live performance later that night ,as we will use footage from both
shoots. They will need to wear the same clothes on the sound check as they do for the performance.
We would also like some crowd noise if at all possible so we can use in the dub on the scenes
that come from the sound check. The audience will be given disclaimers at the venue in case anyone does not want to be filmed (unlikely) and will be advised where the cameras
won't be filming.

I hereby check with Steve and Lauren if any of the spare footage can be used for the bands promotional
tools such as my space. The plan is to just film rock n roll queen and not the whole gig, but if the band
and management wanted the whole gig filmed then Steve will look into the logistics of this. It
would be costly for the film co. to shoot the whole gig, so we would have to come to some

arrangement.

At the moment the plan is to use the live audio from the gig in the final mix, in which case we would
would like to know if Warners will control the live performance or if the band do. In terms

I hope this covers everything for now. Meantime please see the official request form and please proceed
to get the sign off on the fee for publishing and I'll await your response re live recording ownership.

Thnx for everything and look forward hearing back from you and seeing you down there. Obviously
once we hear back we will then let the label know all the info.

<GR RocknRolla Synopsis.doc>
<RocknRolla Deal Memo from Ian Neil 03.08.07.rtf>
<Script pages for RocknRolla.pdf>

Schapiro Exhibit 86

UNITED STATES DISTRICT COURT
FOR THE 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,

Plaintiffs,

v.

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

Defendants.

Case No. 07 Civ. 3582 (LLS)

CHERRY LANES' RESPONSES AND OBJECTIONS TO DEFENDANTS' FIRST SET OF REQUESTS FOR ADMISSION TO CHERRY LANE MUSIC PUBLISHING COMPANY, INC.

Pursuant to Rule 36(a) of the Federal Rules of Civil Procedure, Named Plaintiff Cherry Lane Music Publishing Company, Inc. ("Cherry Lane") 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. Cherry Lane objects to the Requests on the ground that Cherry Lane is still in the process of gathering and analyzing information relevant to these Requests. Cherry Lane 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. Cherry Lane 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 Cherry Lane 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, Plaintiff's responses to these Requests is 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, Cherry Lane does not concede the relevance, materiality or admissibility of any of the admissions or responses sought herein. Cherry Lane's responses are made subject to and without waiving any objections as to relevancy, materiality, admissibility, vagueness, ambiguity, competency or privilege.

3. Cherry Lane does not waive any of its rights to object on any ground to the use of its responses herein.

4. Cherry Lane objects to the Requests to the extent that they set forth compound, conjunctive or disjunctive statements.

5. Cherry Lane 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. Cherry Lane 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. Cherry Lane 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. Cherry Lane 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 Cherry Lane's counsel.

9. Cherry Lane 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. Cherry Lane objects to each request, instruction or definition to the extent that they are vague, ambiguous, overly broad or unduly burdensome.

11. Cherry Lane 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. Cherry Lane objects to each request to the extent that they fail to specify an applicable time period and are thereby vague, ambiguous and overbroad.

13. Cherry Lane objects to each request as premature to the extent that it calls for expert opinion

14. Cherry lane objects to each request to the extent that it calls for a legal conclusion.

15. Cherry Lane objects to each request, instruction or definition to the extent that they purport to require Cherry Lane 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. Cherry Lane objects to the definitions of "Cherry Lane", "Cherry Lane'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). Cherry Lane 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. Cherry Lane 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 “Cherry Lane”, “Cherry Lane’s”, “you” and “your” to mean Named Plaintiff Cherry Lane.

17. Cherry Lane objects to the definitions of “Work(s) In Suit” and “Accused Clip(s)” as compound, vague and ambiguous. Cherry Lane further objects to the extent these definitions call for privileged information. Cherry Lane 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 Cherry Lane seeks recovery. As set forth at paragraph 74 of the Second Amended Complaint, the infringed works specified by Cherry Lane 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. Cherry Lane reserves all rights to identify additional infringements and infringed works.

18. Cherry Lane 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 Cherry Lane 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 Cherry Lane, and the information known or readily obtainable by Cherry Lane is insufficient to enable the party to admit or deny.

20. Cherry Lane reserves the right to supplement or amend these responses. These responses should not be construed as, and do not constitute, a waiver of Cherry Lane’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 Cherry Lane'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. Cherry Lane reserves the right to amend, supplement, modify, or correct these responses and objections as appropriate.

CHERRY LANE'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: Cherry Lane objects to this Request on the grounds that it is vague and ambiguous, including the term "at all relevant times." Cherry Lane further objects to this Request to the extent it calls for a legal conclusion. Subject to and without waiving the foregoing objections, Cherry Lane 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 this 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: Cherry Lane objects to this Request as vague and overbroad, including with respect to the terms "at all relevant times" and "material," which are undefined terms. Cherry Lane 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, Cherry Lane 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: Cherry Lane objects to this Request for Admission as vague and overbroad, including with respect to the term "material," which is an undefined term. Cherry Lane further objects to this Request to the extent it calls for a legal conclusion. Subject to and without waiving the foregoing objections, Cherry Lane 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: Cherry Lane objects to this Request for Admission as vague and overbroad, including with respect to the term "material," which is an undefined term. Cherry Lane further objects to this Request to the extent it calls for a legal conclusion. Subject to and without waiving the foregoing objections, Cherry Lane 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. § 5l2(c)(2).

RESPONSE TO REQUEST FOR ADMISSION NO. 5: Cherry Lane 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, Cherry Lane 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: Cherry lane objects to this Request on the grounds that it is vague and ambiguous, including the term "material". Cherry Lane further objects to this Request to the extent it calls for a legal conclusion. Subject to and without waiving the foregoing objections, Cherry Lane 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: Cherry Lane 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, Cherry Lane 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: Cherry Lane objects to this Request to the extent it calls for a legal conclusion. Subject to and without waiving the foregoing objections, Cherry Lane 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: Cherry Lane objects to this Request as compound. Cherry Lane further objects to this Request to the extent it calls for a legal

conclusion. Subject to and without waiving the foregoing objections, Cherry Lane 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)(l)(B).

RESPONSE TO REQUEST FOR ADMISSION NO. 10: Cherry Lane objects to this Request to the extent it calls for a legal conclusion. Subject to and without waiving the foregoing objections, Cherry Lane 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: Cherry Lane objects to this Request to the extent it calls for a legal conclusion. Subject to and without waiving the foregoing objections, Cherry Lane 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: Cherry Lane objects to the request as compound. Cherry Lane 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, Cherry Lane 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: Cherry Lane objects to this Request as vague and ambiguous, including the terms "at all relevant times", "reasonably implemented" and "appropriate circumstances". Cherry Lane further objects to this Request to the extent it calls for a legal conclusion. Subject to and without waiving the foregoing objections, Cherry Lane 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: Cherry Lane objects to this Request as vague and ambiguous, including the term "in existence". Cherry Lane further objects to this Request to the extent it calls for a legal conclusion. Cherry Lane 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, Cherry Lane denies 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: Cherry Lane objects to this Request to the extent it calls for a legal conclusion. Subject to and without waiving the foregoing objections, Cherry Lane denies 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: Cherry Lane objects to this Request on the grounds that it is vague and ambiguous, including the terms "exhibit", "distribute", "the work" and "on websites". Cherry Lane further objects to this Request on the ground that the requested matter is outside the scope of information relevant to this case. Cherry Lane further objects to this Request on the ground that any rights extended to a licensee of Cherry Lane 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, Cherry Lane 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. Cherry Lane 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: Cherry Lane objects to this Request on the grounds that it is vague and ambiguous, including the terms "exhibit", "distribute", "the work" and "on websites". Cherry Lane further objects to this Request on the ground that the requested matter is outside the scope of information relevant to this case. Cherry Lane further

objects to this Request on the ground that any rights extended to a licensee of Cherry Lane 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, Cherry Lane 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. Cherry Lane 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. Cherry Lane admits that there are fewer than twenty 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 Cherry Lane's responses to Requests nos. 21-29.

REQUEST FOR ADMISSION NO. 18: Admit that you have issued licenses for works-in-suit after November 7, 2007, that grant the licensee the right to exhibit and distribute the work on websites, including YouTube.com.

RESPONSE TO REQUEST FOR ADMISSION NO. 18: Cherry Lane objects to this Request on the grounds that it is vague and ambiguous, including the terms "exhibit", "distribute", "the work" and "on websites". Cherry Lane further objects to this Request on the ground that the requested matter is outside the scope of information relevant to this case. Cherry Lane further objects to this Request on the ground that any rights extended to a licensee of Cherry Lane

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, Cherry Lane 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. Cherry Lane 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. Cherry Lane admits that there are fewer than four 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 Cherry Lane's responses to Requests nos. 21-29.

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: Cherry Lane objects to this Request on the grounds that it is vague and ambiguous, including the terms "exhibit", "distribute", "the work" and "on websites". Cherry Lane further objects to this Request on the ground that the requested matter is outside the scope of information relevant to this case. Cherry Lane further objects to this Request on the ground that any rights extended to a licensee of Cherry Lane 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, Cherry Lane 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. Cherry Lane 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. Cherry Lane admits that there has been one license that has 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 Cherry Lane's responses to Requests nos. 21-29.

REQUEST FOR ADMISSION NO. 20: Admit that on no occasion did you or Stage Three Music Limited inform YouTube of the presence of any authorized videos on the YouTube.com site.

RESPONSE TO REQUEST FOR ADMISSION NO. 20: Cherry Lane objects to this Request on the ground that it is vague and ambiguous, including the terms "inform" and "any authorized videos." Cherry Lane further objects on the ground that the reference to Cherry Lane's co-plaintiff Stage Three Music Limited renders this Request unintelligible. Cherry Lane 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, Cherry Lane denies this Request to the extent it implies that Cherry Lane 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 Cherry Lane that would allow YouTube to determine if the presence of videos containing Cherry Lane 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 Cherry Lane as the administrator of and/or owner of the works in suit and other Cherry Lane content. Cherry Lane further denies this Request because Cherry Lane wrote YouTube in the fall of 2006 to inform YouTube of the presence of videos infringing Cherry Lane works on the YouTube.com website. Keith Hauprich of Cherry Lane also informed Chris Maxcy of the presence of videos infringing Cherry Lane works during a telephone conversation in or around December 2006. Cherry Lane lacks knowledge of the actions of co-plaintiff Stage Three Music Limited, an entity which does not have rights in Cherry Lane's works.

REQUEST FOR ADMISSION NO. 21: Admit that the license agreement produced at CH00000323-26 grants the licensee the right to exhibit and distribute the work on websites including YouTube.com.

RESPONSE TO REQUEST FOR ADMISSION NO. 21: Cherry Lane objects to this Request on the grounds that it is vague and ambiguous, including the terms "exhibit", "distribute", "the work" and "on websites". Cherry Lane 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 Cherry Lane content on

YouTube. Cherry Lane further objects on the ground that any rights extended to a licensee of Cherry Lane 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, Cherry Lane denies that the license produced at the bates numbers above grants the right to exhibit and distribute the work on websites including YouTube.com. The above-referenced license grants certain express rights to the licensee to exploit Cherry Lane content, including the right to exhibit on the Internet limited only to "streaming-only exhibition by non-interactive electronic transmission on the internet" which excludes websites such as youtube.com. Other express provisions further limit the duration of use and limit such usage to an in-context use permitted only after payment of the fee by the licensee.

REQUEST FOR ADMISSION NO. 22: Admit that the license agreement produced at CH00000342-45 grants the licensee the right to exhibit and distribute the work on websites including YouTube.com.

RESPONSE TO REQUEST FOR ADMISSION NO. 22: Subject to and without waiving the foregoing objections, Cherry Lane denies this Request because the express terms of the agreement exclude exploitation of Cherry Lane content on the internet, including youtube.com.

REQUEST FOR ADMISSION NO. 23: Admit that the license agreement produced at CH00000411-14 grants the licensee the right to exhibit and distribute the work on websites including YouTube.com.

RESPONSE TO REQUEST FOR ADMISSION NO. 23: Cherry Lane objects to this Request on the grounds that it is vague and ambiguous, including the terms "exhibit", "distribute", "the work" and "on websites". Cherry Lane 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 Cherry Lane further objects on the ground that any rights extended to a licensee of Cherry Lane 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, Cherry Lane denies that language granting rights to exploit in "any and all forms of media now known of hereafter devised" standing alone authorizes Defendants or a licensee to exploit Cherry Lane content on websites generally or on YouTube.com. The above-referenced license grants certain express rights to the licensee to exploit Cherry Lane content, but excludes "use of the Composition in so-called 'inter-active media' as such term is commonly used in the entertainment industry," which excludes websites such as youtube.com. Other express provisions further limit the duration of use and limit such usage to an in-context use permitted only after payment of the fee by the licensee.

REQUEST FOR ADMISSION NO. 24: Admit that the license agreement produced at CH00000415-18 grants the licensee the right to exhibit and distribute the work on websites including YouTube.com.

RESPONSE TO REQUEST FOR ADMISSION NO. 24: Cherry Lane objects to this Request on the grounds that it is vague and ambiguous, including the terms "exhibit", "distribute", "the work" and "on websites". Cherry Lane 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 Cherry Lane content on YouTube. Cherry Lane further objects on the ground that any rights extended to a licensee of Cherry Lane 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, Cherry Lane denies that the license produced at the bates numbers above grants the right to exhibit and distribute the work on websites including YouTube.com. The above-referenced license grants certain express rights to the licensee to exploit Cherry Lane content, including the right to exhibit on the Internet limited only to "streaming-only exhibition

by non-interactive electronic transmission on the internet" which excludes websites such as youtube.com. Other express provisions further limit the duration of use and limit such usage to an in-context use and only for that program, permitted only after payment of the fee by the licensee.

REQUEST FOR ADMISSION NO. 25: Admit that the license agreement produced at CH00000419-22 grants the licensee the right to exhibit and distribute the work on websites including YouTube.com.

RESPONSE TO REQUEST FOR ADMISSION NO. 25: Cherry Lane objects to this Request on the grounds that it is vague and ambiguous, including the terms "exhibit", "distribute", "the work" and "on websites". Cherry Lane 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 Cherry Lane content on YouTube. Cherry Lane further objects on the ground that any rights extended to a licensee of Cherry Lane 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, Cherry Lane denies that the license produced at the bates numbers above grants the right to exhibit and distribute the work on websites including YouTube.com. The above-referenced license grants certain express rights to the licensee to exploit Cherry Lane content, including the right to exhibit on the Internet limited only to "streaming-only exhibition by non-interactive electronic transmission on the internet" which excludes websites such as youtube.com. Other express provisions further limit the duration of use and limit such usage to an in-context use and only for that program, permitted only after payment of the fee by the licensee.

REQUEST FOR ADMISSION NO. 26: Admit that the license agreement produced at CH00000482-85 grants the licensee the right to exhibit and distribute the work on websites including YouTube.com.

RESPONSE TO REQUEST FOR ADMISSION NO. 26: Cherry Lane objects to this Request on the grounds that it is vague and ambiguous, including the terms "exhibit", "distribute", "the work" and "on websites". Cherry Lane 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 Cherry Lane content on YouTube. Cherry Lane further objects on the ground that any rights extended to a licensee of Cherry Lane 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, Cherry Lane denies that the license produced at the bates numbers above grants the right to exhibit and distribute the work on websites including YouTube.com. The above-referenced license grants certain express rights to the licensee to exploit Cherry Lane content, including the right to exhibit on the Internet limited only to "streaming-only exhibition by non-interactive electronic transmission on the internet" which excludes websites such as youtube.com. Other express provisions further limit the duration of use and limit such usage to an in-context use and only for that program, permitted only after payment of the fee by the licensee.

REQUEST FOR ADMISSION NO. 27: Admit that the license agreement produced at CH00102182-85 grants the licensee the right to exhibit and distribute the work on websites including YouTube.com.

RESPONSE TO REQUEST FOR ADMISSION NO. 27: Cherry Lane objects to this Request on the grounds that it is vague and ambiguous, including the terms "exhibit", "distribute", "the work" and "on websites". Cherry Lane 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 Cherry Lane content on YouTube. Cherry Lane further objects on the ground that any rights extended to a licensee of Cherry Lane 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, Cherry Lane denies that the license produced at the bates numbers above grants the right to exhibit and distribute the work on websites including YouTube.com. The above-referenced license grants certain express rights to the licensee to exploit Cherry Lane content, including the right to exhibit on the Internet limited only to "in-context trailers, promotions and advertisements via website exhibition (whether by streaming or downloadable exhibition)" and in connection with that product. Other express provisions further limit the term of the use, prohibit assignment by the licensee without Cherry Lane's prior written consent, and require the payment of royalties after an initial advance paid by the licensee.

REQUEST FOR ADMISSION NO. 28: Admit that the license agreement produced at CH00114990-94 grants the licensee the right to exhibit and distribute the work on websites including YouTube.com.

RESPONSE TO REQUEST FOR ADMISSION NO. 28: Cherry Lane objects to this Request on the grounds that it is vague and ambiguous, including the terms "exhibit", "distribute", "the work" and "on websites". Cherry Lane 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 Cherry Lane content on YouTube. Cherry Lane further objects on the ground that any rights extended to a licensee of Cherry Lane 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, Cherry Lane denies that the license produced at the bates numbers above grants the right to exhibit and distribute the work on websites including YouTube.com. The above-referenced license grants certain express rights to the licensee to exploit Cherry Lane content, including the right to exhibit on the Internet limited only to "streaming-only exhibition by non-interactive electronic transmission on the internet" which excludes websites such as youtube.com. Other express provisions further limit the duration of use and limit such usage to an in-context use and only for that program, permitted only after payment of the fee by the licensee.

REQUEST FOR ADMISSION NO. 29: Admit that the license agreement produced at CH00116388-92 grants the licensee the right to exhibit and distribute the work on websites including YouTube.com.

RESPONSE TO REQUEST FOR ADMISSION NO. 29: Cherry Lane objects to this Request on the grounds that it is vague and ambiguous, including the terms "exhibit", "distribute", "the work" and "on websites". Subject to and without waiving the foregoing objections, Cherry Lane denies this Request denies this Request because the express terms of the agreement permit exploitation of the Cherry Lane content on CMT.com only and exclude the remainder of the internet, including youtube.com.

REQUEST FOR ADMISSION NO. 30: Admit that you never informed YouTube of the existence of the license agreements set forth in Requests 21-29.

RESPONSE TO REQUEST FOR ADMISSION NO. 30: Cherry Lane 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, Cherry Lane denies this Request to the extent it implies that Cherry Lane 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 the 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 Cherry Lane as the administrator of and/or owner of the works in suit and other Cherry Lane content. Cherry Lane further denies this Request for the reasons set forth in Requests nos. 21-29.

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: Cherry Lane objects to this Request on the grounds that it is vague and ambiguous, including the phrases "can have the effect" and "consumer demand." Cherry Lane further objects to this Request on the ground that the requested matter is outside the scope of information relevant to this case. Cherry Lane further objects to this request on the ground that it seeks Cherry Lane's opinion regarding an incomplete hypothetical question, not the admission or denial of a fact. Subject to and without waiving the foregoing objections, Cherry Lane 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 Cherry Lane to third parties for a fee and/or otherwise damage Cherry Lane'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: Cherry Lane objects to this Request on the grounds that it is vague and ambiguous, including the term "becoming aware." Cherry Lane 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. Cherry Lane further

objects to this Request on the ground that the requested matter is outside the scope of information relevant to this case. Cherry Lane 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, Cherry Lane denies this Request to the extent that many DMCA takedown notices were sent to YouTube within one week of Cherry Lane discovering the infringing content. Cherry Lane 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 to YouTube within one month of becoming aware of that clip's presence on YouTube.

RESPONSE TO REQUEST FOR ADMISSION NO. 33: Cherry Lane objects to this Request on the grounds that it is vague and ambiguous, including the term "becoming aware." Cherry Lane 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. Cherry Lane further objects to this Request on the ground that the requested matter is outside the scope of information relevant to this case. Cherry Lane further objects to this Request on the ground that the requested matter is outside the scope of information relevant to this case. Cherry Lane further object to this request on the ground that it misconstrues the parties' respective obligations under applicable law. Subject to and without waiving the foregoing objections, Cherry Lane denies this Request to the extent that many DMCA takedown notices were sent to YouTube within one month of Cherry Lane discovering the infringing content. Cherry Lane 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: Cherry Lane objects to this Request on the grounds that it is vague and ambiguous, including the term "becoming aware." Cherry Lane 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. Cherry Lane further objects to this Request on the ground that the requested matter is outside the scope of information relevant to this case. Cherry Lane further objects to this Request on the ground that the requested matter is outside the scope of information relevant to this case. Cherry Lane further object to this request on the ground that it misconstrues the parties' respective obligations under applicable law. Subject to and without waiving the foregoing objections, Cherry Lane denies this Request to the extent that many DMCA takedown notices were sent to YouTube within two months of Cherry Lane discovering the infringing content. Cherry Lane 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: 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. 35: Cherry Lane objects to this request on the grounds that it is vague and ambiguous, including the terms "consult" and "ensure". Cherry Lane further objects to this Request on the ground that the requested matter is outside the scope of information relevant to this case. Cherry Lane 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, Cherry Lane denies this Request to the extent it implies that Cherry Lane 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 subpublisher prior to requesting that YouTube take down an infringing clip, because in those cases Cherry Lane's sub-publishers either do not have authority under the express terms of the agreements between them and Cherry Lane to post content to youtube.com or to authorize third parties to posts clips containing Cherry Lane content on youtube.com, a website that is available worldwide, or the sub-publisher is required to seek permission from Cherry Lane before issuing a license to grant the right to exploit Cherry Lane content on the internet.

REQUEST FOR ADMISSION NO. 36: 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. 36: Cherry Lane objects to this request on the grounds that it is vague and ambiguous, including the terms "consult", "ensure" and "co-owner". Cherry Lane further objects to this Request on the ground that the requested matter is outside the scope of information relevant to this case. Cherry Lane 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, Cherry Lane denies this request, because there are no co-owners for the works in suit and Cherry Lane controls the administrative rights for each of the works in suit.

REQUEST FOR ADMISSION NO. 37: Individually for each accused clip, admit that you did not consult with the Stage Three 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. 37: Cherry Lane objects to this request on the grounds that it is vague and ambiguous, including the terms "consult", "ensure" and "writer". Cherry Lane further objects on the ground that the reference to Cherry Lane's co-plaintiff Stage Three Music Limited renders this Request unintelligible. Cherry Lane 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, Cherry Lane denies that Stage Three holds any rights of any nature in its works in suit.

REQUEST FOR ADMISSION NO. 38: 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. 38: Cherry Lane objects to this Request on the grounds that it is vague and ambiguous, including the word "consult" and "ensure". Cherry Lane 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, Cherry Lane 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. 39: Admit that you retracted DMCA takedown notices sent to YouTube for one or more of your works.

RESPONSE TO REQUEST FOR ADMISSION NO. 39: Subject to and without waiving the foregoing objections, Cherry Lane denies this Request.

REQUEST FOR ADMISSION NO. 40: 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.

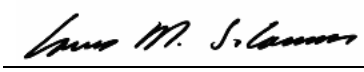
RESPONSE TO REQUEST FOR ADMISSION NO. 40: Cherry Lane objects to this Request on the ground that it requires the compilation or review of information otherwise within Defendants' possession, custody or control and more easily accessible to Defendants. Subject to and without waiving the foregoing objections, Cherry Lane denies this Request.

REQUEST FOR ADMISSION NO. 41: 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. 41: Cherry Lane 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, Cherry Lane denies this Request, and states that a copy of the Amended Complaint, listing video clips on the YouTube website that infringed Cherry Lane'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.

AS TO OBJECTIONS:

Dated: January 8, 2009
New York, New York



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Attorneys for Lead Plaintiffs, Named Plaintiffs Murbo Music Publishing, Inc., Cherry Lane Music Publishing Company, Inc., Robert Tur d/b/a Los Angeles News Service, X-Ray Dog Music, Inc., Fédération Française de Tennis, and for the Prospective Class

Schapiro Exhibit 87

.

From: Gregg Barron
Sent: Thursday, February 01, 2007 5:29 PM
To: James Williams; Philip Cialdella
Subject: RE: License 15713

Attachments: You Tube Day-O.pdf

Phil, here's the one sheet which tells most of the story. I've also pasted Erik's comments to Irving from his approval request below. James, we should have some provision in the license ensuring no parodies, lyric changes, derogatory use, etc.

You Tube Day-O.pdf (16 KB)

This is an internet only contest in which participants will record their own versions of the song and post the video to www.youtube.com. The winner of the contest receives a two week vacation in the Carribean. We would make every provision in the license ensuring that no parodies or lyric changes will be used, but the nature of YouTube prohibits this from being 100% accurate. This could turn out to be a good promotion for the song and I believe Malibu Rum is also in talks with a few different bands trying to get them to cover the song as an example.
The contest will last two (2) months, but they want the videos to be uploaded for a year.

Gregg Barron
Director, Licensing
Cherry Lane Music Publishing
6 East 32nd Street, 11th floor
New York, NY 10016
P (212) 561-3045
F (212) 447-6885

gbarron@cherrylane.com

From: James Williams
Sent: Thursday, February 01, 2007 11:22 AM
To: Gregg Barron
Subject: License 15713

Gregg,

You'll give the licensing details to Phil in regard to the Youtube License? It's already drafted and awaiting comments, if any prior to sending out.

James Williams
Contract Administrator

Cherry Lane Music
6 East 32nd Street
11th Floor
New York, NY 10016

212-561-3519
212-683-2040 fax

http://www.cherrylane.com

SJA-1547

License Request One Sheet

License # 15713 Submission Date: 2/1/2007 By: Erik Tomlin

☐ To APB Board

Contact Name: Persis Singh
Phone: 212 229-2294 Fax: 212 229-2482
Licensee: The Thomas Collective
Address: 111 West 24th Street, Suite 6R
New York, NY 10011

Song (*If More Than One, See Attached*): *DAY-O (100% of the world)*
IRVING BURGIE, WILLIAM ATTAWAY

Production: Malibu-Youtube Online Contest

Detailed Usage: multiple visual/background vocal uses, no parody/altered lyrics or contentious uses

Media: Multimedia / Internet / CDR: Streaming only at www.youtube.com

Territory: Worldwide

Term: One (1) year

Commencement Date: 5/1/2007

Total Fee: $5,000 Cherry Lane Share: $5,000

Royalty:

MFN: with master recording

Exclusivity: No None

Option Detail: No None

Comments:

Mail To Address:
,
111 West 24th Street, Suite 6R, , ,
New York, NY 10011, NY, 10011

SJA-1548

License Request One Sheet

Schapiro Exhibit 89

CONFIDENTIAL

UNITED STATES DISTRICT COURT
FOR THE 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,

Plaintiffs,

v.

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

Defendants.

Civil Action No. 07-CV-3582 (LLS)

BOURNE CO.'S RESPONSES AND OBJECTIONS TO DEFENDANTS' FIRST SET OF REQUESTS FOR ADMISSION TO BOURNE CO.

Pursuant to Rule 36(a) of the Federal Rules of Civil Procedure, Named Plaintiff Bourne Company ("Bourne") hereby responds and objects to the Requests for Admission (the "Requests") propounded by Defendants YouTube, Inc., YouTube LLC and Google, Inc. ("YouTube" or "Defendants").

CONFIDENTIAL

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. Bourne objects to the Requests on the ground that Bourne is still in the process of gathering and analyzing information relevant to these Requests. Bourne 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. Bourne 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 Bourne 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, Plaintiff's responses to these Requests is 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, Bourne does not concede the relevance, materiality or admissibility of any of the admissions or responses sought herein. Bourne's responses are made subject to and without waiving any objections as to relevancy, materiality, admissibility, vagueness, ambiguity, competency or privilege.

3. Bourne does not waive any of its rights to object on any ground to the use of its responses herein.

4. Bourne objects to the Requests to the extent that they set forth compound, conjunctive or disjunctive statements.

5. Bourne 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. Bourne 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. Bourne 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. Bourne 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 Bourne's counsel.

9. Bourne 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. Bourne objects to each request, instruction or definition to the extent that they are vague, ambiguous, overly broad or unduly burdensome.

11. Bourne 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. Bourne objects to each request to the extent that they fail to specify an applicable time period and are thereby vague, ambiguous and overbroad.

13. Bourne objects to each request as premature to the extent that it calls for expert opinion

14. Bourne objects to each request to the extent that it calls for a legal conclusion.

15. Bourne objects to each request, instruction or definition to the extent that they purport to require Bourne 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. Bourne objects to the definitions of "Bourne", "Bourne'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). Bourne 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. Bourne 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 "Bourne", "Bourne's", "you" and "your" to mean Named Plaintiff Bourne.

17. Bourne objects to the definitions of "Work(s) In Suit" and "Accused Clip(s)" as compound, vague and ambiguous. Bourne further objects to the extent these definitions call for

privileged information. Bourne 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 Bourne seeks recovery. As set forth at paragraph 74 of the Second Amended Complaint, the infringed works specified by Bourne 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. Bourne reserves all rights to identify additional infringements and infringed works.

18. Bourne objects to the definition of "substantially DMCA-compliant takedown notice" vague and ambiguous as it requires a qualitative judgment and lacks common or ready definition.

19. Where Bourne 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 Bourne, and the information known or readily obtainable by Bourne is insufficient to enable the party to admit or deny.

20. Bourne reserves the right to supplement or amend these responses. These responses should not be construed as, and do not constitute, a waiver of Bourne'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 Bourne'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. Bourne reserves the right to amend, supplement, modify, or correct these responses and objections as appropriate.

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BOURNE'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: Bourne objects to this Request on the grounds that it is vague and ambiguous, including the term "at all relevant times." Bourne further objects to this Request to the extent it calls for a legal conclusion. Subject to and without waiving the foregoing objections, Bourne 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 this Request.

RESPONSE TO REQUEST FOR ADMISSION NO. 1:

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: Bourne objects to this Request as vague and overbroad, including with respect to the terms "at all relevant times" and "material," which are undefined terms. Bourne 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, Bourne 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: Bourne objects to this Request for Admission as vague and overbroad, including with respect to the term "material," which is an undefined term. Bourne further objects to this Request to the extent it calls for a legal conclusion. Subject to and without waiving the foregoing objections, Bourne 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: Bourne objects to this Request for Admission as vague and overbroad, including with respect to the term "material," which is an undefined term. Bourne further objects to this Request to the extent it calls for a legal conclusion. Subject to and without waiving the foregoing objections, Bourne 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: Bourne 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, Bourne 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: Bourne objects to this Request on the grounds that it is vague and ambiguous, including the term "material". Bourne further objects to

this Request to the extent it calls for a legal conclusion. Subject to and without waiving the foregoing objections, Bourne 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: Bourne 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, Bourne 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: Bourne Lane objects to this Request to the extent it calls for a legal conclusion. Subject to and without waiving the foregoing objections, Bourne 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. § 5l2(c)(1)(A)(ii).

RESPONSE TO REQUEST FOR ADMISSION NO. 9: Bourne objects to this Request as compound. Bourne further objects to this Request to the extent it calls for a legal conclusion. Subject to and without waiving the foregoing objections, Bourne 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: Bourne objects to this Request to the extent it calls for a legal conclusion. Subject to and without waiving the foregoing objections, Bourne 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: Bourne objects to this Request to the extent it calls for a legal conclusion. Subject to and without waiving the foregoing objections, Bourne 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: Bourne objects to the request as compound. Bourne 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, Bourne 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: Bourne objects to this Request as vague and ambiguous, including the terms "at all relevant times", "reasonably implemented" and "appropriate circumstances". Bourne further objects to this Request to the extent it calls for a legal conclusion. Subject to and without waiving the foregoing objections, Bourne 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: Bourne objects to this Request as vague and ambiguous, including the term "in existence". Bourne further objects to this Request to the extent it calls for a legal conclusion. Bourne 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, Bourne denies 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: Bourne objects to this Request to the extent it calls for a legal conclusion. Subject to and without waiving the foregoing objections, Bourne denies 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: Bourne objects to this Request on the grounds that it is vague and ambiguous, including the terms "exhibit", "distribute", "the work" and "on websites". Bourne further objects to this Request on the ground that the requested matter is outside the scope of information relevant to this case. Bourne further objects on the ground that any rights extended to a licensee of Bourne 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, Bourne 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. Bourne 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: Bourne objects to this Request on the grounds that it is vague and ambiguous, including the terms “exhibit”, “distribute”, “the work” and “on websites”. Bourne further objects to this Request on the ground that the requested matter is outside the scope of information relevant to this case. Bourne further objects on the ground that any rights extended to a licensee of Bourne 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, Bourne 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. Bourne 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. Bourne admits that there are fewer than twenty 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* Bourne's responses to RFAs 21-27.

REQUEST FOR ADMISSION NO. 18: Admit that you have issued licenses after May 4, 2007 that grant the licensee the right to exhibit and distribute the work on websites, including YouTube.com.

RESPONSE TO REQUEST FOR ADMISSION NO. 18: Bourne objects to this Request on the grounds that it is vague and ambiguous, including the terms "exhibit", "distribute", "the work" and "on websites". Bourne further objects to this Request on the ground that the requested matter is outside the scope of information relevant to this case. .Bourne further objects on the ground that any rights extended to a licensee of Bourne 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, Bourne 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. Bourne 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. Bourne admits that there

are fewer than ten 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* Bourne's responses to RFAs 21-27.

REQUEST FOR ADMISSION NO. 19: Admit that you have issued licenses for works in suit after May 4, 2007 that grant the licensee the right to exhibit and distribute the work on websites, including YouTube.com.

RESPONSE TO REQUEST FOR ADMISSION NO. 19: Bourne objects to this Request on the grounds that it is vague and ambiguous, including the terms "exhibit", "distribute", "the work" and "on websites". Bourne further objects to this Request on the ground that the requested matter is outside the scope of information relevant to this case. Bourne further objects on the ground that any rights extended to a licensee of Bourne 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, Bourne denies language granting rights in a license can be in isolation, and states that it must be read in light of other terms and restrictions in that license. Bourne 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. Bourne admits that there are fewer than ten 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* Bourne's responses to RFAs 21-27.

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: Bourne objects to this Request on the ground that it is vague and ambiguous, including the terms "inform" and "any authorized videos." Bourne 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, Bourne denies this Request to the extent it implies that Bourne 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 actual or constructive notice whether it is authorized to show the videos displayed on its own website, and further denies this Request to the extent it implies that YouTube does not have access to information furnished by Cherry Lane that would allow YouTube to determine if the presence of videos containing Cherry Lane 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 Bourne as the administrator of and/or owner of the works in suit and other Bourne content.

REQUEST FOR ADMISSION NO. 21: Admit that the license agreement produced at BC00019096-98 grants the licensee the right to exhibit and distribute the work on websites, including YouTube.com.

RESPONSE TO REQUEST FOR ADMISSION NO. 21: Bourne objects to this Request on the grounds that it is vague and ambiguous, including the terms "exhibit", "distribute", "the

work" and "on websites". Bourne further objects to this Request on the grounds that it seeks information that is not relevant because there is no evidence that Defendants or the uploader of any Bourne further objects on the ground that any rights extended to a licensee of Bourne 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, Bourne denies that language granting rights to exploit in "any and all forms of media now known of hereafter devised" standing alone authorize Defendants or a licensee to exploit Bourne content on websites generally or on YouTube.com. The above-referenced license grants certain express rights to the licensee to exploit Bourne content, but any "internet exhibition must be in a non-interactive, linear progression and the Works must be exhibited substantially in its entirety," which excludes websites such as youtube.com. Other express provisions further limit the duration of use and limit such usage to an in-context use permitted only after payment of the fee by the licensee.

REQUEST FOR ADMISSION NO. 22: Admit that the license agreement produced at BC00009821-29 grants the licensee the right to exhibit and distribute the work on websites, including YouTube.com.

RESPONSE TO REQUEST FOR ADMISSION NO. 22: Bourne objects to this Request on the grounds that it is vague and ambiguous, including the terms "exhibit", "distribute", "the work" and "on websites". Bourne further objects to this Request on the grounds that it seeks information that is not relevant because there is no evidence that Defendants or the uploader of any Bourne further objects on the ground that any rights extended to a licensee of Bourne 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, Bourne denies that language granting rights to exploit in "any and all forms of media now known

of hereafter devised" standing alone authorize Defendants or a licensee to exploit Bourne content on websites generally or on YouTube.com. The above-referenced license grants certain express rights to the licensee to exploit Bourne content, but any "use of the Composition in the exhibition and/or broadcast of the Motion Picture in any media granted herein is limited to non-interactive, linear progression and the Motion Picture being exhibited in its entirety," which excludes websites such as youtube.com. Other express provisions further limit the duration of use and limit such usage to an in-context use permitted only after payment of the fee by the licensee.

REQUEST FOR ADMISSION NO. 23: Admit that the license agreement produced at BC00009400-402 grants the licensee the right to exhibit and distribute the work on websites, including YouTube.com.

RESPONSE TO REQUEST FOR ADMISSION NO. 23: Bourne objects to this Request on the grounds that it is vague and ambiguous, including the terms "exhibit", "distribute", "the work" and "on websites". Bourne further objects to this Request on the grounds that it seeks information that is not relevant because there is no evidence that Defendants or the uploader of any Bourne further objects on the ground that any rights extended to a licensee of Bourne 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, Bourne denies that language granting rights to exploit in "any and all forms of media now known of hereafter devised" standing alone authorize Defendants or a licensee to exploit Bourne content on websites generally or on YouTube.com. Bourne states that the above-referenced license grants certain express rights to the licensee to exploit Bourne content, subject to a number of express limitations including provisions that limit the duration of use and limit such usage to an in-context use permitted only after payment of the fee by the licensee.

REQUEST FOR ADMISSION NO. 24: Admit that the license agreement produced at BC00007341-7345 grants the licensee the right to exhibit and distribute the work on websites, including YouTube.com.

RESPONSE TO REQUEST FOR ADMISSION NO. 24: Bourne objects to this Request on the grounds that it is vague and ambiguous, including the terms "exhibit", "distribute", "the work" and "on websites". Bourne further objects to this Request on the grounds that it seeks information that is not relevant because there is no evidence that Defendants or the uploader of any Bourne further objects on the ground that any rights extended to a licensee of Bourne 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, Bourne denies that language granting rights to exploit in "any and all forms of media now known of hereafter devised" standing alone authorize Defendants or a licensee to exploit Bourne content on websites generally or on YouTube.com. Bourne states that the above-referenced license grants certain express rights to the licensee to exploit Bourne content, subject to a number of express limitations including provisions that limit the duration of use and limit such usage to an in-context use permitted only after payment of the fee by the licensee.

REQUEST FOR ADMISSION NO. 25: Admit that the license agreement referenced in the document produced at BC00004968-4970 grants the licensee the right to exhibit and distribute the work on websites, includingYouTube.com.

RESPONSE TO REQUEST FOR ADMISSION NO. 25: Bourne objects to this Request on the grounds that it is vague and ambiguous, including the terms "exhibit", "distribute", "the work" and "on websites". Bourne further objects to this Request on the grounds that it seeks information that is not relevant because there is no evidence that Defendants or the uploader of any Bourne further objects on the ground that any rights extended to a licensee of Bourne 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, Bourne denies that language granting rights to exploit in "any and all forms of media now known of hereafter devised" standing alone authorize Defendants or a licensee to exploit Bourne content on websites generally or on YouTube.com. Bourne states that the above-referenced license grants certain express rights to the licensee to exploit Bourne content, subject to a number of express limitations including provisions that limit the duration of use and limit such usage to an in-context use permitted only after payment of the fee by the licensee.

REQUEST FOR ADMISSION NO. 26: Admit that the license agreement referenced in the document produced at BC00002245-2246 grants the licensee the right to exhibit and distribute the work on websites, including YouTube.com.

RESPONSE TO REQUEST FOR ADMISSION NO. 26: Bourne objects to this Request on the grounds that it is vague and ambiguous, including the terms "exhibit", "distribute", "the work" and "on websites". Bourne further objects to this Request on the grounds that it seeks information that is not relevant because there is no evidence that Defendants or the uploader of any Bourne further objects on the ground that any rights extended to a licensee of Bourne 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, Bourne denies that language granting rights to exploit in "any and all forms of media now known of hereafter devised" standing alone authorize Defendants or a licensee to exploit Bourne content on websites generally or on YouTube.com. The above-referenced license grants certain express rights to the licensee to exploit Bourne content, but "provided that the Trailer is shown in its entirety… in a non-interactive, linear progression only," which excludes websites such as youtube.com. *See* BC00002250-BC00002254. Other express provisions further limit the

duration of use and limit such usage to an in-context use permitted only after payment of the fee by the licensee.

REQUEST FOR ADMISSION NO. 27: Admit that the license agreement referenced in the document produced at BC00019096-19098 grants the licensee the right to exhibit and distribute the work on websites, including YouTube.com.

RESPONSE TO REQUEST FOR ADMISSION NO. 27: Bourne objects to this Request on the grounds that it is vague and ambiguous, including the terms "exhibit", "distribute", "the work" and "on websites". Bourne further objects to this Request on the grounds that it seeks information that is not relevant because there is no evidence that Defendants or the uploader of any Bourne further objects on the ground that any rights extended to a licensee of Bourne 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, Bourne denies that language granting rights to exploit in "any and all forms of media now known of hereafter devised" standing alone authorize Defendants or a licensee to exploit Bourne content on websites generally or on YouTube.com. The above-referenced license grants certain express rights to the licensee to exploit Bourne content, but any "internet exhibition must be in a non-interactive, linear progression and the Works must be exhibited substantially in its entirety," which excludes websites such as youtube.com. Other express provisions further limit the duration of use and limit such usage to an in-context use permitted only after payment of the fee by the licensee.

REQUEST FOR ADMISSION NO. 28: Admit that on no occasion did you inform YouTube of the existence of the license agreements set forth in Requests 21-27.

RESPONSE TO REQUEST FOR ADMISSION NO. 28: Bourne 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, Bourne denies this Request to the extent it implies that Bourne has any obligation to inform YouTube of the existence of these license agreement. As a business practice, it is ordinarily incumbent upon the party exploiting content, i.e. YouTube, to seek and obtain the 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 Bourne as the administrator of and/or owner of the works in suit and other Bourne content. Bourne further denies this Request for the reasons set forth in Requests nos. 21-27.

REQUEST FOR ADMISSION NO. 29: 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. 29: Bourne objects to this Request on the grounds that it is vague and ambiguous, including the phrases "can have the effect" and "consumer demand." Bourne further objects to this Request on the ground that the requested matter is outside the scope of information relevant to this case. Bourne further objects to this request on the ground that it seeks Bourne's opinion regarding an incomplete hypothetical question, not the admission or denial of a fact. Subject to and without waiving the foregoing objections, Bourne 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 Bourne to third parties for a fee and/or otherwise damage Bourne's business.

REQUEST FOR ADMISSION NO. 30: 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. 30: Bourne objects to this Request on the grounds that it is vague and ambiguous, including the term "becoming aware." Bourne 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. Bourne further objects to this Request on the ground that the requested matter is outside the scope of information relevant to this case. Bourne 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, Bourne denies this Request to the extent that many DMCA takedowns were issued within one week of Bourne discovering the infringing content. Bourne 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. 31: 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. 31: Bourne objects to this Request on the grounds that it is vague and ambiguous, including the term "becoming aware." Bourne 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. Bourne further objects to this Request on the ground that the requested matter is outside the scope of information relevant to this case. Bourne 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, Bourne denies this Request to the extent that many DMCA

takedowns were issued within one month of Bourne discovering the infringing content. Bourne 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. 32: 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. 32: Bourne objects to this Request on the grounds that it is vague and ambiguous, including the term "becoming aware." Bourne 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. Bourne further objects to this Request on the ground that the requested matter is outside the scope of information relevant to this case. Bourne 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, Bourne denies this Request to the extent that many DMCA takedowns were issued within two months of Bourne discovering the infringing content. Bourne 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 consult with your sub-publishers to ensure that the clip was not authorized to appear on the YouTube.com site.

RESPONSE TO REQUEST FOR ADMISSION NO. 33: Bourne objects to this request on the grounds that it is vague and ambiguous, including the terms "consult" and "ensure". Bourne further objects to this Request on the ground that the requested matter is outside the scope of information relevant to this case. Bourne 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, Bourne denies this Request to the extent it implies that Bourne is obligated to consult with its sub-publishers to ensure that each accused clip was unauthorized to appear on the YouTube website, and admits that in certain cases it did not contact its subpublisher prior to requesting that YouTube take down an infringing clip, because in those cases Bourne's sub-publishers either do not have authority under the express terms of the agreements between them and Bourne to post content to youtube.com or to authorize third parties to posts clips containing Bourne content on youtube.com, a website that is available worldwide, or the sub-publisher is required to seek permission from Bourne before issuing a license to grant the right to exploit Bourne content on the internet.

REQUEST FOR ADMISSION NO. 34: 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 not authorized to appear on the YouTube.com site.

RESPONSE TO REQUEST FOR ADMISSION NO. 34: Bourne objects to this request on the grounds that it is vague and ambiguous, including the terms "consult", "ensure" and "co-owner". Bourne 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. Bourne 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, Bourne states that there are no are co-owners for the works in suit and that Bourne controls the administrative rights for each of the works in suit.

REQUEST FOR ADMISSION NO. 35: 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. 35: Bourne objects to this Request on the grounds that it is vague and ambiguous, including the word "consult" and "ensure". Bourne 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, Bourne 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. 36: Admit that you have not used YouTube's Content Verification Program.

RESPONSE TO REQUEST FOR ADMISSION NO. 36: Bourne objects on the grounds that it is vague and ambiguous and that YouTube has used several euphemisms to refer a number of "tools" that it offers to content owners. Bourne 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. Bourne 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, Bourne admits that it has not used this "tool", and otherwise denies the Request.

REQUEST FOR ADMISSION NO. 37: Admit that you have not used YouTube's Content ID tool.

RESPONSE TO REQUEST FOR ADMISSION NO. 37: Bourne objects on the grounds that that it is vague and ambiguous and YouTube has used several euphemisms to refer a number of "tools" that it offers to content owners. Bourne 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. Bourne 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, Bourne states that Defendants have not made their digital fingerprinting technology readily available to Plaintiffs on reasonable terms.

REQUEST FOR ADMISSION NO. 38: Admit that on no occasion prior to May 4, 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. 38: Bourne objects to this Request on the grounds that it is vague and ambiguous, including the word "consult" and "ensure". Bourne 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 objection, Bourne admits that, with respect to each accused clip, it is not obligated to consult with its licensees prior to taking action against Defendants for infringements of its works on the YouTube website, and therefore had no reason to consult with them.

REQUEST FOR ADMISSION NO. 39: Admit that on no occasion prior to May 4, 2007 did you inform YouTube of the presence of any accused clip on the YouTube.com site.

RESPONSE TO REQUEST FOR ADMISSION NO. 39: Bourne objects to this Request on the ground that it seeks information equally available to Defendants. Bourne objects to this Request on the ground that it misconstrues the parties' obligations under applicable law. Subject to and without waiving the foregoing objections, Bourne denies the Request to the extent that it

was unnecessary to alert YouTube to the presence of copyrighted musical compositions for which YouTube had obtained no license from Bourne. Bourne further 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 this action infringed its content.

REQUEST FOR ADMISSION NO. 40: Admit that you retracted DMCA takedown notices sent to YouTube for one or more of your works.

RESPONSE TO REQUEST FOR ADMISSION NO. 40: Subject to and without waiving the foregoing objections, Bourne denies this Request.

Dated: January 8, 2009
New York, New York

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Schapiro Exhibit 90

CONFIDENTIAL

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)

EDWARD B. MARKS' RESPONSES AND OBJECTIONS TO DEFENDANTS' FIRST SET OF REQUESTS FOR ADMISSION TO EDWARD B. MARKS MUSIC COMPANY

Pursuant to Rule 36(a) of the Federal Rules of Civil Procedure, Named Plaintiff Edward B. Marks Music Company ("Marks") 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. Marks objects to the Requests on the ground that Marks is still in the process of gathering and analyzing information relevant to these Requests. Marks 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. Marks 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 Marks 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, Marks' 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, Marks does not concede the relevance, materiality or admissibility of any of the admissions or responses sought herein. Marks' responses are made subject to and without waiving any objections as to relevancy, materiality, admissibility, vagueness, ambiguity, competency or privilege.

3. Marks does not waive any of its rights to object on any ground to the use of its responses herein.

4. Marks objects to the Requests to the extent that they set forth compound, conjunctive or disjunctive statements.

5. Marks 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. Marks 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. Marks 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. Marks 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 Marks' counsel.

9. Marks 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. Marks objects to each request, instruction or definition to the extent that they are vague, ambiguous, overly broad or unduly burdensome.

11. Marks 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. Marks objects to each request to the extent that they fail to specify an applicable time period and are thereby vague, ambiguous and overbroad.

13. Marks objects to each request as premature to the extent that it calls for expert opinion

14. Marks objects to each request to the extent that it calls for a legal conclusion.

15. Marks objects to each request, instruction or definition to the extent that they purport to require Marks 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. Marks objects to the definitions of "Edward B. Marks", "Edward B. Marks'", "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). Marks 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. Marks 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 "Edward B. Marks", "Edward B. Marks'", "you" and "your" to mean Named Plaintiff Marks.

17. Marks objects to the definitions of "Work(s) In Suit" and "Accused Clip(s)" as compound, vague and ambiguous. Marks further objects to the extent these definitions call for

privileged information. Marks 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 Marks seeks recovery. As set forth at paragraph 74 of the Second Amended Complaint, the infringed works specified by Marks 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. Marks reserves all rights to identify additional infringements and infringed works.

18. Marks 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 Marks 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 Marks, and the information known or readily obtainable by Marks is insufficient to enable the party to admit or deny.

20. Marks reserves the right to supplement or amend these responses. These responses should not be construed as, and do not constitute, a waiver of Marks' 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 Marks' 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. Marks reserves the right to amend, supplement, modify, or correct these responses and objections as appropriate.

MARKS' 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:

Marks objects to this Request on the grounds that it is vague and ambiguous, including the term "at all relevant times." Marks further objects to this Request to the extent it calls for a legal conclusion. Subject to and without waiving the foregoing objections, Marks 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:

Marks objects to this Request as vague and overbroad, including with respect to the terms "at all relevant times" and "material," which are undefined terms. Marks 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, Marks 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:

Marks objects to this Request for Admission as vague and overbroad, including with respect to the term "material," which is an undefined term. Marks further objects to this Request to the extent it calls for a legal conclusion. Subject to and without waiving the foregoing objections, Marks 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:

Marks objects to this Request for Admission as vague and overbroad, including with respect to the term "material," which is an undefined term. Marks further objects to this Request to the extent it calls for a legal conclusion. Subject to and without waiving the foregoing objections, Marks 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:

Marks 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, Marks 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:

Marks objects to this Request on the grounds that it is vague and ambiguous, including the term "material". Marks further objects to this Request to the extent it calls for a legal conclusion. Subject to and without waiving the foregoing objections, Marks 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:

Marks 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, Marks 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:

Marks objects to this Request to the extent it calls for a legal conclusion. Subject to and

without waiving the foregoing objections, Marks 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:

Marks objects to this Request as compound. Marks further objects to this Request to the extent it calls for a legal conclusion. Subject to and without waiving the foregoing objections, Marks 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)(l)(B).

RESPONSE TO REQUEST FOR ADMISSION NO. 10:

Marks objects to this Request to the extent it calls for a legal conclusion. Subject to and without waiving the foregoing objections, Marks 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:

Marks objects to this Request to the extent it calls for a legal conclusion. Subject to and without waiving the foregoing objections, Marks 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:

Marks objects to the request as compound. Marks 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, Marks 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:

Marks objects to this Request as vague and ambiguous, including the terms "at all relevant times", "reasonably implemented" and "appropriate circumstances". Marks further objects to this Request to the extent it calls for a legal conclusion. Subject to and without waiving the foregoing objections, Marks 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:

Marks objects to this Request as vague and ambiguous, including the term "in existence". Marks further objects to this Request to the extent it calls for a legal conclusion. Marks 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,

Marks 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:

Marks objects to this Request to the extent it calls for a legal conclusion. Subject to and without waiving the foregoing objections, Marks 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:

Marks objects to this Request on the grounds that it is vague and ambiguous, including the terms "exhibit", "distribute", "the work" and "on websites". Marks further objects to this Request on the ground that the requested matter is outside the scope of information relevant to this case. Marks further objects to this Request on the ground that any rights extended to a licensee of Marks 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, Marks 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. Marks 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:

Marks objects to this Request on the grounds that it is vague and ambiguous, including the terms "exhibit", "distribute", "the work" and "on websites". Marks further objects to this Request on the ground that the requested matter is outside the scope of information relevant to this case. Marks further objects to this Request on the ground that any rights extended to a licensee of Marks 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, Marks 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. Marks 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. Marks admits that there are fewer than five licenses that have granted the licensee the

right to exploit a work-in-suit in certain specific and identifiable contexts on certain specified websites, subject to the various restrictions identified above. See also Marks' response to Request no. 25.

REQUEST FOR ADMISSION NO. 18:

Admit that you have issued licenses after November 7, 2007 that grant the licensee the right to exhibit and distribute the work on websites, including YouTube.com.

RESPONSE TO REQUEST FOR ADMISSION NO. 18:

Marks objects to this Request on the grounds that the terms "exhibit", "distribute", "the work" and "on websites" are vague and ambiguous. Marks further objects to this Request on the ground that the requested matter is outside the scope of information relevant to this case. Marks denies that language granting rights to exploit in "all media" or "the Internet" standing alone authorize a licensee to exploit Marks content on websites generally or on YouTube.com specifically. Subject to and without waiving the foregoing objections, Marks denies this request.

REQUEST FOR ADMISSION NO. 19:

Admit that you have issued licenses for works-in-suit after November 7, 2007, that grant the licensee the right to exhibit and distribute the work on websites, including YouTube.com.

RESPONSE TO REQUEST FOR ADMISSION NO. 19:

Marks objects to this Request on the grounds that it is vague and ambiguous, including the terms "exhibit", "distribute", "the work" and "on websites". Marks further objects to this Request on the ground that the requested matter is outside the scope of information relevant to this case. Marks further objects to this Request on the ground that any rights extended to a licensee of Marks 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, Marks 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. Marks 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. Marks admits that there are fewer than five licenses that have granted the licensee the right to exploit a work-in-suit in certain specific and identifiable contexts on certain specified websites, subject to the various restrictions identified above, since November 7, 2007. See also Marks' response to Request no. 25.

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:

Marks objects to this Request on the ground that it is vague and ambiguous, including the terms "inform" and "any authorized videos." Marks 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, Marks denies this Request to the extent it implies that Marks 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 Marks that would allow YouTube to determine if the presence of videos containing Marks 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 Marks as the administrator of and/or owner of the works in suit and other Marks content.

REQUEST FOR ADMISSION NO. 21:

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. 21:

Marks objects to this Request on the grounds that it is vague and ambiguous, including the phrases "can have the effect" and "consumer demand." Marks further objects to this Request on the ground that the requested matter is outside the scope of information relevant to this case. Marks further objects to this request on the ground that it seeks Marks' opinion regarding an incomplete hypothetical question, not the admission or denial of a fact. Subject to and without waiving the foregoing objections, Marks 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 Marks to third parties for a fee and/or otherwise damage Marks' business.

REQUEST FOR ADMISSION NO. 22:

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. 22:

Marks objects to this Request on the grounds that it is vague and ambiguous, including the term "becoming aware." Marks 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. Marks further objects to this Request on the ground that the requested matter is outside the scope of information relevant to this case. Marks 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, Marks denies this Request to the extent that many DMCA takedown notices were sent to YouTube within one week of Marks discovering the infringing content. Marks 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. 23:

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. 23:

Marks objects to this Request on the grounds that it is vague and ambiguous, including the term "becoming aware." Marks 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. Marks further objects to this Request on the ground that the requested matter is outside the scope of information relevant to this case. Marks further objects to this Request on the ground that the requested matter is outside the scope of information relevant to this case. Marks 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, Marks denies this Request to the extent that many DMCA takedown notices were sent to YouTube within one month of Marks discovering the infringing content. Marks 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. 24:

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. 24:

Marks objects to this Request on the grounds that it is vague and ambiguous, including the term "becoming aware." Marks 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. Marks further objects to this Request on the ground that the requested matter is outside the scope of information relevant to this case. Marks further objects to this Request on the ground that the requested matter is outside the scope of information relevant to this case. Marks 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, Marks denies this Request to the extent that many DMCA takedown notices were sent to YouTube within two months of Marks discovering the infringing content. Marks 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. 25:

Admit that the license agreement produced at CA00240485 – CA00240488 grants the licensee the right to exhibit and distribute the work on websites including youtube.com.

RESPONSE TO REQUEST FOR ADMISSION NO. 25:

Marks objects to this Request on the grounds that it is vague and ambiguous, including the terms "exhibit", "distribute", "the work" and "on websites". Subject to and without waiving the foregoing objections, Marks denies this Request because the express terms of the agreement permit exploitation of the Marks on hallmark.com only during a six week term, and excludes the remainder of the internet, including youtube.com.

REQUEST FOR ADMISSION NO. 26:

Admit that you never informed YouTube of the existence of the license agreement set forth in Request 25.

RESPONSE TO REQUEST FOR ADMISSION NO. 26:

Marks 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, Marks denies this Request to the extent it implies that Marks 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 Marks as the administrator of and/or owner of the works in suit and other Marks content. Marks further denies this Request for the reasons set forth in Request no. 25.

REQUEST FOR ADMISSION NO. 27:

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.

RESPONSE TO REQUEST FOR ADMISSION NO. 27:

Marks objects to this request on the grounds that it is vague and ambiguous, including the terms "consult" and "ensure". Marks further objects to this Request on the ground that the requested matter is outside the scope of information relevant to this case. Marks 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, Marks denies this Request to the extent it implies that Marks 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 Marks' sub-publishers either do not have authority under the express terms of the agreements between them and Marks to post content to youtube.com or to authorize third parties to posts clips containing Marks content on youtube.com, a website that is available worldwide, or the sub-publisher is required to seek permission from Marks before issuing a license to grant the right to exploit Marks content on the internet.

REQUEST FOR ADMISSION NO. 28:

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. 28:

Marks objects to this request on the grounds that it is vague and ambiguous, including the terms "consult", "ensure" and "writer". Marks 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, Marks denies this Request to the extent it implies that Marks is obligated to consult with the "writer" to ensure that each accused clip was unauthorized to be on the YouTube website.

REQUEST FOR ADMISSION NO. 29:

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. 29:

Marks objects to this Request on the grounds that it is vague and ambiguous, including the word "consult" and "ensure". Marks 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, Marks 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. 30:

Admit that you have not used YouTube's Content Verification Program.

RESPONSE TO REQUEST FOR ADMISSION NO. 30:

Marks 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. Marks 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. Marks 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, Marks admits that it has not used this "tool", and otherwise denies the Request.

REQUEST FOR ADMISSION NO. 31:

Admit that you have not used YouTube's Content ID tool.

RESPONSE TO REQUEST FOR ADMISSION NO. 31:

Marks 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. Marks 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. Marks 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, Marks states that Defendants have not made their digital fingerprinting technology readily available to Plaintiffs on reasonable terms.

REQUEST FOR ADMISSION NO. 32:

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. 32:

Marks 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, Marks denies this Request.

REQUEST FOR ADMISSION NO. 33:

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. 33:

Marks 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, Marks denies this Request, and states that a copy of the Amended Complaint, listing video clips on the YouTube website that infringed Marks' 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. 34:

Admit that you retracted DMCA takedown notices sent to YouTube for one or more of your works.

RESPONSE TO REQUEST FOR ADMISSION NO. 34:

Subject to and without waiving the foregoing objections, Marks denies this Request.

Dated: January 11, 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 91

CONFIDENTIAL

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)

BIENSTOCK PUBLISHING COMPANY'S RESPONSES AND OBJECTIONS TO DEFENDANTS' FIRST SET OF REQUESTS FOR ADMISSION TO FREDDY BIENSTOCK MUSIC COMPANY d/b/a BIENSTOCK PUBLISHING COMPANY

Pursuant to Rule 36(a) of the Federal Rules of Civil Procedure, Named Plaintiff Freddy Bienstock Music Publishing Company, Inc. ("Bienstock") 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. Bienstock objects to the Requests on the ground that Bienstock is still in the process of gathering and analyzing information relevant to these Requests. Bienstock 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. Bienstock 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 Bienstock 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, Bienstock'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, Bienstock does not concede the relevance, materiality or admissibility of any of the admissions or responses sought herein. Bienstock's responses are made subject to and without waiving any objections as to relevancy, materiality, admissibility, vagueness, ambiguity, competency or privilege.

3. Bienstock does not waive any of its rights to object on any ground to the use of its responses herein.

4. Bienstock objects to the Requests to the extent that they set forth compound, conjunctive or disjunctive statements.

5. Bienstock 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. Bienstock 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. Bienstock 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. Bienstock 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 Bienstock's counsel.

9. Bienstock 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. Bienstock objects to each request, instruction or definition to the extent that they are vague, ambiguous, overly broad or unduly burdensome.

11. Bienstock 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. Bienstock objects to each request to the extent that they fail to specify an applicable time period and are thereby vague, ambiguous and overbroad.

13. Bienstock objects to each request as premature to the extent that it calls for expert opinion

14. Bienstock objects to each request to the extent that it calls for a legal conclusion.

15. Bienstock objects to each request, instruction or definition to the extent that they purport to require Bienstock 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. Bienstock objects to the definitions of "Bienstock", "Bienstock'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). Bienstock 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. Bienstock 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 "Bienstock", "Bienstock's", "you" and "your" to mean Named Plaintiff Bienstock.

17. Bienstock objects to the definitions of "Work(s) In Suit" and "Accused Clip(s)" as compound, vague and ambiguous. Bienstock further objects to the extent these definitions call

for privileged information. Bienstock 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 Bienstock seeks recovery. As set forth at paragraph 74 of the Second Amended Complaint, the infringed works specified by Bienstock 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. Bienstock reserves all rights to identify additional infringements and infringed works.

18. Bienstock 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 Bienstock 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 Bienstock, and the information known or readily obtainable by Bienstock is insufficient to enable the party to admit or deny.

20. Bienstock reserves the right to supplement or amend these responses. These responses should not be construed as, and do not constitute, a waiver of Bienstock'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 Bienstock'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. Bienstock reserves the right to amend, supplement, modify, or correct these responses and objections as appropriate.

BIENSTOCK'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:

Bienstock objects to this Request on the grounds that it is vague and ambiguous, including the term "at all relevant times." Bienstock further objects to this Request to the extent it calls for a legal conclusion. Subject to and without waiving the foregoing objections, Bienstock 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:

Bienstock objects to this Request as vague and overbroad, including with respect to the terms "at all relevant times" and "material," which are undefined terms. Bienstock 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, Bienstock 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:

Bienstock objects to this Request for Admission as vague and overbroad, including with respect to the term "material," which is an undefined term. Bienstock further objects to this Request to the extent it calls for a legal conclusion. Subject to and without waiving the foregoing objections, Bienstock 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:

Bienstock objects to this Request for Admission as vague and overbroad, including with respect to the term "material," which is an undefined term. Bienstock further objects to this Request to the extent it calls for a legal conclusion. Subject to and without waiving the foregoing objections, Bienstock 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:

Bienstock 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, Bienstock 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:

Bienstock objects to this Request on the grounds that it is vague and ambiguous, including the term "material". Bienstock further objects to this Request to the extent it calls for a legal conclusion. Subject to and without waiving the foregoing objections, Bienstock 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:

Bienstock 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, Bienstock 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:

Bienstock objects to this Request to the extent it calls for a legal conclusion. Subject to and without waiving the foregoing objections, Bienstock 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:

Bienstock objects to this Request as compound. Bienstock further objects to this Request to the extent it calls for a legal conclusion. Subject to and without waiving the foregoing objections, Bienstock 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)(l)(B).

RESPONSE TO REQUEST FOR ADMISSION NO. 10:

Bienstock objects to this Request to the extent it calls for a legal conclusion. Subject to and without waiving the foregoing objections, Bienstock 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:

Bienstock objects to this Request to the extent it calls for a legal conclusion. Subject to and without waiving the foregoing objections, Bienstock 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:

Bienstock objects to the request as compound. Bienstock 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, Bienstock 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:

Bienstock objects to this Request as vague and ambiguous, including the terms "at all relevant times", "reasonably implemented" and "appropriate circumstances". Bienstock further objects to this Request to the extent it calls for a legal conclusion. Subject to and without waiving the foregoing objections, Bienstock 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:

Bienstock objects to this Request as vague and ambiguous, including the term "in existence". Bienstock further objects to this Request to the extent it calls for a legal conclusion. Bienstock 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, Bienstock 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:

Bienstock objects to this Request to the extent it calls for a legal conclusion. Subject to and without waiving the foregoing objections, Bienstock 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:

Bienstock objects to this Request on the grounds that it is vague and ambiguous, including the terms "exhibit", "distribute", "the work" and "on websites". Bienstock further objects to this Request on the ground that the requested matter is outside the scope of

information relevant to this case. Bienstock further objects to this Request on the ground that any rights extended to a licensee of Bienstock 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, Bienstock 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. Bienstock 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:

Bienstock objects to this Request on the grounds that it is vague and ambiguous, including the terms "exhibit", "distribute", "the work" and "on websites". Bienstock further objects to this Request on the ground that the requested matter is outside the scope of information relevant to this case. Bienstock further objects to this Request on the ground that any rights extended to a licensee of Bienstock 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, Bienstock 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. Bienstock 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. Bienstock admits that there are fewer than twenty 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.

REQUEST FOR ADMISSION NO. 18:

Admit that you have issued licenses after November 7, 2007 that grant the licensee the right to exhibit and distribute the work on websites, including YouTube.com.

RESPONSE TO REQUEST FOR ADMISSION NO. 18:

Bienstock objects to this Request on the grounds that the terms "exhibit", "distribute" and "the work" are vague and ambiguous. Bienstock 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, Bienstock denies that language granting rights to exploit in "all media" or "the Internet" standing alone authorize a licensee to exploit Bienstock content on

websites generally or on YouTube.com specifically, but Bienstock admits that it has issued a limited number of licenses that grant certain rights to exploit Bienstock content on the Internet subject to the express terms of the agreement, including the fee paid by the licensee in exchange for said rights, including fewer than twenty 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.

REQUEST FOR ADMISSION NO. 19:

Admit that you have issued licenses for works-in-suit after November 7, 2007, that grant the licensee the right to exhibit and distribute the work on websites, including YouTube.com.

RESPONSE TO REQUEST FOR ADMISSION NO. 19:

Bienstock objects to this Request on the grounds that it is vague and ambiguous, including the terms "exhibit", "distribute", "the work" and "on websites". Bienstock further objects to this Request on the ground that the requested matter is outside the scope of information relevant to this case. Bienstock further objects to this Request on the ground that any rights extended to a licensee of Bienstock 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, Bienstock 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. Bienstock 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. Bienstock admits that there are fewer than ten 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.

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:

Bienstock objects to this Request on the ground that it is vague and ambiguous, including the terms "inform" and "any authorized videos." Bienstock 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, Bienstock denies this Request to the extent it implies that Bienstock 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 Bienstock that would allow YouTube to determine if the presence of videos containing Bienstock 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 Bienstock as the administrator of and/or owner of the works in suit and other Bienstock content.

REQUEST FOR ADMISSION NO. 21:

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. 21:

Bienstock objects to this Request on the grounds that it is vague and ambiguous, including the phrases "can have the effect" and "consumer demand." Bienstock further objects to this Request on the ground that the requested matter is outside the scope of information relevant to this case. Bienstock further objects to this request on the ground that it seeks Bienstock's opinion regarding an incomplete hypothetical question, not the admission or denial of a fact. Subject to and without waiving the foregoing objections, Bienstock 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 Bienstock to third parties for a fee and/or otherwise damage Bienstock's business.

REQUEST FOR ADMISSION NO. 22:

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. 22:

Bienstock objects to this Request on the grounds that it is vague and ambiguous, including the term "becoming aware." Bienstock 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. Bienstock further objects to this Request on the ground that the requested matter is outside the scope of information relevant to this case. Bienstock 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, Bienstock denies this Request to the extent that many DMCA takedown notices were sent to YouTube within one week of Bienstock discovering the infringing content. Bienstock 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. 23:

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. 23:

Bienstock objects to this Request on the grounds that it is vague and ambiguous, including the term "becoming aware." Bienstock 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. Bienstock further objects to this Request on the ground that the requested matter is outside the scope of information relevant to this case. Bienstock further objects to this Request on the ground that the requested matter is outside the scope of information relevant to this case. Bienstock 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, Bienstock denies this Request to the extent that many DMCA takedown notices were sent to YouTube within one month of Bienstock discovering the

infringing content. Bienstock 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. 24:

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. 24:

Bienstock objects to this Request on the grounds that it is vague and ambiguous, including the term "becoming aware." Bienstock 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. Bienstock further objects to this Request on the ground that the requested matter is outside the scope of information relevant to this case. Bienstock further objects to this Request on the ground that the requested matter is outside the scope of information relevant to this case. Bienstock 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, Bienstock denies this Request to the extent that many DMCA takedown notices were sent to YouTube within two months of Bienstock discovering the infringing content. Bienstock 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. 25:

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.

RESPONSE TO REQUEST FOR ADMISSION NO. 25:

Bienstock objects to this request on the grounds that it is vague and ambiguous, including the terms "consult" and "ensure". Bienstock further objects to this Request on the ground that the requested matter is outside the scope of information relevant to this case. Bienstock 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, Bienstock denies this Request to the extent it implies that Bienstock 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 Bienstock's sub-publishers either do not have authority under the express terms of the agreements between them and Bienstock to post content to youtube.com or to authorize third parties to posts clips containing Bienstock content on youtube.com, a website that is available worldwide, or the sub-publisher is required to seek permission from Bienstock before issuing a license to grant the right to exploit Bienstock content on the internet.

REQUEST FOR ADMISSION NO. 26:

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. 26:

Bienstock objects to this request on the grounds that it is vague and ambiguous, including

the terms "consult", "ensure" and "writer". Bienstock further objects on the ground that the reference to Bienstock's co-plaintiff Stage Three Music Limited renders this Request unintelligible. Bienstock 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, Bienstock denies this Request to the extent it implies that Bienstock 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, Bienstock has no obligation to consult with the "writer" of the work prior to taking action against Defendants for infringements of Bienstock's works.

REQUEST FOR ADMISSION NO. 27:

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. 27:

Bienstock objects to this Request on the grounds that it is vague and ambiguous, including the word "consult" and "ensure". Bienstock 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, Bienstock 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. 28:

Admit that you have not used YouTube's Content Verification Program.

RESPONSE TO REQUEST FOR ADMISSION NO. 28:

Bienstock 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. Bienstock 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. Bienstock 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, Bienstock admits that it has not used this "tool", and otherwise denies the Request.

REQUEST FOR ADMISSION NO. 29:

Admit that you have not used YouTube's Content ID tool.

RESPONSE TO REQUEST FOR ADMISSION NO. 29:

Bienstock 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. Bienstock 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. Bienstock 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, Bienstock states that Defendants have not made their digital fingerprinting technology readily available to Plaintiffs on reasonable terms.

REQUEST FOR ADMISSION NO. 30:

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. 30:

Bienstock 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, Bienstock denies this Request.

REQUEST FOR ADMISSION NO. 31:

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. 31:

Bienstock 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, Bienstock denies this Request, and states that a copy of the Amended Complaint, listing video clips on the YouTube website that infringed Bienstock'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. 32:

Admit that you retracted DMCA takedown notices sent to YouTube for one or more of your works.

RESPONSE TO REQUEST FOR ADMISSION NO. 32:

Subject to and without waiving the foregoing objections, Bienstock denies this Request.

Dated: January 11, 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 92

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,		CASE NO. 07-CV-2103
vs.		
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,		CASE NO. 07-CV-3582
vs.		
YOUTUBE, INC., YOUTUBE, LLC, AND GOOGLE, INC.,		
DEFENDANTS.		

VIDEOTAPED 30(B)(6) DEPOSITION OF
X-RAY DOG MUSIC, INC. through TIMOTHY A. STITHEM
TUESDAY, DECEMBER 8, 2009
LOS ANGELES, CALIFORNIA

Job No. 18195

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,		CASE NO. 07-CV-2103
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THE FOOTBALL ASSOCIATION PREMIER LEAGUE LIMITED, BOURNE CO., ET AL., ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED,		
PLAINTIFFS,		CASE NO. 07-CV-3582
vs.		
YOUTUBE, INC., YOUTUBE, LLC, AND GOOGLE, INC.,		
DEFENDANTS.		

VIDEOTAPED 30(B)(6) DEPOSITION OF X-RAY DOG MUSIC, INC. through TIMOTHY A. STITHEM, taken on behalf of the Defendants, at 10:05 a.m., Tuesday, December 8, 2009, at 350 South Grand Avenue, Los Angeles, California, before Elizabeth Borrelli, CSR No. 7884, pursuant to notice.

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ALSO PRESENT:

MITCH LERMAN, Videographer

posted promotional materials for Cloverfield as opposed to -- a licensed use as opposed to an unlicensed use?

MR. GALDSTON: Object to the form of the question. Lacks foundation and calls for speculation and is compound.

THE WITNESS: Yeah, I'm not really sure how to answer that question, because no one sitting -- any general person sitting anywhere is going to know whether something has been licensed or not unless you follow up with those entities. People at Paramount would answer the question. People at X-Ray Dog who owned a piece of work would answer the question.

BY MS. SCHULTZ:

Q. I'm going to show you what has been marked -- what will be marked as Exhibit 6. It's XD00063860.

(Whereupon Exhibit 6 was marked for identification.)

THE WITNESS: Are you done with this one?

BY MS. SCHULTZ:

Q. Yes.

Now, this looks like a licensing agreement for the use of Dethrone -- Dethroned --

13:33 A. Uh-huh.

Q. -- in a nonbroadcast trailer for the video game Transformers Deep Six; is that correct?

A. Appears to be. Let me just keep looking 13:33 through it quickly.

Okay.

Q. Paragraph 4, License Use, states that, "The licensee may use the work in trailers, advertisements and promotional materials in 13:34 nontheatrical trailer for Internet use only."

Do you see that?

A. Yes, I do.

Q. Does the Internet include a posting of that material on YouTube?

13:34 MR. GALDSTON: Object to the form of the question. It calls for a legal conclusion.

THE WITNESS: The trailer for the video game or any specific advertisement created with our work in it can be posted on the Internet. The 13:34 client has the right to use it on any website it seems -- deems appropriate for their marketing campaign.

BY MS. SCHULTZ:

Q. So that means that the licensee could post 13:34 that material on YouTube, correct?

13:34 A. I wouldn't restrict them not to.

Q. Do you know whether the licensee posted any content on YouTube pursuant to this license?

A. I'm not aware of it.

13:35 MR. GALDSTON: Object to the form of the question. Calls for a legal conclusion.

THE WITNESS: I'm not aware of...

BY MS. SCHULTZ:

Q. Did you ever inquire as to whether the

13:35 licensee or its designee posted promotional materials for Too Human on YouTube -- on -- I'm sorry -- Transformers Deep Six on YouTube?

A. Who would I inquire with? The licensee? I have not personally.

13:35 Q. And how would YouTube be able to determine if the Ayzenberg Group or its designee -- I'm sorry. Let's use the Ayzenberg.

How would YouTube be able to determine if the Ayzenberg Group or its designee posted

13:36 promotional materials for Transformers Deep Six on YouTube?

MR. GALDSTON: Object to the form of the question. Calls for speculation.

THE WITNESS: I'm not sure how YouTube

13:36 does its practices of determining what goes on their

website. I can't speculate on what they do or don't do.

BY MS. SCHULTZ:

Q. Is looking at the clip enough to determine whether it's an authorized use or not?

MR. GALDSTON: Object to the form of the question. Calls for speculation.

THE WITNESS: Yeah, I'm not sure how I could answer that. I feel like we've kind of answered this already.

Any person looking at something won't know unless they've done their homework.

BY MS. SCHULTZ:

Q. And that homework would be...

A. Making sure that the rights for all copyright owners with attached things were taken care of.

Q. Paragraph 6 states that, "The licensing fee is a special rate."

What does that mean?

MR. GALDSTON: Well, I object. The document speaks for itself. And I think you've mischaracterized. Mischaracterizes the document.

THE WITNESS: Yeah, I can't honestly say why it says, "special rate."

13:45 correct?

MR. GALDSTON: Objection. Lacks foundation. You're asking about this e-mail, not the license --

13:46 MS. SCHULTZ: Yes.

MR. GALDSTON: -- that was actually presumably subsequently executed, correct?

MS. SCHULTZ: Correct.

MR. GALDSTON: Okay.

13:46 THE WITNESS: I think it's also going on the record that I'm -- my recollection is that this didn't cover any of the two works in suit either.

BY MS. SCHULTZ:

Q. When you entered into licenses that were

13:46 for use of the works on the Internet, did you inform YouTube that you had licenses out there that permitted certain uses of your works?

A. That's a pretty compound question. If you could break that up for me, it would be great.

13:46 Q. Did there ever come a time that you notified YouTube that there was an authorized use of your work that could be posted on YouTube?

MR. GALDSTON: And you're excluding through the discovery process in this case?

13:47 MS. SCHULTZ: Yes.

13:47 MR. GALDSTON: So prior to this --

MS. SCHULTZ: Prior to.

MR. GALDSTON: Okay.

THE WITNESS: Okay.

13:47 I'm not sure what that just meant, but...

MR. GALDSTON: She's framing it in time. So other than the mechanisms of the discovery in this action, prior to the litigation...

THE WITNESS: To be honest with you, I'm 13:47 not going to inform all the various websites that we have licenses in place. That would be mundane administration work that I don't need to do.

We're having a hard enough time tracking the people who use our music unauthorized, let alone 13:47 telling people this is authorized. Again, I would never get anything done. This is a small company.

BY MS. SCHULTZ:

Q. So you've never informed YouTube of an authorized licensed work?

13:47 A. I haven't informed any websites of any authorized work.

Q. Including YouTube?

A. If you want to put it that way, yes.

Q. Does X-Ray Dog enter into blanket 13:48 licensing agreements?

13:48 MR. GALDSTON: Object to the form of the question.

THE WITNESS: Well, not necessarily a true blanket. There's merry -- there's very different approaches to a blanket license. And the standard generic blanket license, no, we do not.

BY MS. SCHULTZ:

Q. What is -- what would -- how would you define a standard blanket license?

13:48 A. A client pays a fee, and they do not have to report nor track the music they use under that fee.

Q. Has XRD ever entered into a licensing agreement where a licensee may choose from a pool of

13:49 XRD works to use over a specified period of time?

A. Not that I'm aware of. That doesn't sound like something we would do.

Q. I'm going to hand you what's going to be marked as Exhibit 8. It's XD00063639.

13:49 (Whereupon Exhibit 8 was marked for identification.)

BY MS. SCHULTZ:

Q. Let me know when you're finished.

A. Okay.

13:50 Q. Was this license executed?

forward.

A. Okay.

Q. You know, you -- you get a little -- you know, I mean, sometimes I just don't know exactly what it is, and --

A. Yes.

Q. -- so if it's a list of subpublishers, that helps me, because I didn't necessarily know that.

A. Okay.

Q. Are these all of the subpublishers that XRD has entered contracts with?

MR. GALDSTON: At present?

MS. SCHULTZ: At present is fine.

THE WITNESS: Yeah. Was there a date on this sheet?

BY MS. SCHULTZ:

Q. There was not.

MS. KEEGAN: The e-mail.

MS. SCHULTZ: It was -- the e-mail was in '07.

THE WITNESS: Okay.

Then I can't really say at present, because it's '09. So without knowing immediately offhand if any of these have changed -- well, a

couple have, but -- so as of 2007, this would be accurate.

BY MS. SCHULTZ:

Q. And I think you just explained it, but it says, "Statement received." Is that what -- that would be when you receive a statement from the subpublisher?

A. Correct.

Q. And you would receive those, you said, about twice a year, every --

A. Yes.

Q. Okay.

And can these subpublishers execute licenses for use of XRD's works on the Internet?

A. Yes.

Q. Does that include YouTube?

MR. GALDSTON: Object to the form of the question.

THE WITNESS: Is YouTube on the Internet?

BY MS. SCHULTZ:

Q. You tell me.

A. Then I would say yes.

Q. What is EMI?

A. EMI is a large publishing company.

Q. And what is EMI's relationship with X-Ray

14:08 Dog?

A. They have several subpublishing agents in various territories.

Q. Do you know which territories?

14:08 A. Well, off the top of my head, but looking at this list -- well, first of all, they have territories in -- they have companies in every territory. We just chose not to go with some of them.

14:08 Here it's Hungary. Ireland, which we've since discontinued working with. Italy, same thing. Scandinavia, we're still in business with them. Sweden. Taiwan. And technically U.K. KPM Music is a division of EMI.

14:08 MS. SCHULTZ: I'm going to hand you what's going to be marked as Exhibit 10, which is XD00057132.

(Whereupon Exhibit 10 was marked for identification.)

14:09 THE WITNESS: Do I need this one still? No?

BY MS. SCHULTZ:

Q. After you get a chance to look at the agreement, if you could just let me know what this

14:09 agreement is.

14:17 e-mail?

A. I don't use the e-mail. It just is -- I receive everything.

Q. Okay.

14:17 The bottom e-mail message is from weison@ms2.hinet.net.

Do you know who that is?

A. I have no idea.

Q. Okay.

14:17 And from what you just said, does it make sense, would that individual have sent an e-mail to your website?

A. Yep.

Q. Okay.

14:17 So that e-mail went to your website e-mail address?

A. Yep. We have several friends, maybe hundreds, that kind of look out for us and let us know when things look fishy, as this clearly was.

14:17 Q. So what that person did was send you a YouTube clip and ask you, did they pay you anything?

A. Yep.

And the answer was no.

Q. And you wrote, "Here's a really good one

14:18 for the YouTube file," dot, dot, dot, question mark.

14:18 A. Uh-huh.

Q. What does that mean?

A. It would mean another infringement on You- -- or I'm sorry -- another unauthorized use on 14:18 YouTube that we needed to look into.

Q. And then you say, "Would be nice to know if this was licensed," dot, dot, dot, dot, "but I'm not sure what language it is" --

A. Right.

14:18 Q. -- dot, dot, dot.

By looking at the YouTube clip, it wasn't enough to let you know whether that was an authorized use or not of your work?

MR. GALDSTON: Object to the form of the 14:18 question. Calls for speculation.

THE WITNESS: Yeah, because we would have to consult with our foreign publisher.

But in this case, since it was a language I couldn't tell, Asian language of some sort, I was 14:19 not even clear on which Asian country it would be.

BY MS. SCHULTZ:

Q. Why does not knowing what language the video was in make it difficult to know whether it was a licensed use?

14:19 A. Well, I'm not very proficient on the

14:19 different Asian -- you know, the language, the way it's spelled out, you know, in its written form. I couldn't tell.

Q. Do you remember this clip?

14:19 A. Off the top of my head, no.

Q. And it sounds like from before you said you figured out that it was an unlicensed use?

MR. GALDSTON: Object to the form of the question.

14:19 THE WITNESS: It didn't appear to be an authentic production. It appeared to be a homemade animated video.

BY MS. SCHULTZ:

Q. And so did you ever determine whether it

14:20 was an authorized use?

A. I can't say yes or no. I can't recall exactly what the outcome was.

Q. Did anyone at X-Ray Dog follow up on this?

A. I believe we tried, yes.

14:20 Q. And what did you do?

A. I forwarded this to -- well, Mitch and Lauren, who were handling some of the international people contacts, publishers, and then they put forth a question to their contacts.

14:20 I can't recall if there was an answer or a

14:20 license or if we added it to our Excel list of YouTube unauthorized usages.

Q. You're not sure whether it got added?

A. I couldn't say 100 percent right now.

14:20 Q. Do you know how many hours XRD spent trying to figure this out?

A. I would only guess several.

Q. And if it was difficult for XRD to determine if this was a licensed use, how would 14:21 YouTube be able to tell if this was an authorized use?

MR. GALDSTON: Object to the form of the question. Calls for speculation. And has been asked and answered.

14:21 THE WITNESS: Yeah. It would have to be a system set up where whoever is broadcasting materials has an agreement in place with whoever is posting that that they have the rights to do such things.

14:21 BY MS. SCHULTZ:

Q. So that's the system you believe should be set up for YouTube?

MR. GALDSTON: Object to the form of the question. It's argumentative. Calls for 14:21 speculation.

14:21 THE WITNESS: Yeah, I believe there is a fiduciary duty or a duty by anyone broadcasting to the world video information material that it's not violating any other people's copyrights, which is
14:22 clearly the case with YouTube, which many of the clips up there freely admit that, "I don't own the copyright of this Star Wars video, nor this piece of music from X-Ray Dog Music, but I'm posting it up here anyway." It says it right there. Many of
14:22 these clips do the same thing.

So, unfortunately, we have no control over stopping that. Because people do it daily. Hundreds. We stop 10, 10 more show up. It doesn't stop.

14:22 BY MS. SCHULTZ:

Q. What's the system you would propose that YouTube follow to prevent unauthorized uses on its site?

MR. GALDSTON: Object to the form of the
14:22 question. Calls for speculation. Asked and answered. Lacks foundation.

THE WITNESS: I'm not an expert. I can't -- I can't speak to that. I just -- I feel like any entity that is large and broadcasting to
14:23 the world should have some responsibility to make

Schapiro Exhibit 93

1023 North Hollywood Way, Suite 103 Burbank, CA 91505 (818) 597-4859

SYNCHRONIZATION AND MASTER USE LICENSE

This Synchronization and Master Use Agreement ("Agreement") is entered into as of the 17th day of June, 2009 by and between THE AYZENBERG GROUP located at 49 East Walnut Street Pasadena, CA 91103 ("Licensee") and X-RAY DOG MUSIC, INC., A California Corporation located at 1023 North Hollywood Way, Suite 103 Burbank, CA 91505 ("Licensor"), who owns or controls 100% of the Synchronization and Master Use rights to the musical composition and sound recording listed herein below (the "Property"), in connection with Licensee's desire to use the Property as set forth herein.

WHEREAS, Licensor owns or controls the copyright in the musical composition and the master sound recording entitled **"Dethroned"** composed by **Paul Dinletir (ASCAP)** and music published by X-RAY DOG PUBLISHING (ASCAP) (hereinafter referred to as the "Composition" or the "Master" or jointly as the "Property"); and

WHEREAS, Licensee is engaged in the production of a non-broadcast trailer for the VIDEO GAME **"Transformers Deep 6"** (hereinafter referred to as the "VIDEO GAME"); and

WHEREAS, Licensee desires to utilize the Property in connection with the production and exploitation of trailers, advertisements and promotional materials for the VIDEO GAME; and,

NOW THEREFORE, in consideration of the promises, conditions, and warranties hereinafter set forth, Licensor and Licensee hereby agree as follows:

1. **Term:** IN PERPETUITY

2. **Territory:** WORLDWIDE

3. **Nature of Use:** Background Instrumental [for no more than :60 seconds for the NON-BROADCAST spot] in synchronized or time relation to visual or audio material from the VIDEO GAME, for the purpose of advertising and promoting the VIDEO GAME.

4. **Licensed Use**: Subject to the limitations set forth herein, Licensor hereby grants to Licensee the right to use the Property for trailers, advertisements and promotional materials, including derivatives of the foregoing for the VIDEO GAME, in the following media: *Non-Theatrical Trailer for internet use only.*

5. **Limitations**: Notwithstanding the foregoing, and without limitation, this License does not grant to Licensee any right or authority to:

   a. separately use the title of the Property or the story, if any, of the Property;

   b. incorporate the Property on or in compact discs, phonograph records and/or tapes including any sound track recording;

c. Incorporate the Property in non-linear flash openings on websites as a featured (non-background) music usage.

d. incorporate the Property in any so-called "making-of" programs, except as set forth in paragraph 7 below;

e. add vocals to an instrumental only Composition, or edit/modify the Master other than for timing, without Licensor's prior written consent; or

f. Use the Property for any non-promotional purpose, which for purposes herein shall mean any purpose for which Licensee is paid, or by barter receives, any type of consideration.

g. use the Property in any interactive or non-linear context;

h. Permit the downloading of an audio only recording of the Property.

6. **Consideration**: In full consideration of the rights granted herein, Licensee shall pay Licensor a special rate of **$2,000.00** upon execution hereof or upon release of any trailer, advertisement or promotional material embodying the Property pursuant to the terms herein, whichever occurs first.

~~7. **Option/"Making Of"**: Licensee shall have the option, which shall be deemed exercised upon written notice within twelve (12) months from the date hereof and payment of an additional fee to Licensor in the amount of $1,500.00, to extend the terms of this License to include the use of the Property in so-called "making of" programs for exploitation as set forth in paragraphs 1, 2, 3, 4 and 5 above.~~

8. **Performance Royalties**: Nothing herein shall be construed to limit Licensor's right to receive performance royalties for the Composition from the applicable performing rights society.

9. **Media Buy Schedules**: Licensee agrees to promptly provide Licensor, at Licensor's request, with all media buy schedules pursuant to date and time of network Television or other media performances.

10. **Cue Sheets/ISCI Codes**: Licensee agrees to promptly provide Licensor, at Licensor's request, with all studio cue sheets, including International Standard Commercial Identification ("ISCI") codes.

11. **Re-Use Fees**: The Licensor shall make any and all payments to all musicians, vocalists, arrangers and copyists whose performances are embodied in the Property which may be required under the American Federation of Musicians Labor Agreement, the American Federation of Television and Radio Artists Labor Agreement, or any other applicable and binding union agreement in connection with the use of the Property by Licensee in accordance with this License. Licensor hereby agrees to defend, indemnify and hold Licensee harmless from and against any and all claims, demands or actions with respect to such fees and payments, with a maximum liability no greater than the consideration received by Licensor hereunder.

12. **Warranties and Representations**: Licensor hereby warrants and represents that it has the legal right and authority to enter into this License and to grant those rights granted to Licensee hereunder and that such grant will not infringe on the rights of any other person or entity. If said warranty shall be breached in whole or in part, Licensor's total liability shall be limited to repaying to Licensee the consideration theretofore paid by Licensee under this License to the extent of such breach.

13. **Notices**: All notices hereunder shall be sent certified mail, return receipt requested, or delivered by hand to the applicable address set forth hereinabove unless and until written notice, via registered mail, to the contrary is received by the applicable party. Copies of all notices to Licensor shall be sent to Berger, Kahn, attn.: Owen J. Sloane, 4215 Glencoe Avenue, 2nd Floor, Marina Del Rey, California 90292.

14. **Cure and Remedies**: In the event that Licensee, or its assigns, licensees, or sub-licensees, breaches this License and fails to cure such breach within thirty (30) days after written notice of such breach is given by Licensor to Licensee, then this License will automatically terminate. Such termination shall render the distribution, licensing, or use of the Property as unauthorized uses, subject except as set forth in paragraph 15 below to the rights and remedies provided by the laws, including copyright, and equity of the various countries within the territory.

15. **No Injunctive Relief**: Provided this License is terminated by reason of paragraph 14 above for failure to timely pay any license fees hereunder, Licensor's rights and remedies shall be limited to Licensor's right, if any, to recover damages in an action at law and in no event shall Licensor be entitled by reason of such breach to enjoin, restrain or seek to enjoin or restrain the distribution or other exploitation of the VIDEO GAME.

16. **Assignment**: Licensee shall have the right to assign this Agreement or any of its rights hereunder at any time to any person, firm or entity provided that such assignment shall not be effective as to Licensor unless and until written notice in accordance with paragraph 13 above is given by Licensee to Licensor. Licensor may not assign any of the obligations hereunder unless such assignee acquires all or substantially all of Licensor's stock and/or assets.

17. **Applicable Law**: This License shall be governed by and construed under the laws of the State of California, and any actions or proceedings between the parties hereto to enforce any provisions of this License shall be conducted in the County of Los Angeles.

18. **Miscellaneous**:

a. If any part of this License shall be determined to be invalid or unenforceable by a court of competent jurisdiction or by any other legally constituted body having jurisdiction to make such a determination, the remainder of this License shall remain in full force and effect.

b. This License is binding upon, and shall inure to the benefit of the parties and their respective successors and/or assignees of the parties hereto, but in no event shall Licensee be relieved of its obligations hereunder without the express written consent of Licensor.

c. No waiver by either party of a breach or default hereunder of the other party shall be deemed a waiver of any other provisions hereof or of any subsequent breach or default by such party.

d. The section headings and captions contained herein are for reference purposes and convenience only and shall not in anyway affect the meaning or interpretation of this License.

e. This License sets forth the entire understanding of the parties hereof with respect to the subject matter hereof, and may be modified solely by a written instrument signed by both parties hereto.

IN WITNESS WHEREOF, and intending to be legally bound thereby, the parties acknowledge that they have read, are aware of the contents hereto, and have executed this License on the date and year first written above.

Date: 6/26/2009 By: _____
X-RAY DOG MUSIC, INC., A California Corporation ("LICENSOR") Jennifer Duran – Manager of Licensing & Finance

Date: 6/30/09 By: _____
THE AYZENBERG GROUP / It's Authorized Agent ("LICENSEE")

Title: PRODUCER Print Name MEHERA WHEDON

REF: Invoice Number: 2463
Effective as of: 6/17/2009
Project Title: Transformers Deep 6 Video Game Trailer
Usage: Internet Streaming Non- Broadcast / WW in Perpetuity
Client: The Ayzenberg Group

Total Amount Due: **$2,000.00**

Originally Requested By: Mehera Whedon

1023 North Hollywood Way, Suite 103 Burbank, CA 91505 (818) 597-4859

Schapiro Exhibit 98

Confidential

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

THE FOOTBALL ASSOCIATION PREMIER LEAGUE LIMITED, BOURNE CO. (together with its affiliate MURBO MUSIC PUBLISHING, INC.), MUSIC FORCE 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,

Plaintiffs,

v.

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

Defendants.

Case No. 07 Civ. 3582 (LLS)

THE MUSIC FORCE MEDIA GROUP LLC, THE MUSIC FORCE LLC, AND SIN-DROME RECORDS, LTD.'S RESPONSES AND OBJECTIONS TO DEFENDANTS' FIRST SET OF REQUESTS FOR ADMISSION

Pursuant to Rule 36(a) of the Federal Rules of Civil Procedure, Named Plaintiff The Music Force Media Group LLC, The Music Force LLC, and Sin-Drome Records, Ltd. (collectively, "Music Force") 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. Music Force objects to the Requests on the ground that Music Force is still in the process of gathering and analyzing information relevant to these Requests. Music Force 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. Music Force 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 Music Force 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, Music Force's responses to these Requests is 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, Music Force does not concede the relevance, materiality or admissibility of any of the admissions or responses sought herein. Music Force's responses are made subject to and without waiving any objections as to relevancy, materiality, admissibility, vagueness, ambiguity, competency or privilege.

3. Music Force does not waive any of its rights to object on any ground to the use of its responses herein.

4. Music Force objects to the Requests to the extent that they set forth compound, conjunctive or disjunctive statements.

5. Music Force objects to the 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. Music Force objects to the each request, instruction or definition to the extent that they seek information, documents, or other materials that are neither relevant to the subject matter of this action, nor reasonably calculated to lead to the discovery of admissible evidence.

7. Music Force objects to the each request, instruction or definition to the extent that they seek information, documents, or other materials protected by the attorney-client privilege, the work product doctrine, or any other applicable privilege or immunity.

8. Music Force objects to the each request, instruction or definition to the extent that they seek documents or information generated or compiled by or at the direction of Music Force's counsel.

9. Music Force objects to the each request, instruction or definition to the extent that they seek information which is publicly available or which is already within Defendants' possession, custody or control.

10. Music Force objects to the each request, instruction or definition to the extent that they are vague, ambiguous, overly broad or unduly burdensome.

11. Music Force objects to the 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. Music Force objects to each request to the extent that they fail to specify an applicable time period and are thereby vague, ambiguous and overbroad.

13. Music Force objects to each request as premature to the extent that it calls for expert opinion, particularly with respect to requests that require a legal conclusion.

14. Music Forces object to the each request, instruction or definition to the extent that they purport to require Music Forces 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.

15. Music Force objects to the definitions of "the MF Entities", "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). Music Force 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. Music Force 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 requests, Plaintiffs will construe the terms

"the MF Entities", "you" and "your" to mean Named Plaintiffs collectively referred to herein as Music Force.

16. Music Force objects to the definitions of "Work(s) In Suit" and "Accused Clip(s)" as compound, vague and ambiguous. Music Force further objects to the extent these definitions call for privileged information. Music Force 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 Music Force seeks recovery. As set forth at paragraph 74 of the Second Amended Complaint, the infringed works specified by Music Force 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. Music Force reserves all rights to identify additional infringements and infringed works.

17. Music Force objects to the definition of "substantially DMCA-compliant takedown notice" on the grounds that such definition vague and ambiguous as it requires a qualitative judgment and lacks common or ready definition.

18. Music Force objects to the definition of "YouTube Copyright Protection Service" on the grounds that such definition vague and ambiguous as it requires a qualitative judgment and lacks common or ready definition.

19. Where Music Force 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 Music Force, and the information known or readily obtainable by Music Force is insufficient to enable the party to admit or deny.

20. Music Force reserves the right to supplement or amend these responses. These responses should not be construed as, and do not constitute, a waiver of Music Force'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 Music Force'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. Music Force reserves the right to amend, supplement, modify, or correct these responses and objections as appropriate.

MUSIC FORCE'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

Music Force incorporates each of the foregoing General Objections. Music Force objects to this Request on the grounds that it is vague and ambiguous, including the term "at all relevant times." Music Force further objects to this Request to the extent it calls for a legal conclusion. Subject to and without waiving the foregoing objections, Music Force 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

Music Force incorporates each of the foregoing General Objections. Music Force objects to this Request as vague and overbroad, including with respect to the terms "at all relevant times" and "material," which are undefined terms. Music Force 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, Music Force 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

Music Force incorporates each of the foregoing General Objections. Music Force objects to this Request for Admission as vague and overbroad, including with respect to the term "material," which is an undefined term. Music Force further objects to this Request to the extent it calls for a legal conclusion. Subject to and without waiving the foregoing objections, Music Force 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

Music Force incorporates each of the foregoing General Objections. Music Force objects to this Request for Admission as vague and overbroad, including with respect to the term "material," which is an undefined term. Music Force further objects to this Request to the extent it calls for a legal conclusion. Subject to and without waiving the foregoing objections, Music Force 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. § 5l2(c)(2).

RESPONSE TO REQUEST FOR ADMISSION NO. 5

Music Force incorporates each of the foregoing General Objections. Music Force 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, Music Force 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

Music Force incorporates each of the foregoing General Objections. Music Force objects to this Request on the grounds that it is vague and ambiguous, including the term "material". Music Force further objects to this Request to the extent it calls for a legal conclusion. Subject to and without waiving the foregoing objections, Music Force 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

Music Force incorporates each of the foregoing General Objections. Music Force 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, Music Force 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

Music Force incorporates each of the foregoing General Objections. Music Force objects to this Request to the extent it calls for a legal conclusion. Subject to and without waiving the foregoing objections, Music Force 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

Music Force incorporates each of the foregoing General Objections. Music Force objects to this Request as compound. Music Force further objects to this Request to the extent it calls for a legal conclusion. Subject to and without waiving the foregoing objections, Music Force 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)(l)(B).

RESPONSE TO REQUEST FOR ADMISSION NO. 10

Music Force incorporates each of the foregoing General Objections. Music Force objects to this Request to the extent it calls for a legal conclusion. Subject to and without waiving the foregoing objections, Music Force 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

Music Force incorporates each of the foregoing General Objections. Music Force objects to this Request to the extent it calls for a legal conclusion. Subject to and without waiving the foregoing objections, Music Force 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

Music Force incorporates each of the foregoing General Objections. Music Force objects to the request as compound. Music Force 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, Music Force denies that “use” of the youtube.com website was provided free and without charge.

REQUEST FOR ADMISSION NO. 13

Admit that during all time periods relevant to this case, the revenues generated by the youtube.com service never exceeded the costs of operating the youtube.com service.

RESPONSE TO REQUEST FOR ADMISSION NO. 13

Music Force incorporates each of the foregoing General Objections. Music Force objects to this Request on the grounds that it is vague and ambiguous, including the terms "all time periods relevant to this case", "revenues", "generated", "service", "costs", and "operating". Music Force further objects to this Request on the grounds that it is premature, as discovery is ongoing and Music Force has not completed its review of relevant discovery obtained from Defendants.

REQUEST FOR ADMISSION NO. 14

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. 14

Music Force incorporates each of the foregoing General Objections. Music Force objects to this Request as vague and ambiguous, including the terms “at all relevant times”, “reasonably implemented” and “appropriate circumstances”. Music Force further objects to this Request to the extent it calls for a legal conclusion. Subject to and without waiving the foregoing objections, Music Force denies this Request.

REQUEST FOR ADMISSION NO. 15

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. 15

Music Force incorporates each of the foregoing General Objections. Music Force objects to this Request as vague and ambiguous, including the term "in existence". Music Force further objects to this Request to the extent it calls for a legal conclusion. Music Force 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, Music Force denies Request.

REQUEST FOR ADMISSION NO. 16

Admit that there has been no broad consensus of copyright owners and service providers in an open, fair, voluntary, multi-industry standards process resulting in the development of "standard technical measures," as defined in 17 U.S.C. § 512(i)(2).

RESPONSE TO REQUEST FOR ADMISSION NO. 16

Music Force incorporates each of the foregoing General Objections. Music Force objects to this Request on the grounds that it is vague and ambiguous, including the terms "broad consensus", and "open fair, voluntary, multi-industry standards process". Music Force further objects to this Request on the ground that the requested matter is outside the scope of information relevant to this case. Music Force further objects to this Request to the extent it calls for a legal conclusion. Music Force further objects to this Request to the extent it is not bounded by any time period.

REQUEST FOR ADMISSION NO. 17

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. 17

Music Force incorporates each of the foregoing General Objections. Music Force objects to this Request to the extent it calls for a legal conclusion. Subject to and without waiving the foregoing objections, Music Force denies Request.

REQUEST FOR ADMISSION NO. 18

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. 18

Music Force incorporates each of the foregoing General Objections. Music Force objects to this Request on the grounds that it is vague and ambiguous, including the phrases "can have the effect" and "consumer demand." Music Force further objects to this Request on the ground that the requested matter is outside the scope of information relevant to this case. Music Force further objects to this request on the ground that it seeks Music Force's opinion regarding an incomplete hypothetical question, not the admission or denial of a fact. Subject to and without waiving the foregoing objections, Music Force 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 Music Force to third parties for a fee and/or otherwise damage Music Force's business.

REQUEST FOR ADMISSION NO. 19

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. 19

Music Force incorporates each of the foregoing General Objections. Music Force objects to this Request on the grounds that it is vague and ambiguous, including the term "becoming aware." Music Force 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. Music Force further objects to this Request on the ground that the requested matter is outside the scope of information relevant to this case. Music Force further object to this request on the ground that it misconstrues the parties' respective obligations under applicable law. Subject to and without waiving the foregoing objections, Music denies this Request to the extent that DMCA takedown notices were sent to YouTube within one week of Music Force discovering the infringing content. Music Force 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. 20

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. 20

Music Force incorporates each of the foregoing General Objections. Music Force objects to this Request on the grounds that it is vague and ambiguous, including the term "becoming aware." Music Force 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. Music Force further objects to this Request on the ground that the requested matter is outside the scope of information relevant to this case. Music Force further object to this request on the

ground that it misconstrues the parties' respective obligations under applicable law. Subject to and without waiving the foregoing objections, Music denies this Request to the extent that DMCA takedown notices were sent to YouTube within one month of Music Force discovering the infringing content. Music Force 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. 21

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. 21

Music Force incorporates each of the foregoing General Objections. Music Force objects to this Request on the grounds that it is vague and ambiguous, including the term "becoming aware." Music Force 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. Music Force further objects to this Request on the ground that the requested matter is outside the scope of information relevant to this case. Music Force further object to this request on the ground that it misconstrues the parties' respective obligations under applicable law. Subject to and without waiving the foregoing objections, Music denies this Request to the extent that DMCA takedown notices were sent to YouTube within two months of Music Force discovering the infringing content. Music Force 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. 22

Admit that You never requested YouTube to give You access to use a YouTube Copyright Protection Service.

RESPONSE TO REQUEST FOR ADMISSION NO. 22

Music Force incorporates each of the foregoing General Objections. Music Force objects on the grounds that YouTube has used several euphemisms to refer a number of "tools" that it offers to content owners. Music Force objects to this Request on the grounds that it is vague and ambiguous, including the term "YouTube Copyright Protection Service." Music Force 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. Music Force further objects to this Request on the ground that the requested matter is outside the scope of information relevant to this case. Music Force further objects to this request on the ground that it misconstrues the parties' respective obligations under applicable law. Subject to and without waiving the forgoing objections, and to the extent that "YouTube Copyright Protection Service" refers one or more of Defendants' "tools", Music Force states that Defendants have not made these tools readily available to Plaintiffs on reasonable terms.

REQUEST FOR ADMISSION NO. 23

Admit that YouTube never denied any request by You to use a YouTube Copyright Protection Service.

RESPONSE TO REQUEST FOR ADMISSION NO. 23

Music Force incorporates each of the foregoing General Objections. Music Force objects on the grounds that YouTube has used several euphemisms to refer a number of "tools" that it

offers to content owners. Music Force objects to this Request on the grounds that it is vague and ambiguous, including the term "YouTube Copyright Protection Service." Music Force 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. Music Force further objects to this Request on the ground that the requested matter is outside the scope of information relevant to this case. Music Force further objects to this request on the ground that it misconstrues the parties' respective obligations under applicable law. Subject to and without waiving the forgoing objections, and to the extent that "YouTube Copyright Protection Service" refers one or more of Defendants' "tools", Music Force states that Defendants have not made these tools readily available to Plaintiffs on reasonable terms.

REQUEST FOR ADMISSION NO. 24

Individually, for each Accused Clip, admit that You were not the owner of the copyright allegedly infringed by the Accused Clip at the time the accused clip was uploaded to YouTube.

RESPONSE TO REQUEST FOR ADMISSION NO. 24

Music Force incorporates each of the foregoing General Objections. Subject to and without waiving the foregoing objections, Music Force denies this Request.

REQUEST FOR ADMISSION NO. 25

Individually, for each Accused Clip, admit that the MF Entities were not the sole owners of the copyright allegedly infringed by the Accused Clip at the time the Accused Clip was uploaded to YouTube.

RESPONSE TO REQUEST FOR ADMISSION NO. 25

Music Force incorporates each of the foregoing General Objections. Subject to and without waiving the foregoing objections, Music Force admits that Robert Caldwell is a co-

owner of the copyrights listed in ¶33A-D of the Second Amended Complaint but that Henry Marx and the Music Force fully control and administer each of such copyright.

REQUEST FOR ADMISSION NO. 26

Individually, for each Accused Clip, admit that the MF Entities and their employees were not the only entities and persons with the right or authorization to upload videos to YouTube containing the Work in Suit alleged infringed by the Accused Clip at the time the Accused Clip was uploaded to YouTube.

RESPONSE TO REQUEST FOR ADMISSION NO. 26

Music Force incorporates each of the foregoing General Objections. Subject to and without wavier of the foregoing objections, Music Force denies this Request.

REQUEST FOR ADMISSION NO. 27

Individually, for each Accused Clip, admit that Robert Caldwell would have had the right to upload the Accused Clip to YouTube.

RESPONSE TO REQUEST FOR ADMISSION NO. 27

Music Force incorporates each of the foregoing General Objections. Subject to and without wavier of the foregoing objections, Music Force denies this Request and further states that Robert Caldwell did not upload any of the Accused Clips to YouTube.

REQUEST FOR ADMISSION NO. 28

Individually, for each Accused Clip, admit that Robert Caldwell would have had the right to authorize the presence of the Accused Clip on YouTube.

RESPONSE TO REQUEST FOR ADMISSION NO. 28

Music Force incorporates each of the foregoing General Objections. Subject to and without wavier of the foregoing objections, Music Force denies this Request and further states that that Robert Caldwell did not authorize the presence of the Accused Clips on YouTube.

REQUEST FOR ADMISSION NO. 29

Individually, for each Accused Clip, admit that other videos containing the Work in Suit allegedly infringed by the Accused Clip had been uploaded to YouTube by someone with the right or authorization to do so.

RESPONSE TO REQUEST FOR ADMISSION NO. 29

Music Force incorporates each of the foregoing General Objections. Music Force objects to this Request on the grounds that the phrase "other videos" is vague and ambiguous. Music Force further objects to this Request on the grounds that the failure to specify an applicable time period renders the Request vague and ambiguous. Subject to and without waiving the foregoing objections, Music Force denies this request.

REQUEST FOR ADMISSION NO. 30

Admit that You have uploaded videos containing copyrighted works to YouTube.

RESPONSE TO REQUEST FOR ADMISSION NO. 30

Music Force incorporates each of the foregoing General Objections. Subject to and without waiving the foregoing objections, Music Force incorporates by reference its Responses To Requests For Admissions Nos. 40-42 below and further states that such uploads were made without the knowledge or authorization of Henry Marx and did not involve the works in suit.

REQUEST FOR ADMISSION NO. 31

Admit that You have created a YouTube user account.

RESPONSE TO REQUEST FOR ADMISSION NO. 31

Music Force incorporates each of the foregoing General Objections. Music Force incorporates by reference its Responses To Requests For Admissions Nos. 38-39 and No. 44 below and further states that such accounts were made without the knowledge or authorization of Henry Marx.

REQUEST FOR ADMISSION NO. 32

Admit that a YouTube user account was created using an email address owned or controlled by You.

RESPONSE TO REQUEST FOR ADMISSION NO. 32

Music Force incorporates each of the foregoing General Objections. Music Force incorporates by reference its Responses To Request For Admission Nos. 38-39, 44 below and further states that such accounts were created without the knowledge or authorization of Henry Marx.

REQUEST FOR ADMISSION NO. 33

Admit that videos containing copyrighted works have been uploaded to YouTube using an account created with an email address owned or controlled by You.

RESPONSE TO REQUEST FOR ADMISSION NO. 33

Music Force incorporates each of the foregoing General Objections. Music Force incorporates by reference its Responses To Request For Admissions Nos. 40-42, 44 and 45-47 below and further states that such uploads were made without the knowledge or authorization of Mr. Marx and did not involve the works in suit.

REQUEST FOR ADMISSION NO. 34

Admit that Robert Caldwell distributed copies of the Works in Suit in which he did not own distribution rights.

RESPONSE TO REQUEST FOR ADMISSION NO. 34

Music Force incorporates by reference the General Objections. Music Force 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. Music Force further objects to this Request on the grounds that it fails to specify an applicable

time period and is thereby vague, ambiguous and overbroad. Subject to and without waiver of the foregoing objections, Music Force lacks specific knowledge of the actions of the non-party Robert Caldwell necessary to admit or deny this Request.

REQUEST FOR ADMISSION NO. 35

Admit that Robert Caldwell's wife encouraged him to distribute copies of the Works in Suit in which he did not own distribution rights.

RESPONSE TO REQUEST FOR ADMISSION NO. 35

Music Force incorporates by reference the General Objections. Music Force 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. Music Force further objects to this Request on the grounds that it fails to specify an applicable time period and is thereby vague, ambiguous and overbroad. Subject to and without waiver of the foregoing objections, Music Force lacks specific knowledge of the actions of the non-party wife of Robert Caldwell necessary to admit or deny this Request.

REQUEST FOR ADMISSION NO. 36

Admit that You do business as Hyena Records.

RESPONSE TO REQUEST FOR ADMISSION NO. 36

Music Force incorporates by reference the General Objections. Subject to and without waiver of the foregoing objections, Music Force admits that Hyena Records is a d/b/a of The Music Force Media Group.

REQUEST FOR ADMISSION NO. 37

Admit that You do business as Big Deal Records.

RESPONSE TO REQUEST FOR ADMISSION NO. 37

Music Force incorporates by reference the General Objections. Subject to and without waiver of the foregoing objections, Music Force admits that Big Deal Records is a d/b/a of The Music Force Media Group.

REQUEST FOR ADMISSION NO. 38

Admit that You created the "hyenarecords" YouTube account.

RESPONSE TO REQUEST FOR ADMISSION NO. 38

Music Force incorporates by reference the General Objections. Subject to and without waiver of the foregoing objections, Music Force admits that as a result of its inquiry into responding to these Requests, it learned that former Hyena Records participating partner Joel Dorn created the "hyenarecords" YouTube account without Henry Marx's knowledge or authorization.

REQUEST FOR ADMISSION NO. 39

Admit that You created the "bigdealrecords" YouTube account.

RESPONSE TO REQUEST FOR ADMISSION NO. 39

Music Force incorporates by reference the General Objections. Subject to and without waiver of the foregoing objections, Music Force admits that as a result of its inquiry into responding to these Requests, it learned that former Music Force employee Layla Ross created the "bigdealrecords" YouTube account without Henry Marx's knowledge or authorization.

REQUEST FOR ADMISSION NO. 40

Admit that You have uploaded videos containing copyrighted works to YouTube using the "hyenarecords" YouTube account.

RESPONSE TO REQUEST FOR ADMISSION NO. 40

Music Force incorporates by reference the General Objections. Music Force objects to the phrase "videos containing copyrighted works" as vague and ambiguous. Music Force objects to the extent that that the failure to specify an applicable time period renders the Request vague and ambiguous. Subject to and without waiver of the foregoing objections, Music Force admits that as a result of its inquiry into responding to these Requests, it learned that former Hyena Records participating partner Joel Dorn created the "hyenarecords" YouTube account without Henry Marx's knowledge or authorization and caused to be uploaded a very limited number of videos (approximately eleven) to YouTube. Music Force further admits that none of the videos are related to the Works in Suit and that all such uploads appear to have occurred approximately two or more years ago.

REQUEST FOR ADMISSION NO. 41

Admit that You have uploaded videos containing copyrighted works to YouTube using the "bigdealrecords" YouTube account.

RESPONSE TO REQUEST FOR ADMISSION NO. 41

Music Force incorporates by reference the General Objections. Music Force objects to the phrase "videos containing copyrighted works" as vague and ambiguous. Music Force objects to the extent that that the failure to specify an applicable time period renders the Request vague and ambiguous. Subject to and without waiver of the foregoing objections, Music Force admits that as a result of its inquiry into responding to these Requests, it learned that former Music Force employee Layla Ross created the "bigdealrecords" YouTube account without Henry Marx's knowledge or authorization and caused to be uploaded approximately one video to

YouTube. Music Force further admits that none of the videos are related to the Works in Suit and that all such uploads appear to have occurred approximately two and one-half or more years ago.

REQUEST FOR ADMISSION NO. 42

Admit that videos containing copyrighted works have been uploaded to YouTube using the "grumpoM" YouTube Account.

RESPONSE TO REQUEST FOR ADMISSION NO. 42

Music Force incorporates by reference the General Objections. Music Force objects to the phrase "videos containing copyrighted works" as vague and ambiguous. Music Force objects to the extent that that the failure to specify an applicable time period renders the Request vague and ambiguous. Subject to and without waiver of the foregoing objections, Music Force denies this Request to the extent that it appears that no videos have been uploaded to YouTube using the "grumpoM" YouTube Account.

REQUEST FOR ADMISSION NO. 43

Admit that Henry Marx created the "grumpoM" YouTube account.

RESPONSE TO REQUEST FOR ADMISSION NO. 43

Music Force incorporates by reference the General Objections. Subject to and without waiving the foregoing objections, Music Force denies this request.

REQUEST FOR ADMISSION NO. 44

Admit that someone created the "grumpoM" YouTube account using an email address owned or controlled by Henry Marx.

RESPONSE TO REQUEST FOR ADMISSION NO. 44

Music Force incorporates by reference the General Objections. Subject to and without waiver of the foregoing objections, Music Force admits that as a result of its inquiry into responding to these Requests, it learned that former Music Force employee Layla Ross created

the "grumpoM" YouTube account using an email address owned or controlled by Henry Marx without Henry Marx's knowledge or authorization.

REQUEST FOR ADMISSION NO. 45

Admit that only Henry Marx and his internet service providers have authorized access to the [redacted] email address.

RESPONSE TO REQUEST FOR ADMISSION NO. 45

Music Force incorporates by reference the foregoing General Objections. Subject to and without waiver of the foregoing objections, Music Force admits that only Henry Marx has authorized access to the [redacted] email address but that on specific occasions former Music Force employees were provided access to the [redacted] email address for limited purposes, none of which involved YouTube.

REQUEST FOR ADMISSION NO. 46

Admit that only Henry Marx and his internet service providers have authorized access to the [redacted] email address.

RESPONSE TO REQUEST FOR ADMISSION NO. 46

Music Force incorporates by reference the foregoing General Objections. Subject to and without waiver of the foregoing objections, Music Force admits that only Henry Marx has authorized access to the [redacted] email address but that on specific occasions former Music Force employees were provided access to the [redacted] email address for limited purposes, none of which involved YouTube.

REQUEST FOR ADMISSION NO. 47

Admit that only Henry Marx and his internet service providers have authorized access to the [redacted] email address.

RESPONSE TO REQUEST FOR ADMISSION NO. 47

Music Force incorporates by reference the foregoing General Objections. Subject to and without waiver of the foregoing objections, Music Force admits that only Henry Marx has authorized access to the [redacted] email address but that on specific occasions former Music Force employees were provided access to the [redacted] email address for limited purposes, none of which involved YouTube.

REQUEST FOR ADMISSION NO. 48

Admit that Robert Caldwell filed a "First Amended Verified Complaint" in federal district court on March 4, 2008 alleging claims against You and Henry.

RESPONSE TO REQUEST FOR ADMISSION NO. 48

Music Force incorporates by reference the foregoing General Objections. Music Force 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 waiver of the foregoing objections, the Music Force admits that on March 4, 2008, Robert Hunter Caldwell, *et al*. filed a complaint in the United States District Court for the Central District of California against Henry G. Marx, *et al*. Music Force further admits that such complaint was dismissed with prejudice on July 9, 2009 and that Mr. Caldwell subsequently issued an apology to Mr. Marx in which he stated that the foregoing lawsuit was totally without merit.

REQUEST FOR ADMISSION NO. 49

Admit that, in a March 4, 2008 complaint filed by Robert Caldwell against You and Henry Marx, Robert Caldwell sued Henry Marx for, among other claims, "fraud."

RESPONSE TO REQUEST FOR ADMISSION NO. 49

Music Force incorporates by reference the foregoing General Objections. Music Force 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 waiver of the foregoing objections, the Music Force admits that on March 4, 2008, Robert Hunter Caldwell, *et al*. filed a complaint in the United States District Court for the Central District of California against Henry G. Marx, *et al*. and that such complaint included a claim for fraud. Music Force further admits that such complaint was dismissed with prejudice on July 9, 2009 and that Mr. Caldwell subsequently issued an apology to Mr. Marx in which he stated that the foregoing lawsuit was totally without merit.

REQUEST FOR ADMISSION NO. 50

Admit that, in a March 4, 2008 complaint filed by Robert Caldwell against You and Henry Marx, Robert Caldwell alleged that Henry Marx engaged in a fraud against him in connection with, among other alleged acts and omissions, "the misrepresentation by omission and failure to disclose the existence of an opportunity to acquire a share of the ownership interest in the copyright composition 'What You Won't Do For Love,' Marx's intent to acquire the interest, or the fact that he had done so."

RESPONSE TO REQUEST FOR ADMISSION NO. 50

Music Force incorporates by reference the foregoing General Objections. Music Force 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 waiver of the foregoing objections, the Music Force admits that on March 4, 2008, Robert Hunter Caldwell, *et al*. filed a complaint in the United States District Court for the Central District of California against Henry G. Marx, *et al*. and that ¶133 of such complaint stated and alleged, in part, "the misrepresentation by omission and failure to

disclose the existence of an opportunity to acquire a share of the ownership interest in the copyright composition 'What You Won't Do For Love,' Marx's intent to acquire the interest, or the fact that he had done so." Music Force further admits that such complaint was dismissed with prejudice on July 9, 2009 and that Mr. Caldwell subsequently issued an apology to Mr. Marx in which he stated that the foregoing lawsuit was totally without merit.

REQUEST FOR ADMISSION NO. 51

Admit, consistent with allegations in counterclaims filed by You against Robert Caldwell on August 1, 2007, that as of August 1, 2008, "What You Won't Do For Love [was] Robert Caldwell's only bona fide hit as a recording artist".

RESPONSE TO REQUEST FOR ADMISSION NO. 51

Music Force incorporates by reference the foregoing General Objections. Music Force 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 waiver of the foregoing objections, Music Force admits that Henry Marx, *et al*. filed a counterclaim on August 1, 2008 against Robert H. Caldwell, *et al*. and that ¶18 of such counterclaim alleged "[t]o date, "What You Won't Do For Love" is Caldwell's only bono fide hit as a recording artist."

REQUEST FOR ADMISSION NO. 52

Admit that one of the issues disputed during litigation between You and Robert Caldwell was whether Robert Caldwell was the sole author of the song "Stuck on You."

RESPONSE TO REQUEST FOR ADMISSION NO. 52

Music Force incorporates by reference the foregoing General Objections. Music Force specifically 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 and that the phrase "one of the issues disputed during litigation" is vague and ambiguous. Subject to and without waiver of the foregoing objections, Music Force admits that, consistent with ¶79 of counterclaim filed by Henry Marx, *et al.*, against Robert H. Caldwell *et al.*, on August 1, 2008, Henry Marx co-wrote "Stuck on You".

AS TO OBJECTIONS:

Dated: New York, New York January 8, 2010	*Attorneys for The Music Force Media Group LLC, The Music Force LLC, and Sin-Drome Records, Ltd.* */s/ Christopher M. McGrath* Christopher Lovell (CL-2595) Christopher M. McGrath (CM-4983) LOVELL STEWART HALEBIAN LLP 61 Broadway, Suite 501 New York, New York 10006 Telephone: (212) 608-1900 Facsimile: (212) 719-4775 *-and-* Jeffrey L. Graubart (JG-1338) LAW OFFICES OF JEFFREY L. GRAUBART, P.C. 350 West Colorado Boulevard, Suite 200 Pasadena, California 91105-1855 Telephone: (626) 304-2800 Facsimile: (626) 304-2807 *-and-* Steve D'Onofrio (SD-8794) 5335 Wisconsin Avenue, N.W. Suite 950 Washington, D.C. 20015 Telephone: (202) 686-2872 Facsimile: (202) 686-2875

Schapiro Exhibit 103

CONFIDENTIAL

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

THE FOOTBALL ASSOCIATION PREMIER LEAGUE LIMITED, BOURNE CO. (together with its affiliate MURBO MUSIC PUBLISHING, INC.), CAL IV 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,

Plaintiffs,

v.

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

Defendants.

Case No. 07 Civ. 3582 (LLS)

CAL IV ENTERTAINMENT LLC'S RESPONSES AND OBJECTIONS TO DEFENDANTS' FIRST SET OF REQUESTS FOR ADMISSION TO CAL IV ENTERTAINMENT LLP.

Pursuant to Rule 36(a) of the Federal Rules of Civil Procedure, Named Plaintiff Cal IV Entertainment LLC ("Cal IV") 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. Cal IV objects to the Requests on the ground that Cal IV is still in the process of gathering and analyzing information relevant to these Requests. Cal IV 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. Cal IV 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 Cal IV 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, Plaintiff's responses to these Requests is 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, Cal IV does not concede the relevance, materiality or admissibility of any of the admissions or responses sought herein. Cal IV's responses are made subject to and without waiving any objections as to relevancy, materiality, admissibility, vagueness, ambiguity, competency or privilege.

3. Cal IV does not waive any of its rights to object on any ground to the use of its responses herein.

4. Cal IV objects to the Requests to the extent that they set forth compound, conjunctive or disjunctive statements.

5. Cal IV 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. Cal IV 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. Cal IV 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. Cal IV 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 Cal IV's counsel.

9. Cal IV objects to each request, instruction or definition to the extent that it would require compilation or review of information otherwise within Defendants' possession, custody or control or more easily accessible to Defendants.

10. Cal IV objects to each request, instruction or definition to the extent that they are vague, ambiguous, overly broad or unduly burdensome.

11. Cal IV 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. Cal IV objects to each request to the extent that they fail to specify an applicable time period and are thereby vague, ambiguous and overbroad.

13. Cal IV objects to each request as premature to the extent that it calls for expert opinion.

14. Cal IV objects to each request to the extent that it calls for a legal conclusion.

15. Cal IV objects to each request, instruction or definition to the extent that they purport to require Cal IV 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. Cal IV objects to the definitions of "Cal IV", "Cal IV'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). Cal IV 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. Cal IV 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 "Cal IV", "Cal IV's", "you" and "your" to mean Named Plaintiff Cal IV.

17. Cal IV objects to the definitions of "Work(s) In Suit" and "Accused Clip(s)" as compound, vague and ambiguous. Cal IV further objects to the extent these definitions call for

privileged information. Cal IV 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 Cal IV seeks recovery. As set forth at paragraph 74 of the Second Amended Complaint, the infringed works specified by Cal IV 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. Cal IV reserves all rights to identify additional infringements and infringed works.

18. Cal IV 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 Cal IV 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 Cal IV, and the information known or readily obtainable by Cal IV is insufficient to enable the party to admit or deny.

20. Cal IV reserves the right to supplement or amend these responses. These responses should not be construed as, and do not constitute, a waiver of Cal IV'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 Cal IV'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. Cal IV reserves the right to amend, supplement, modify, or correct these responses and objections as appropriate.

CAL IV'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: Cal IV objects to this Request on the grounds that it is vague and ambiguous, including the term "at all relevant times." Cal IV further objects to this Request to the extent it calls for a legal conclusion. Subject to and without waiving the foregoing objections, Cal IV 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: Cal IV objects to this Request as vague and overbroad, including with respect to the terms "at all relevant times" and "material," which are undefined terms. Cal IV 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, Cal IV 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: Cal IV objects to this Request for Admission as vague and overbroad, including with respect to the term "material," which is an undefined term. Cal IV further objects to this Request to the extent it calls for a legal conclusion. Subject to and without waiving the foregoing objections, Cal IV 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: Cal IV objects to this Request for Admission as vague and overbroad, including with respect to the term "material," which is an undefined term. Cal IV further objects to this Request to the extent it calls for a legal conclusion. Subject to and without waiving the foregoing objections, Cal IV 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. § 5l2(c)(2).

RESPONSE TO REQUEST FOR ADMISSION NO. 5: Cal IV 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, Cal IV 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: Cal IV objects to this Request on the grounds that it is vague and ambiguous, including the term "material." Cal IV further objects to this Request to the extent it calls for a legal conclusion. Subject to and without waiving the foregoing objections, Cal IV 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: Cal IV objects to this Request on the grounds that it is vague and ambiguous, including the term "material." Subject to and without waiting the foregoing objections, Cal IV 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: Cal IV objects to this Request on the grounds that it is vague and ambiguous, including the term "material." Cal IV further objects to this Request to the extent it calls for a legal conclusion. Subject to and without waiving the foregoing objections, Cal IV 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: Cal IV objects to this Request as compound. Cal IV further objects to this Request to the extent it calls for a legal conclusion. Subject to and without waiving the foregoing objections, Cal IV 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)(l)(B).

RESPONSE TO REQUEST FOR ADMISSION NO. 10: Cal IV objects to this Request to the extent it calls for a legal conclusion. Subject to and without waiving the foregoing objections, Cal IV 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: Cal IV objects to this Request to the extent it calls for a legal conclusion. Subject to and without waiving the foregoing objections, Cal IV 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: Cal IV objects to this Request as compound. Cal IV 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, Cal IV 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: Cal IV objects to this Request as vague and ambiguous, including the terms "at all relevant times," "reasonably implemented" and "appropriate circumstances." Cal IV further objects to this Request to the extent it calls for a legal conclusion. Subject to and without waiving the foregoing objections, Cal IV 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: Cal IV objects to this Request as vague and ambiguous, including the term "in existence." Cal IV further objects to this Request to the extent it calls for legal conclusion. Cal IV 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, Cal IV 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: Cal IV objects to this Request to the extent it calls for a legal conclusion. Subject to and without waiving the foregoing objections, Cal IV denies this Request.

REQUEST FOR ADMISSION NO. 16:

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. 16: Cal IV objects to this Request on the grounds that it is vague and ambiguous, including the phrases "can have the effect" and "consumer demand." Cal IV further objects to this Request on the ground that the requested matter is outside the scope of information relevant to this case. Cal IV further objects to this request on the ground that it seeks Cal IV's opinion regarding an incomplete hypothetical question, not the admission or denial of a fact. Subject to the foregoing objections, Cal IV denies this Request on the grounds that the presence of Cal IV content on youtube.com constitutes a substitution of the products sold or and licensed by Cal IV to third parties for a fee.

REQUEST FOR ADMISSION NO. 17:

Admit that you agreed to YouTube's Terms of Service when you created an account on the YouTube server.

RESPONSE TO REQUEST FOR ADMISSION NO. 17: Cal IV objects to this Request on the grounds that it is vague and ambiguous, including the term "Terms of Service." Subject to

and without waiving the foregoing objections, Cal IV states that it created a YouTube account in order to sign up for the Content Verification Program and further states that in order to sign up for the Content Verification Program, Cal IV was required by YouTube to agree to whatever terms YouTube unilaterally imposed on the YouTube account.

REQUEST FOR ADMISSION NO. 18:

Admit that while you signed up for YouTube's Content Verification Program, you did not use it.

RESPONSE TO REQUEST FOR ADMISSION NO. 18: Cal IV 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. Cal IV further objects to this Request on the grounds that YouTube has used several euphemisms to refer to a number of "tools" that it offers to content owners. To the extent that the Content Verification Program "tool" is an electronic substitute for a DMCA takedown notice, Cal IV states that after signing up for the Content Verification Program, it determined that because of the huge volume of infringements of its works on the YouTube website, use of the Content Verification Program would not be an effective means of protecting Cal IV's copyrighted content and that it has not used this "tool" and otherwise denies this Request.

REQUEST FOR ADMISSION NO. 19:

Admit that you have not signed up to use YouTube's Content ID tool.

RESPONSE TO REQUEST FOR ADMISSION NO. 19: Cal IV objects to this Request on the grounds that YouTube has used several euphemisms to refer to a number of "tools" that it offers to content owners. To the extent that Content ID is a "tool" that refers to digital

fingerprinting technology, Cal IV states that Defendants have not made their digital fingerprinting technology readily available to Plaintiffs on reasonable terms.

REQUEST FOR ADMISSION NO. 20:

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. 20: Cal IV objects to this Request on the grounds that it is vague and ambiguous, including the term "becoming aware." Cal IV 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. Cal IV further objects to this Request on the ground that the requested matter is outside the scope of information relevant to this case. Cal IV 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, Cal IV denies this Request to the extent that Cal IV and/or its agents have sent DMCA takedown notices to YouTube within one week of Cal IV discovering the infringing content. Cal IV 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 is claims as infringing in the Complaints in this action infringed its content.

REQUEST FOR ADMISSION NO. 21:

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. 21: Cal IV objects to this Request on the grounds that it is vague and ambiguous, including the term "becoming aware." Cal IV 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. Cal IV further objects to this Request on the ground that the requested matter is outside the scope of information relevant to this case. Cal IV 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, Cal IV denies this Request to the extent that Cal IV and/or its agents have sent DMCA takedown notices to YouTube within one month of Cal IV discovering the infringing content. Cal IV 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. 22:

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. 22: Cal IV objects to this Request on the grounds that it is vague and ambiguous, including the term "becoming aware." Cal IV 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. Cal IV further objects to this Request on the ground that the requested matter is outside the scope of information relevant to this case. Cal IV 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, Cal IV denies this Request to the extent that Cal IV and/or its agents have sent DMCA takedown notices to YouTube within two months of Cal IV discovering the infringing content. Cal IV 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. 23:

Admit that you retracted DMCA takedown notices sent to YouTube for one or more of your works.

RESPONSE TO REQUEST FOR ADMISSION NO. 23: Cal IV objects to this Request on the grounds that the terms "retracted" and "your works" are vague and ambiguous as used in this Request. Cal IV further objects to this Request on the ground that the requested matter is outside the scope of information relevant to this case. Cal IV further objects to this Request to the extent it calls for a legal conclusion. Subject to and without waiving the foregoing objections and as further set forth in Cal IV's response to Interrogatory No. 14 and Cal IV witnesses' deposition testimony, Cal IV states that on one occasion it retracted its request to take down two video clips that were posted by Carey Ott—a songwriter employed by Cal IV at the time as an independent contractor over whom Cal IV had no control—as a courtesy to Mr. Ott. Cal IV otherwise denies the Request.

REQUEST FOR ADMISSION NO. 24:

Admit that you have issued licenses for works in suit that grant the license the right to exhibit and distribute the work on websites, including YouTube.com.

RESPONSE TO REQUEST FOR ADMISSION NO. 24: Cal IV objects to this Request on the grounds that the terms "exhibit", "distribute" and "the work" are vague and ambiguous as used in this Request. Cal IV further objects to this Request on the ground that the requested matter is outside the scope of information relevant to this case. Cal IV further objects to this Request on the ground that any rights extended to a licensee of Cal IV 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, Cal IV denies that language granting rights in a license can be read in isolation and states that is must be read in light of other terms and restrictions in that license. Cal IV states 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. 25:

Admit that the license agreement produced at CAL00002218 grants the licensee the right to exhibit and distribute the work on websites, including YouTube.com.

RESPONSE TO REQUEST FOR ADMISSION NO. 25: Cal IV objects to this Request on the grounds that the terms “exhibit”, “distribute,” “the work” and “on websites” are vague and ambiguous. Cal IV further 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 Cal IV content on YouTube. Cal IV further objects on the ground that any rights extended to a licensee of Cal IV 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, Cal IV denies that language granting rights to exploit content in “all media now known or hereafter devised,” “online programming services” or “downloads and/or streams” standing alone authorizes a licensee to exploit Cal IV content on websites generally or on YouTube.com

specifically. Cal IV states that the license produced at the bates number above grants certain rights to exploit Cal IV content on the internet subject to the express terms of the agreement, including the fee paid by the licensee in exchange for said rights.

REQUEST FOR ADMISSION NO. 26:

Admit that the license agreement produced at CAL0000233 grants the licensee the right to exhibit and distribute the work on websites, including YouTube.com.

RESPONSE TO REQUEST FOR ADMISSION NO. 26: Cal IV objects to this Request on the grounds that the terms "exhibit", "distribute," "the work" and "on websites" are vague and ambiguous. Cal IV further 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 Cal IV content on YouTube. Cal IV further objects on the ground that any rights extended to a licensee of Cal IV 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, Cal IV denies that language granting rights to exploit content in "all media now known or hereafter devised," "promotional downloading for marketing purposes," "streaming and temporary downloading" and "permanent downloading" standing alone authorize a licensee to exploit Cal IV content on websites generally or on YouTube.com specifically and further states that the license produced at the bates number above specifically excludes "theatrical, out-of-context and/or non-sequential / non-linear uses," such as YouTube.com. Cal IV states that the license produced at the bates number above grants certain rights but excludes "theatrical, out-of-context and/or non-sequential / non-linear uses."

REQUEST FOR ADMISSION NO. 27:

Admit that the license agreement produced at CAL 0000219-20 grants the licensee the right to exhibit and distribute the work on websites, including YouTube.com.

RESPONSE TO REQUEST FOR ADMISSION NO. 27: Cal IV objects to this Request on the grounds that the terms "exhibit", "distribute," "the work" and "on websites" are vague and ambiguous. Cal IV further 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 Cal IV content on YouTube. Cal IV further objects on the ground that any rights extended to a licensee of Cal IV 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, Cal IV denies that language granting rights to exploit in "any and all linear media, whether now known or hereafter devised" and "Internet (whether downloading, streaming or otherwise)" standing alone authorize a licensee to exploit Cal IV content on websites generally or on YouTube.com specifically. Cal IV states that the license produced at the bates number above grants certain rights to exploit Cal IV content subject to the express terms of the agreement, including the fee paid by the licensee in exchange for said rights and the limitation that rights conferred by the license apply "only in synchronization or timed relationship to the Motion Picture and trailers."

REQUEST FOR ADMISSION NO. 28:

Admit that the license agreement produced at CAL00002597-601 grants the licensee the right to exhibit and distribute the work on websites, including YouTube.com.

RESPONSE TO REQUEST FOR ADMISSION NO. 28: Cal IV objects to this Request on the grounds that the terms "exhibit", "distribute," "the work" and "on websites" are vague and

ambiguous. Cal IV further objects to this Request on the grounds that the license produced at the bates numbers is not applicable to the works-in-suit. Cal IV further 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 Cal IV content on YouTube. Cal IV further objects on the ground that any rights extended to a licensee of Cal IV 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, Cal IV denies that language granting rights to exploit in "a streamed transmission" "audio and/or audiovisual download offered via official show website and all other associated and branded websites," "audio download/streaming realtone or ringback," "Internet Streaming via official show websites" and "Internet Streaming via affiliated websites (e.g., www.hulu.com)" standing alone authorize a licensee to exploit Cal IV content on websites generally or on YouTube.com specifically. In addition, Cal IV denies that the license produced at the bates number above grants rights to exploit Cal IV content on YouTube.com, because the express terms of the agreement permit exploitation of Cal IV content only on "official show websites" and "affiliated websites (e.g., www.hulu.com)."

REQUEST FOR ADMISSION NO. 29:

Admit that on no occasion did you inform YouTube of the existence of the license agreements set forth in Requests 27-30.

RESPONSE TO REQUEST FOR ADMISSION NO. 29: Cal IV objects to this Request as unintelligible on the ground that no license agreements are set forth in Requests 29 and 30. Cal IV 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, Cal IV denies this Request to the extent it implies that Cal IV 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 content it is exploiting. Such information is readily and publicly available including through public databases identifying Cal IV as the administrator of and/or owner of the works in suit and other Cal IV content. Cal IV further denies this Request for the reasons set forth in its responses to Requests nos. 27-30.

REQUEST FOR ADMISSION NO. 30:

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 not authorized to appear on the YouTube.com site.

RESPONSE TO REQUEST FOR ADMISSION NO. 30: Cal IV objects to this request on the grounds that it is vague and ambiguous, including the terms "consult", "ensure" and "co-owner(s)." Cal IV further objects to this Request on the grounds the requested matter is outside the scope of information relevant to this case. Subject to and without waiving the foregoing objections, Cal IV denies this Request to the extent it implies that Cal IV 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.

REQUEST FOR ADMISSION NO. 31:

Individually for each accused clip, admit that you did not consult with the writer (i.e., a writer signed with Cal IV) of the work-in-suit to ensure that the clip was not authorized to appear on the YouTube.com site.

RESPONSE TO REQUEST FOR ADMISSION NO. 31: Cal IV objects to this request on the grounds that it is vague and ambiguous, including the terms "consult," "ensure" and "writer." Cal IV further 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, Cal IV denies this Request to the extent it implies that Cal IV is obligated to consult with the "writer" to ensure that each accused clip was unauthorized to be on the YouTube website, and states that, with respect to each accused clip, Cal IV either has no obligation to consult with the "writer" of the work prior to taking action against Defendants for infringements of Cal IV's works, or that it obtained the necessary authorizations (if any were necessary) to take action against Defendants.

REQUEST FOR ADMISSION NO. 32:

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. 32: Cal IV objects to this Request on the grounds that it is vague and ambiguous, including the words "consult" and "ensure." Cal IV further 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 objection, Cal IV 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. 33:

Admit that some of your works in suit are co-owned by third parties.

RESPONSE TO REQUEST FOR ADMISSION NO. 33: Cal IV objects to this Request on the grounds that it is vague and ambiguous, including the terms "co-owned" and "third parties."

Cal IV 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, Cal IV denies this Request as to the work-in-suit "Sharing the Night Together" and admits this Request as to the work-in-suit "If You're Going Through Hell."

REQUEST FOR ADMISSION NO. 34:

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. 34: Cal IV objects to this Request on the grounds that it is vague and ambiguous, including the terms "co-owned," "third parties," "co-owners," and "consult." Cal IV 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, Cal IV denies this Request as inapplicable to the work-in-suit "Sharing the Night Together." Cal IV denies this Request with regard to work-in-suit "If You're Going Through Hell" insofar as it applies to licensing for the YouTube website.

REQUEST FOR ADMISSION NO. 35:

Admit that your writers (i.e. writers signed by Cal IV) have posted videos on YouTube.

RESPONSE TO REQUEST FOR ADMISSION NO. 35: Cal IV objects to this request on the grounds that it is vague and ambiguous, including the term "writer." Cal IV 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, Cal IV denies this Request to the extent

it related to Cal IV's works-in-suit. Cal IV states that to its knowledge and as further set forth in Cal IV's response to Interrogatory No. 14 and Cal IV witnesses' deposition testimony, Carey Ott—a songwriter previously employed by Cal IV as an independent contractor over whom Cal IV had no control—posted videos on YouTube, but was not authorized to do so at the time of posting Cal IV otherwise denies the Request.

AS TO OBJECTIONS:

Dated: January 8, 2010
San Francisco, CA

Daniel Girard
Christina Connolly Sharp
GIRARD GIBBS LLP
601 California Street, 14th Floor
San Francisco, CA 94108

-and-

Gerald E. Martin
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-and-

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Attorneys for Cal IV Entertainment LLC

Schapiro Exhibit 107

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,	)	
vs.	)	Case No. 07CV3582
YOUTUBE, INC., YOUTUBE, LLC, and GOOGLE, INC.,	)	
Defendants.	)	

DEPOSITION OF GEORGINA LOTH
NEW YORK, NEW YORK

WEDNESDAY, DECEMBER 2, 2009

REPORTED BY:
ERICA RUGGIERI, CSR, RPR
JOB NO.: 18233

December 2, 2009

1:08 p.m.

VIDEOTAPED DEPOSITION OF GEORGINA LOTH, held at the offices of Mayer Brown, 1675 Broadway, New York, New York, pursuant to notice, before Erica L. Ruggieri, Registered Professional Reporter and Notary Public of the State of New York.

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

FOR THE PLAINTIFFS:

PROSKAUER ROSE, LLP

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BY: BRIAN WILLEN, ESQ.

JASON KIRSCHNER, ESQ.

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ALSO PRESENT:

EMILIE MONTANE, FFT

CARLOS KING, Videographer

ABDOU FALL, Interpreter

JOANNA DEZIO, Ph.D, Interpreter

boxes. Period.

Q. What does the CMS tool do?

A. The CMS enables the content

06:22:53 owners to find videos sorted by keywords, and then we can -- for each videos, we can choose to remove, to ask to remove it on it.

Q. Did FFT ever sign up for the

06:22:53 content verification tool?

A. As what?

Q. Did FFT ever sign up to use the content verification tool?

MR. GITTERMAN: Objection to the

06:22:53 form. I assume you mean FFT and not Net Result.

MR. KIRSCHNER: I said FFT.

A. I don't know if it's content verification tool, so. I don't know this

06:22:53 is the same as the content verification tool.

MR. KIRSCHNER: I'd like to mark, as Exhibit 4, a document produced by FFT, bearing the Bates

06:22:54 label FT16689 through 94.

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(Loth Exhibit 4, document produced by FFT, bearing Bates label FT16689 through 94, marked for identification, as of this date.)

Q. Does this refresh your recollection as to whether FFT signed up to use the content verification program?

A. Yes.

06:22:54 Q. Did FFT sign up to use the content verification program?

A. Yes.

Q. Why did FFT sign up to use CVT?

A. We sign to find an easy way to remove our content, the content infringing on YouTube.

Q. Was the content verification program helpful?

MR. GITTERMAN: Objection to the form. Vague and ambiguous.

06:22:54

A. I think it helps Net Result to remove the 550, 550 clips that's specified here.

Q. And how did FFT learn about the content verification program?

06:22:56

MR. GITTERMAN: Objection to form.

A. If I remember well, we sent the -- Net Results send the take-down notices, and YouTube respond saying, okay, we will remove it; but by the way, we can show you the content verification program.

Q. So YouTube informed FFT about the existence of this tool?

A. Informed Net Results.

Q. Has FFT had any problems using CVP?

MR. GITTERMAN: Objection to form. Vague and ambiguous, lacks foundation. I don't know that you've established that FFT uses it.

A. In 2007 this is Net Results. We use the CVP.

Q. So Net Results used CVP in 2007?

A. Yes.

Q. And FFT actually used it, used CVP itself, after that point?

MR. GITTERMAN: Objection to form.

A. In 2009.

Q. And Net Result was using CVP on FFT's behalf in 2007, correct?

06:22:56 A. Yes.

Q. Are you aware of YouTube's content ID program?

A. Content ID program.

Q. Are you aware of YouTube's

06:22:56 fingerprinting technology?

MR. GITTERMAN: Objection to form.

A. We know about fingerprinting YouTube technology.

06:22:56 Q. How did you learn about YouTube's fingerprinting technology?

A. YouTube speak about fingerprinting technology before, just before 2009 events.

06:22:57 Q. So YouTube contacted FFT to inform it that it had fingerprinting technology?

MR. GITTERMAN: Objection to the form.

06:22:57 A. Yes.

LOTH

Q. The amended complaint?

A. I don't know everything. I have an idea.

06:23:23 Q. FFT -- in the amended complaint FFT asserted three allegedly infringing videos, correct?

A. What? I don't know if it's three. At least three.

06:23:23 MR. GITTERMAN: I'm going to also object to this as being beyond the notice topics.

Q. My next question may tie the loop.

06:23:23 As of the date of the amended complaint, had FFT sent take-down notices for all of the videos it listed in the complaint?

A. It's my understanding, yes.

06:23:24 Q. What is that understanding based on?

A. Because those clips have been removed, and we did something to remove it -- them, to remove them.

06:23:24 Q. How do you know those clips had

been removed?

A. Because we had the URL, and we came back to see.

06:23:24 Q. On May 8th, 2009 FFT submitted a revised list of allegedly infringing videos in this case, correct?

MR. GITTERMAN: Objection. I think this goes beyond the notice

06:23:24 topics.

If you know anything about it, you can answer.

A. I don't know the dates. I know there is a list with more than 500.

06:23:25 Q. As of the date of that list, had FFT sent take-down notices to YouTube for all of the videos listed?

A. I don't know if it's one take-down notice per video. What I know

06:23:25 is all videos has been removed.

Q. So you had removed all of the allegedly infringing videos asserted in this case?

A. Yes.

06:23:25 MR. GITTERMAN: Objection to the

form. Vague and ambiguous.

Q. When did YouTube remove those videos?

06:23:25 A. I don't know. I don't know exactly when.

Q. Was it within a day of the take-down notice?

A. I don't know if it was 24 hours, 48 hours, I don't know.

06:23:25

Q. But it was a short time after the take-down notice, correct?

MR. GITTERMAN: Objection to form. Vague and ambiguous.

06:23:26 A. Depends what you call short. It should be in the first place. Short is never enough.

Q. Did YouTube remove the videos within days of the take-down notice?

06:23:26 A. I don't know.

Q. But it was days, correct?

A. Sorry, yes, it was days.

MR. KIRSCHNER: Let's take a short break, if that's okay.

06:23:26 THE VIDEOGRAPHER: The time is

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5:48 p.m., and we are off the record.

(Whereupon, there is a recess in the proceedings.)

06:23:26 THE VIDEOGRAPHER: The time is 6:03 p.m., and we are back on the record.

Q. I'd like to play you some videos and ask you some questions about the

06:23:26 videos, okay? So I'm going to play you a video that was posted at the URL http:\\www.YouTube.com/\watchV=A5Q6RBR3TW.

(Whereupon, the video was played.)

06:23:26 MR. GITTERMAN: Actually, before you ask a question, was this video produced in the case?

MR. KIRSCHNER: Yes.

MR. GITTERMAN: Do you know what

06:23:26 Bates number it was produced at?

MR. KIRSCHNER: I don't have the Bates number on it, but I can get it for you.

MR. GITTERMAN: Okay. I mean

06:23:26 I'm going to object to the use of this

Schapiro Exhibit 117

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. YOUTUBE, INC., YOUTUBE, LLC, and GOOGLE, INC., Defendants.	NO. 07-CV-2103
THE FOOTBALL ASSOCIATION PREMIER LEAGUE LIMITED, BOURNE CO., et al., on behalf of themselves and all others similarly situated, Plaintiffs, vs. YOUTUBE, INC., YOUTUBE, LLC, and GOOGLE, INC., Defendants.	NO. 07-CV-3582

VIDEOTAPED DEPOSITION OF MARCO BERROCAL
NEW YORK, NEW YORK
NOVEMBER 5TH, 2009

JOB NO. 18082

VIDEOTAPED DEPOSITION OF MARCO BERROCAL, held at the offices of Mayer Brown, 1675 Broadway, New York, New York, pursuant to notice, before Maureen Ratto, Registered Professional Reporter and Notary Public of the State of New York on November 5, 2009, at 10:10 a.m.

A P P E A R A N C E S

FOR THE PLAINTIFFS:

PROSKAUER ROSE, LLP

BY: WILLIAM M. HART, ESQ.

DANIEL P. GOLDBERGER, ESQ.

1585 Broadway, New York, NY 10036

(212)969-3095

whart@proskauer.com

FOR THE BOURNE DEFENDANTS:

MAYER BROWN, LLP

BY: CHRISTINE M. HERNANDEZ, ESQ.

GREGORY FRANTZ, ESQ.

1675 Broadway, New York, NY 10019

(212) 506-2146

Chernandez@mayerbrown.com

Q. I'm not asking for substance of discussion you had with counsel over legal advice. I'm asking to the extent that you are the one who makes the
14:32:51 ultimate decision, other than information that you have received from counsel, do you base your decision on any other factors?

MR. HART: That's a different
14:33:03 question.

A. Well, each particular case I would look at it and a fair use maybe one matter. There maybe other issues that were brought up. So, in a vague
14:33:28 respect there could be other factors that I'm considering.

Q. What other issues would you consider in conjunction with fair use? Can you give me an example?

14:33:40 MR. HART: I won't let you answer that question. If there are other considerations that you raised and discussed with counsel. It's only going to be independent of your
14:33:48 discussions with counsel.

Q. Can you answer the question, keeping in mind counsel's instruction?

A. Can you repeat it, please?

Q. I'm asking you what other issues would you consider in conjunction with fair use? Can you give me an example?

MR. HART: Maintain my objection and the way that question came out has other form problems but go ahead.

14:34:29 A. Anything that would be brought up at that point we would clearly discuss with our counsel. There maybe one thing we think of is fair use but there maybe other issues but it's all discussed with my attorneys.

Q. Okay. Has there ever been an instance when Bourne decided not to take any action or otherwise send a -- strike that.

14:35:01 Has there ever been an instance where Bourne decided not to issue a take-down as a result of a fair use analysis?

A. No.

14:35:28 Q. With respect to take-downs that

Bourne has sent to YouTube or have been sent on Bourne's behalf to YouTube, in what amount of time does YouTube on average respond to that take-down notice?

MR. HART: Objection to form, respond.

A. I would say within 24 hours.

Q. Are you -- to your knowledge, has YouTube ever taken more than 24 hours to respond to a take-down notice concerning the Bourne work?

MR. HART: Maintain an objection, form, respond.

A. I don't absolutely -- I don't recall thinking why did this take so long.

Q. Do you have any objection as to the length of time it takes YouTube to take down a specific URL containing what Bourne believes to be infringing content?

MR. HART: Aside from the allegations in the lawsuit.

MS. HERNANDEZ: Counsel, I take

issue with your clarification.

MR. HART: It's not a clarification, it's an objection.

MS. HERNANDEZ: Well then you can make your objection but there is no need to make some purported clarification to my question.

14:37:42

A. Can you repeat it then?

Q. Absolutely. Do you have any objection as to the length of time it takes YouTube to take down a specific URL containing what Bourne believes to be infringing content?

14:37:54

MR. HART: Objection. Lack of foundation, misleading, disregards everything about this lawsuit. You're free to answer.

14:38:02

A. No.

MR. HART: What? You put up your hand like wait a minute. What?

14:38:28

A. I guess thinking it out, I mean, the time it took for them to respond. This part of my feeling is that it shouldn't have been up there in the first place, so I don't know if that's

14:38:39

Does it say Murbo?

MR. HART: To hold the right to what?

MS. HERNANDEZ: I'm trying to -- the copyright ownership in the Murbo catalogue.

A. If the --

MR. HART: I caution you not to speculate.

15:15:19 A. A Murbo agreement with a BMI writer which pretty much decides whether the writer belongs to BMI we would do an agreement with Murbo and the writer.

15:15:30 Q. Does Bourne have any sub-publishers?

A. Yes.

Q. Who are the sub-publishers?

A. We have various sub-publishers throughout the world.

15:15:52 Q. And what about in the US, is there a sub-publishing entity?

A. No.

Q. What about in Canada, is there a sub-publishing entity?

15:16:10

A. We have a company in Canada.
Q. What is the name of that company?
A. Bourne Canada. We also have a
15:16:29 representative who collects performance and collects some royalties for us on our behalf in Canada.
Q. What entity -- what is that entity called?
15:16:44 A. Radio Chart Facts.
Q. Are they authorized -- is Radio Chart Facts authorized to issue licenses on behalf of Bourne?
A. No.
15:16:55 Q. Does Bourne Canada issue licenses?
A. I can only speak since '06. And as I recall, it has not.
Q. Why can you only speak since
15:17:26 '06?
A. Bebe Bourne, my mother, handled it before then. So I don't recall seeing a Bourne Canada license but I can't outright say no.
15:17:39 Q. What function does Bourne Canada

perform?

A. It collects royalties, say, from the Canadian Mechanical Society.

Q. Does it perform any other function?

15:17:56

A. None that I recall.

Q. Setting aside whether Bourne Canada did or did not actually issue licenses, is Bourne Canada authorized to issue licenses for songs in the Bourne catalogue?

15:18:14

A. No. Again, I say that since '06, I would handle it. There's -- in any correspondence going to Bourne Canada would come to me.

15:18:33

Q. Do you know if prior to '06 Bourne Canada was authorized to issue licenses, whether they did or not?

A. They would not issue a license without the permission of Bourne.

15:18:55

Q. And how does Bourne Canada -- how did Bourne Canada seek the permission of Bourne?

MR. HART: Lack of foundation.

A. Well, requests could have gone

15:19:19

Schapiro Exhibit 132

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

HIGHLY CONFIDENTIAL

VIDEOTAPED DEPOSITION OF
NICHOLAS SEET/AUDITUDE, INC.
SAN FRANCISCO, CALIFORNIA
TUESDAY, NOVEMBER 24, 2009

JOB NO. 18254

Nicholas Seet San Francisco, CA November 24, 2009

NOVEMBER 24, 2009

9:17 P.M.

HIGHLY CONFIDENTIAL VIDEOTAPED DEPOSITION OF NICHOLAS SEET, at WILSON, SONSINI, GOODRICH & ROSATI, 1 Market Plaza, Spear Tower, Suite 3400, San Francisco, California, pursuant to notice, before me, KATHERINE E. LAUSTER, CLR, CRR, RPR, CSR License No. 1894.

Nicholas Seet San Francisco, CA November 24, 2009

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

FOR THE PLAINTIFFS, VIACOM INTERNATIONAL, INC.:

JENNER & BLOCK, LLP
BY: LUKE C. PLATZER, ESQ.
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FOR THE DEFENDANTS YOUTUBE, INC., YOUTUBE, LLC, and GOOGLE, INC.:

MAYER BROWN, LLP
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FOR THE DEFENDANTS YOUTUBE, INC., YOUTUBE, LLC, and GOOGLE, INC.:

WILSON, SONSINI, GOODRICH & ROSATI
BY: NEMA MILANINIA, ESQ.
650 Page Mill Road
Palo Alto, California 94304-1050
Telephone: 650.493.9300
fax: 650.493.6811
nmilaninia@wsgr.com

Redacted at the Request of Auditude

Redacted at the Request of Auditude

Redacted at the Request of Auditude

Schapiro Exhibit 133

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. YOUTUBE, INC., YOUTUBE, LLC, and GOOGLE, INC., Defendants.	NO. 07-CV-2103
THE FOOTBALL ASSOCIATION PREMIER LEAGUE LIMITED, BOURNE CO., et al., on behalf of themselves and all others similarly situated, Plaintiffs, vs. YOUTUBE, INC., YOUTUBE, LLC, and GOOGLE, INC., Defendants.	NO. 07-CV-3582

VIDEOTAPED DEPOSITION OF MIKA SALMI
SAN FRANCISCO, CALIFORNIA
FRIDAY, OCTOBER 16, 2009

JOB NO. 17909

OCTOBER 16, 2009

9:30 a.m.

VIDEOTAPED DEPOSITION OF MIKA SALMI,

WILSON, SONSINI, GOODRICH & ROSATI, LLP,

One Market Street, Spear Street Tower,

San Francisco, California pursuant to notice,

and before, ANDREA M. IGNACIO HOWARD, CLR,

RPR, CRR, CSR License No. 9830.

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

FOR THE PLAINTIFFS VIACOM INTERNATIONAL, INC.:

JENNER & BLOCK, LLP

By: SCOTT WILKENS, Esq.

1099 New York Avenue, NW, Suite 900

Washington, D.C. 20001

(202) 639-6000 swilkens@jenner.com

FOR THE DEFENDANTS YOUTUBE, INC., YOUTUBE, LLC and GOOGLE, INC.:

WILSON SONSINI GOODRICH & ROSATI, LLP

By: DAVID KRAMER, Esq.

CAROLINE WILSON, Esq.

650 Page Mill Road

Palo Alto, California 94304-1050

(650) 320-4741 dkramer@wsgr.com

ALSO PRESENT: Michelena Hallie, MTV Networks.

Lou Meadows, Videographer.

---oOo---

SALMI, M.

10:04:52 analysis, and both from a technical and legal side
10:04:56 that I can't sit here and make an opinion on right
10:04:57 now.
10:04:58 MR. KRAMER: Q. When it launched
10:05:13 AddictingClips, did the service -- sorry. Strike
10:05:15 that.
10:05:15 When the AddictingClips service launched, did
10:05:19 it have human beings screening all videos that users
10:05:22 were uploading to the service for potentially
10:05:24 unauthorized copyrighted material?
10:05:26 A No.
10:05:26 Q Roughly how many videos per day were uploaded
10:05:32 to the service?
10:05:34 A I don't recall.
10:05:35 Q Is it in the hundreds? Thousands? Tens?
10:05:40 A It varied from when it launched to, you know,
10:05:43 a period of time, but...
10:05:45 Q How about at the start?
10:05:48 A Hundreds, I'd guess.
10:05:52 Q You said that AddictingClips didn't want to
10:05:55 have unauthorized copyrighted material appearing on
10:05:57 the service; right?
10:06:04 A I think I said it wasn't a stated intention
10:06:06 of ours to have it up there, but...

SALMI, M.

10:06:08 Q Did -- did -- did AddictingClips want
10:06:10 unauthorized copyrighted material?
10:06:11 A No.
10:06:12 Q Wouldn't one way of keeping that material off
10:06:16 the service have been to have human beings review all
10:06:19 incoming videos and block those that weren't
10:06:22 authorized?
10:06:28 A AddictingClips was set up differently than
10:06:30 Atom Films, which was all about review.
10:06:32 AddictingClips was set up as a user-generated website
10:06:36 according to the legal parameters that our lawyer
10:06:38 provided us.
10:06:39 Q But wouldn't one way of keeping unauthorized
10:06:42 copyrighted material off the service have been to have
10:06:46 human beings screening all of the videos that users
10:06:48 sought to upload and block the upload of those that
10:06:50 were unauthorized copyrighted material?
10:06:52 MR. WILKENS: Objection to the form.
10:06:54 THE WITNESS: That would be one way to do it,
10:06:55 yes.
10:06:56 MR. KRAMER: All right.
10:06:56 Q So when I asked you earlier whether
10:06:59 AddictingClips could have done more to prevent the
10:07:02 upload by users of unauthorized copyrighted materials,

10:07:05 one thing it could have done was employ human beings
10:07:08 to screen all videos uploaded by users and block those
10:07:12 that were unauthorized; right?
10:07:16 A Then it would not have been a user-generated
10:07:19 website the way we had envisioned it to be if it would
10:07:24 have done that. It would also have been
10:07:26 cost-prohibitive to have human beings.
10:07:28 Q Why so?
10:07:29 A That's a lot of clips to...
10:07:32 Q Hundreds of clips a day is a lot of clips,
10:07:35 and it would be cost-prohibitive to have human beings
10:07:38 screen them; right?
10:07:38 MR. WILKENS: Objection to the form.
10:07:39 THE WITNESS: For a small company like ours,
10:07:41 yes.
10:07:41 MR. KRAMER: Okay.
10:07:48 Q Is it reasonable to conclude, based on Atom's
10:07:51 failure to employ human beings to screen videos
10:07:54 uploaded to the service, that Atom wanted users to
10:07:59 upload infringing material to AddictingClips?
10:08:03 MR. WILKENS: Objection to the form; asked
10:08:08 and answered.
10:08:08 THE WITNESS: Yeah, there was not a failure.
10:08:09 It was set up purposely in a certain methodology, so I

10:08:16 would not call it a failure to do either one, your
10:08:20 statement.
10:08:20 MR. KRAMER: Okay.
10:08:21 Q Would it be reasonable to conclude, based on
10:08:23 AddictingClips's decision not to employ human beings
10:08:28 to screen videos uploaded to the service by users,
10:08:31 that AddictingClips wanted users to upload potentially
10:08:35 unauthorized copyrighted material?
10:08:37 A No, that's false. We -- we never -- we never
10:08:42 even had the decision not to have human beings. It
10:08:45 was -- it was always set up a different way.
10:08:48 Q It wouldn't be reasonable to conclude, that
10:08:50 is what you're saying?
10:08:51 A Correct, not reasonable to conclude that.
10:08:54 Q And Atom -- sorry -- AddictingClips -- I
10:08:58 guess it's -- Atom's choice not to have human beings
10:09:04 screening videos uploaded to the service by users
10:09:07 wasn't motivated by a desire to earn advertising
10:09:11 revenue from unauthorized copyrighted material on the
10:09:14 service; right?
10:09:14 MR. WILKENS: Objection to the form.
10:09:17 THE WITNESS: It was strictly done that way
10:09:21 as a -- on the advice of our legal counsel.
10:09:25 MR. KRAMER: Different question than I asked.

Schapiro Exhibit 135

From: Mark M. Ishikawa
Sent: Monday, July 10, 2006 7:37 PM
To: Scott Martin
Cc: Alfred Perry; John Salter; Evelyn Espinosa; Arielle Kim
Subject: Anti-Piracy discussion topcs for Wed.

Scott,

Thanks for the invite to the Wednesday meeting. I do believe that we need to sit down with Amy and Nancy to clear the air about the services that they require, and how to get their needs satisfied without having them create their own anti-piracy department. I also want to set Amy's expectations for what we can and cannot do for her. From our conversations and e-mails it would appear that they need some education as to how the DMCA works, and the level of response we can and cannot get from the ISP's in question.

Thx

Mark

==========

Topics:

1) Coordination between Online Marketing and BayTSP

- Advance notice of when and where marketing materials being posted online.
- Copies of material being posed so we can distinguish between authorized and un-authorized materials.
- Post-Mortum of the Transformers project.

2) Determination of takedown policy and procedures

- There seems to be a level of mis-understanding about the services BayTSP provides for Paramount and Viacom by the different groups within the studio. I would like to discuss exactly what we do, and how we do it with the Marketing group so they have a better understanding of the services we provide. I also believe that there is a lack of understanding as to what the Online Piracy program in place at the studio does and its capabilities.
- Determine if there is a different procedure required for the Marketing Department infringements, and define the EXACT procedures that are to be used when the Marketing Department is involved.
- Determine the Anti-Piracy needs of the Marketing Department.

Schapiro Exhibit 137

From: Mark M. Ishikawa
Sent: Wednesday, November 08, 2006 9:19 PM
To: Perry, Alfred - Paramount
Cc: Evelyn Espinosa; Scott Martin; John Salter; Arielle Kim
Subject: RE: Bay TSP - Clips
Importance: High

Al, Scott, & John,

I have no idea what this is about other than the fact that Amy Powel does not like me or my company and is attemting to ruin my relationship with the studios. Nancy sent us links with a "White List" of places the clips are authorized to be on. A normal person would draw the conclusion that since she provided an authorized location list that any other place would be considered infringing, otherwise she should have said leave these clips alone.

All we did was send a clairification e-mail confirming the actions that we believe they have asked us to take. We have *NOT* taken any actions, just asking for clairification, and now we see this e-mail from Nancy. I believe her reactions are unwarrented and unjustified.

If we make a mistake I'm the first one to admit it and make it right. In this case I believe that BayTSP is being treated unfairly. We have been a long time partner with Paramount and this series of reactions is causing me great concern.

I would appreciate it if Scott could give me a call on my cell phone [redacted] to discuss this situation.

Thx

mark

-----Original Message-----
From: Perry, Alfred - Paramount [mailto:Alfred_Perry@Paramount.com]
Sent: Wed 11/8/2006 12:14 PM
To: Mark M. Ishikawa
Cc: Evelyn Espinosa; Scott Martin; John Salter
Subject: Fw: Bay TSP - Clips

Mark, what is this about?

[Sent wirelessly from my BlackBerry device]

-----Original Message-----
From: Derwin-Weiss, Nancy
To: Martin, Scott; Perry, Alfred - Paramount
CC: Powell, Amy - Paramount
Sent: Wed Nov 08 12:12:06 2006
Subject: FW: Bay TSP - Clips

What will it take for Bay TSP to understand that they are not to initiate takedown actions without our express written approval?

Amy asked us to research other companies who perform competitive services that we can meet with.

Do you have a list of vendors...I will be happy to set up the initial meetings.

Nancy Derwin-Weiss| VP Interactive Marketing Legal | Paramount Pictures| direct 323.956.5878

From: Derwin-Weiss, Nancy
Sent: Wednesday, November 08, 2006 12:03 PM
To: 'Evelyn Espinosa'
Cc: Deana Arizala; Warren Kim; Richard Kawasaki; Mark M. Ishikawa; Powell, Amy - Paramount; Perry, Alfred - Paramount; Martin, Scott; Magid, Karen - Paramount
Subject: RE: Bay TSP - Clips

If you find the Perfume clip on other sites, please send us the links to the sites and we will decide whether or not to pursue a take down action. Please do not initiate takedown actions without express prior written approval from us.

Nancy Derwin-Weiss| VP Interactive Marketing Legal | Paramount Pictures| direct 323.956.5878

From: Evelyn Espinosa [mailto:evelyn@baytsp.com]
Sent: Wednesday, November 08, 2006 11:38 AM
To: Derwin-Weiss, Nancy
Cc: Deana Arizala; Warren Kim; Richard Kawasaki; Mark M. Ishikawa
Subject: RE: Bay TSP - Clips

Hi Nancy,

Thanks for heads up for clips below. Just to make sure:

The perfume clip is exclusive and should only be available to view on aintitcool.com.

If we find it on youtube/google video/or any other site we will send a take down notice.

The bee movie clip is ok to stay up regardless of where it is found.

From: Derwin-Weiss, Nancy [mailto:Nancy_Derwin-Weiss@Paramount.com]
Sent: Wednesday, November 08, 2006 11:13 AM
To: Evelyn Espinosa
Cc: Perry, Alfred - Paramount; Powell, Amy - Paramount; Scott Martin; Magid, Karen - Paramount; Tipton, Kristina; Teifeld, Tamar; Mark M. Ishikawa
Subject: Bay TSP - Clips

Hi Evelyn:

Set forth below are links to two approved clips going out this week. Please exclude these clips from your search for pirated content on You Tube and other sites.

Perfume Exclusive Clip – "Don't Touch Anything" – Exclusive to AintItCool.com

http://www.perfumemovie.com/public/video_files/perfume_dont_touch_anything_large.mov

Bee Movie Trailer – wide distribution

http://www.beemovie.com/public/video_files/bee_movie_trailer1_large.mov

I will be sending you links to Freedom Writers clips and Flushed Away Featurettes when they become available.

Feel free to contact me with any questions.

Nancy

Schapiro Exhibit 141

From: Mark M. Ishikawa
Sent: Saturday, October 28, 2006 11:06 PM
To: Perry, Alfred - Paramount
Cc: John Salter; Scott Martin
Subject: pending authorization

Al,

We are going to hold off on removing the OTH clips on YouTube cause we do not know which videos Marketing has put up. Pls call me ASAP with further instructions.

Mark

[redacted]

Schapiro Exhibit 142

Subject: Fw: Fw: MI:3
From: "Alfred Perry" <>
To: Scott Martin
Cc: Date: Wed, 19 Apr 2006 23:47:28 +0000

Redacted for Privilege [redacted]

Sent from my BlackBerry wireless handheld

From: Alfred Perry
Sent: 04/19/2006 04:46 PM
To: Bryan Warman
Cc: Amy Powell
Subject: Re: Fw: MI:3

Thanks to all....we hoped as much.

Sent from my BlackBerry wireless handheld

From: Bryan Warman
Sent: 04/19/2006 04:45 PM
To: Alfred Perry
Cc: Amy Powell
Subject: Re: Fw: MI:3

Alfred, Dan & Joe,

None of the below scenes mistakenly listed as "leaked" in this article were leaked at all, they were all brought online this week as pat of normal online publicity before the release of the film.

These 2 clips plus 7 others are all online on numerous websites including the official site at MissionImpossible.com

Hope this helps clear up any confusion...

Please feel free to let Amy Powell or myself know if there are any other questions or concerns about these or any other clips online.

Bryan Warman
Creative Director
Motion Picture Interactive Marketing
Paramount Pictures
5555 Melrose Avenue - Marathon, 3204
Hollywood, CA 90038
P: 323.956.8275 | F: 323.862.1107

----- Replied by Bryan Warman on 4/19/2006 4:41:50 PM

From: Alfred Perry
Sent: 04/19/2006 04:37 PM
To: Amy Powell
Subject: Fw: MI:3

----- Forwarded by Alfred Perry/PHE/MP/Paramount_Pictures on 04/19/2006 04:36 PM -----

From:Alfred Perry

04/19/2006 04:32 PM
To: Scott Martin
cc:
Subject: Fw: MI:3

[redacted]

Sent from my BlackBerry wireless handheld

From: Joe Ruvalcaba
Sent: 04/19/2006 04:27 PM
To: Alfred Perry
Subject: Fw: MI:3

I just spoke with Dan Seymour and Brad Borchard from the MPA re. MI:3 scenes found on YouTube.com. [redacted]

The 3 clips I found on the site are:

1. Mission Impossible 3: I've Got a Signal
2. Mission Impossible 3: Are You In
3. MI:3 Trailer

Also noting that an article was posted today on the FOX NEWS website indicating scenes have hit the internet.

Here's a cut and paste of the article:

'Mission: Impossible' Scenes Hit Internet

Tom Cruise's baby was not the only birth in his life over the past 24 hours. Today, scenes from his upcoming thriller, "Mission: Impossible 3," are being leaked to the internet.

In the last day or so, two scenes have made it onto youtube.com. They aren't trailers. These are scenes. One of them is called "I've Got a Signal" and the other is "Are You In?"

Both scenes are a minute long. The first one is an action sequence with Ving Rhames and Jonathan Rhys-Myers. You can't really judge it, but it's very colorful chase that ends with a big explosion. The sound is good enough that the clip will definitely whet appetites for more.

The second scene, however, is less exciting. It's Tom delivering an impassioned speech to Rhames and Rhys-Myers in front of a clear planning board. Honestly, it looks a little like an outtake from "Minority Report."

But at least there's a funny little spoiler: it seems that Philip Seymour Hoffman's villain is named Oscar Davian, a tribute to his longtime manager and friend Davien Littlefield. The character is referred to in the movie by his last name, so there's a lot of talk about "Davian." It's a nice inside joke.

It's hard to say whether Paramount has authorized these clips as a way of stoking interest in the $200 million film (that includes promotion), or if some snarky person in the production office is behind the leaks.

And if there are two today, are more coming? The answer is probably yes. Paramount's mission, if they choose to accept it, may be to stem the tide in coming days.

The clips can be found on youtube simply by typing in Cruise's name or the name of the movie in the search engine.

But be warned: you will also find several parodies of the film and of Cruise himself regarding Katie Holmes and Scientology. They are almost more fun to watch than the clips.

----- Forwarded by Joe Ruvalcaba/PHE/MP/Paramount_Pictures on 04/19/2006 04:16 PM -----

---

From:<Dan_Seymour@mpaa.org>
04/19/2006 04:14 PM
To: <Joe_Ruvalcaba@paramount.com>
cc:
Subject: FW: MI:3

Daniel Seymour
Internet Investigations Manager
Worldwide Internet Enforcement
Motion Picture Association of America
818.995.6600

From: Borchard, Brad
Sent: Wednesday, April 19, 2006 3:43 PM
To: Seymour, Dan; Bergstrom, Peter; Winter, Craig; Yang, Jason; Huang, Eddie; Gischner, Michael
Subject: MI:3
Importance: High

Saw that two scenes have been leaked onto YouTube.com. Anyway we can confirm that this is the studio doing this to create buzz or do we have a serious leak that we need to start tracking on?

http://www.foxnews.com/story/0,2933,192331,00.html

Brad

Powered by CardScan

Schapiro Exhibit 143

From: Al Perry
Sent: Friday, June 22, 2007 12:04 AM
To: Warren Kim; Courtney Nieman; Amy Powell; Tipton, Kristina - Paramount
Cc: Mark M. Ishikawa; Evelyn Espinosa; Scott Martin
Subject: RE: Transformers

From: Warren Kim [mailto:warrenk@baytsp.com]
Sent: Thursday, June 21, 2007 4:27 PM
To: Courtney Nieman; Perry, Alfred - Paramount; Powell, Amy - Paramount; Tipton, Kristina - Paramount
Cc: Mark M. Ishikawa; Evelyn Espinosa
Subject: RE: Transformers

Courtney/Blair-
Do not send notices for these clips until you get confirmation. IGN clips are almost always all authorized. Some of these may be from the EPK DVD. And I recognize some of the footage from TV spots and other sneak clips.

Al/Amy/Kristina –
We will not send any takedown notices until we receive confirmation from you.

Thank you,
Warren

From: Courtney Nieman
Sent: Thursday, June 21, 2007 4:20 PM
To: Al Perry; Amy Powell
Cc: Mark M. Ishikawa; Evelyn Espinosa; Warren Kim
Subject: FW: Transformers
Importance: High

We found these just a short time ago. I have asked Blair to send take down notices on them. They don't look like teasers or trailers. Many scenes I haven't picked up on before. Let me know if you want me to stop the take down notices.

Courtney Nieman

From: Blair Taylor
Sent: Thursday, June 21, 2007 4:10 PM
To: Warren Kim; Courtney Nieman
Subject: Transformers

yugiohtcgcollector02

http://www.youtube.com/watch?v=5G8Tcms6xQk
http://www.youtube.com/watch?v=3v1NUJze4nI
http://www.youtube.com/watch?v=rSVdjKXmVDo
http://www.youtube.com/watch?v=VG3OjK41Q8E
http://www.youtube.com/watch?v=fyCNSWALU6k
http://www.youtube.com/watch?v=wZRELoQN-HQ
http://www.youtube.com/watch?v=wxxnllc5K_g
http://www.youtube.com/watch?v=RDPGh6hsW0g
http://www.youtube.com/watch?v=Esyyx1i1_nQ

This user has all the above clips on YouTube. To me they do not appear to be parts of the trailer. Please advise~

Thanks
b

6/11/2008

.....
Blair Taylor
Client Services Support
BayTSP, Inc
blairt@baytsp.com
408.341.2300
.....

Schapiro Exhibit 149

Subject: Re: Fw: Unauthorized Baytsp Take-down Notice
From: "Powell, Amy - Paramount" [redacted]
To: Perry, Alfred
Cc: Salter, John - Paramount; Derwin-Weiss, Nancy - Paramount; Martin, Scott - Paramount
Date: Wed, 26 Jul 2006 03:25:13 +0000

Al,

I look fwd to hearing back from you. As discussed in our meeting with BayTSP, they were strictly informed to never contact a third party without an OK from me, personally, either on the phone or in writing.

This instance violates our direction and I find it extremely concerning, not to mention his cavalier attitude.

amy

Amy Powell
Senior Vice President, Interactive Marketing
Paramount Pictures

[redacted]

-----Alfred Perry/PHE/MP/Paramount_Pictures wrote: -----

To: [redacted]
From: Alfred Perry/PHE/MP/Paramount_Pictures
Date: 07/25/2006 04:21PM
cc: John Salter/IS/Group/Paramount_Pictures@Paramount_Pictures, Nancy Derwin-Weiss/Business Affairs/MP/Paramount_Pictures@Paramount_Pictures, Scott Martin/Business Affairs/MP/Paramount_Pictures@Paramount_Pictures
Subject: Re: Fw: Unauthorized Baytsp Take-down Notice

Amy, I want to discuss with Scott (who is in meetings) and then discuss with you.

BayTSP was not provided the trailer and therefore assumed (incorrectly) that the footage was unauthorized pre-release content from the film.

I, like Nancy, expressed incredulity to Mark that BayTSp would not have called to just make sure (given the sensitivity to removal of clips).

----- Replied by Alfred Perry on 7/25/2006 4:13:54 PM ----------
Inactive hide details for From:Amy PowellFrom:Amy Powell

From:Amy Powell
07/25/2006 03:49 PM
To: Nancy Derwin-Weiss, Alfred Perry
cc: John Salter, Scott Martin
Subject: Re: Fw: Unauthorized Baytsp Take-down Notice

I have serious issues with this response. Al, can we discuss? I'm not comfortable with his business practices.

Inactive hide details for Nancy Derwin-WeissNancy Derwin-Weiss

From: Nancy Derwin-Weiss
Sent: 07/25/2006 03:43 PM
To: Alfred Perry

Cc: Amy Powell
Subject: Re: Fw: Unauthorized Baytsp Take-down Notice

I spoke to Mark about the incident. He wasn't exactly apologetic about the incident. He said that from their perspective, the Zack Braff footage appeared to be nothing more than pirated clips from the movie mashed together by an individual (whose name happened to be Zack Braff). I asked why they didn't put a call into us first before issuing the take-down notice since we just had the meeting about the very issue. He said that they didn't have any reason to believe that the material wasn't pirated as we hadn't given them the trailer in advance and in this instance, the footage looked pirated. He said that they were simply operating under the studio's directive to pull down unauthorized clips. He said he was going to direct Baytsp to stop searching Youtube for our content since it is creating too much of a headache for everyone. Frankly, I am not sure why he would do that since it may be that our unauthorized content appears there at a later date.

----- Replied by Nancy Derwin-Weiss on 7/25/2006 3:34:10 PM

Inactive hide details for From:Alfred PerryFrom:Alfred Perry

From:Alfred Perry
07/25/2006 03:15 PM
To: Scott Martin, John Salter, Nancy Derwin-Weiss, Amy Powell
cc:
Subject: Fw: Unauthorized Baytsp Take-down Notice

I am calling BayTSP now!
----- Forwarded by Alfred Perry/PHE/MP/Paramount_Pictures on 07/25/2006 03:14 PM -----

From:Nancy Derwin-Weiss
Sent by: Nancy Derwin-Weiss
07/25/2006 03:01 PM
To: Alfred Perry
cc: Amy Powell
Subject: Unauthorized Baytsp Take-down Notice

We have just learned that Baytsp issued a take-down notice to Youtube for a Zach Brack montage trailer for The Last Kiss. This is content we uploaded to Youtube in connection with our marketing efforts for the film. Obviously, we never authorized Baytsp to issue take-down notice for footage we had posted. I have a call into Mark Ishikawa to see how this could have happened. We thought we could not be clearer in our meeting that we did not want Baytsp to issue take down notices unless we explicitly requested them to do so.

Nancy

Schapiro Exhibit 151

.

From: Philip Cialdella
Sent: Wednesday, June 27, 2007 2:47 PM
To: Gregg Barron
Subject: RE: YouTube Malibu Rum Contest using Day O!

Provide details to the group please.

-----Original Message-----
From: Gregg Barron
Sent: Wednesday, June 27, 2007 9:46 AM
To: Philip Cialdella
Subject: RE: YouTube Malibu Rum Contest using Day O!

Yes, we licensed this.

Gregg Barron
Director, Licensing
Cherry Lane Music Publishing
6 East 32nd Street, 11th floor
New York, NY 10016
P (212) 561-3045
F (212) 447-6885
gbarron@cherrylane.com

-----Original Message-----
From: Philip Cialdella
Sent: Wednesday, June 27, 2007 9:28 AM
To: Gregg Barron
Subject: FW: YouTube Malibu Rum Contest using Day O!

Please advise.

-----Original Message-----
From: Philip Cialdella
Sent: Wednesday, June 27, 2007 8:59 AM
To: Keith Hauprich; Richard Stumpf
Cc: Mike Connelly
Subject: RE: YouTube Malibu Rum Contest using Day O!

Gregg,
Please advise.
-Phil

-----Original Message-----
From: Keith Hauprich
Sent: Wednesday, June 27, 2007 8:57 AM
To: Philip Cialdella; Richard Stumpf
Cc: Mike Connelly
Subject: YouTube Malibu Rum Contest using Day O!

Did we authorize this?

Schapiro Exhibit 152

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,	)	
vs.	)	Case No. 07CV3582
YOUTUBE, INC., YOUTUBE, LLC, and GOOGLE, INC.,	)	
Defendants.	)	

VIDEOTAPE DEPOSITION OF GREGG BARRON

NEW YORK, NEW YORK

TUESDAY, SEPTEMBER 23, 2008

REPORTED BY:
ERICA RUGGIERI, CSR, RPR
JOB NO: 15379

September 23, 2008
9:34 a.m.

VIDEOTAPED DEPOSITION OF GREGG BARRON, held at the offices of Mayer Brown, LLP, 1675 Broadway, New York, New York, pursuant to notice, before Erica L. Ruggieri, Registered Professional Reporter and Notary Public of the State of New York.

91b957bf-7b69-48bf-9e34-bcdb7addec96

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

FOR THE LEAD PLAINTIFFS AND PROSPECTIVE CLASS:

PROSKAUER ROSE, LLP
BY: WILLIAM M. HART, ESQ.
ELIZABETH FIGUEIRA, ESQ.
1585 Broadway
New York, New York 10036-8299
Whart@proskauer.com
Efiguiera@proskauer.com

FOR THE DEFENDANTS YOUTUBE, INC., YOUTUBE, LLC and GOOGLE, INC.:

MAYER BROWN, LLP
BY: REGINALD R. GOEKE, ESQ.
RICHARD S. PIANKA, ESQ.
1909 K Street, N.W.
Washington, D.C. 20006-1101
Rgoeke@mayerbrown.com
Rpianka@mayerbrown.com

ALSO PRESENT:
MANUEL ABREU, Videographer
KEITH HAUPRICH, Cherry Lane

statements, what sorts of statements are you aware that BMI and ASCAP provide to Cherry Lane?

09:51:37 MR. HART: Same objections.

A. I don't know. That's not my domain.

Q. Other than licenses granted by your department and licenses granted

09:52:02 through BMI and ASCAP, is there any other entity, that you are aware of, that grants licenses to any use of Cherry Lane works?

MR. HART: Objection to form. Prior testimony.

09:52:17 A. We also have a print department. They issue licenses for musical notation, sheet music.

Q. Who is in charge of the print department?

09:52:45 A. John Stix.

Q. Do you know whether licenses issued by the print department would be recorded in some fashion by Cherry Lane?

MR. HART: Form.

09:53:05 A. I don't know how our print

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department maintains their records.

Q. Other than your department, BMI, ASCAP and the print department, are you aware of any other entity that licenses any use of Cherry Lane works?

MR. HART: Form, prior testimony.

A. Overseas we have some publishers who issue licenses on our behalf.

Q. Is there -- do you know approximately how many subpublishers there are?

MR. HART: Form.

Q. Do you know approximately how many subpublishers Cherry Lane employs overseas?

MR. HART: I'll maintain objection as to form, but please go ahead.

A. There are approximately 20 some-odd subpublishers.

Q. And when you say they issue licenses, do they issue mechanical licenses?

G. Barron

MR. HART: Foundation.

A. It's not my area of expertise. As in most countries outside of the United States and Canada, societies like Harry Fox issue licenses, and we are not involved with the process on the U.S. side.

Q. Do you know whether any of the subpublishers issue synchronization licenses overseas?

MR. HART: Same objections.

A. Yes, I am.

Q. Yes, you do?

MR. HART: For your sake, do you want to just restate the question?

MR. GOEKE: Yeah.

Q. You indicated, "Yes, I am."

The question was, do you know whether any of the subpublishers issue synchronization licenses overseas?

A. Yes, they do.

Q. And are there any restrictions on the scope of licenses that those subpublishers issue overseas?

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recollection of having seen it. But if he sent me the link, I'm sure I watched it.

Q. And at the top there it says, "Thanks Selim, I don't recognize the song."

Does that suggest you watched it?

A. Yes, it does suggest I watched it.

Q. Now, what is Cherry Lane's relationship with Black Eyed Peas?

MR. HART: Form.

A. They are a client of ours.

Q. And does Cherry Lane typically manage all of Black Eyed Peas' works?

MR. HART: Objection to form. Legal conclusion, competence.

A. As far as I know, we administer most of their catalog, but I don't know if any of it falls outside of the scope of our agreement.

Q. And if something did fall outside the scope of your agreement, do you have any idea who would administer

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those rights?

A. I don't know.

Q. Now, at the top of this you indicate that you don't recognize the song, perhaps it was written for the commercial, and that you forwarded this to the band's manager to clarify.

Do you see that?

A. Yes, I see that.

Q. I take it you couldn't tell, just by looking at the link on YouTube, whether or not the work was, in fact, a licensed work?

MR. HART: Objection to form. Competence, prior testimony, foundation.

A. I didn't recognize the song upon watching the video.

Q. And so not recognizing the song, you couldn't tell whether it was licensed or not; is that right?

MR. HART: Same objections.

A. I wouldn't know.

Q. So as the director of licensing

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for Cherry Lane, which administers most of the catalog for Black Eyed Peas, upon looking at the YouTube link that includes
12:25:26 the Black Eyed Peas song, you wouldn't know whether that song was, in fact, licensed; is that right?

MR. HART: I'll object to the prior grounds, and also
12:25:31 mischaracterizes the witness's prior testimony.

Go ahead.

A. All I can confirm is that I didn't recognize the song that was used in
12:25:41 the video.

Q. And you didn't know whether or not it was, in fact, approved to be used in that fashion?

MR. HART: Objection,
12:25:48 foundation, competence, prior testimony.

A. I don't know whether or not it was.

Q. Okay. And then, if you turn to
12:26:11 the last page of this document, there's an

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e-mail that appears to be following up from the prior string, in which you write back to them, "Hi, Selim, management
12:26:21 confirmed that the song was written for the commercial. No need for any action on our part."

Do you see that?

A. I see that.

12:26:28 Q. So does that refresh your recollection that perhaps this work was one that was not being administered by Cherry Lane?

MR. HART: Objection to form.
12:26:38 Competence, foundation.

A. It confirms that the song was written for the commercial. I can't confirm whether or not we obtained rights as a result.

12:26:56 Q. Okay. And it confirms -- you say, "no need for action on our part." So it confirms that this posting on YouTube was, in fact, an authorized use of that song; is that correct?

12:27:04 MR. HART: Objection, form,

G. Barron

legal conclusion, competence, foundation.

A. It confirms that the song was written for the commercial. What rights were granted to the ad agency, with respect to the broadcasting of the commercial, I can't speak to.

12:27:14

Q. So is it your testimony that even after you, as the director of licensing at Cherry Lane, spoke with the manager of Black Eyed Peas about a specific link on YouTube, you still could not determine whether or not that specific context was, in fact, licensed to be used in the fashion it was posted on YouTube?

12:27:49

12:28:07

MR. HART: I'm going to have to object to that, because it mischaracterizes the witness's testimony and the document.

12:28:17

A. I can only confirm that I confirmed that the song was written for use in the commercial. What was done -- what was licensed, with respect to the media in which that commercial was to be

12:28:28

G. Barron

used, I can't speak to.

Q. So again, the answer, though, is you couldn't tell just by looking at this and talking to Black Eyed Peas management, whether or not the use on YouTube was, in fact, a licensed use?

MR. HART: I'm going to have to maintain my objection on the grounds of competence and the witness's prior testimony, which I think you are mischaracterizing.

A. Could you repeat it, please.

Q. Yes. So the answer is that you couldn't tell, by looking at this link on YouTube and talking to the Black Eyed Peas management, whether or not the use of this work on YouTube was, in fact, a licensed use?

MR. HART: Same objections. Competence, foundation, prior testimony.

A. I don't know whether or not it was.

(Barron Exhibit 11, two

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documents, Bates numbers CH00001540, and CH00075142 to 143, marked for identification, as of this date.)

12:30:28 Q. Mr. Barron, I'm showing you a document that's marked as Barron Exhibit 11. This is two documents that have been attached, one to the next. In terms of Bates numbers, they are

12:30:52 nonsequential. The first Bates number is CH00001540, and the next two are Bates number CH00075142 to 143.

MR. HART: So you are saying they didn't belong together as a

12:31:14 single document?

MR. GOEKE: They were not produced together as a single document.

MR. HART: I see. Thanks for

12:31:21 clarifying that.

Q. Mr. Barron, are you familiar with the song, My Humps?

A. Yes, I am.

Q. And did there come a time when

12:31:36 you viewed the song My Humps, as performed

91b957bf-7b69-48bf-9e34-bcdb7addec96

Schapiro Exhibit 153

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. YOUTUBE, INC., YOUTUBE, LLC, and GOOGLE, INC., Defendants.	Case No. 1:07CV02103
THE FOOTBALL ASSOCIATION PREMIER LEAGUE LIMITED, BOURNE CO., et al., on behalf of themselves and all others similarly situated, Plaintiffs, vs. YOUTUBE, INC., YOUTUBE, LLC, and GOOGLE, INC., Defendants.	Case No. 07CV3582

DEPOSITION OF LAUREN APOLITO
NEW YORK, NEW YORK
THURSDAY, January 7, 2010

REPORTED BY:
ERICA RUGGIERI, CSR, RPR
JOB NO: 18448

January 7, 2010

10:03 a.m.

VIDEOTAPED DEPOSITION OF LAUREN APOLITO, held at the offices of WILSON SONSINI GOODRICH & ROSATI, 1301 Avenue of the Americas, New York, New York, pursuant to notice, before before Erica L. Ruggieri, Registered Professional Reporter and Notary Public of the State of New York.

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

FOR THE DEFENDANTS YOUTUBE, INC., YOUTUBE, LLC and GOOGLE, INC.:

WILSON SONSINI GOODRICH & ROSATI, LLP
BY: MAURA REES, ESQ.
650 Page Mill Road
Palo Alto, California 94304-1050
(650) 493-9300
Mrees@wsgr.com

FOR THE HARRY FOX AGENCY AND THE WITNESS:

LIEFF CABRASER HEIMANN & BERNSTEIN
BY: DAVID S. STELLINGS, ESQ
ANNIKA K. MARTIN, ESQ.
250 Hudson Street, 8th Floor
New York, NY 10013-1413
(212) 355-9500
Dstellings@lchb.com

ALSO PRESENT:

MANUEL ABREU, Videographer

synchronization licenses on an ad hoc or a one-off basis?

A. No.

02:57:06 Q. Does Harry Fox Agency have any policies prohibiting its employees from using YouTube while at work?

A. No.

Q. Does HFA have any policies

02:57:44 specifically about whether its employees can watch videos on the Internet at work that infringe other people's copyrights?

A. No.

MS. REES: Exhibit 31.

02:58:20 (Apolito Exhibit 31, e-mail chain among Harry Fox employees regarding a YouTube video, marked for identification, as of this date.) .

02:58:51 (Witness reviews document.)

Q. Can you identify Exhibit 31?

A. This appears to be an e-mail chain among three or four Harry Fox employees regarding a particular YouTube

02:59:20 video.

Q. The first e-mail is from Jonathan Elsas. It says in this e-mail, "signature licensing agent."

02:59:31 Is that his title at Harry Fox Agency?

A. Yes.

Q. Who is Stephen Ebinger?

A. He's also a licensing or at that

02:59:46 time was a licensing agent and is now a collections agent.

Q. What is Joseph DiPalo's position?

A. Joseph is part of the licensing

03:00:02 department, and he also handles a lot of our metadata work.

Q. And what is Fred Beteille's title?

A. Fred is the director of business

03:00:15 affairs and licensing technology.

Q. And there's I guess three links to YouTube videos listed in this e-mail.

I take it you don't have any way of knowing whether any of the videos that

03:00:45 are located at these links include music

that infringe a composition copyright?

MR. STELLINGS: Object to the form of the question.

03:00:55 But you can answer.

A. I have no information.

Q. Is that something that you would be able to determine with more information?

03:01:13 MR. STELLINGS: Object to the form of the question.

A. It would be a multi-step process.

Q. And what steps are you thinking

03:01:27 of?

A. One would have to put in this URL, see if it's still operable, identify if there was a sound recording associated with it and then conduct research to

03:01:44 determine if it was licensed.

MS. REES: Exhibit 32.

(Apolito Exhibit 32, e-mail from Fred Beteille to Maurice Russell, providing two links, marked

03:02:58 for identification, as of this

date.)

(Witness reviews document.)

Q. Can you identify Exhibit 32?

03:02:50 A. It is an e-mail from Fred Beteille to Maurice Russell that provides two links.

Q. And one of the links appears to be a YouTube.com link?

03:03:08 A. Correct.

Q. You told me before, I think, what Maurice Russell's title was, and I forgot.

Could you remind me?

03:03:20 A. Sure. He's VP of licensing and collections.

Q. And who is Warren Adler?

A. Warren Adler is a former employee. He was in our publisher

03:03:34 services department.

Q. And, again, with respect to the YouTube link that's in this e-mail, I take it you don't have any information about whether the video at this link includes a

03:03:59 musical composition that infringes a

Schapiro Exhibit 154

.

From: Brian Bradford
Sent: Friday, June 08, 2007 8:50 PM
To: Copyright Service
Cc: Jerry Martin; Daniel Hill; 'Daniel Girard'; Doherty, Kevin M.
Subject: RE: [C#154263444] DMCA Counter Notification - from Universal Music Group - re: Cal IV Entertainment, LLC

Attachments: Complaint (Filed copy).pdf


Complaint (Filed copy).pdf (1 ...

Heather:

Please find the attached Complaint filed in federal court in the Middle District of Tennessee. At this time, CAL IV will not object to these particular URLs remaining on your website until further clarification of ownership or licensing rights can be obtained.

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

-----Original Message-----
From: Copyright Service [mailto:copyright@youtube.com]
Sent: Thursday, May 31, 2007 4:41 PM
To: Brian Bradford
Subject: Re: [C#154263444] DMCA Counter Notification - from Universal Music Group - re: Cal IV Entertainment, LLC

Dear Brian,

We received the attached counter-notification in response to a complaint you filed with us. As described in the United States Digital Millennium Copyright Act (DMCA) 17 U.S.C. 512, by this email, we're providing you with the counter-notification and await your notice (in not more than 10
days) that you've filed an action seeking a court order to restrain the counter-notifier's allegedly infringing activity. Such notice should be submitted by replying to this email. If we don't receive notice from you, we will reinstate the material to YouTube.

If you have any questions, please contact copyright@youtube.com.

Sincerely,

Heather
The YouTube Team

Original Message Follows:

From: "Sanchez, Angela" <angela.sanchez@umusic.com>
Subject: DMCA Complaint: UMG Counter Notification
Date: Thu, 31 May 2007 11:06:42 -0700

The attached 4 Copyright Infringement notices were sent to Universal Music Group byCal IV Entertainment, LLC for the videos listed below.

Shooter Jennings - Steady At The Wheel: Closed Captioned:
http://www.youtube.com/watch?v=mOtTZ2Ks_48

McBride And The Ride - Sacred Ground:
http://www.youtube.com/watch?v=06bHooOCXps

Tracy Lawrence - It's All How You Look At It: Closed Captioned:
http://www.youtube.com/watch?v=v9zWnAeIG4Y

Gary Nichols - Unbroken Ground: Closed Captioned:
http://www.youtube.com/watch?v=_ajRyqcWtXg

Universal Music Group has a good faith belief that the material was removed or disabled as a result of mistake or misidentification of the material. Universal Music Group does have rights to these videos pursuant to physical licenses for Shooter Jennings, McBride and the Ride, and Tracy Lawrence and a contractual license for Gary Nichols in his recording agreement. Universal Music Group would like to request that the videos remain on youtube.com and that the copyright infringement notices not be associated with the Universal Music Group account.

Universal Music Group consents to the jurisdiction of Federal District Court for the judicial district in which the following address is
located:

Universal Music Group
2220 Colorado Avenue
Santa Monica, CA 90404

Angela Sanchez
Sr. Director of Marketing/Digital
Universal Music Group Distribution