

08/04/2010	325	ORDER After examining the redactions proposed by the defendants with respect to confidential personal and business information contained in submissions filed in support of Defendants' Opposition to Plaintiffs' Motions for Partial Summary Judgment, Viacom's Opposition to Defendants' Motion for Summary Judgment, Class Plaintiffs' Opposition to Defendants' Motion for Summary Judgment, Defendants' Reply in Support of Defendants' Motion for Summary Judgment, Viacom's Reply in Support of Viacom's Motion for Partial Summary Judgment, and Class Plaintiffs' Reply Motion for Partial Summary Judgment - together with the reasons given for continued confidential treatment of the designated material, I have determined that the protection of the value of this private, proprietary and commercially sensitive information to its owners clearly outweighs any countervailing public interest in its disclosure to the general public and to competitors, and justifies its redaction, together with personally identifiable matter such as addresses, telephone and account numbers, family and personal affairs and similar information, publicly filed and disclosed. So ordered. (Signed by Judge Louis L. Stanton on 8/4/2010) (jmi) (Entered: 08/04/2010)
08/09/2010	330	CLASS PLAINTIFFS' NOTICE OF MOTION FOR CLASS CERTIFICATION. (This document was previously sealed in envelope # 209, and unsealed with order # 327) Document filed by Bourne Co., Cherry Lane Music Publishing Company, Inc., Federation Francaise De Tennis, Murbo Music Publishing, Inc., The Football Association Premier League Limited, Robert Tur, X-Ray Dog Music, Inc.(mbe) (Entered: 08/10/2010)
08/10/2010	327	ORDER: Judgment for defendants in this case having been entered on August 9, 2010, Class Plaintiffs' Motion for Class Certification, which was filed under seal on April 9, 2010, is dismissed as moot. The parties having filed all materials in connection with that motion under seal, the Clerk of the Court is directed to unseal Class Plaintiffs' Notice of Motion for Class Certification, recorded in docket entry 209, and return the remainder of the material whose filing is recorded in docket entry 209 and the material whose filing is recorded in docket entries 277, 289, 297 and 298 to the parties. (Signed by Judge Louis L. Stanton on 8/9/2010) (tro) (Entered: 08/10/2010)
08/10/2010		Transmission to Sealed Records Clerk. Transmitted re: 327 Order, to the Sealed Records Clerk for the sealing or unsealing of document or case. (tro) (Entered: 08/10/2010)
08/10/2010	328	JOINT STIPULATION AND ORDER REGARDING YOUTUBE'S MOTION FOR SANCTIONS: The parties agree that this Stipulation and Order, when entered by the Court, disposes of the Protective Order Issue in its entirety. Tur hereby: (i) dismisses his entire case against YouTube with prejudice including, without limitation, any right to appeal from the Summary Judgment Order; and (ii) agrees to file a separate dismissal with prejudice as soon as practicable. YouTube hereby withdraws, with prejudice, its request for permission to move for sanctions against Tur in connection with the protective Order Issue and hereby waives and relinquishes any right to seek sanctions or any other form of relief against Tur arising out of or related to the Protective Order Issue. Tur shall pay YouTube the sum of Twenty Thousand and 00/100 dollars (\$20,000.00) on or before five (5) business days

		after the Order requested herein is entered. Tur shall have no liability or obligation for costs, attorneys fees or other relief in this action, and as further set forth in this Order. Robert Tur terminated. (Signed by Judge Louis L. Stanton on 8/9/2010) (tro) (Entered: 08/10/2010)
08/10/2010	329	STIPULATION AND ORDER: The parties have met and conferred and reach a stipulated resolution regarding the treatment of removed videos, as further set forth in this Order. (Signed by Judge Louis L. Stanton on 8/9/2010) (tro) (Entered: 08/10/2010)
08/10/2010	332	FINAL JUDGMENT that for the reasons set forth in the Court's Opinion and Order dated June 23, 2010, judgment is entered for Defendants and against Plaintiffs on all of Plaintiffs' claims. (Signed by Judge Louis L. Stanton on 8/9/10) (Attachments: # 1 notice of right to appeal)(ml) (Entered: 08/10/2010)
08/10/2010		***DELETED DOCUMENT. Deleted document number 331 Final Judgment. The document was incorrectly filed in this case. (ml) (Entered: 08/10/2010)
08/11/2010	334	SEALED MATERIALS RETRIEVED: Document(s) 277 and 289 were retrieved. Law Firm retrieving records: Mayer Brown. Person retrieving records: Abayomi Talbot on 8/11/10.(dn) (Entered: 08/13/2010)
08/12/2010	335	SEALED MATERIALS RETRIEVED: Document(s) 298 were retrieved. Law Firm retrieving records: Proskauer Rose LLP. Person retrieving records: Jesus Hernandez on 8/12/2010.(nm) (Entered: 08/13/2010)
08/12/2010	336	NOTICE OF APPEAL from 303 Memorandum & Opinion,, 332 Judgment,, Document filed by Alley Music Corporation, Bourne Co., Cal IV Entertainment, LLC, Cherry Lane Music Publishing Company, Inc., Edward B. Marks Music Company, Federation Francaise De Tennis, Freddy Bienstock Music Company, National Music Publishers' Association, Sin-Drome Records, Ltd., Stage Three Music (US), Inc., The Football Association Premier League Limited, The Music Force LLC, The Music Force Media Group LLC, The Rodgers & Hammerstein Organization, X-Ray Dog Music, Inc.. Filing fee \$ 455.00, receipt number E 911803. (nd) (Entered: 08/13/2010)
08/13/2010		Transmission of Notice of Appeal to the District Judge re: 336 Notice of Appeal,, (nd) (Entered: 08/13/2010)
08/13/2010		Transmission of Notice of Appeal and Certified Copy of Docket Sheet to US Court of Appeals re: 336 Notice of Appeal,, (nd) (Entered: 08/13/2010)
08/13/2010		Appeal Record Sent to USCA (Electronic File). Certified Indexed record on Appeal Electronic Files for 174 Declaration in Support of Motion filed by Youtube, LLC, Youtube, Inc., Google, Inc., 167 MOTION for Summary Judgment. filed by Youtube, LLC, Youtube, Inc., Google, Inc., 258 Declaration in Opposition to Motion, filed by Youtube, LLC, Youtube, Inc., Google, Inc., 96 MOTION for Gerald E. Martin to Appear Pro Hac Vice. filed by Cal IV Entertainment, LLC, 253 Declaration in Opposition to Motion, filed by Youtube, LLC, Youtube, Inc., Google, Inc., 326 Order, 184 Declaration in Support of Motion,, filed by Youtube, LLC, Youtube, Inc.,

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08/24/2010	337	SEALED MATERIALS RETRIEVED: Document(s) 209 and 297 were retrieved. Law Firm retrieving records: Bernstein Litowitz Berger & Grossmann LLP. Person retrieving records: Alex Feroso, Jr. on 8/24/2010. (nm) (Entered: 08/24/2010)
09/29/2010	338	ORDER, that for the reasons stated on the record in open court this afternoon, the balance of the pre-motion conference regarding defendants' application for attorneys fees is adjourned until it is rescheduled following receipt of the Court of Appeals' mandate in the pending appeal. (Signed by Judge Louis L. Stanton on 9/28/10) (pl) (Entered: 09/29/2010)

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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

_____)	
VIACOM INTERNATIONAL INC.,)	
COMEDY PARTNERS,)	
COUNTRY MUSIC TELEVISION, INC.,)	
PARAMOUNT PICTURES CORPORATION,	)	Case No. 1:07-cv-02103 (LLS)
and BLACK ENTERTAINMENT TELEVISION	)	(Related Case No. 1:07-cv-03582 (LLS))
LLC,)	
	)	FIRST AMENDED COMPLAINT
	)	FOR DECLARATORY AND
	)	INJUNCTIVE RELIEF AND
	)	DAMAGES AND DEMAND FOR
	)	JURY TRIAL
)	
Plaintiffs,)	
)	
v.)	
)	
YOUTUBE, INC., YOUTUBE, LLC, and)	
GOOGLE INC.,)	
)	
)	
Defendants.)	
_____)	

Plaintiffs Viacom International Inc., Comedy Partners, Country Music Television, Inc., Paramount Pictures Corporation, and Black Entertainment Television LLC (collectively, "Plaintiffs"), by and for their Complaint against Defendants YouTube, Inc. and YouTube, LLC (collectively, "YouTube"), and Google Inc. ("Google") (all collectively, "Defendants"), aver as follows:

INTRODUCTION

1. Over the past decade, the emergence of broadband networks, Internet protocol and inexpensive wireless networks has revolutionized the way Americans inform and entertain themselves. Millions have seized the opportunities digital technology provides to obtain creative works and to express themselves creatively. Entrepreneurs have made

fortunes providing the networks, the tools and the creative works that have fueled this revolution. But these same innovations have also been misused to fuel an explosion of copyright infringement by exploiting the inexpensive duplication and distribution made possible by digital technology. Some entities, rather than taking the lawful path of building businesses that respect intellectual property rights on the Internet, have sought their fortunes by brazenly exploiting the infringing potential of digital technology.

2. YouTube is one such entity. YouTube has harnessed technology to willfully infringe copyrights on a huge scale, depriving writers, composers and performers of the rewards they are owed for effort and innovation, reducing the incentives of America's creative industries, and profiting from the illegal conduct of others as well. Using the leverage of the Internet, YouTube appropriates the value of creative content on a massive scale for YouTube's benefit without payment or license. YouTube's brazen disregard of the intellectual property laws fundamentally threatens not just Plaintiffs, but the economic underpinnings of one of the most important sectors of the United States economy.

3. YouTube's website purports to be a forum for users to share their own original "user generated" video content. In reality, however, a vast amount of that content consists of infringing copies of Plaintiffs' copyrighted works, including such popular (and obviously copyrighted) television programming and motion pictures as "SpongeBob SquarePants," "The Daily Show with Jon Stewart," "The Colbert Report," "South Park," "Ren & Stimpy," "MTV Unplugged," "An Inconvenient Truth," "Mean Girls," and many others. Unauthorized copies of these and other copyrighted works are posted daily on YouTube and each is viewed tens of thousands of times. As Dow Jones reported, "[i]t's no secret that millions of Internet users every day watch copyright-infringing video clips on

YouTube.” Market Watch by Dow Jones, October 20, 2006. In fact, as of March 13, 2007, Plaintiffs had identified more than 150,000 unauthorized clips of their copyrighted programming on YouTube that had been viewed an astounding 1.5 billion times. Since that time, substantially more unauthorized clips of Plaintiffs’ programming have been added to YouTube, and the total number of views has increased by a corresponding amount. And Plaintiffs’ tally of unauthorized clips represents only a small fraction of the content on YouTube that infringes Plaintiffs’ copyrights, because as described below, YouTube prevents copyright owners from finding on the YouTube site all of the infringing works from which YouTube profits.

4. Defendants actively engage in, promote and induce this infringement. Defendants convert the copyrighted videos uploaded by YouTube users into a special file format, copy these videos, and distribute copies of these videos to users’ computers. YouTube itself publicly performs the infringing videos on the YouTube site and other websites. Thus, YouTube does not simply enable massive infringement by its users. It is YouTube that knowingly reproduces, distributes, publicly performs, and publicly displays the copyrighted works uploaded to its site.

5. Defendants know and intend that a substantial amount of the content on the YouTube site consists of unlicensed infringing copies of copyrighted works and have done little or nothing to prevent this massive infringement. To the contrary, the availability on the YouTube site of a vast library of the copyrighted works of Plaintiffs and others is the cornerstone of Defendants’ business plan. YouTube deliberately built up a library of infringing works to draw traffic to the YouTube site, enabling it to gain a commanding market share, earn significant revenues, and increase its enterprise value.

6. YouTube has deliberately chosen not to take reasonable precautions to deter the rampant infringement on its site. Because YouTube directly profits from the availability of popular infringing works on its site, it has decided to shift the burden entirely onto copyright owners to monitor the YouTube site on a daily or hourly basis to detect infringing videos and send notices to YouTube demanding that it “take down” the infringing works. In the meantime, YouTube profits handsomely from the presence of the infringing works on its site. And even after it receives a notice from a copyright owner, in many instances the very same infringing video remains on YouTube because it was uploaded by at least one other user, or appears on YouTube again within hours of its removal. YouTube has deliberately chosen this approach because it allows YouTube to profit from infringement while leaving copyright owners insufficient means to prevent it.

7. Moreover, YouTube has deliberately withheld the application of available copyright protection measures in order to coerce rights holders to grant it licenses on favorable terms. YouTube’s chief executive and cofounder Chad Hurley was quoted in the New York Times on February 3, 2007, as saying that YouTube has agreed to use filtering technology “to identify and possibly remove copyrighted material,” but only after YouTube obtains a license from the copyright owner. Geraldine Fabrikant & Saul Hansell, *Viacom Tells YouTube: Hands Off*, N.Y. Times, Feb. 3, 2007, at C1. Those who refuse to be coerced are subjected to continuing infringement. *Id.*; see also Saul Hansell, *A Bet That Media Companies Will Want to Share Ad Revenue*, N.Y. Times, Sept. 30, 2006, at C1.

8. YouTube has also implemented features that prevent copyright owners from finding infringing videos by searching the YouTube site. YouTube thereby hinders Plaintiffs’ attempts to locate infringing videos to protect their rights. At the same time,

YouTube allows its users to make the hidden videos available to others through other YouTube features like the “embed,” “share,” and “friends” functions. In this way, YouTube continues to profit from the infringement, while hindering Plaintiffs from preventing it.

9. Defendant Google recently purchased YouTube for \$1.65 billion, generating extraordinary riches for YouTube’s founders and investors. In recognition of the undeniable reality of massive infringement on the YouTube site, Google has reportedly issued substantial equity and entered into expensive licenses with certain providers of copyrighted content.

10. Defendants’ infringement has harmed and continues to harm the interests of authors, songwriters, directors, producers, performers, and many other creators. If left unchecked, rampant infringement will gravely undermine Plaintiffs and other companies that generate creative works, and will threaten the livelihoods of those who work in and depend upon these companies. Plaintiffs therefore have no choice but to seek immediate redress. Plaintiffs seek a declaration that Defendants’ conduct willfully infringes Plaintiffs’ copyrights, a permanent injunction requiring Defendants to employ reasonable methodologies to prevent or limit infringement of Plaintiffs’ copyrights, and statutory damages for Defendants’ past and present willful infringement, or actual damages plus profits, of at least one billion dollars.

JURISDICTION AND VENUE

11. This is a civil action seeking damages and declaratory and injunctive relief for copyright infringement under the Copyright Act, 17 U.S.C. § 101 *et seq.*

12. This Court has original subject matter jurisdiction over all claims pursuant to 28 U.S.C. §§ 1331 and 1338(a).

13. This Court has personal jurisdiction over Defendants. Google does continuous and systematic business in New York and this District. It maintains an office and employs personnel in New York and this District, and is thus physically present in the state. *See* N.Y. C.P.L.R. § 301. On information and belief, YouTube also does continuous and systematic business in New York and in this District. *See id.* All Defendants have also transacted business within New York and contracted to supply goods or services in New York in connection with the matters giving rise to this suit. *See id.* § 302(a)(1). Defendants have also committed infringing acts outside of New York causing injury to Plaintiffs in New York, and Defendants regularly do or solicit business in New York, and/or derive substantial revenue from goods used or services rendered in New York, and/or expect or reasonably should expect their infringing conduct to have consequences in New York and derive substantial revenue from interstate commerce. *See id.* § 302(a)(3). In addition, Plaintiffs Viacom International Inc. and Comedy Partners have their principal places of business in New York and in this District, and have been injured in New York by Defendants' infringing conduct.

14. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b), (c) and 1400(a).

PLAINTIFFS AND PLAINTIFFS' BUSINESSES

15. Plaintiff Viacom International Inc. ("Viacom"), one of the world's leading creators and distributors of programming and content across all media platforms, is a Delaware corporation with its principal place of business in New York, New York.

16. Plaintiff Comedy Partners, an affiliate of Viacom, is a general partnership formed in New York with its principal place of business in New York, New York.

17. Plaintiff Country Music Television, Inc., an affiliate of Viacom, is a Tennessee corporation with its principal place of business in Nashville, Tennessee.

18. Plaintiff Paramount Pictures Corporation, an affiliate of Viacom, is a Delaware corporation with its principal place of business in Los Angeles, California.

19. Plaintiff Black Entertainment Television LLC, an affiliate of Viacom, is a Washington, D.C. limited liability company with its principal place of business in Washington, D.C.

20. Plaintiffs are among the world's preeminent creators, producers and distributors of copyrighted television programming, motion pictures, short form audiovisual works and other entertainment programming, who have invested and continue to invest many millions of dollars annually to create and disseminate these works because the Copyright Act protects their economic incentive to do so and tens of millions of consumers desire to experience the works. Plaintiffs distribute and publicly perform those works, and/or license them for distribution and/or public performance, by telecast on cable and satellite television systems, in motion picture theaters, on DVD and other video formats, through their own websites and various authorized internet distribution channels, and over cell phones and other portable devices, among other ways. Plaintiffs' television channels and trademarks include MTV, Nickelodeon, VH1, Comedy Central, Logo, MTV2, MTV Tres, Nick at Nite, Noggin, TV Land, CMT, mtvU, Nickelodeon, The N, and BET. Plaintiffs' motion picture labels include Paramount Pictures, DreamWorks, Paramount Vantage, MTV Films, and Nickelodeon Films.

21. Examples of legitimate licensed channels for the distribution of Plaintiffs' programs include Apple's iTunes Music Store, which sells secure digital downloads of

television shows from several of Plaintiffs' television networks; Joost, an advertising-supported, Internet-based television service; and numerous others that currently exist or are just emerging. The shows distributed through these licensed on-line distribution channels include "The Daily Show with Jon Stewart," "The Colbert Report," and "South Park" from Comedy Central; "SpongeBob SquarePants," and "Dora the Explorer," among others, from Nickelodeon; and "Beavis and Butthead," "Laguna Beach," and "Jackass," among others, from MTV.

22. Plaintiffs also offer streaming video clips of many of their most popular television shows and other works through their own websites, such as www.comedycentral.com. Plaintiffs derive advertising revenue and other benefits from the Internet traffic generated by the availability of these video clips on their websites.

23. Defendants' conduct directly and secondarily infringes the copyrights in works owned by or exclusively licensed to Plaintiffs that are the subject of valid Certificates of Copyright Registration from the Register of Copyrights, including but not limited to those listed on Exhibit A attached to this Complaint.

DEFENDANTS AND THE INFRINGING YOUTUBE SERVICE

24. Defendant YouTube, Inc. is a Delaware corporation with its principal place of business in San Bruno, California.

25. Defendant YouTube, LLC is a Delaware limited liability company with its principal place of business in San Bruno, California. On information and belief, YouTube, LLC is the successor in interest of YouTube, Inc. YouTube, Inc. and YouTube, LLC are referred to collectively herein as "YouTube."

26. YouTube is a wholly owned and controlled subsidiary of Defendant Google Inc., a Delaware corporation with its principal place of business in Mountain View, California, and a place of business in the State of New York and this District. Pursuant to a transaction that was publicly announced on October 9, 2006, and closed on November 13, 2006, Google acquired YouTube for \$1.65 billion.

27. Defendants operate a website called "YouTube," located at www.youtube.com, one of the most prominent and popular websites on the Internet. The recent \$1.65 billion acquisition price for YouTube reflects the website's enormous popularity. YouTube's value, however, is built largely on the unauthorized appropriation and exploitation of copyrighted works belonging to others, especially Plaintiffs. As a result, a large part of YouTube's value is directly attributable to the availability of Plaintiffs' copyrighted works on YouTube's website.

28. Google exercises substantial and continuing control over the continuing acts of YouTube that form the subject matter of this complaint. Google's press release at the time of the closing of the \$1.65 billion acquisition announced that YouTube would stay "on the same course" and, on information and belief, Google determined to have YouTube continue to withhold measures to prevent the massive copyright infringement known to be taking place on the site. Google has also recently launched a feature on Google's own website whereby a search for videos returns thumbnails and results for videos on YouTube, thereby participating in, inducing, contributing to, and profiting from the infringement on YouTube. Additional massive damages to plaintiffs and others have been caused by Google's preservation and backing of YouTube's infringing business model.

NATURE OF THE ACTION

29. Under Section 106 of the Copyright Act of 1976, 17 U.S.C. § 101 *et seq.* (the “Copyright Act”), Plaintiffs have the distinct, severable, and exclusive rights to, among other things, reproduce, distribute, publicly perform, and publicly display their copyrighted works. 17 U.S.C. §§ 106(1), (3), (4), (5).

30. YouTube is a self-described “consumer media company” that “deliver[s] entertaining, authentic and informative videos across the Internet.” YouTube Dec. 15, 2005 Press Release (available at http://www.youtube.com/press_room_entry?entry=OcN9xXYarIg). Defendants encourage individuals to upload videos to the YouTube site, where YouTube makes them available for immediate viewing by members of the public free of charge. Although YouTube touts itself as a service for sharing home videos, the well-known reality of YouTube’s business is far different. YouTube has filled its library with entire episodes and movies and significant segments of popular copyrighted programming from Plaintiffs and other copyright owners, that neither YouTube nor the users who submit the works are licensed to use in this manner. Because YouTube users contribute pirated copyrighted works to YouTube by the thousands, including those owned by Plaintiffs, the videos “deliver[ed]” by YouTube include a vast unauthorized collection of Plaintiffs’ copyrighted audiovisual works. YouTube’s use of this content directly competes with uses that Plaintiffs have authorized and for which Plaintiffs receive valuable compensation. Defendants’ infringing uses of Plaintiffs’ content impairs Plaintiffs’ ability to fully exploit its copyrighted audiovisual works.

31. Though the videos available on YouTube are uploaded by users in the first instance, upon upload the videos become part of the YouTube library for performance and

display on YouTube's own website, which Defendants control and directly profit from. When a user uploads a video, YouTube copies the video in its own software format, adds it to its own servers, and makes it available for viewing on its own website. A user who wants to view a video goes to the YouTube site by typing www.youtube.com into the user's web browser, enters search terms into a search and indexing function provided by YouTube for this purpose on its site, and receives a list of thumbnails of videos in the YouTube library matching those terms. YouTube creates the thumbnails, which are individual frames from videos in its library – including infringing videos – for the purpose of helping users find what they are searching for. For example, users looking for Plaintiffs' popular works might type in search terms such as "MTV," "Stephen Colbert," "Beavis and Butthead," or "SpongeBob." YouTube then returns a list with thumbnails of matching videos in its library, and the user can select and view a video from the list of matches by clicking on the thumbnail created and supplied by YouTube for this purpose. YouTube then publicly performs the chosen video by sending streaming video content from YouTube's servers to the user's computer, where it can be viewed by the user. Simultaneously, a copy of the chosen video is downloaded from the YouTube website to the user's computer. During the entire experience, YouTube prominently displays its logo, user interface, and advertising to the user. Thus, the YouTube conduct that forms the basis of this Complaint is not simply providing storage space, conduits, or other facilities to users who create their own websites with infringing materials. To the contrary, YouTube itself commits the infringing duplication, distribution, public performance, and public display of Plaintiffs' copyrighted works, and that infringement occurs on YouTube's own website, which is operated and controlled by Defendants, not users.

32. Users can also download copies of Plaintiffs' copyrighted works posted and maintained on YouTube's website using various readily available software applications and devices. These software applications and devices are produced by third-party entities to facilitate the distribution of copies from the YouTube website to YouTube users. On information and belief, YouTube consciously tolerates or cooperates with such entities in order to permit YouTube users to play downloaded copies of infringing videos on their home computers, laptops, iPods, or other devices; YouTube has the technical means to prevent the making or retention of such copies but has elected not to do so. On information and belief, YouTube also distributes infringing videos to third-party business partners that provide new "platforms" for viewing and/or copying the videos.

33. YouTube also allows any person to "embed" any video available in the YouTube library into another website (such as a blog, MySpace page, or any other page on the web where the user can post material). To do this, the user simply copies the "embed" code, which YouTube supplies for each video in its library, and then pastes that code into the other website, where the embedded video will appear as a television-shaped picture with the YouTube logo prominently displayed and a triangular icon that any user can click to play the video. When a user clicks the play icon, the embedded video plays within the context of the host website, but it is actually YouTube, not the host site, that publicly performs the video by transmitting the streaming video content from YouTube's own servers to the viewer's computer.

34. YouTube also makes it possible for a user to share an embedded video by clicking the word "share" that is displayed with the video. After clicking "share," the user is taken to a location on YouTube's own website where there is a form for entering the email

addresses of persons to share the video with. YouTube then sends an email to each person listed in that form, with a link that takes the recipient to YouTube's own site to view the video. These embedded videos therefore act as a draw to attract users to YouTube.

35. Because of its prominent display of YouTube's logo and the share function that draws new users to YouTube's own website, the embed function has contributed significantly to the explosive growth in YouTube's popularity, network, and enterprise value. But the videos that YouTube publicly performs and displays through the embed function to draw users back to YouTube's own site are frequently the most popular copyrighted works created and owned by Plaintiffs, not YouTube.

36. YouTube and its users have not received a valid license, authorization, permission or consent to use the registered copyrighted works owned by Plaintiffs that have appeared and continue to appear on the YouTube website and are at issue in this action, including but not limited to those listed on Exhibit A hereto. Instead, in violation of Plaintiffs' rights under copyright law, YouTube has willfully, intentionally, and purposefully reproduced, publicly performed, and publicly displayed the copyrighted works, and/or knowingly facilitated, enabled, induced, and materially contributed to infringing uses thereof, and/or refused to exercise its ability to control or supervise infringing uses thereof from which it obtains direct financial benefits.

37. Defendants have actual knowledge and clear notice of this massive infringement, which is obvious to even the most casual visitor to the site. The rampant infringement of Plaintiffs' copyrights on YouTube is open and notorious and has been the subject of numerous news reports. *See, e.g.,* Saul Hansell, *A Bet That Media Companies Will Want to Share Ad Revenue*, N.Y. Times, Sept. 30, 2006, at C1. YouTube's site is also filled

with “red flags” from which infringing activity is apparent, such as description terms and search tags using Plaintiffs’ well-known trademarks and other terms identifying their popular copyrighted works. Indeed, the presence of infringing copyrighted material on YouTube is fully intended by Defendants as a critical part of their business plan to drive traffic and increase YouTube’s network, market share and enterprise value, as reflected in the purchase price of \$1.65 billion Google paid for YouTube, the additional market valuation obtained by Google through its purchase of YouTube, and the continued increase in the value of YouTube and Google fueled by infringement of Plaintiffs’ copyrights after Google’s purchase of YouTube.

38. Defendants profit handsomely from the infringement of Plaintiffs’ copyrighted works, and receive financial benefits directly attributable to the infringing activity. YouTube has built an infringement-driven business by exploiting the popularity of Plaintiffs’ copyrighted works (and the works of other copyright owners) to draw millions of users to its website. YouTube derives advertising revenue directly attributable to the infringing works, because advertisers pay YouTube to display banner advertising to users whenever they log on to, search for, and view infringing videos. Through the embed function and in other ways, infringing videos also draw users to YouTube’s site in the first instance, and YouTube then derives additional advertising revenue when those users search for and watch other videos on the site. In either event, there is a direct causal connection between the presence of infringing videos and YouTube’s income from the additional “eyeballs” viewing advertising on the site. The draw of infringing works has also made an enormous contribution to the explosive growth of YouTube, resulting in the remarkable \$1.65 billion price Google paid for YouTube only a short time after its founding, the

additional market valuation obtained by Google through its purchase of YouTube, and the continued increase in the value of YouTube and Google fueled by infringement of Viacom's copyrights after Google's purchase of YouTube. Thus, infringement of Plaintiffs' works contributes substantially and directly to the value of YouTube's and Google's business.

39. YouTube has the right and ability to control the massive infringement on its site. As described above, the infringement is being committed on YouTube's own website, which Defendants control, not on other websites controlled by others. YouTube has reserved to itself the unilateral right to impose Terms of Use to which users must agree when they accept YouTube's invitation to post videos to the site, and YouTube has the power and authority to police what occurs on its premises. Through its Terms of Use, YouTube imposes a wide number of content-based restrictions on the types of videos uploaded to the site, and reserves and exercises the unfettered right to block or remove any video which, in its sole discretion, it deems "inappropriate." YouTube proactively reviews and removes pornographic videos from its library, but refuses to do the same thing for videos that obviously infringe Plaintiffs' copyrights. YouTube also demands that users grant YouTube a "worldwide . . . license to use, reproduce, distribute, prepare derivative works of, display, and perform" the videos they add to YouTube's library. *See* Terms of Use, <http://www.youtube.com/t/terms> (last visited March 12, 2007).

40. On information and belief, YouTube has also sent cease and desist letters to persons who provide software that can be used to make copies of videos from YouTube's library, asserting that such use is not "authorized." In truth, YouTube opposes such copying because YouTube receives advertising revenue and new users only if viewers are drawn to YouTube's own site to view videos, not when users make copies that they can share with

others independently of YouTube's site. Thus, when it is in YouTube's financial interest to do so, it proactively polices conduct it regards as unauthorized, even on other websites.

41. In stark contrast, because it profits directly from the infringement of Plaintiffs' works on its website, YouTube has failed to employ reasonable measures that could substantially reduce, or eliminate, the massive amount of copyright infringement on the YouTube site from which YouTube directly profits. Even though Defendants are well aware of the rampant infringement on the YouTube website, and YouTube has the right and ability to control it, YouTube's intentional strategy has been to take no steps to curtail the infringement from which it profits unless notified of specific infringing videos by copyright owners, thereby shifting the entire burden – and high cost – of monitoring YouTube's infringement onto the victims of that infringement. Although YouTube touts the availability of purported copyright protection tools on its site, at best these tools help copyright owners find a portion of the infringing files, and, as to that portion, only after the files have been uploaded. These tools also prevent upload of the exact same video (or the exact same excerpt of a video) after YouTube receives a takedown notice from the owner. However, users routinely alter as little as a frame or two of a video and repost it on YouTube where it will remain until YouTube receives a new takedown notice. YouTube's consistent approach is to take no action to remove infringing videos from its library unless and until a copyright owner notifies it that that specific video is infringing.

42. Even when YouTube responds to notices of specific infringing videos, its response has been ineffectual. YouTube does not even try to block slightly altered copies of the very same video from being uploaded again immediately after being removed. It does not block repeat infringers from signing up for the service again with a new account. And it

removes only the specific infringing clips at the specific web addresses (URLs) identified in a takedown notice, rather than all infringing works that can be reasonably located using the representative lists and other information in the notice.

43. YouTube adopted this hands-off policy knowing that copyright owners have a limited ability to monitor for infringing videos on its site and send takedown notices for the videos they find. Copyright owners can monitor for infringing videos only after they are posted on the site, so there is an inevitable time lag between when a video is posted and the first reasonable time at which an owner can identify it and send a takedown notice.

44. In addition, YouTube is deliberately interfering with copyright owners' ability to find infringing videos even after they are added to YouTube's library. YouTube offers a feature that allows users to designate "friends" who are the only persons allowed to see videos they upload, preventing copyright owners from finding infringing videos with this limitation. YouTube has also recently limited the search function so that it identifies no more than 1,000 video clips for any given search. Thus, for example, if there are several thousand infringing clips from the "South Park" series on YouTube, the limitations YouTube has placed on the search function may prevent Plaintiffs from identifying all of the infringing clips. In that case, even if Plaintiffs send takedown notices for the video clips they have been able to identify, and even if YouTube responds to the notices by removing those videos, many more infringing videos from the South Park series will still be available for viewing on YouTube. Thus, Plaintiffs cannot necessarily find all infringing videos to protect their rights through searching, even though until recently that was the only avenue YouTube made available to copyright owners. Moreover, YouTube still makes the hidden infringing videos available for viewing through YouTube features like the embed, share, and friends functions.

For example, many users are sharing full-length copies of copyrighted works and stating plainly in the description “Add me as a friend to watch.” For all these reasons, no matter how much effort and money copyright owners expend to protect their rights, there will always be a vast collection of infringing videos available on YouTube to draw users to its site. That is precisely what YouTube intends, because YouTube makes money from the collection of infringing videos on its site.

45. YouTube’s strategy also leaves Plaintiffs unable to meaningfully protect their rights in time-sensitive works, such as episodes of “The Daily Show” or “The Colbert Report” that appear on YouTube as soon as they air, or first-run movies like “An Inconvenient Truth” that appear in their entirety on YouTube before being distributed on home video, irreparably harming Plaintiffs’ own markets for these works. In this and many other ways, YouTube deprives Plaintiffs of economic returns to which they are entitled under the copyright laws, thereby undermining the system of incentives that copyright provides for the creation and dissemination of new works.

46. YouTube’s failure to take reasonable measures to prevent infringement of Plaintiffs’ copyrights stands in stark contrast to the protection which YouTube offers for the content to which it has acquired licenses through various business partnerships with other copyright holders. Until recently, it was YouTube’s policy (as publicly stated by YouTube’s cofounder and chief executive Chad Hurley) to use filtering technology to identify and remove copyrighted works for companies that grant licenses with YouTube, but not for companies that declined to grant licenses on YouTube’s terms. By limiting copyright protection to business partners who have agreed to grant it licenses, YouTube attempted to

coerce copyright owners to grant it a license in order to receive the protection to which they are entitled under the copyright laws.

47. In late 2007, Google and YouTube announced that they would make video anti-piracy tools generally available to all copyright holders. Although Plaintiffs welcome this announcement, Google and YouTube could have made similar protections available at an earlier date - as shown by the fact that they have long offered such tools to their content partners. Furthermore, on information and belief, the anti-piracy tools that Google and YouTube have announced fall short of the reasonable measures they could have adopted earlier. Notwithstanding this announcement, Defendants continue to infringe Plaintiffs' works and impose on Plaintiffs the substantial costs and burdens of locating and demanding the removal of their copyrighted works from Defendants' website. Finally, Defendants' future provision of copyright protection services will not in any way compensate Plaintiffs for the very substantial harm that Defendants have already caused.

CLAIMS FOR RELIEF

COUNT I

(Direct Copyright Infringement – Public Performance)

48. Plaintiffs incorporate by reference paragraphs 1 - 47 as if set forth herein.

49. Defendants, without the permission or consent of Plaintiffs, and without authority, are publicly performing and purporting to authorize the public performance of Plaintiffs' registered copyrighted audiovisual works. Defendants cause these works to be publicly performed upon request by users. Defendants' conduct constitutes direct infringement of Plaintiffs' exclusive rights under the Copyright Act to publicly perform their copyrighted audiovisual works.

50. Defendants' acts of infringement have been willful, intentional, and purposeful, in disregard of and indifferent to the rights of Plaintiffs.

51. As a direct and proximate result of Defendants' infringement of Plaintiffs' copyrights and exclusive rights under copyright, Plaintiffs are entitled to the maximum statutory damages pursuant to 17 U.S.C. § 504(c). Alternatively, at Plaintiffs' election, pursuant to 17 U.S.C. § 504(b), Plaintiffs shall be entitled to their actual damages plus Defendants' profits from infringement, as will be proven at trial.

52. Plaintiffs are entitled to their costs, including reasonable attorneys' fees, pursuant to 17 U.S.C. § 505.

53. Defendants' conduct is causing and, unless enjoined by this Court, will continue to cause Plaintiffs great and irreparable injury that cannot fully be compensated or measured in money. Plaintiffs have no adequate remedy at law. Pursuant to 17 U.S.C. § 502, Plaintiffs are entitled to a permanent injunction requiring Defendants to employ reasonable methodologies to prevent or limit infringement of Plaintiffs' copyrights.

COUNT II

(Direct Copyright Infringement – Public Display)

54. Plaintiffs incorporate by reference paragraphs 1 - 53 as if set forth herein.

55. Defendants, without the permission or consent of Plaintiffs, and without authority, are publicly displaying and purporting to authorize the public display of Plaintiffs' registered copyrighted audiovisual works. Defendants cause these works to be publicly displayed by showing individual images of infringing video clips in response to searches for videos on YouTube. Defendants' conduct constitutes direct infringement of Plaintiffs'

exclusive rights under the Copyright Act to publicly display their copyrighted audiovisual works.

56. Defendants' acts of infringement have been willful, intentional, and purposeful, in disregard of and indifferent to the rights of Plaintiffs.

57. As a direct and proximate result of Defendants' infringement of Plaintiffs' copyrights and exclusive rights under copyright, Plaintiffs are entitled to the maximum statutory damages pursuant to 17 U.S.C. § 504(c). Alternatively, at Plaintiffs' election, pursuant to 17 U.S.C. § 504(b), Plaintiffs shall be entitled to their actual damages plus Defendants' profits from infringement, as will be proven at trial.

58. Plaintiffs are entitled to their costs, including reasonable attorneys' fees, pursuant to 17 U.S.C. § 505.

59. Defendants' conduct is causing and, unless enjoined by this Court, will continue to cause Plaintiffs great and irreparable injury that cannot fully be compensated or measured in money. Plaintiffs have no adequate remedy at law. Pursuant to 17 U.S.C. § 502, Plaintiffs are entitled to a permanent injunction requiring Defendants to employ reasonable methodologies to prevent or limit infringement of Plaintiffs' copyrights.

COUNT III

(Direct Copyright Infringement – Reproduction)

60. Plaintiffs incorporate by reference paragraphs 1 - 59 as if set forth herein.

61. Defendants, without authority, are making, causing to be made, and purporting to authorize the making of unauthorized copies of Plaintiffs' registered copyrighted audiovisual works. Defendants' conduct constitutes direct infringement of Plaintiffs' exclusive right under the Copyright Act to reproduce their copyrighted works.

62. Defendants' acts of infringement have been willful, intentional, and purposeful, in disregard of and indifferent to the rights of Plaintiffs.

63. As a direct and proximate result of Defendants' infringement of Plaintiffs' copyrights and exclusive rights under copyright, Plaintiffs are entitled to the maximum statutory damages pursuant to 17 U.S.C. § 504(c). Alternatively, at Plaintiffs' election, pursuant to 17 U.S.C. § 504(b), Plaintiffs shall be entitled to their actual damages plus Defendants' profits from infringement, as will be proven at trial.

64. Plaintiffs are entitled to their costs, including reasonable attorneys' fees, pursuant to 17 U.S.C. § 505.

65. Defendants' conduct is causing and, unless enjoined by this Court, will continue to cause Plaintiffs great and irreparable injury that cannot fully be compensated or measured in money. Plaintiffs have no adequate remedy at law. Pursuant to 17 U.S.C. § 502, Plaintiffs are entitled to a permanent injunction requiring Defendants to employ reasonable methodologies to prevent or limit infringement of Plaintiffs' copyrights.

COUNT IV

(Direct Copyright Infringement – Distribution)

66. Plaintiffs incorporate by reference paragraphs 1 - 65 as if set forth herein.

67. Defendants, without the permission or consent of Plaintiffs, and without authority, are distributing Plaintiffs' registered copyrighted audiovisual works to the public by making available to YouTube users copies of audiovisual works posted and maintained on YouTube's website. Defendants' conduct constitutes direct infringement of Plaintiffs' exclusive rights under the Copyright Act to distribute their copyrighted audiovisual works to the public.

68. Defendants' acts of infringement have been willful, intentional and purposeful, in disregard of and indifferent to the rights of Plaintiffs.

69. As a direct and proximate result of Defendants' infringement of Plaintiffs' copyrights and exclusive rights under copyright, Plaintiffs are entitled to the maximum statutory damages, pursuant to 17 U.S.C. § 504(c), in the amount of \$150,000 with respect to each act of infringement, or such other amounts as may be proper under 17 U.S.C. § 504(c). Alternatively, at Plaintiffs' election, pursuant to 17 U.S.C. § 504(b), Plaintiffs shall be entitled to their actual damages plus Defendants' profits from infringement, as will be proven at trial.

70. Plaintiffs are entitled to their costs, including reasonable attorneys' fees, pursuant to 17 U.S.C. § 505.

71. Defendants' conduct is causing and, unless enjoined by this Court, will continue to cause Plaintiffs great and irreparable injury that cannot fully be compensated or measured in money. Plaintiffs have no adequate remedy at law. Pursuant to 17 U.S.C. § 502, Plaintiffs are entitled to a permanent injunction prohibiting infringement of Plaintiffs' copyrights and exclusive rights under copyright.

COUNT V

(Inducement of Copyright Infringement)

72. Plaintiffs incorporate by reference paragraphs 1 - 71 as if set forth herein.

73. YouTube users have infringed and are infringing Plaintiffs' rights in their registered copyrighted audiovisual works by, *inter alia*, uploading and downloading infringing copies of Plaintiffs' copyrighted works onto and from YouTube's website and publicly performing or displaying or purporting to authorize the public performance or

display of such infringing videos, all without authorization. YouTube users are therefore directly infringing Plaintiffs' exclusive rights of reproduction, distribution, public performance, and public display under 17 U.S.C. §§ 106(1), (3), (4) and (5).

74. Defendants are liable under the Copyright Act for inducing the infringing acts of YouTube users. Defendants operate the YouTube website service with the object of promoting its use to infringe Plaintiffs' copyrights and, by their clear expression and other affirmative steps, Defendants are unlawfully fostering copyright infringement by YouTube users.

75. Defendants are fully aware that Plaintiffs' audiovisual works are copyrighted and authorized for purchase through various outlets, including numerous lawfully authorized online digital download services. Defendants are equally aware that YouTube users are employing the YouTube website and the services provided through that website to unlawfully reproduce, distribute, publicly perform, and publicly display Plaintiffs' copyrighted works. Defendants intend, encourage, and induce YouTube users to employ the YouTube site in this fashion.

76. Defendants' acts of infringement have been willful, intentional, and purposeful, in disregard of and indifferent to the rights of Plaintiffs.

77. As a direct and proximate result of Defendants' infringement of Plaintiffs' copyrights and exclusive rights under copyright, Plaintiffs are entitled to the maximum statutory damages pursuant to 17 U.S.C. § 504(c). Alternatively, at Plaintiffs' election, pursuant to 17 U.S.C. § 504(b), Plaintiffs shall be entitled to their actual damages plus Defendants' profits from infringement, as will be proven at trial.

78. Plaintiffs are entitled to their costs, including reasonable attorneys' fees, pursuant to 17 U.S.C. § 505.

79. Defendants' conduct is causing and, unless enjoined by this Court, will continue to cause Plaintiffs great and irreparable injury that cannot fully be compensated or measured in money. Plaintiffs have no adequate remedy at law. Pursuant to 17 U.S.C. § 502, Plaintiffs are entitled to a permanent injunction requiring Defendants to employ reasonable methodologies to prevent or limit infringement of Plaintiffs' copyrights.

COUNT VI

(Contributory Copyright Infringement)

80. Plaintiffs incorporate by reference paragraphs 1 - 79 as if set forth herein.

81. YouTube users have infringed and are infringing Plaintiffs' rights in their registered copyrighted audiovisual works by, *inter alia*, uploading and downloading infringing copies of Plaintiffs' copyrighted works onto and from YouTube's website and publicly performing or displaying or purporting to authorize the public performance or display of such infringing videos, all without authorization. YouTube users are therefore directly infringing Plaintiffs' exclusive rights of reproduction, distribution, public performance, and public display under 17 U.S.C. §§ 106(1), (3), (4) and (5).

82. Defendants are liable as contributory copyright infringers for the infringing acts of YouTube users. Defendants enable, induce, facilitate, and materially contribute to each act of infringement by YouTube users.

83. Defendants have actual and constructive knowledge that YouTube users are employing the YouTube website to copy, distribute, publicly perform, and publicly display Plaintiffs' copyrighted works. Plaintiffs' television shows and motion pictures are well

known and recognizable, and even a cursory review of the YouTube website reveals numerous infringing videos of Plaintiffs' television shows, motion pictures, and other audiovisual works.

84. Acting with this actual and constructive knowledge, Defendants enable, facilitate, and materially contribute to YouTube users' copyright infringement, which could not occur without Defendants' enablement.

85. Defendants' acts of infringement have been willful, intentional, and purposeful, in disregard of and indifferent to the rights of Plaintiffs.

86. As a direct and proximate result of Defendants' infringement of Plaintiffs' copyrights and exclusive rights under copyright, Plaintiffs are entitled to the maximum statutory damages pursuant to 17 U.S.C. § 504(c). Alternatively, at Plaintiffs' election, pursuant to 17 U.S.C. § 504(b), Plaintiffs shall be entitled to their actual damages plus Defendants' profits from infringement, as will be proven at trial.

87. Plaintiffs are entitled to their costs, including reasonable attorneys' fees, pursuant to 17 U.S.C. § 505.

88. Defendants' conduct is causing and, unless enjoined by this Court, will continue to cause Plaintiffs great and irreparable injury that cannot fully be compensated or measured in money. Plaintiffs have no adequate remedy at law. Pursuant to 17 U.S.C. § 502, Plaintiffs are entitled to a permanent injunction requiring Defendants to employ reasonable methodologies to prevent or limit infringement of Plaintiffs' copyrights.

COUNT VII

(Vicarious Copyright Infringement)

89. Plaintiffs incorporate by reference paragraphs 1 - 88 as if set forth herein.

90. YouTube users have infringed and are infringing Plaintiffs' rights in their registered copyrighted audiovisual works by, *inter alia*, uploading and downloading infringing copies of Plaintiffs' copyrighted works onto and from YouTube's website and publicly performing or displaying or purporting to authorize the public performance or display of such infringing videos, all without authorization. YouTube users are therefore directly infringing Plaintiffs' exclusive rights of reproduction, distribution, public performance, and public display under 17 U.S.C. §§ 106(1), (3), (4) and (5).

91. Defendants are vicariously liable for the infringing acts of YouTube users. Defendants have both the right and the ability to supervise YouTube users' infringing conduct, and to prevent YouTube users from infringing Plaintiffs' copyrighted audiovisual works.

92. Upon information and belief, YouTube currently engages in practices to enforce content restrictions and protect the copyrighted works of its business partners, but withholds these same protections for the copyrights of persons, including Plaintiffs, who have not granted licenses to YouTube.

93. YouTube significantly and directly benefits from the widespread infringement by its users. The availability of a vast collection of infringing copyrighted works on the YouTube site, including Plaintiffs' most popular works, acts as a substantial draw, attracting users to the website and increasing the amount of time they spend there once they visit. Defendants derive substantial advertising revenue tied directly to the volume of traffic they are able to attract to the YouTube site.

94. Defendants' acts of infringement have been willful, intentional, and purposeful, in disregard of and indifferent to the rights of Plaintiffs.

95. As a direct and proximate result of Defendants' infringement of Plaintiffs' copyrights and exclusive rights under copyright, Plaintiffs are entitled to the maximum statutory damages pursuant to 17 U.S.C. § 504(c). Alternatively, at Plaintiffs' election, pursuant to 17 U.S.C. § 504(b), Plaintiffs shall be entitled to their actual damages plus Defendants' profits from infringement, as will be proven at trial.

96. Plaintiffs are entitled to their costs, including reasonable attorneys' fees, pursuant to 17 U.S.C. § 505.

97. Defendants' conduct is causing and, unless enjoined by this Court, will continue to cause Plaintiffs great and irreparable injury that cannot fully be compensated or measured in money. Plaintiffs have no adequate remedy at law. Pursuant to 17 U.S.C. § 502, Plaintiffs are entitled to a permanent injunction requiring Defendants to employ reasonable methodologies to prevent or limit infringement of Plaintiffs' copyrights.

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

1. For a declaration that Defendants' YouTube service willfully infringes Plaintiffs' copyrights both directly and secondarily.

2. For a permanent injunction requiring that Defendants and their agents, servants, employees, officers, attorneys, successors, licensees, partners, and assigns, and all persons acting in concert or participation with each or any of them, cease directly or indirectly infringing, or causing, enabling, facilitating, encouraging, promoting and inducing or participating in the infringement of, any of Plaintiffs' respective copyrights or exclusive rights protected by the Copyright Act, whether now in existence or hereafter created.


3. For statutory damages pursuant to 17 U.S.C. § 504(c). Alternatively, at Plaintiffs' election, pursuant to 17 U.S.C. § 504(b), Plaintiffs shall be entitled to actual damages plus Defendants' profits from infringement, as will be proven at trial.
4. For Plaintiffs' costs, including reasonable attorneys' fees, pursuant to 17 U.S.C. § 505.
5. For pre- and post-judgment interest according to law.
6. For such other and further relief as the Court may deem just and proper.

DEMAND FOR A JURY TRIAL

In accordance with Fed. R. Civ. P. 38, Plaintiffs demand a trial by jury on all issues so triable.

April 18, 2008

Respectfully submitted,



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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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

Plaintiffs,

v.

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

Defendants.

ECF Case

No. 1:07-cv-02103 (LLS) (FM)

**DEFENDANTS' ANSWER TO FIRST
AMENDED COMPLAINT AND
DEMAND FOR JURY TRIAL**

Viacom's lawsuit challenges the protections of the Digital Millennium Copyright Act ("DMCA") that Congress enacted a decade ago to encourage the development of services like YouTube. Congress recognized that such services could not and would not exist if they faced liability for copyright infringement based on materials users uploaded to their services. It chose to immunize these services from copyright liability provided they are properly responsive to notices of alleged infringement from content owners.

Looking at the online world today, there is no question that Congress made the correct policy choice. Legitimate services like YouTube provide the world with free and authorized access to extraordinary libraries of information that would not be available without the DMCA -- information created by users who have every right to share it. YouTube fulfills Congress's vision for the DMCA. YouTube also fulfills its end of the DMCA bargain, and indeed goes far beyond its legal obligations in assisting content owners to protect their works. By seeking to make carriers and hosting providers liable for internet communications, Viacom's complaint

threatens the way hundreds of millions of people legitimately exchange information, news, entertainment, and political and artistic expression.

Defendants YouTube, Inc., YouTube, LLC and Google Inc. (collectively, “Defendants”), by their undersigned attorneys, hereby answer Plaintiffs’ Viacom International Inc., Comedy Partners, Country Music Television, Inc., Paramount Pictures Corporation, and Black Entertainment Television LLC (all collectively, “Plaintiffs”) First Amended Complaint For Declaratory and Injunctive Relief and Damages and Demand for Jury Trial (the “First Amended Complaint”) as follows:

INTRODUCTION

1. Defendants admit that the internet has had a significant impact on the way in which Americans inform and entertain themselves. Defendants are without information sufficient to form a belief as to the remaining allegations of paragraph 1 of the First Amended Complaint, in part because such allegations are not simple, concise and direct averments as required by Federal Rule of Civil Procedure 8(d), and on that basis Defendants deny such allegations.

2. Defendants deny the allegations of paragraph 2 of the First Amended Complaint.

3. Defendants admit that the website located at www.youtube.com is a forum for users to share their own original “user generated” video content. Defendants are without sufficient knowledge or information to confirm that Dow Jones reported the information averred in paragraph 3 of the First Amended Complaint, and therefore deny it. Defendants deny the remaining allegations in paragraph 3 of the First Amended Complaint.

4. Defendants deny the allegations of paragraph 4 of the First Amended Complaint.

5. Defendants deny the allegations of paragraph 5 of the First Amended Complaint.

6. Defendants deny the allegations of paragraph 6 of the First Amended Complaint.

7. Defendants deny the allegations of paragraph 7 of the First Amended Complaint.

8. Defendants deny the allegations of paragraph 8 of the First Amended Complaint.

9. Defendants admit that Google purchased YouTube, Inc. for \$1.65 billion.

Defendants deny the remaining allegations of paragraph 9 of the First Amended Complaint.

10. Defendants admit that Plaintiffs seek a declaration of willful infringement, a permanent injunction and damages, but deny that Plaintiffs are entitled to any such relief.

Defendants deny the remaining allegations of paragraph 10 of the First Amended Complaint.

JURISDICTION AND VENUE

11. Defendants admit that the First Amended Complaint purports to state a claim for damages, declaratory relief and injunctive relief for copyright infringement, but deny that Plaintiffs are entitled to any such relief and otherwise deny the allegations of paragraph 11 of the First Amended Complaint.

12. Defendants admit that this Court has original subject matter jurisdiction over this matter.

13. Defendants admit this Court has personal jurisdiction over them for purposes of this action. Defendants admit that Google maintains an office and employs personnel in New York and this District, and is thus physically present in the state. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations that Plaintiffs Viacom International Inc. and Comedy Partners have their principal places of business in New York and in this District, and therefore deny them. Defendants deny the remaining allegations of paragraph 13 of the First Amended Complaint.

14. Defendants admit that venue is proper in this District.

PLAINTIFFS AND PLAINTIFFS' BUSINESSES

15. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 15 of the First Amended Complaint, and therefore deny them.

16. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 16 of the First Amended Complaint, and therefore deny them.

17. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 17 of the First Amended Complaint, and therefore deny them.

18. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 18 of the First Amended Complaint, and therefore deny them.

19. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 19 of the First Amended Complaint, and therefore deny them.

20. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 20 of the First Amended Complaint, and therefore deny them.

21. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 21 of the First Amended Complaint, and therefore deny them.

22. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 22 of the First Amended Complaint, and therefore deny them.

23. Defendants deny the allegations in paragraph 23 of the First Amended Complaint.

DEFENDANTS

24. Defendants deny the allegations of paragraph 24 of the First Amended Complaint.

25. Defendants admit that YouTube, LLC is a Delaware limited liability company with its principal place of business in San Bruno, California. Defendants otherwise deny the allegations of Paragraph 25.

26. Defendants admit that YouTube, LLC is a wholly-owned subsidiary of Google Inc. (“Google”), and that Google is a Delaware corporation with its principal place of business in Mountain View, California. Defendants further admit that Google has a place of business in the State of New York, in this judicial district, and that Google acquired YouTube, Inc. for \$1.65 billion in a transaction announced on October 9, 2006 and closed on November 13, 2006. Defendants deny any remaining allegations of Paragraph 26.

27. Defendants admit that YouTube, LLC and Google today operate an online service called “YouTube” which can be accessed at the website www.youtube.com, and that the service is popular. Defendants deny the remaining allegations in paragraph 27 of the First Amended Complaint.

28. Defendants admit that Google’s press release announcing that it had closed its acquisition of YouTube quoted Chad Hurley, CEO and Co-Founder of YouTube, as saying, “The community will remain the most important part of YouTube and we are staying on the same course we set out nearly one year ago.” Defendants admit that Google’s website includes a capability for users to search for video clips and receive search results that include links to clips

on YouTube. Defendants deny the remaining allegations in paragraph 28 of the First Amended Complaint.

NATURE OF THE ACTION

29. Paragraph 29 of the First Amended Complaint states legal conclusions as to which no responsive pleading is required. To the extent a response is required, Defendants deny the allegations of paragraph 29 of the First Amended Complaint.

30. Defendants admit that paragraph 30 of the First Amended Complaint quotes small excerpts from a YouTube, Inc. Press Release dated December 15, 2005. Defendants admit that YouTube encourages users to upload video clips to the service that the users have the right to upload, and that clips uploaded to the service are typically available for viewing free of charge by members of the public who have internet access. Defendants deny the remaining allegations in paragraph 30 of the First Amended Complaint.

31. Defendants admit that when a user uploads a video to the YouTube service, the video is copied into a software format, stored on YouTube's computers, and made available for viewing through the YouTube service. Defendants admit that users of the YouTube service can search for videos stored on the service by entering a search query, and that they will receive a list of thumbnails – single frame images of video clips stored on the service – identified in response to that search query. Defendants admit that the purpose of these thumbnails is to help users find what they are searching for. Defendants deny the remaining allegations of paragraph 31 of the First Amended Complaint.

32. Defendants deny the allegations of paragraph 32 of the First Amended Complaint.

33. Defendants deny the allegations of paragraph 33 of the First Amended Complaint.

34. Defendants admit that a YouTube user can send another person an email message containing a link to a video clip stored on the YouTube service, and that if the recipient of the

email message clicks on the link the recipient will be able to view the video clip on the YouTube service. Defendants deny the remaining allegations of paragraph 34 of the First Amended Complaint.

35. Defendants deny the allegations of paragraph 35 of the First Amended Complaint.

36. Defendants deny the allegations of paragraph 36 of the First Amended Complaint.

37. Defendants deny the allegations of paragraph 37 of the First Amended Complaint.

38. Defendants deny the allegations of paragraph 38 of the First Amended Complaint.

39. Defendants admit that YouTube users must agree to Terms of Use prior to posting video clips to YouTube's service. Defendants admit that the Terms of Use contain certain content-based restrictions on the types of videos users may upload and store on the service, and that YouTube reserves the right to remove from the service material uploaded in violation of YouTube's Terms of Use. Defendants admit that paragraph 39 quotes an excerpt from YouTube's Terms of Use. Defendants deny the remaining allegations in paragraph 39 of the First Amended Complaint.

40. Defendants admit that YouTube has sent letters to third parties in which it accused them of enabling users to make unauthorized use of the YouTube service. Defendants deny the remaining allegations of paragraph 40 of the First Amended Complaint.

41. Defendants admit that the YouTube service provides copyright protection tools that help copyright owners find clips that users have uploaded that the copyright holders may contend infringe their copyrights. Defendants further admit that these tools can prevent the reloading of copies of the same video clip after it has been removed from YouTube's service following notice of alleged infringement from a copyright holder. Defendants deny the remaining allegations of paragraph 41 of the First Amended Complaint.

42. Defendants deny the allegations of paragraph 42 of the First Amended Complaint.

43. Defendants deny the allegations of paragraph 43 of the First Amended Complaint.

44. Defendants admit that the YouTube service enables users to limit the audience of persons able to see video clips they upload to the service. Defendants admit that following Google's acquisition of the YouTube service, the user search function on the service now identifies no more than 1,000 video clips for any given search by a user. Defendants deny the remaining allegations of paragraph 44 of the First Amended Complaint.

45. Defendants deny the allegations of paragraph 45 of the First Amended Complaint.

46. Defendants deny the allegations of paragraph 46 of the First Amended Complaint.

47. Defendants deny the allegations of paragraph 47 of the First Amended Complaint.

ANSWER TO CLAIMS FOR RELIEF

COUNT I

48. Defendants incorporate by reference their responses to paragraphs 1-47 as if set forth herein.

49. Defendants deny the allegations of paragraph 49 of the First Amended Complaint.

50. Defendants deny the allegations of paragraph 50 of the First Amended Complaint.

51. Defendants deny the allegations of paragraph 51 of the First Amended Complaint.

52. Defendants deny the allegations of paragraph 52 of the First Amended Complaint.

53. Defendants deny the allegations of paragraph 53 of the First Amended Complaint.

COUNT II

54. Defendants incorporate by reference their responses to paragraphs 1-53 as if set forth herein.

55. Defendants deny the allegations of paragraph 55 of the First Amended Complaint.

56. Defendants deny the allegations of paragraph 56 of the First Amended Complaint.

57. Defendants deny the allegations of paragraph 57 of the First Amended Complaint.

58. Defendants deny the allegations of paragraph 58 of the First Amended Complaint.

59. Defendants deny the allegations of paragraph 59 of the First Amended Complaint.

COUNT III

60. Defendants incorporate by reference their responses to paragraphs 1-59 as if set forth herein.

61. Defendants deny the allegations of paragraph 61 of the First Amended Complaint.

62. Defendants deny the allegations of paragraph 62 of the First Amended Complaint.

63. Defendants deny the allegations of paragraph 63 of the First Amended Complaint.

64. Defendants deny the allegations of paragraph 64 of the First Amended Complaint.

65. Defendants deny the allegations of paragraph 65 of the First Amended Complaint.

COUNT IV

66. Defendants incorporate by reference their responses to paragraphs 1-65 as if set forth herein.

67. Defendants deny the allegations of paragraph 67 of the First Amended Complaint.

68. Defendants deny the allegations of paragraph 68 of the First Amended Complaint.

69. Defendants deny the allegations of paragraph 69 of the First Amended Complaint.

70. Defendants deny the allegations of paragraph 70 of the First Amended Complaint.

71. Defendants deny the allegations of paragraph 71 of the First Amended Complaint.

72. Defendants deny the allegations of paragraph 72 of the First Amended Complaint.

73. Defendants deny the allegations of paragraph 73 of the First Amended Complaint.

COUNT V

74. Defendants incorporate by reference their responses to paragraphs 1-73 as if set forth herein.

- 75. Defendants deny the allegations of paragraph 75 of the First Amended Complaint.
- 76. Defendants deny the allegations of paragraph 76 of the First Amended Complaint.
- 77. Defendants deny the allegations of paragraph 77 of the First Amended Complaint.
- 78. Defendants deny the allegations of paragraph 78 of the First Amended Complaint.
- 79. Defendants deny the allegations of paragraph 79 of the First Amended Complaint.
- 80. Defendants deny the allegations of paragraph 80 of the First Amended Complaint.
- 81. Defendants deny the allegations of paragraph 81 of the First Amended Complaint.
- 82. Defendants deny the allegations of paragraph 82 of the First Amended Complaint.

COUNT VI

83. Defendants incorporate by reference their responses to paragraphs 1-82 as if set forth herein.

- 84. Defendants deny the allegations of paragraph 84 of the First Amended Complaint.
- 85. Defendants deny the allegations of paragraph 85 of the First Amended Complaint.
- 86. Defendants deny the allegations of paragraph 86 of the First Amended Complaint.
- 87. Defendants deny the allegations of paragraph 87 of the First Amended Complaint.
- 88. Defendants deny the allegations of paragraph 88 of the First Amended Complaint.
- 89. Defendants deny the allegations of paragraph 89 of the First Amended Complaint.
- 90. Defendants deny the allegations of paragraph 90 of the First Amended Complaint.
- 91. Defendants deny the allegations of paragraph 91 of the First Amended Complaint.

DEFENSES

FIRST DEFENSE (DMCA SAFE HARBORS)

Plaintiffs' claims are barred in whole or in part because Defendants are protected by one or more of the DMCA Safe Harbors in 17 U.S.C. § 512.

SECOND DEFENSE (LICENSE)

Plaintiffs' claims are barred in whole or in part by licenses, express and implied, granted or authorized to be granted by Plaintiffs.

THIRD DEFENSE (FAIR USE)

Plaintiffs' claims are barred in whole or in part by the doctrine of fair use.

FOURTH DEFENSE (FAILURE TO MITIGATE)

Plaintiffs' claims are barred in whole or in part because Plaintiffs have failed to mitigate their damages, if any.

FIFTH DEFENSE (FAILURE TO STATE A CLAIM)

Plaintiffs' allegations fail to state a claim for copyright infringement of any work not listed on Exhibit A of the First Amended Complaint.

SIXTH DEFENSE (INNOCENT INTENT)

Plaintiffs' damages, if any, are limited by Defendants' innocent intent.

SEVENTH DEFENSE (COPYRIGHT MISUSE)

Plaintiffs' claims are barred in whole or in part by the doctrine of copyright misuse.

EIGHTH DEFENSE (ESTOPPEL)

Plaintiffs' claims are barred in whole or in part by the doctrine of estoppel.

NINTH DEFENSE (WAIVER)

Plaintiffs' claims are barred in whole or in part by the doctrine of waiver.

TENTH DEFENSE (UNCLEAN HANDS)

Plaintiffs' claims are barred in whole or in part by the doctrine of unclean hands.

ELEVENTH DEFENSE (LACHES)

Plaintiffs' claims are barred in whole or in part by the doctrine of laches.

TWELFTH DEFENSE (SUBSTANTIAL NON-INFRINGEMENT USE)

Plaintiffs' claims are barred in whole or in part based on the doctrine of substantial non-infringing use, although Defendants submit Plaintiffs bear the burden of proving the doctrine's inapplicability.

RELIEF REQUESTED

WHEREFORE, Defendants respectfully request the following relief:

1. A judgment in favor of Defendants denying Plaintiffs all relief requested in their First Amended Complaint in this action and dismissing Plaintiffs' First Amended Complaint with prejudice;
2. That Defendants be awarded their costs of suit, including reasonable attorney's fees; and
3. That the Court award Defendants such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

In accordance with Fed. R. Civ. P. 38(b), Defendants demand a trial by jury on all issues so triable.

Date: May 23, 2008

Respectfully submitted,

s/

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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. 1:07-cv-02103 (LLS)
	v.	)	(Related Case No. 1:07-cv-03582 (LLS))
		)	ECF Case
YOUTUBE INC., YOUTUBE, LLC, and)	
GOOGLE, INC.,)	
)	
	Defendants.)	
)	
_____)	

**VIACOM’S STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF ITS MOTION
FOR PARTIAL SUMMARY JUDGMENT ON LIABILITY AND INAPPLICABILITY
OF THE DIGITAL MILLENNIUM COPYRIGHT ACT SAFE HARBOR DEFENSE**

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March 18, 2010

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LEGEND

For the purposes of Viacom's Statement of Undisputed Facts in Support of Its Motion for Partial Summary Judgment on Liability and Inapplicability of the Digital Millennium Copyright Act Safe Harbor Defense, the following abbreviations shall be used:

"Hohengarten Decl." shall refer to the declaration of William M. Hohengarten, dated March 5, 2010, filed herewith.

"Hohengarten ¶ ___ & Ex. __," shall refer to the paragraphs of the Hohengarten Declaration and the Exhibits attached thereto, respectively. Any Exhibit attached to the Hohengarten Declaration that was produced during the course of this litigation and marked with Bates numbers is identified by its beginning Bates number, followed by a pinpoint citation. Pinpoint citations shall refer to the page number(s), and paragraph or line numbers, of the cited document. In some instances Hohengarten Declaration Exhibits have been manually paginated for ease of the Court's reference. Where used, parentheticals indicate the nature of the item cited – e.g., deposition transcripts ("Dep.") or other declarations ("Decl."). Thus, by way of illustration, "Hohengarten ¶ 7 & Ex. 4, GOO001-00011355, at GOO001-00011356" would refer to Exhibit 4 to the Hohengarten Declaration, which has the beginning Bates number GOO001-00011355, and would refer specifically to the page of that Exhibit marked with Bates number GOO001-00011356. And, "Hohengarten ¶ 366 & Ex. 332 (Eun Dep.) at 200:1-10" would refer to the deposition of Google employee David Eun, which is referenced at Paragraph 366 of and attached as Exhibit 332 to the Hohengarten Declaration.

"Solow Decl." shall refer to the declaration of Warren Solow, a representative of Viacom, dated March 3, 2010, filed herewith. The Solow Declaration is attached as Exhibit 2 to the Hohengarten Declaration.

“SUF ¶” shall refer to specific paragraph numbers in Viacom’s Statement of Undisputed Facts.

Pursuant to Local Civil Rule 56.1, Viacom submits the following Statement of Undisputed Facts in Support of Its Motion for Partial Summary Judgment on Liability and Inapplicability of the Digital Millennium Copyright Act Safe Harbor Defense.

UNDISPUTED FACTS

I. VIACOM'S OWNERSHIP OF THE WORKS IN SUIT

Undisputed Fact	Evidence
1. Viacom creates and acquires exclusive rights in copyrighted audiovisual works, including motion pictures and television programming.	Hohengarten Decl. ¶ 3 & Ex. 2 (Solow Decl. ¶ 2).
2. Viacom distributes its copyrighted television programs and motion pictures through various outlets, including cable and satellite services, movie theaters, home entertainment products (such as DVDs and Blu-Ray discs) and digital platforms.	Hohengarten Decl. ¶ 3 & Ex. 2 (Solow Decl. ¶ 3).
3. Viacom owns many of the world's best known entertainment brands, including Paramount Pictures, MTV, BET, VH1, CMT, Nickelodeon, Comedy Central, and SpikeTV.	Hohengarten Decl. ¶ 3 & Ex. 2 (Solow Decl. ¶ 4).
4. Viacom's thousands of copyrighted works include the following famous movies: <i>Braveheart</i> , <i>Gladiator</i> , <i>The Godfather</i> , <i>Forrest Gump</i> , <i>Raiders of the Lost Ark</i> , <i>Breakfast at Tiffany's</i> , <i>Top Gun</i> , <i>Grease</i> , <i>Iron Man</i> , and <i>Star Trek</i> .	Hohengarten Decl. ¶ 3 & Ex. 2 (Solow Decl. ¶ 5).
5. Viacom's thousands of copyrighted works include the following famous television shows: <i>The Daily Show with Jon Stewart</i> , <i>The Colbert Report</i> , <i>South Park</i> , <i>Chappelle's Show</i> , <i>Spongebob Squarepants</i> , <i>The Hills</i> , <i>iCarly</i> , and <i>Dora the Explorer</i> .	Hohengarten Decl. ¶ 3 & Ex. 2 (Solow Decl. ¶ 6).
6. Viacom owns or controls the copyrights or exclusive rights under copyright in the	Hohengarten Decl. ¶ 3 & Ex. 2 (Solow Decl. ¶¶ 7-14, 17).

<p>3,085 audiovisual works identified in Exhibits A-E to the Solow Decl. filed herewith (“Works in Suit”).</p>	
--	--

II. INFRINGEMENT OF THE WORKS IN SUIT ON YOUTUBE

Undisputed Fact	Evidence
<p>7. Defendants have reproduced and distributed for viewing, and performed on the YouTube website, 62,637 video clips that infringe the Works in Suit (“Clips in Suit”); the Clips in Suit are identified in Attachment F to the Solow Decl. filed herewith.</p>	<p>Hohengarten Decl. ¶ 3 & Ex. 2 (Solow Decl. ¶¶ 16-26).</p>
<p>8. The Clips in Suit were collectively viewed on the YouTube website more than 507 million times.</p>	<p>Hohengarten Decl. ¶ 4.</p>
<p>9. Viacom has not authorized the distribution or reproduction or performance of the Clips in Suit on Defendants’ YouTube.com service.</p>	<p>Hohengarten Decl. ¶ 3 & Ex. 2 (Solow Decl. ¶ 26).</p>

III. DEFENDANTS’ KNOWLEDGE AND INTENT CONCERNING INFRINGEMENT ON YOUTUBE


A. The YouTube Founders’ Knowledge and Intent Concerning Infringement on YouTube

Background Facts Regarding the Founding of YouTube, the Founders of YouTube, and Google’s Acquisition of YouTube	
Undisputed Fact	Evidence
<p>10. YouTube was founded in February 2005 by Chad Hurley, Steve Chen, and Jawed Karim.</p>	<p>Hohengarten ¶ 393 & Ex. 356 (January 5, 2007 Declaration of Steve Chen in Support of [YouTube’s] Motion for Summary Adjudication of [YouTube’s] First Affirmative Defense of DMCA Safe Harbor, <i>Robert Tur v. YouTube, Inc.</i>, Case No. CV 06-4436 FMC) (“declaration of Steve Chen dated January 5, 2007”) at ¶ 2.</p>

	Hohengarten ¶ 346 & Ex. 312 (C. Hurley Dep.) at 12:21-13:7.
11. Prior to founding YouTube, Chad Hurley, Steve Chen, and Jawed Karim worked together at the Internet start-up PayPal.	Hohengarten ¶ 222 & Ex. 204, JK00009887, at JK00009890-91. Hohengarten ¶ 346 & Ex. 312 (C. Hurley Dep.) at 16:20-17:16). Hohengarten ¶ 402 & Ex. 365. Hohengarten ¶ 347 & Ex. 313 (Karim Dep.) at 8:24-9:14, 16:3-16:23.
12. When eBay acquired PayPal for \$1.5 billion in 2002, PayPal’s stockholders, including [REDACTED] Chad Hurley, Steve Chen, and [REDACTED], received substantial profits from the deal.	Hohengarten ¶ 6 & Ex. 3, GOO001-00303096, at GOO001-00303100. Hohengarten ¶ 346 & Ex. 312 (C. Hurley Dep.) at 19:11-21:12. Hohengarten [REDACTED].
13. The YouTube website first became publicly accessible in a “beta” version in April 2005.	Hohengarten ¶ 393 & Ex. 356 (declaration of Steve Chen dated January 5, 2007) at ¶ 3. Hohengarten ¶ 7 & Ex. 4, GOO001-00011355, GOO001-00011357.
14. YouTube publicized the “official launch” of the YouTube website in December 2005.	Hohengarten ¶ 307 & Ex. 279 (YouTube page entitled “YouTube Company History”).
15. A December 15, 2005 YouTube press release described YouTube as a “consumer media company” that “deliver[s] entertaining, authentic and informative videos across the Internet.”	Hohengarten ¶ 299 & Ex. 271 (YouTube press release dated December 15, 2005).
16. On October 9, 2006, Google announced its agreement with YouTube for Google to acquire YouTube for \$1.65 billion in Google stock.	Hohengarten ¶ 304 & Ex. 276 (Google press release dated October 9, 2006).
17. Google’s acquisition of YouTube closed on	Hohengarten ¶ 305 & Ex. 277 (Google

<p>November 13, 2006.</p>	<p>press release dated November 13, 2006). Hohengarten ¶ 366 & Ex. 332 (Eun Dep.) at 58:3-14.</p>
<p>18. In connection with the acquisition, Google issued an aggregate of 3,217,560 shares, and restricted stock units, options and a warrant exercisable for or convertible into an aggregate of 442,210 shares, of Google Class A common stock.</p>	<p>Hohengarten ¶ 305 & Ex. 277 (Google press release dated November 13, 2006).</p>
<p>19. On November 13, 2006, the closing date of the transaction, Google Class A common stock closed at a price of \$481.03; at that price, the 3,659,770 shares issued and issuable in connection with Google’s acquisition of YouTube were worth an aggregate \$1.77 billion.</p>	<p>Hohengarten ¶ 306 & Ex. 278 (screenshot of Google’s finance webpage showing that the closing price for Google shares on November 13, 2006 was \$481.03).</p>
<p>20. 12.5 percent of the equity issued and issuable pursuant to Google’s acquisition of YouTube was placed in escrow to secure indemnification obligations.</p>	<p>Hohengarten ¶ 305 & Ex. 277 (Google press release dated November 13, 2006).</p>
<p>21. As a result of Google’s acquisition of YouTube, YouTube co-founder Chad Hurley received Google shares worth approximately \$334 million at the November 13, 2006 closing price.</p>	<p>Hohengarten ¶ 400 & Ex. 363 (Google Inc., S-3ASR Registration Statement dated February 7, 2007)) at 5 (page numbers at bottom center) (showing 694,087 issued to Chad Hurley). Hohengarten ¶ 306 & Ex. 278 (screenshot of Google’s finance webpage showing that the closing price for Google shares on November 13, 2006 was \$481.03). Hohengarten ¶ 346 & Ex. 312 (C. Hurley Dep.) at 22:8-18 (stating that as a result of the sale of YouTube to Google his net worth increased by around \$300 million).</p>
<p>22. As a result of Google’s acquisition of YouTube, YouTube co-founder Steve Chen received Google shares worth approximately \$301 million at the November 13, 2006 closing price.</p>	<p>Hohengarten ¶ 400 & Ex. 363 (Google Inc., S-3ASR Registration Statement (February 7, 2007)) at 5 (page numbers at bottom center) (showing 625,366 issued to Steve Chen).</p>

	<p>Hohengarten ¶ 306 & Ex. 278 (screenshot of Google’s finance webpage showing that the closing price for Google shares on November 13, 2006 was \$481.03).</p>
<p>23. As a result of Google’s acquisition of YouTube, YouTube co-founder Jawed Karim received Google shares worth approximately \$66 million at the November 13, 2006 closing price.</p>	<p>Hohengarten ¶ 400 & Ex. 363 (Google Inc., S-3ASR Registration Statement (February 7, 2007)) at 5 (page numbers at bottom center) (showing 137,443 issued to Jawed Karim).</p> <p>Hohengarten ¶ 306 & Ex. 278 (screenshot of Google’s finance webpage showing that the closing price for Google shares on November 13, 2006 was \$481.03).</p> <p>Hohengarten ¶ 347 & Ex. 313 (Karim Dep.) at 106:20-107:8 [REDACTED].</p>
<p>24. As a result of Google’s acquisition of YouTube, Sequoia Capital, the largest venture capital investor in YouTube, received Google shares worth approximately \$516 million at the November 13, 2006 closing price.</p>	<p>Hohengarten ¶ 400 & Ex. 363 (Google Inc., S-3ASR Registration Statement dated February 7, 2007)) at 6, 10 (page numbers at bottom center) (showing 941,027 shares issued to Sequoia Capital XI, L.P.; 102,376 shares issued to Sequoia Capital XI Principals Fund; and 29,724 shares issued to Sequoia Technology Partners XI).</p> <p>Hohengarten ¶ 306 & Ex. 278 (screenshot of Google’s finance webpage showing that the closing price for Google shares on November 13, 2006 was \$481.03).</p>
<p>25. Sequoia Capital invested approximately \$9 million in YouTube in late 2005 and early 2006.</p>	<p>Hohengarten ¶ 329 & Ex. 297, SC008711, at SC008781 (showing that Sequoia Capital invested \$4.99 million in Series B financing).</p> <p>Hohengarten ¶ 328 & Ex. 296, SC008403, at SC008470-71 (showing approximately \$3.4 million invested in cash and over \$100,000 invested as debt conversion in</p>

	<p>Series A financing).</p> <p>Hohengarten ¶ 351 & Ex. 317 (Botha Dep.) at 53:20-54:5; 137:15-24.</p>
<p>26. As a result of Google’s acquisition of YouTube, Artis Capital, another venture capital investor in YouTube, received Google shares worth approximately \$85 million at the November 13, 2006 closing price.</p>	<p>Hohengarten ¶ 400 & Ex. 363 (Google Inc., S-3ASR Registration Statement dated February 7, 2007)) at 5 (page numbers at bottom center) (showing 176,621 shares issued to Artis Capital entities).</p> <p>Hohengarten ¶ 306 & Ex. 278 (screenshot of Google’s finance webpage showing that the closing price for Google shares on November 13, 2006 was \$481.03).</p> 
<p>27. Artis Capital invested approximately \$3 million in YouTube in early 2006.</p>	<p>Hohengarten ¶ 329 & Ex. 297, SC008711, at SC008781-83 (showing that Artis Capital invested \$3 million in Series B financing).</p>
<p>28. “As of December 31, 2006,” Google’s “cash, cash equivalents, and marketable securities were \$11.2 billion.”</p>	<p>Hohengarten ¶ 303 & Ex. 275 (Google Investor Relations page announcing Fourth Quarter and Fiscal Year 2006 Results).</p>

YouTube’s Founders’ and Other Employees’ Knowledge of and Intent to Benefit From Massive Copyright Infringement on YouTube	
Undisputed Fact	Evidence
29. In a February 11, 2005 email to YouTube co-founders Chad Hurley and Steve Chen, with the subject “aiming high,” YouTube co-founder Jawed Karim wrote that, in terms of “the number of users and popularity,” he wanted to “firmly place [YouTube] among” “napster,” “kazaa,” and “bittorrent.”	Hohengarten ¶ 8 & Ex. 5, GOO001-02757578, at GOO001-02757578.
30. In an April 23, 2005 email to YouTube co-founders Steve Chen and Chad Hurley, YouTube co-founder Jawed Karim wrote: “It’s all ‘bout da videos, yo. We’ll be an excellent acquisition target once we’re huge.”	Hohengarten ¶ 223 & Ex. 205, JK00009137, at JK00009137.
31. In an April 25, 2005 email to YouTube co-founders Steve Chen and Jawed Karim, YouTube co-founder Chad Hurley noted the presence of a “South Park” clip on YouTube and questioned whether it should be left on the site because “its [sic] copyrighted material.”	Hohengarten ¶ 224 & Ex. 206, JK00004704, at JK00004704.
32. YouTube’s content review manager Heather Gillette testified that early in YouTube’s existence “South Park” was “the content that appeared to be most popular and shared at that stage that we suspected could be unauthorized.”	Hohengarten ¶ 368 & Ex. 334 (Gillette Dep.) at 7:22-9:20, 46:20-47:24. Hohengarten ¶ 400 & Ex. 363 (Google Inc., S-3ASR Registration Statement (February 7, 2007)) at 16 (page numbers at bottom center) (stating Heather Gillette’s job title).
33. In a June 15, 2005 email to YouTube co-founders Chad Hurley and YouTube co-founder Jawed Karim, YouTube co-founder Steve Chen stated “we got a complaint from someone that we were violating their user agreement. i *think* it may be because we’re hosting copyrighted content. instead of taking it down – i’m not about to take down content because our ISP is giving us shit – we should just investigate moving www.youtube.com.”	Hohengarten ¶ 225 & Ex. 207, JK00005039, at JK00005039.

<p>34. In a June 15, 2005 email to YouTube co-founders Steve Chen and Jawed Karim, YouTube co-founders Chad Hurley stated: “so, a way to avoid the copyright bastards might be to remove the ‘No copyrighted or obscene material’ line and let the users moderate the videos themselves. legally, this will probably be better for us, as we’ll make the case we can review all videos and tell them if they’re concerned they have the tools to do it themselves.”</p>	<p>Hohengarten ¶ 226 & Ex. 208, JK00005043, at JK00005043.</p>
<p>35. In a June 20, 2005 email to YouTube co-founders Chad Hurley and Steve Chen, YouTube co-founder Jawed Karim wrote: “If we want to sign up lots of users who keep coming back, we have to target the people who will never upload a video in their life. And those are really valuable because they spend time watching. And if they watch, then it’s just like TV, which means lots of value.”</p>	<p>Hohengarten ¶ 228 & Ex. 210, JK00009383, at JK00009383.</p>
<p>36. On June 21, 2005, YouTube co-founder Jawed Karim stated in an email to YouTube co-founders Chad Hurley and Steve Chen that “Where our value comes in is USERS. . . . [O]ur buy-out value is positively affected by . . . more Youtube users The only thing we have control over is users. We must build features that sign up tons of users, and keep them coming back.”</p>	<p>Hohengarten ¶ 227 & Ex. 209, JK00009381, at JK00009381.</p>
<p>37. On July 4, 2005, YouTube co-founder Chad Hurley sent an email to YouTube co-founders Steve Chen and Jawed Karim titled “budlight commercials,” stating “we need to reject these too”; Steve Chen responded by asking to “leave these in a bit longer? another week or two can’t hurt;” Jawed Karim subsequently stated that he “added back all 28 bud videos. stupid . . .,” and Steve Chen replied: “okay first, regardless of the video they upload, people are going to be telling people about the site, therefore making it viral. they’re going to drive traffic. second, it adds more content to the site. third, we’re going to be adding advertisements in the future so this gets them</p>	<p>Hohengarten ¶ 229 & Ex. 211, JK00005928, at JK00005928. Hohengarten ¶ 230 & Ex. 212, JK00005929, at JK00005929.</p>

<p>used to it. I'm asking for a couple more weeks."</p>	
<p>38. In a July 10, 2005 email to YouTube co-founders Chad Hurley and Steve Chen, YouTube co-founder Jawed Karim reported that he had found a "copyright video" and stated: "Ordinarily I'd say reject it, but I agree with Steve, let's ease up on our strict policies for now. So let's just leave copyrighted stuff there if it's news clips. I still think we should reject some other (C) things tho . . ."; Chad Hurley replied, "ok man, save your meal money for some lawsuits! ;) no really, I guess we'll just see what happens."</p>	<p>Hohengarten ¶ 231 & Ex. 213, JK00006057, at JK00006057.</p>
<p>39. In a July 10, 2005 email to YouTube co-founders Jawed Karim and Steve Chen, YouTube co-founder Chad Hurley wrote: "yup, we need views. I'm a little concerned with the recent supreme court ruling on copyrighted material though."</p>	<p>Hohengarten ¶ 234 & Ex. 216, JK00006055, at JK00006055.</p>
<p>40. In a July 19, 2005 email to YouTube co-founders Chad Hurley and Jawed Karim, YouTube co-founder Steve Chen wrote: "jawed, please stop putting stolen videos on the site. We're going to have a tough time defending the fact that we're not liable for the copyrighted material on the site because we didn't put it up when one of the co-founders is blatantly stealing content from other sites and trying to get everyone to see it."</p>	<p>Hohengarten ¶ 235 & Ex. 217, JK00006166, at JK00006166.</p>
<p>41. On July 19, 2005, YouTube co-founder Steve Chen sent an email to YouTube co-founder Jawed Karim, copying YouTube co-founder Chad Hurley, stating "why don't i just put up 20 videos of pornography and obviously copyrighted materials and then link them from the front page. what were you thinking."</p>	<p>Hohengarten ¶ 236 & Ex. 218, JK00009595, at JK00009595.</p>
<p>42. On July 22, 2005, YouTube co-founder Steve Chen forwarded to all YouTube employees a "YouTube Marketing Analysis" stating that "users not only upload their own work, but can potentially upload publicly available</p>	<p>Hohengarten ¶ 239 & Ex. 221, JK00006259, at JK00006266, JK00006268.</p>

<p>content for viewing. Risk area here is copyright as many videos which are uploaded are not the property of the uploader. . . . Although the policy when uploading states that the video must be legit, YouTube may be liable for any damages which copyright holders may press.”</p>	
<p>43. In a July 23, 2005 email to YouTube co-founders Steve Chen and Jawed Karim, YouTube co-founder Chad Hurley responded to a YouTube link sent by Jawed Karim by saying: “if we reject this, we need to reject all the other copyrighted ones. . . . should we just develop a flagging system for a future push?”; Karim responded: “I say we reject this one, but not the other ones. This one is totally blatant.”</p>	<p>Hohengarten ¶ 240 & Ex. 222, JK00009668, at JK00009668.</p>
<p>44. In a July 29, 2005 email about competing video websites, YouTube co-founder Steve Chen wrote to YouTube co-founders Chad Hurley and Jawed Karim, “steal it!”, and Chad Hurley responded: “hmm, steal the movies?” Steve Chen replied: “we have to keep in mind that we need to attract traffic. how much traffic will we get from personal videos? remember, the only reason why our traffic surged was due to a video of this type. . . . viral videos will tend to be THOSE type of videos.”</p>	<p>Hohengarten ¶ 241 & Ex. 223, JK00006392, at JK00006392.</p>
<p>45. In an August 1, 2005 email to all YouTube employees, YouTube co-founder Chad Hurley stated: “This user is starting to upload tons of ‘Family Guy’ copyrighted clips... I think it’s time to start rejecting some of them. Any objections?”</p>	<p>Hohengarten ¶ 9 & Ex. 6, GOO001-00660588, at GOO001-00660588.</p>
<p>46. In an August 9, 2005 email to YouTube co-founders Steve Chen and Jawed Karim, YouTube co-founder Chad Hurley stated: “we need to start being diligent about rejecting copyrighted/inappropriate content. we are getting serious traffic and attention now, I don’t want this to be killed by a potentially bad experience of a network exec or someone</p>	<p>Hohengarten ¶ 242 & Ex. 224, JK00006689, at JK00006689-90.</p>

<p>visiting us. like there is a cnn clip of the shuttle clip on the site today, if the boys from Turner would come to the site, they might be pissed? these guys are the ones that will buy us for big money, so lets make them happy. we can then roll a lot of this work into a flagging system soon.”</p>	
<p>47. In response to YouTube co-founder Chad Hurley’s August 9, 2005 email (<i>see</i> SUF ¶ 46) YouTube co-founder Steve Chen stated: “but we should just keep that stuff on the site. I really don’t see what will happen. what? someone from cnn sees it? he happens to be someone with power? he happens to want to take it down right away. he get in touch with cnn legal. 2 weeks later, we get a cease & desist letter. we take the video down”; Chad Hurley replied: I just don’t want to create a bad vibe... and perhaps give the users or the press something bad to write about.”</p>	<p>Hohengarten ¶ 242 & Ex. 224, JK00006689, at JK00006689.</p>
<p>48. On August 10, 2005, YouTube co-founder Jawed Karim responded to YouTube co-founder Chad Hurley (see SUF ¶ [previous para]): “lets remove stuff like movies/tv shows. lets keep short news clips for now. we can become stricter over time, just not overnight. like the CNN space shuttle clip, I like. we can remove it once we’re bigger and better known, but for now that clip is fine.” Steve Chen replied, “sounds good.”</p>	<p>Hohengarten ¶ 242 & Ex. 224 JK00006689, at JK00006689.</p>
<p>49. On August 11, 2005, YouTube co-founders Chad Hurley, Steve Chen, and Jawed Karim met with Sequoia Capital regarding a possible investment by Sequoia Capital in YouTube.</p>	<p>Hohengarten ¶ 243 & Ex. 225, JK00006627, at JK00006627. Hohengarten ¶ 10 & Ex. 7, GOO001-01907664, at GOO001-01907664. Hohengarten ¶ 244 & Ex. 226 at JK00009791.</p>
<p>50. On August 11, 2005, outside Sequoia’s offices in Palo Alto, YouTube co-founder Jawed Karim asked the two other YouTube co-founders, as captured on video, “At what point would we tell them our dirty little secret, which is that we actually just want to sell out</p>	<p>Hohengarten ¶ 261 & Ex. 240, JK00010387_MVI_0922.avi. Hohengarten ¶ 262 & Ex. 241 (true and correct transcript of Hohengarten Ex. 240).</p>

<p>quickly,” and Chad Hurley responded, “we’ll have to erase the file.”</p>	<p>Hohengarten ¶ 346 & Ex. 312 (C. Hurley Dep.) 106:11-108:20.</p>
<p>51. In an August 14, 2005 email YouTube co-founder Jawed Karim reported to the two other YouTube co-founders Chad Hurley and Steve Chen that the three co-founders (using YouTube user names “steve,” “jawed,” and “Chad”) were among the top six most active viewers on YouTube, in terms of number of videos watched.</p>	<p>Hohengarten ¶ 188 & Ex. 185, GOO001-01949763, at GOO001-01949763.</p> <p>Hohengarten ¶ 258 & Ex. 379, JK00004669, at JK00004669 (making clear that Steve Chen, Jawed Karim, and Chad Hurley used YouTube user names “steve,” “jawed,” and “chad,” respectively).</p>
<p>52. In a September 1, 2005 email to YouTube co-founder Steve Chen and all YouTube employees, YouTube co-founder Jawed Karim stated, “well, we SHOULD take down any: 1) movies 2) TV shows. we should KEEP: 1) news clips 2) comedy clips (Conan, Leno, etc) 3) music videos. In the future, I’d also reject these last three but not yet.”</p>	<p>Hohengarten ¶ 11 & Ex. 8, GOO001-01424049, at GOO001-01424049.</p>
<p>53. On September 2, 2005, in response to an email from YouTube co-founder Chad Hurley reporting that he had taken down clips of the TV show “Family Guy,” YouTube co-founder Steve Chen stated: “should we just assume that a user uploading content really owns the content and is agreeing to all the terms of use? so we don’t take down anything other than obscene stuff?”</p>	<p>Hohengarten ¶ 245 & Ex. 227, JK00007378, at JK00007378.</p>
<p>54. In a September 3, 2005 email to the two other YouTube co-founders with the subject line “copyrighted material!!!”, YouTube co-founder Chad Hurley wrote, “aaahhhhh, the site is starting to get out of control with copyrighted material... we are becoming another big-boys or stupidvideos.”</p>	<p>Hohengarten ¶ 233 & Ex. 215, JK00007416, at JK00007418.</p> <p><i>See also</i> Hohengarten ¶ 259 & Ex. 380, JK00005597, at JK00005597 (“I really want to start rejecting copyrighted material now. . . . We are not another ‘StupidVideos’ or ‘Bittorrent.’”).</p>
<p>55. In a September 3, 2005 email responding to YouTube co-founder Chad Hurley’s concern that “the site is starting to get out of control with copyrighted material” (<i>see</i> SUF ¶ 54),</p>	<p>Hohengarten ¶ 233 & Ex. 215, JK00007416, at JK00007417-18.</p>

<p>YouTube co-founder Steve Chen stated to the other two YouTube co-founders that, “what’s the difference between big-boys/stupidvideos vs youtube? . . . if you look at the top videos on the site, it’s all from this type of content. in a way, if you remove the potential copyright infringements, wouldn’t you still say these are ‘personal’ videos? if you define ‘personal’ to be videos on your personal hard drive that you want to upload and share with people? anyway, if we do remove that stuff, site traffic and virality will drop to maybe 20% of what it is . . . i’d hate to prematurely attack a problem and end up just losing growth due to it.”</p>	
<p>56. In response (see SUF ¶ 55), YouTube co-founder Jawed Karim wrote: “well I’d just remove the obviously copyright infringing stuff. movies and tv shows, I’d get rid of. . . . we’ll leave music videos, news clips, and clips of comedy shows for now. I think thats a pretty good policy for now, no?”</p>	<p>Hohengarten ¶ 233 & Ex. 215, JK00007416, at JK00007417.</p>
<p>57. In a September 3, 2005 email to the two other YouTube co-founders, YouTube co-founder Steve Chen responded to Jawed Karim’s suggestion that YouTube remove “obviously copyright infringing stuff” (see SUF ¶ 56) by stating that “i know that if [we] remove all that content. we go from 100,000 views a day down to about 20,000 views or maybe even lower. the copyright infringement stuff. i mean, we can presumably claim that we don’t know who owns the rights to that video and by uploading, the user is claiming they own that video. we’re protected by DMCA for that. we’ll take it down if we get a ‘cease and desist’”; Jawed Karim replied: “my suggested policy is really lax though. . . . if we keep that policy I don’t think our views will decrease at all.”</p>	<p>Hohengarten ¶ 233 & Ex. 215, JK00007416, at JK00007416.</p>
<p>58. On September 3, 2005, YouTube co-founder Steve Chen stated in response to YouTube co-founder Jawed Karim’s “really lax” policy (see SUF ¶ 57): “yes, then i agree with you.</p>	<p>Hohengarten ¶ 233 & Ex. 215, JK00007416, at JK00007416. Hohengarten ¶ 246 & Ex. 228,</p>

<p>take down whole movies, take down entire TV shows, take down XXX stuff. everything else keep including sports, commercials, news, etc. keeping it, we improve video uploads, videos viewed, and user registrations”; Chad Hurley replied: “lets just work in that flagging feature soon . . . then we won’t be liable.”</p>	<p>JK00007420, at JK00007420.</p>
<p>59. In a September 4, 2005 email to YouTube co-founder Jawed Karim and others at YouTube, a YouTube user stated: “Jawed - You have a lot of people posting Chappelle Show clips and stuff like that. Aren’t you guys worried that someone might sue you for copywrite [sic] violation like Napster?”; Karim replied: “ahaha.”</p>	<p>Hohengarten ¶ 247 & Ex. 229, JK00007423, at JK00007423.</p>
<p>60. In a September 7, 2005 email, YouTube co-founder Steve Chen wrote to YouTube co-founders Chad Hurley and Jawed Karim, and Roelof Botha of Sequoia Capital (and later a YouTube board member) that YouTube had “implemented a flagging system so you can flag a video as being inappropriate or copyrighted. That way, the perception is that we are concerned about this type of material and we’re actively monitoring it. The actual removal of this content will be in varying degrees. We may want to keep some of the borderline content on the site but just remove it from the browse/search pages. that way, you can’t find the content easily. Again, similar to Flickr, . . . you can find truckloads of adult and copyrighted content. It’s just that you can’t stumble upon it, you have to be actively searching for it.”</p>	<p>Hohengarten ¶ 248 & Ex. 230, JK00007479, at JK00007479.</p> <p>Hohengarten ¶ 351 & Ex. 317 (Botha Dep.) at 8:19-9:12 (describing Roelof Botha’s position at Sequoia), 53:16-53:21 (describing Sequoia’s investment in YouTube), 93:19-93:21 (identifying Roelof Botha as a YouTube board member).</p>
<p>61. In a September 8, 2005 email to all YouTube employees with the subject line “committed changes,” YouTube co-founder Steve Chen wrote: “Flagging for Inappropriate/ Copyrighted Content: . . . this is hooked up now.”</p>	<p>Hohengarten ¶ 260 & Ex. 381, JK00007560, at JK00007560.</p>
<p>62. On September 12, 2005, the “Official YouTube Blog” stated: “We are ecstatic to announce the changes we made to the site last</p>	<p>Hohengarten ¶ 298 & Ex. 270 (September 12, 2005 YouTube Blog entry) (emphasis in original).</p>

<p>night. . . . First up, video flagging. At the bottom of the video watch page, you will notice a new section for flagging a video. If you encounter a video that’s inappropriate or copyrighted, please use this feature to notify us. We will aggressively monitor these submissions and respond as quickly as we can.”</p>	
<p>63. YouTube’s community flagging system originally allowed users to flag videos as copyrighted or as otherwise inappropriate, for reasons such as sexual content or violence, by clicking a button at the bottom of the video watch page and selecting the reason for the flagging from a menu of options supplied by YouTube.</p>	<p><i>See supra</i> SUF ¶¶ 61-62. Hohengarten ¶ 368 & Ex. 334 (Gillette Dep.) at 94:12-96:23, 148:17-150:7. Hohengarten ¶ 350 & Ex. 316 (B. Hurley Dep.) at 191:10-192:11.</p>
<p>64. On September 23, 2005, YouTube co-founder Chad Hurley emailed YouTube co-founders Steve Chen and Jawed Karim, stating: “can we remove the flagging link for ‘copyrighted’ today? we are starting to see complaints for this and basically if we don’t remove them we could be held liable for being served a notice. it’s actually better if we don’t have the link there at all because then the copyright holder is responsible for serving us notice of the material and not the users. anyways, it would be good if we could remove this asap.”</p>	<p>Hohengarten ¶ 250 & Ex. 232, JK00008043, at JK00008043.</p>
<p>65. On or shortly after September 23, 2005, YouTube discontinued community flagging for copyright infringement, while retaining community flagging for inappropriate content and other types of terms of use violations.</p>	<p>Hohengarten ¶ 397 & Ex. 360 (Defendants’ Amended Reponses and Objections to Plaintiffs’ First Set of Interrogatories, Interrogatory No. 2 (Set 1)) at 8-9. Hohengarten ¶ 368 & Ex. 334 (Gillette Dep.) at 94:12-97:15; 148:17-150:7 (testifying about the way a user flags a video and the manner in which YouTube’s personnel review every flagged video). Hohengarten ¶ 376 & Ex. 342 (Levine Dep.) at 50:21-53:20, 56:17-22.</p>

<p>66. When a YouTube user flags a video, the video is put into a queue for review by a team of YouTube reviewers who make a decision whether to remove the video from YouTube.</p>	<p>Hohengarten ¶ 368 & Ex. 334 (Gillette Dep.) at 42:2-5, 92:14-17, 150:23-151:8.</p> <p>Hohengarten ¶ 376 & Ex. 342 (Levine Dep.) at 51:24-52:6, 56:17-22.</p> <p>Hohengarten ¶ 350 & Ex. 316 (B. Hurley Dep.) at 191:10-192:11.</p> <p>Hohengarten ¶ 12 & Ex. 9, GOO001-05951723, at GOO001-05951725, GOO001-05951729.</p> <p>Hohengarten ¶ 301 & Ex. 273 (October 8, 2006 YouTube Blog post entitled “How Flagging Works”).</p>
<p>67. YouTube employs an “army of content reviewers” who review flagged videos “24 hours a day, 365 days a year.”</p>	<p>Hohengarten ¶ 13 & Ex. 10, GOO001-02482760, at GOO001-02482760 (“army of content reviewers”).</p> <p>Hohengarten ¶ 14 & Ex. 11, GOO001-00561567, at GOO001-00561577 (“24 hours a day, 365 days a year”).</p>
<p>68. YouTube has issued guidelines to content reviewers regarding the approval and rejection of flagged videos.</p>	<p>Hohengarten ¶ 15 & Ex. 12, GOO001-00744094, at GOO001-00744095-152.</p>
<p>69. The February 23, 2007 guidelines issued by YouTube to its content reviewers instructed them regarding the approval and removal of videos that depict children, sexual content, body parts, crude content, and various illegal acts, but not copyright; one of the examples of “PG-13 sexual content” that reviewers were supposed to approve was a clip from the Daily Show.</p>	<p>Hohengarten ¶ 15 & Ex. 12, GOO001-00744094, at GOO001-00744096, GOO001-00744120.</p>
<p>70. Community flagging has expedited removal of pornography and other content YouTube regards as undesirable.</p>	<p>Hohengarten ¶ 12 & Ex. 9, GOO001-05951723, at GOO001-05951728.</p> <p>Hohengarten ¶ 16 & Ex. 13, GOO001-00044974, at GOO001-00044979.</p> <p>Hohengarten ¶ 368 & Ex. 334 (Gillette</p>

	<p>Dep.) at 150:8-18 (testifying that she was “confident” that pornography is typically flagged and removed within the first 100 views).</p>
<p>71. During the two-week period that community flagging for copyright infringement was available on YouTube, users identified and flagged unauthorized copyrighted material that YouTube reviewed and removed.</p>	<p>Hohengarten ¶ 397 & Ex. 360 (Defendants’ Amended Responses and Objections to Plaintiffs’ First Set of Interrogatories, Interrogatory No. 2) at 8-9.</p>
<p>72. Some YouTube employees advocated bringing back community flagging for copyright infringement, but that tool was never reinstated after it was disabled on or about September 23, 2005.</p>	<p>Hohengarten ¶ 17 & Ex. 14, GOO001-07167907, at GOO001-07167907.</p> <p>Hohengarten ¶ 397 & Ex. 360 (Defendants’ Amended Response and Objections to Plaintiffs’ First Set of Interrogatories, Interrogatory No. 2) at 8-9.</p>
<p>73. YouTube has touted the success of the community flagging system in expediting removal of videos flagged as inappropriate.</p>	<p>Hohengarten ¶ 12 & Ex. 9, GOO001-05951723, at GOO001-05951728.</p> <p>Hohengarten ¶ 16 & Ex. 13, GOO001-00044974, at GOO001-00044979.</p> <p>Hohengarten ¶ 368 & Ex. 334 (Gillette Dep.) at 150:8-18.</p>
<p>74. On October 11, 2005, YouTube director of finance Brent Hurley suggested to YouTube co-founders Chad Hurley, Steve Chen, and Jawed Karim: “[i]f we reject a video, flag the user who uploaded it so that anytime they upload a new video, we need to approve it before going live”; YouTube never implemented that suggestion.</p>	<p>Hohengarten ¶ 232 & Ex. 214, JK00000382, at JK00000382.</p> <p>Hohengarten ¶ 350 & Ex. 316 (B. Hurley Dep.) at 10:9-10:18 (stating Brent Hurley’s title).</p> <p><i>See also</i> Hohengarten ¶ 184 & Ex 181, GOO001-00827716, at GOO001-00827716-17 (Roelef Botha of Sequoia Capital asking whether YouTube could “queue[] high risk tags . . . so that they are reviewed before going live?” and YouTube product manager Maryrose Dunton writing to YouTube co-founder Chad Hurley, “I think we can add this fairly easily”).</p>

<p>75. In the same October 11, 2005 email, YouTube director of finance Brent Hurley also suggested that YouTube should build a tool that would automatically flag for review “any video with *hot* tags, such as Family Guy, Angry Kid, etc. (We can add to this *hot* list as needed),” but such a tool was never implemented.</p>	<p>Hohengarten ¶ 232 & Ex. 214, JK00000382, at JK00000382.</p>
<p>76. In an October 11, 2005 email, YouTube director of finance Brent Hurley suggested to YouTube co-founders Chad Hurley, Steve Chen, and Jawed Karim that YouTube should “flag/highlight any video with a run time >10 minutes, since most of those are copyrighted shows.”</p>	<p>Hohengarten ¶ 232 & Ex. 214, JK00000382, at JK00000382.</p>
<p>77. On October 18, 2005, YouTube director of finance Brent Hurley sent an email to YouTube co-founder Steve Chen, Chad Hurley, Jawed Karim and YouTube software engineer Mike Solomon stating: “Yes, I rejected all of the videos that were listed in this email yesterday. Looks like the users simply uploaded the videos again today. **We need to beef up admin. Create a tag watch list, like Family Guy, Baker skateboarding, etc. Also, once we reject a video, flag the user so that we must review all of their new videos before they go live. Otherwise, this will continue to happen. :(”</p>	<p>Hohengarten ¶ 251 & Ex. 233, JK00008331, at JK00008331.</p> <p>Hohengarten ¶ 392 & Ex. 386 at (Solomon Dep.) at 12:5-14:2 (testifying to Solomon’s job description).</p>
<p>78. In a November 8, 2005 email regarding a contest in which an uploading YouTube user would be awarded an iPod Nano, YouTube product manager Maryrose Dunton, the YouTube employee responsible for the user functionality of the YouTube website, asked whether user “Bigjay” was eligible; YouTube interface designer Christina Brodbeck responded, “Cool However, most of his stuff is copyrighted,” and added, “Does this matter? Probably not, as UCBearcats1125 is almost entirely copyrighted. Heh.”; in response, Maryrose Dunton stated: “Ya . . . I don’t think we care too much if they’ve posted</p>	<p>Hohengarten ¶ 18 & Ex. 15, GOO001-00504044, at GOO001-00504044.</p> <p>Hohengarten ¶ 363 & Ex. 329 (Dunton Dep.) at 10:23-23:21 (describing Maryrose Dunton’s job responsibilities).</p> <p>Hohengarten ¶ 400 & Ex. 363 (Google Inc., S-3ASR Registration Statement (Feb. 7, 2007)) at 16 (page numbers at bottom center) (stating Christina Brodbeck’s job title).</p>

copyrighted videos.”	
79. As a result of Google’s acquisition of YouTube, YouTube interface designer Christina Brodbeck received Google shares worth \$9.09 million.	<p>Hohengarten ¶ 400 & Ex. 363 (Google Inc., S-3ASR Registration Statement (Feb. 7, 2007)) at 5 (page numbers at bottom center) (showing 18,898 shares issued to Christina Brodbeck).</p> <p>Hohengarten ¶ 306 & Ex. 278 (screenshot of Google’s finance webpage showing that the closing price for Google shares on November 13, 2006 was \$481.03).</p>
80. On November 18, 2005, a YouTube user with the email address “anonymosdude@gmail.com” sent an email to YouTube co-founders Chad Hurley, Steve Chen, and Jawed Karim, YouTube director of finance Brent Hurley, and YouTube engineering manager Cuong Do stating: “How is it that ‘Family Guy cartoon clips are deleted, [but] ECW, WWE, WCW, clips and other TV clips are free to watch? What is the difference with the copyright?”	<p>Hohengarten ¶ 252 & Ex. 234, JK00000824, at JK00000824.</p> <p>Hohengarten ¶ 357 & Ex. 323 (Do 30(b)(6) Dep.) at 8:15-9:15 (stating Cuong Do’s title).</p>
81. On Monday, November 21, 2005, a YouTube user with the email address “lvpsganchito@hotmail.com” sent an email to YouTube co-founders Chad Hurley, Steve Chen, Jawed Karim, YouTube director of finance Brent Hurley, and YouTube engineering manager Cuong Do, stating: “I’m a little confused about the rejection of my last and other videos. I have seen other ‘family guy’ videos on here and when I put one on here its against the rules. Please explan. [sic] I also have other vids that are cartoons from TV Funhouse from SNL, that are still active and live. What is the difference?”	<p>Hohengarten ¶ 253 & Ex. 235, JK00000836, at JK00000836.</p>
82. In a November 24, 2005 email, YouTube director of finance Brent Hurley asked all YouTube employees for “help” reviewing videos “over the long weekend,” and instructed them that, “[a]s far as copyright stuff is concerned, be on the look out for	<p>Hohengarten ¶ 19 & Ex. 16, GOO001-00629095, at GOO001-00629095.</p> <p>Hohengarten ¶ 350 & Ex. 316 (B. Hurley Dep.) at 80:18-82:8.</p>

<p>Family Guy, South Park, and full-length anime episodes,” but that “music videos and news programs are fine to approve.”</p>	
<p>83. In a January 2, 2006 email, YouTube co-founder Jawed Karim recommended adding “a very simple feature that temporarily prevents a user from removing a video” because “next time we have another lazy sunday hit, it would hurt us if the user suddenly removed the video, either out of stupidity, or by accident. . . . what if we add a flag to certain videos so that when the owner tries to remove the hugely popular video it just gives some error message and does not remove the video.”</p>	<p>Hohengarten ¶ 20 & Ex. 17, GOO001-00629474, at GOO001-00629474.</p>
<p>84. In a January 3, 2006 instant message exchange between YouTube product manager Maryrose Dunton (IM user name maryrosedunton) and YouTube software engineer Jake McGuire (IM user name oJAKEMo) Dunton stated: “between [a YouTube-MySpace dispute] and the Saturday Night Clips that got put on our site (which also made the Times) we’re now getting close to 7 million views a day.”</p>	<p>Hohengarten ¶ 206 & Ex. 194 GOO001-00507405, at 3 & at GOO001-00507405.</p> <p>Hohengarten ¶ 198 & Ex. 374, GOO001-06010126, at GOO001-06010126 (confirming that oJAKEMo is Jake McGuire’s IM user name).</p> <p>Hohengarten ¶ 363 & Ex. 329 (Dunton Dep.) at 34:15-18 (testifying that maryrosedunton is Maryrose Dunton’s IM user name).</p> <p>Hohengarten ¶ 356 & Ex. 322 (Do Dep.) at 136:19-137:2 (stating Jake McGuire’s job title).</p>
<p>85. In a January 25, 2006 instant message exchange, YouTube co-founder Steve Chen (IM user name tunawarrior) told his colleague YouTube product manager Maryrose Dunton (IM user name maryrosedunton) that he wanted to “concentrate all of our efforts in building up [YouTube’s] numbers as aggressively as we can through whatever tactics, however evil,” including “user metrics” and “views,” and “then 3 months, sell it with 20m views per day and like 2m users or something . . . I think we can sell for somewhere between \$250m - \$500m . . . in the</p>	<p>Hohengarten ¶ 204 & Ex. 192, GOO001-00507525, at 4-5 & at GOO001-00507526-27.</p> <p>Hohengarten ¶ 363 & Ex. 329 (Dunton Dep.) at 35:14-15 (confirming that tunawarrior is Steve Chen’s IM user name).</p>

<p>next 3 months . . . and there *is* a potential to get to \$1b or something.”</p>	
<p>86. In late January 2006 email exchange, YouTube co-founder Steve Chen expressed concern about “our most popular videos” being removed from YouTube; YouTube content review manager Heather Gillette responded with an email about “the manual process that we have now in rejecting videos for copyright,” and stated “if a really popular video is about to be rejected there [should be] a pop-up that says, ‘this video has been viewed 20,000 times, are you sure you want to reject?’”</p>	<p>Hohengarten ¶ 21 & Ex. 18, GOO001-00839842, at GOO001-00839843-44.</p>
<p>87. In a February 4, 2006 instant message conversation, YouTube product manager Maryrose Dunton (IM user name maryrosedunton) told YouTube systems administrator Bradley Heilbrun (IM user name nurblieh) that YouTube co-founder Chad Hurley sent her an email “and told me we can’t feature videos or have contest winners with copyrighted songs in them”; Heilbrun responded “man. That’s like half our videos”; Dunton replied “I know.”</p>	<p>Hohengarten ¶ 210 & Ex. 198, GOO001-01931799, at 5 & at GOO001-01931806.</p> <p>Hohengarten ¶ 363 & Ex. 329 (Dunton Dep.) at 30:23-31:2 (stating Bradley Heilbrun’s job title); 35:16-23 (confirming that nurblieh is Bradley Heilbrun’s IM user name).</p>
<p>88. In a February 4, 2006 instant message conversation, YouTube product manager Maryrose Dunton (IM user name maryrosedunton) told YouTube systems administrator Bradley Heilbrun (IM user name nurblieh) that YouTube director of finance Brent Hurley told her to take down a copyrighted Ed Sullivan show clip that she uploaded to YouTube, and she said “maybe I’ll just make it private ;).”</p>	<p>Hohengarten ¶ 210 & Ex. 198, GOO001-01931799, at 4-5 & at GOO001-01931806.</p>
<p>89. In early February 2006, NBC Universal sent letters to YouTube requesting the removal of the “Lazy Sunday: Chronicles of Narnia” clip from the television show Saturday Night Live.</p>	<p>Hohengarten ¶ 22 & Ex. 19, GOO001-00007027, at GOO001-00007028-29.</p> <p>Hohengarten ¶ 23 & Ex. 20, GOO001-02403826, at GOO001-02403826-27.</p>
<p>90. YouTube refused to remove the Lazy Sunday clips unless NBC Universal provided specific</p>	<p>Hohengarten ¶ 22 & Ex. 29, GOO001-00007027, at GOO001-00007028-29.</p>

URLs for the clips.	Hohengarten ¶ 23 & Ex. 20, GOO001-02403826, at GOO001-02403826-27.
91. On February 14, 2006, YouTube vice president of marketing and programming Kevin Donahue emailed YouTube product manager Maryrose Dunton stating: “I just got off the phone with NBC and I’m trying to get them to let us keep the Lazy Sunday clip on the site. I need to convince them of the promotional value of doing that considering the fact that their legal dept. is having us remove ALL of their stuff. Julie and I are worried that if Lazy Sunday is taken down, then it could be taken as a bad sign by the journalists who are writing about us now and may search for it.”	Hohengarten ¶ 24 & Ex. 21, GOO001-02824049, at GOO001-02824049. Hohengarten ¶ 359 & Ex. 325 (Donahue Dep.) at 20:23-21:3, 75:11-76:4 (stating Kevin Donahue’s job title).
92. On February 16, 2006, YouTube informed its users in a YouTube Official Blog post titled “Lazy Sunday”: “Hi Tubers! NBC recently contacted YouTube and asked us to remove Saturday Night Live’s ‘Lazy Sunday: Chronicles of Narnia’ video. We know how popular that video is but YouTube respects the rights of copyright holders. You can still watch SNL’s ‘Lazy Sunday’ video for free on NBC’s website”; in the same blog post, YouTube informed its users of “[s]ome good news: we are happy to report that YouTube is now serving up more than 15 million videos streamed per day- that’s nearly 465M videos streamed per month with 20,000 videos being uploaded daily.”	Hohengarten ¶ 300 & Ex. 272 (February 16, 2006 YouTube Blog entry “Lazy Sunday”).
93. In a February 17, 2006 instant message conversation, YouTube systems administrator Bradley Heilbrun (IM user name nurblieh) asked YouTube product manager Maryrose Dunton (IM user name maryrosedunton), “was it me, or was the lawyer thing today a cover-your-ass thing from the company?” Dunton responded, “oh totally . . . did you hear what they were saying? it was really hardcore . . . if we even see copyrighted material on the site, as employees we’re supposed [sic] to report it”; Heilbrun replied, “sure, whatever,” and Dunton said “I guess the fact that I started like	Hohengarten ¶ 209 & Ex. 197, GOO001-00507331, at 2-3 & at GOO001-00507331-32.

<p>5 groups based on copyrighted material probably isn't so great"; in response Heilbrun said "right exactly . . . but it's a cover your ass . . . so the board can say we told maryrose not to do this."</p>	
<p>94. In an instant message exchange between YouTube co-founder Steve Chen (IM user name tunawarrior) and YouTube product manager Maryrose Dunton (maryrosedunton) dated February 28, 2006, Steve Chen stated that, "we're the first mass entertainment thing accessible from the internet," that YouTube was "revolutionizing entertainment," and that "we are bigger than the internet, . . . we should be comparing ourselves to, say, abc/fox/whatever."</p>	<p>Hohengarten ¶ 205 & Ex. 193, GOO001-00507535, at 6-7 & at GOO001-00507538.</p>
<p>95. In the same instant message conversation, YouTube product manager Maryrose Dunton (IM user name maryrosedunton) reported the results of a "little exercise" she performed wherein she "went through all the most viewed/most discussed/top favorites/top rated to try and figure out what percentage is or has copyrighted material. it was over 70%." She added, "what I meant to say is after I found that 70%, I went and flagged it all for review."</p>	<p>Hohengarten ¶ 205 & Ex. 193, GOO001-00507535, at 8 & at GOO001-00507539.</p>
<p>96. When deposed, YouTube product manager Maryrose Dunton confirmed in reference to the February 28, 2006 instant message exchange with YouTube co-founder Steve Chen (<i>see</i> SUF ¶ 95) that she was being sarcastic and did not actually flag any of the copyrighted videos for review.</p>	<p>Hohengarten ¶ 363 & Ex. 329 (Dunton Dep.) at 84:12-85:9.</p>
<p>97. As a result of Google's acquisition of YouTube, YouTube product manager Maryrose Dunton received Google shares worth \$4.13 million.</p>	<p>Hohengarten ¶ 400 & Ex. 363 (Google Inc., S-3ASR Registration Statement dated February 7, 2007) at 5 (showing 8,590 shares issued to "Maryrose Dunton" [sic]).</p> <p>Hohengarten ¶ 306 & Ex. 278 (screenshot of Google's finance webpage showing that the closing price for Google shares on November 13,</p>

	2006 was \$481.03).
98. A February 2006 YouTube Board Presentation noted that YouTube received 20 million views per day and expressly pointed out the day when the “SNL Narnia clip,” also known as “Lazy Sunday,” was “added” to YouTube.	Hohengarten ¶ 25 & Ex. 22, GOO001-00762174, at GOO001-00762181.
99. A March 2006 YouTube company presentation to potential investor TriplePoint Capital touted the success of the “NBC/SNL ‘Lazy Sunday’ clip” as one example of “Incredible Results with Branded Video” and noted that the clip “[r]eceived 5 million views in about a month.”	Hohengarten ¶ 334 & Ex. 302, TP000479, at TP000490.
100. On March 1, 2006, <i>Newsweek</i> published an article titled “Video Napster?” with the subheading “Only a year old, YouTube has already rocketed past Google and Yahoo to become No. 1 in Web video. But can it survive the fear of a copyright crunch?”; the article discusses the presence on YouTube of infringing content from major media companies.	Hohengarten ¶ 26 & Ex. 23, GOO001-07728393, at GOO001-07728393.
101. In response to the March 1, 2006 <i>Newsweek</i> article, YouTube vice president of marketing and programming Kevin Donahue sent an email asking another YouTube employee to “please go through the newsweek article and work with heather to remove all of the listed copyright infringing video.”	Hohengarten ¶ 27 & Ex. 24, GOO001-00522244, at GOO001-00522244.
102. In an instant message conversation discussing the March 1, 2006 <i>Newsweek</i> article, Bradley Heilbrun (IM user name nurblieh) stated to YouTube product manager Maryrose Dunton (IM user name maryrosedunton) in an instant message: “this affects my chance at being rich, and that upsets me.”	Hohengarten ¶ 207 & Ex. 195, GOO001-01931840, at 3 & at GOO001-01931841.
103. As a result of Google’s acquisition of YouTube, YouTube systems administrator Bradley Heilbrun received Google shares worth \$6.2 million.	Hohengarten ¶ 400 & Ex. 363 (Google Inc., S-3ASR Registration Statement (February 7, 2007)) at 5 (page numbers at bottom center) (showing 12,885 shares issued to “Bradley Heilburn”

	<p>[sic]).</p> <p>Hohengarten ¶ 306 & Ex. 278 (screenshot of Google’s finance webpage showing that the closing price for Google shares on November 13, 2006 was \$481.03).</p>
<p>104. In a March 1, 2006 instant message conversation with YouTube systems administrator Bradley Heilbrun (IM user name nurblieh), YouTube product manager Maryrose Dunton (IM user name maryrose dunton) said “the truth of the matter is, probably 75-80% of our views come from copyrighted material.” She agreed that YouTube has some “good original content” but “it’s just such a small percentage.”</p>	<p>Hohengarten ¶ 207 & Ex. 195, GOO001-01931840, at 6-7 & at GOO001-01931843.</p>
<p>105. In a March 8, 2006 email, a YouTube employee sent a message to other YouTube employees attaching a screenshot of a search for “dailyshow.”</p>	<p>Hohengarten ¶ 254 & Ex. 236, JK00002261, at JK00002261-62.</p>
<p>106. In a March 14, 2006 email, YouTube engineer Matt Rizzo stated: “this is some ugly javascript so these copyright cop assholes can click through the pages and store what they checked. I hope they die and rot in hell!”</p>	<p>Hohengarten ¶ 28 & Ex. 25, GOO001-05172407, at GOO001-05172407.</p>
<p>107. In a March 15, 2006 instant message conversation YouTube engineer Matt Rizzo (IM user name mattadoor) described copyright owners as “fucking assholes,” asking “just how much time do you guys want to give to these fucking assholes,” and YouTube product manager Maryrose Dunton (IM user name maryrosedunton) responded: “hah. not any time really.”</p>	<p>Hohengarten ¶ 213 & Ex. 201, GOO001-00829681, at 9-10 & at GOO001-00829687.</p> <p>Hohengarten ¶ 363 & Ex. 329 (Dunton Dep.) at 261:20-261:21 (confirming that mattadoor is Matt Rizzo’s IM user name); 275:13-276:10 (confirming that “fucking assholes” refers to copyright owners).</p> <p>Hohengarten ¶ 400 & Ex. 363 (Google Inc., S-3ASR Registration Statement (February 7, 2007)) at 16 (page numbers at bottom center) (listing Matt Rizzo’s job title).</p>

<p>108. As a result of Google's acquisition of YouTube, YouTube engineer Matt Rizzo received Google shares worth \$3.7 million.</p>	<p>Hohengarten ¶ 400 & Ex. 363 (Google Inc., S-3ASR Registration Statement (February 7, 2007)) at 6 (page numbers at bottom center) (showing 7,731 shares issued to Matt Rizzo).</p> <p>Hohengarten ¶ 306 & Ex. 278 (screenshot of Google's finance webpage showing that the closing price for Google shares on November 13, 2006 was \$481.03).</p>
<p>109. In a March 22, 2006 memorandum distributed to the members of YouTube's Board of Directors at a board meeting, YouTube co-founder Jawed Karim wrote under the heading "Copyrighted content": "Although the new 10-minute length restriction [on clips uploaded to YouTube] serves well to reinforce the official line that YouTube is not in the business of hosting full-length television shows, it probably won't cut down the actual amount of illegal content uploaded since standard 22-minute episodes can still easily be uploaded in parts, and users will continue to upload the 'juiciest' bits of television shows."</p>	<p>Hohengarten ¶ 255 & Ex. 237, JK00000173, at JK00000173.</p> <p>Hohengarten ¶ 347 & Ex. 313 (Karim Dep.) at 178:18-179:19.</p>
<p>110. In the same March 22, 2006 memorandum, YouTube co-founder Jawed Karim wrote: "As of today episodes and clips of the following well-known shows can still be found: Family Guy, South Park, MTV Cribs, Daily Show, Reno 911, Dave Chapelle. This content is an easy target for critics who claim that copyrighted content is entirely responsible for YouTube's popularity. Although YouTube is not legally required to monitor content (as we have explained in the press) and complies with DMCA takedown requests, we would benefit from <i>preemptively</i> removing content that is blatantly illegal and likely to attract criticism. This will help to dispel YouTube's association with Napster (Newsweek: "<u>Is YouTube the Napster of Video?</u>", "<u>Showbiz unsure if YouTube a friend or foe.</u>")"</p>	<p>Hohengarten ¶ 255 & Ex. 237, JK00000173, at JK00000173.</p>
<p>111. At his deposition, YouTube co-founder Jawed</p>	<p>Hohengarten ¶ 347 & Ex. 313 (Karim</p>

Karim stated that he distributed his March 22, 2006 memorandum at a YouTube board meeting.	Dep.) at 178:19-183:4.
112. In March 2006, YouTube considered implementing an automated tool that would search the metadata for each uploaded video to identify potentially infringing clips and send emails to content owners to notify them of the potential infringement so that they could review the video and request its removal.	Hohengarten ¶ 363 & Ex. 329 (Dunton Dep.) at 303:4-305:9, 307:18-308:4.
113. At his deposition, YouTube director of finance Brent Hurley testified that the automated video metadata search tool would have allowed content owners to “define at their direction what . . . keywords that they would like to save as sort of a predefined search,” that the tool would have sent those content owners “emails . . . daily, weekly, monthly . . . at their direction,” and that his ‘vision’ of the tool would have allowed Viacom to search for terms like “Daily Show.”	Hohengarten ¶ 350 & Ex. 316 (B. Hurley Dep.) at 216:21-218:17. Hohengarten ¶ 29 & Ex. 26, GOO001-00630641, at GOO001-00630641.
114. In a March 11, 2006 instant message exchange, YouTube engineer Matt Rizzo (IM user name mattadoor) told YouTube product manager Maryrose Dunton (IM user name maryrosedunton), that implementing the tool “isn’t hard” and would only “take another day or w/e [weekend] . . . but I still don’t understand why we have to cater to these guys”; Dunton voiced her opposition to the tool, stating “[I] hate this feature. I hate making it easier for these a-holes,” “ok, forget about the email alerts stuff,” and “we’re just trying to cover our asses so we don’t get sued.”	Hohengarten ¶ 214 & Ex. 202, GOO001-00829702, at 4 & at GOO001-00829704.
115. YouTube never implemented the search tool described in SUF ¶ 114.	Hohengarten ¶ 214 & Ex. 202, GOO001-00829702, at 4 & at GOO001-00829704 (“forget about the email alerts stuff.”).
116. In an April 3, 2006 email, a YouTube employee characterized a <i>Fort Worth Star-</i>	Hohengarten ¶ 30 & Ex. 27, GOO001-03060898, at GOO001-03060899.

<p><i>Telegram</i> article as a “great regional piece . . . that really captured the passion of the YouTube user and would have convinced me as her reader to check out the service.” The article described “South Park” and “Daily Show” videos on YouTube.</p>	
<p>117. In a May 14, 2006 email exchange with YouTube’s copyright personnel, a YouTube user whose South Park clip had been taken down wrote: “You guys have TONS of South Park Clips... is mine the only one in violation? You have WWF/WWE Media. WCW Media. Tons of Media that is liable for infringement of copyrights and your site promotes it. Seems odd.”</p>	<p>Hohengarten ¶ 31 & Ex. 28, GOO001-00558783, at GOO001-00558783-84.</p>
<p>118. In a May 14, 2006 email exchange with YouTube’s copyright personnel, a YouTube user responded to YouTube’s claim that it “remove[s] videos when we receive a complaint from a rights holder” by saying: “knowing that you contain a lot of copyrighted [sic] media, why don't you guys remove it instead of wait around for a complaint? Basically everyone else gets away with it while I am now warned about it. Seems odd again. So what would happen if I report the entire youtube website and it’s content? Would you guys remove your illegal media then?”</p>	<p>Hohengarten ¶ 31 & Ex. 28, GOO001-00558783, at GOO001-00558783-84.</p>
<p>119. In a May 25, 2006 instant message conversation, YouTube product manager Matthew Liu (IM user name coda322) stated: “one of the vids in my playlist got removed . . . for copyright infringement . . . assholes . . . im going [sic] to go hit the customer service lady.”</p>	<p>Hohengarten ¶ 216 & Ex. 376, GOO001-07169708, at 8 & at GOO001-07169713.</p> <p>Hohengarten ¶ 200 & Ex. 278, GOO001-07181365, at GOO001-07181365 (noting that coda322 is Matthew Liu’s AOL account name).</p> <p>Hohengarten ¶ 193 & Ex. 190, GOO001-06525907, at GOO001-06525907 (noting that coda322 is a YouTube account name used by Matthew Liu).</p>

<p>120. In a June 4, 2006 instant message conversation, YouTube product manager Matthew Liu (IM user name coda322) directed a friend to two YouTube profile playlist pages containing content that he recognized as infringing, stating, “go watch some superman . . . dont show other people though . . . it can get taken off”; Liu’s friend asked, “why would it get taken off[?]”; Liu responded, “cuz its copyrighted . . . technically we shouldn’t allow it . . . but we’re not going to take it off until the person that holds the copyright . . . is like . . . you shouldnt have that . . . then we’ll take it off .”</p>	<p>Hohengarten ¶ 217 & Ex. 377, GOO001-07169928, at 2 & at GOO001-07169928.</p>
<p>121. In a June 26, 2006 instant message conversation with an unknown individual, YouTube product manager Matthew Liu responded to the question “what percentage of the videos on youtube are violating copyright infringement” by stating, “its a lot lower than you would think . . . but in terms of . . . percentage of videos that are watched . . . it is significantly higher.”</p>	<p>Hohengarten ¶ 215 & Ex. 203, GOO001-07169720, at 2 & at GOO001-07169720.</p>
<p>122. On June 27, 2006, YouTube co-founders Chad Hurley and Steve Chen, YouTube product manager Maryrose Dunton and YouTube senior software engineer Erik Klein received a <i>Wall Street Journal</i> article about YouTube that stated: “critics say the most-viewed items often involve some type of copyright infringement. On a recent day, top-viewed videos included clips from . . . ‘The Daily Show.’”</p>	<p>Hohengarten ¶ 32 & Ex. 29, GOO001-02761607, at GOO001-02761607.</p> <p>Hohengarten ¶ 33 & Ex. 30, GOO001-00420319, at GOO001-00420321.</p> <p>Hohengarten ¶ 392 & Ex. 386 (Solomon Dep.) at 18:13-18:23 (testifying to Erik Klein’s job title).</p>
<p>123. When a user uploads a video the user may choose whether to make the video public (viewable to any user unless restricted by age or geography) or private (viewable to only the uploading user and users invited by the uploading user).</p>	<p>Hohengarten ¶ 356 & Ex. 322 (Do Dep.) at 172:16-173:8, 180:8-181:4.</p> <p>Hohengarten ¶ 347 & Ex. 313 (Karim Dep.) at 134:3-16.</p> <p>Hohengarten ¶ 368 & Ex. 334 (Gillette Dep.) at 154:8-21.</p> <p>Hohengarten ¶ 385 & Ex. 351 (Schaffer Dep.) at 162:19-24.</p>

<p>124.Private videos are not searchable by a content owner seeking to identify instances of infringement on YouTube.</p>	<p>Hohengarten ¶ 88 & Ex. 85, GOO001-00827503, at GOO001-00827503.</p> <p>Hohengarten ¶ 57 & Ex. 54, GOO001-02055019, at GOO001-02055019.</p> <p>Hohengarten ¶ 361 & Ex. 327 (Drummond Dep.) at 195:13-20.</p>
<p>125.YouTube co-founder Chad Hurley testified in deposition that it is possible for a user to serially upload an entire movie as several private videos and that then the “content owner can’t see them.”</p>	<p>Hohengarten ¶ 346 & Ex. 312 (C. Hurley Dep.) at 238:18-239:9.</p>
<p>126.In June 2006 YouTube employees proactively reviewed private videos uploaded by the 40 users who uploaded the most private videos over a two-day period, concluded that 17 of those user accounts contained copyrighted private videos, and consequently closed those 17 accounts.</p>	<p>Hohengarten ¶ 58 & Ex. 55, GOO001-02693804, GOO001-02693808.</p> <p>Hohengarten ¶ 59 & Ex. 56, GOO001-05150988, at GOO001-05150988.</p>
<p>127.In June 2006 YouTube employees proactively reviewed private videos uploaded by the 40 users who uploaded the most total videos over a two-day period, concluded that 22 of those user accounts contained copyrighted private videos, and closed 17 of those 22 accounts.</p>	<p>Hohengarten ¶ 58 & Ex. 56, GOO001-02693804, at GOO001-02693808.</p> <p>Hohengarten ¶ 59 & Ex. 56, GOO001-05150988, at GOO001-05150988.</p>
<p>128.In an August 3, 2006 instant message conversation with YouTube engineer Matthew Rizzo (IM user name mattador), YouTube product manager Maryrose Dunton (IM user name maryrosedunton) said “so *technically* if you even perform a copyrighted song, it’s considered infringement. but we can leave this up until someone bitches.”</p>	<p>Hohengarten ¶ 208 & Ex. 196, GOO001-07585952, at 2 & at GOO001-07585952.</p>
<p>129.A YouTube board meeting presentation dated August 23, 2006 stated: “YouTube has become the next generation media AND advertising platform.”</p>	<p>Hohengarten ¶ 330 & Ex. 298, SC011742, at SC011760.</p>
<p>130.In an August 24, 2006 email to other YouTube employees, YouTube systems administrator Paul Blair provided a link to a Daily Show</p>	<p>Hohengarten ¶ 35 & Ex. 32, GOO001-03631419, at GOO001-03631419.</p>

<p>clip on YouTube.</p>	<p>Hohengarten ¶ 36 & Ex. 33, GOO001-03406085, at GOO001-03406086 (stating Paul Blair’s job title).</p>
<p>131. YouTube recognized that users might break up a movie or television episode into multiple parts and upload the parts to YouTube, and considered creating a queue for human review of videos close to ten minutes long, but never implemented such a queue.</p>	<p>Hohengarten ¶ 37 & Ex. 34, GOO001-00988969, at GOO001-00988970.</p> <p>Hohengarten ¶ 368 & Ex. 334 (Gillette Dep.) at 49:23-50:10, 216:2-10, 217:15-19.</p> <p>Hohengarten ¶ 38 & Ex. 35, GOO001-00953867, at GOO001-00953868.</p>
<p>132. A YouTube list of the “top keyword searches” in the United States for September 19, 2006 listed many Viacom shows and movies, including “south park” ([REDACTED]), “flavor of love” ([REDACTED]), “dave chappelle” ([REDACTED]), “daily show” ([REDACTED]), “jon stewart” ([REDACTED]), “colbert” ([REDACTED]); “transformers” ([REDACTED]), and “southpark” ([REDACTED]).</p>	<p>Hohengarten ¶ 41 & Ex. 38, GOO001-03045959, at GOO001-03045960-63.</p>

B. Google’s Knowledge and Intent Concerning Infringement on YouTube

<p>Google’s Knowledge of Infringement on YouTube Prior to Acquiring It</p>	
<p>Undisputed Fact</p>	<p>Evidence</p>
<p>133. Before acquiring YouTube, Google had its own Internet video site, Google Video, which allowed users to upload videos.</p>	<p>Hohengarten ¶ 366 & Ex. 332 (Eun Dep.) at 57:3-58:2.</p> <p>Hohengarten ¶ 381 & Ex. 347 (P. Walker Dep.) at 240:6-240:14.</p>
<p>134. Until September 2006, Google Video employees reviewed each video uploaded to the Google Video site for copyright infringement and other terms of use violations before allowing the video to be displayed to users of the site.</p>	<p>Hohengarten ¶ 366 & Ex. 332 (Eun Dep.) at 118:19-121:25, 130:3-130:17.</p> <p>Hohengarten ¶ 42 & Ex. 39, GOO001-00794737, at GOO001-00794742-43 (attachment).</p> <p>Hohengarten ¶ 194 & Ex. 191,</p>

	<p>GOO001-00923210, at GOO001-00923210.</p> <p>Hohengarten ¶ 381 & Ex. 347 (P. Walker Dep.) at 69:6-75:7.</p> <p>Hohengarten ¶ 380 & Ex. 346 (Narasimhan Dep.) at 13:25-16:8, 51:16-53:6.</p> <p>Hohengarten ¶ 44 & Ex. 41, GOO001-03114019, at GOO001-03114019.</p> <p>Hohengarten ¶ 46 & Ex. 43, GOO001-06555098, at GOO001-06555098.</p>
<p>135. Until September 2006, all videos uploaded to the Google Video website were placed in a “video approval bin, essentially a video review queue,” and were reviewed by a Google employee before being made available for viewing on the Google Video website.</p>	<p>Hohengarten ¶ 380 & Ex. 346 (Narasimhan Dep.) at 12:5-16:8.</p>
<p>136. Each video uploaded to Google Video and placed in the video review queue was reviewed by a Google employee for copyright infringement, porn, violence, and other reasons.</p>	<p>Hohengarten ¶ 366 & Ex. 332 (Eun Dep.) at 68:15-71:8, 130:1-130:17.</p> <p>Hohengarten ¶ 194 & Ex. 191, GOO001-00923210, at GOO001-00923210.</p> <p>Hohengarten ¶ 380 & Ex. 346 (Narasimhan Dep.) at 41:16-22, 50:9-53:6.</p> <p>Hohengarten ¶ 44 & Ex. 41, GOO001-03114019, at GOO001-03114019.</p>
<p>137. In a June 26, 2006 email titled “illegal uploads,” Google vice president of content partnerships David Eun asked Google Video content review manager Bhanu Narasimhan, who was in charge of the team reviewing videos in the video review queue: “In the swirl of discussions around copyright enforcement policies, can you tell me how</p>	<p>Hohengarten ¶ 42 & Ex. 39, GOO001-00794737, at GOO001-00794737.</p> <p>Hohengarten ¶ 380 & Ex. 346 (Narasimhan Dep.) at 8:12-10:5 (stating Bhanu Narasimhan’s job title), 10:24-11:3, 148:2-148:8, 152:5-152:20.</p>

<p>many illegal videos we catch each week on average and what types/kinds/categories they fall into? How do they correspond to the stuff that gets uploaded to YouTube?"; Ms. Narasimhan responded: "We catch around 10% of all online user uploaded videos during review. Of these approximately 90% is disapproved due to copyright violation, and the rest due to policy (porn, violence, etc.)."</p>	<p>Hohengarten ¶ 366 & Ex. 332 (Eun Dep.) at 25:7-25:19 (stating David Eun's job title).</p>
<p>138. Google Video stopped proactively reviewing for copyright infringement on or about September 1, 2006.</p>	<p>Hohengarten ¶ 45 & Ex. 42, GOO001-00802317, at GOO001-00802317.</p> <p>Hohengarten ¶ 380 & Ex. 346 (Narasimhan Dep.) at 13:25-16:8.</p> <p>Hohengarten ¶ 46 & Ex. 43, GOO001-06555098, at GOO001-06555098.</p>
<p>139. Google Video also used keyword searching for terms such as "Daily Show," "Jon Stewart," "Dave Chappelle," and "Comedy Central" to locate videos that infringed Viacom's and others' copyrights.</p>	<p>Hohengarten ¶ 47 & Ex. 44, GOO001-00990640, at GOO001-00990641.</p>
<p>140. In a January 15, 2006 email Google executive Peter Chane responded to a colleague who emailed him a link to a YouTube video by saying: "google video doesn't have this one b/c we have a zero tolerance policy for copyrighted content."</p>	<p>Hohengarten ¶ 48 & Ex. 45, GOO001-03592968, at GOO001-03592968.</p> <p>Hohengarten ¶ 353 & Ex. 319 (Chane Dep.) at 8:18-10:25 (stating Peter Chane's job title).</p>
<p>141. In the same January 15, 2006 email, Google executive Peter Chane continued, in reference to a discussion he had with YouTube co-founder Chad Hurley and another YouTube executive Chris Maxcy: "youtube is at an advantage b/c they aren't the target that we are with issues like this. they are aware of this (I spoke with them on friday) and they plan on exploiting this in order to get more and more traffic."</p>	<p>Hohengarten ¶ 48 & Ex. 45, GOO001-03592968, at GOO001-03592968.</p> <p>Hohengarten ¶ 353 & Ex. 319 (Chane Dep.) at 8:18-10:25, 48:10-50:18.</p>
<p>142. In a February 7, 2006 email Google executive Peter Chane wrote to several Google colleagues: "my concern with youtube is their inclusion of clearly copyrighted content in</p>	<p>Hohengarten ¶ 49 & Ex. 46, GOO001-03594244, at GOO001-03594244.</p>

<p>their index. if you query for SNL or Jon Stewart you'll see what I'm talking about. . . . if they were to be a part of google I assume we'd impose our zero tolerance policy with respect to copyright infringement which would significantly reduce their index size and traffic."</p>	
<p>143. In a February 7, 2006 email Google executive Peter Chane wrote to several Google colleagues: "my concern about youtube is their dependence upon copyrighted content for traffic."</p>	<p>Hohengarten ¶ 50 & Ex. 47, GOO001-05084213, at GOO001-05084213.</p>
<p>144. On March 4, 2006 Google executive Patrick Walker emailed Google Video Product Manager Hunter Walk, the business product manager of Google Video, that he was "baffled" by comparisons between YouTube and Google Video because YouTube was "doing little to stem its traffic growth on the back of pirated content," calling that choice "unsustainable and irresponsible."</p>	<p>Hohengarten ¶ 51 & Ex. 48, GOO001-00562962, at GOO001-00562962.</p> <p>Hohengarten ¶ 381 & Ex. 347 (P. Walker Dep.) at 144:15-145:10 (testifying to Hunter Walk's job title).</p> <p>Hohengarten ¶ 366 & Ex. 332 (Eun Dep.) at 166:20-167:12 (testifying to Hunter Walk's job title).</p>
<p>145. On April 27, 2006, Google executive Peter Chane sent an email to the Video Team at Google forwarding the statement by Peter Chernin, then CEO of Fox Entertainment, about YouTube: "Exciting as it shows the potential pent up demand. we did a survey and more than 80 percent of video on this site is copyrighted content"; Google Video business product manager Ethan Anderson replied, "Holy cow."</p>	<p>Hohengarten ¶ 52 & Ex. 49, GOO001-00566289, at GOO001-00566289.</p>
<p>146. By May 2006 YouTube had far surpassed Google Video in terms of number of users, number of playbacks, and number of videos.</p>	<p>Hohengarten ¶ 53 & Ex. 50, GOO001-00495746, at GOO001-00495746 (Eric Schmidt stating: "My primary concern is that . . . we are behind Youtube.").</p> <p>Hohengarten ¶ 54 & Ex. 51, GOO001-00496021, at GOO001-00496024.</p> <p>Hohengarten ¶ 55 & Ex. 52, GOO001-00496614, at GOO001-00496633.</p>

<p>147. In May 2006, Google held a Google Product Strategy (or “GPS”) meeting attended by top executives, including Google CEO Eric Schmidt; the meeting focused on Google Video.</p>	<p>Hohengarten ¶ 384 & Ex. 350 (Rosenberg Dep.) at 50:15-51:7.</p> <p>Hohengarten ¶ 56 & Ex. 53 GOO001-01495915, at GOO001-01495915.</p> <p>Hohengarten ¶ 348 & Ex. 314 (Schmidt Dep.) at 76:20-78:10.</p> <p>Hohengarten ¶ 353 & Ex. 319 (Chane Dep.) at 114:22-115:6.</p>
<p>148. An early May 2006 draft information sheet about YouTube created for Google co-founder Larry Page discussed YouTube’s “Fast-start history” and stated that YouTube’s “[l]ack of focus on copyright violation (especially early on) created Napster-type adoption increases: ‘good content’ available for free without delay.”</p>	<p>Hohengarten ¶ 60 & Ex. 57 GOO001-04430721, at GOO001-04430722.002.</p> <p>Hohengarten ¶ 349 & Ex. 315 (Page Dep.) at 10:22-10:24 (testifying to Larry Page’s job title).</p>
<p>149. In a May 2, 2006, email to Google executive Susan Wojcicki, Google vice president of content partnerships David Eun stated that he “ran into Peter and he had this idea to ‘beat YouTube’ by calling quits on our copyright compliance standards”; in his deposition Eun identified “Peter” as Google executive Peter Chane.</p>	<p>Hohengarten ¶ 53 & Ex. 50, GOO001-00495746, at GOO001-00495746.</p> <p>Hohengarten ¶ 366 & Ex. 332 (Eun Dep.) 115:8-116:5, 201:2-201:9 (testifying to Susan Wojcicki’s job description).</p> <p>Hohengarten ¶ 353 & Ex. 319 (Chane Dep.) at 9:5-10:4.</p> <p>Hohengarten ¶ 366 & Ex. 332 (Eun Dep.) at 201:2-201:9.</p>
<p>150. A May 3, 2006 Google Video document stated: “Why is YouTube the Key Competitor? Not all traffic is created equal. Traffic is high but content is mostly illegal content (copyright infringing but not porn); how would comparable usage stats look for consumption of just legal content?”</p>	<p>Hohengarten ¶ 61 & Ex. 58, GOO001-02361246, at GOO001-02361247.</p>
<p>151. A May 5, 2006 draft presentation from Google vice president of content partnerships David Eun for the GPS meeting summarized the “Views of Premium Content Owners On</p>	<p>Hohengarten ¶ 62 & Ex. 59, GOO001-00496065, at GOO001-00496086.</p>

<p>YouTube” and stated: “YouTube is perceived as trafficking mostly illegal content -- ‘it’s a video Grokster.’”</p>	
<p>152. A May 9, 2006 Google Video presentation titled “Content Acquisition Strategy Update” stated that “YouTube’s business model is completely sustained by pirated content,” and recommended that “we should beat YouTube by improving features and user experience, not being a ‘rogue enabler’ of content theft.”</p>	<p>Hohengarten ¶ 63 & Ex. 60, GOO001-00502665, at GOO001-00502674, GOO001-00502684.</p>
<p>153. In a May 10, 2006 email to Google executive Patrick Walker, Google Video business product manager Ethan Anderson stated: “I can’t believe you’re recommending buying YouTube. . . . they’re 80% illegal pirated content”</p>	<p>Hohengarten ¶ 64 & Ex. 61, GOO001-00482516, at GOO001-00482516.</p> <p>Hohengarten ¶ 381 & Ex. 347 (P. Walker Dep.) at 87:6-87:12 (testifying to Ethan Anderson’s job title).</p>
<p>154. A May 11, 2006 draft presentation for the GPS titled “Google Video” by Google executive Peter Chane stated that YouTube had more daily video uploads and daily video views than Google Video.</p>	<p>Hohengarten ¶ 54 & Ex. 51, GOO001-00496021, at GOO001-00496024, GOO001-00496031.</p>
<p>155. The same May 11, 2006 draft presentation stated that “YouTube is growing” in part because of its “Liberal copyright policy,” including “No proactive screening; reactive DMCA only,” making “YouTube better for users.”</p>	<p>Hohengarten ¶ 54 & Ex. 51, GOO001-00496021, at GOO001-00496031.</p>
<p>156. The same May 11, 2006 draft presentation included a “Copyright policy parity analysis” stating that on YouTube, “Partial works [are] accepted[;] CSPAN, Family Guy, John Stewart, NBA clips, music videos posted on the site[;] YouTube gets content when it’s hot (Lazy Sunday, Stephen Colbert, Lakers wins at the buzzer)”; and stating with respect to Google Video that it “[t]akes us too long to acquire content directly from the rights holder.”</p>	<p>Hohengarten ¶ 54 & Ex. 51, GOO001-00496021, at GOO001-00496035 (emphasis in original).</p>
<p>157. In a May 11, 2006 document titled “Video GPS content pages FINAL,” sent to Google</p>	<p>Hohengarten ¶ 55 & Ex 52, GOO001-00496614, at GOO001-00496627,</p>