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Ms. Deborah Holmes
Ms. Kimberly Gay
Case Managers, Clerk's Office
U.S. Court of Appeals for the Second Circuit
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007

Re: *Viacom Int'l, Inc., et al.* v. *YouTube, Inc., et al.*, No. 10-3270; *The Football Ass'n Premier League, et al.* v. *YouTube, Inc. et al.*, No. 10-3342 (argued Oct. 18, 2011 (Cabranes, Miner, Livingston))

Dear Ms. Holmes & Ms. Gay:

YouTube writes to notify the Court of another recent decision adopting the understanding of the DMCA advocated by YouTube in this appeal. *Wolk v. Kodak Imaging Network, Inc.*, 2012 WL 11270 (S.D.N.Y. Jan. 3, 2012).

In *Wolk*, Judge Sweet found on summary judgment that Photobucket—an online service allowing users to post photographs—is protected by §512(c). The court held, first, that DMCA notices identifying particular instances of infringement of certain copyrighted works did not confer knowledge requiring Photobucket to find and remove *other* instances of those works. 2012 WL 11270, at *20. It explained that because "Wolk and other copyright holders retain the right to license their work, a policy under which Photobucket assumes infringement could result in Photobucket unlawfully blocking others from uploading images to which they hold valid licenses." *Id.* Plaintiffs here make the same misguided argument. YouTube Br. 56-58.

Second, the court held that Photobucket lacks the "right and ability to control" the alleged infringing activity:

> [S]uch a right and ability to control must take the form of prescreening content, rendering extensive advice to users regarding content and editing user content. In this case, Photobucket does not engage in such activities, and, considering that millions of images are uploaded daily, it is unlikely that this kind of prescreening is even feasible.

2012 WL 11270, at *21. That applies even more powerfully to YouTube. YouTube Br. 58-66.

Third, Judge Sweet adopted the understanding of the "financial benefit" provision that YouTube advocates (Br. 73-77), holding that Photobucket is protected because there was no evidence that it "capitalizes specifically because a given image a user selects to print is infringing. The Defendants' profits are derived from the service they provide, not a particular infringement." 2012 WL 11270, at *21.

Finally, relying on §512(m), the court rejected plaintiff's argument that "Photobucket would be required to police its website for infringing copies of her work wherever they may appear once she has provided a DMCA-compliant notice." *Id.* at *22-23. *Wolk* is thus the latest in an unbroken line of cases confirming that Judge Stanton's decision is correct and should be affirmed.

Respectfully submitted,

/s Andrew H. Schapiro

Andrew H. Schapiro

Counsel for YouTube