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LLC, The Music Force LLC, and Sin-Drome  
Records, Ltd.*

EXHIBIT A

*Infringing copies of the copyrighted works identified below have been found on the YouTube.com website at the URLs listed below, as well as at other URLs*

Title of Infringed Work	URL where Infringing Work Found	Date Posted
PREMIER LEAGUE WORKS		
Chelsea v Tottenham, April 7, 2007	<a href="http://www.youtube.com/watch?v=kXtjVVqeZwM">http://www.youtube.com/watch?v=kXtjVVqeZwM</a>	April 7, 2007
Arsenal v West Ham, April 7, 2007	<a href="http://www.youtube.com/watch?v=dM0c0ftTSVU">http://www.youtube.com/watch?v=dM0c0ftTSVU</a>	April 7, 2007
Arsenal v West Ham, April 7, 2007 (re-posted)	<a href="http://www.youtube.com/watch?v=GO7EHjzCPNU">http://www.youtube.com/watch?v=GO7EHjzCPNU</a>	June 7, 2008
Portsmouth v Manchester United, April 7, 2007	<a href="http://www.youtube.com/watch?v=aB0Pb3RiMoi">http://www.youtube.com/watch?v=aB0Pb3RiMoi</a>	April 8, 2007
Watford v Portsmouth, April 9, 2007	<a href="http://www.youtube.com/watch?v=900wOOdihc">http://www.youtube.com/watch?v=900wOOdihc</a>	April 10, 2007
Fulham v Manchester City, April 9, 2007	<a href="http://www.youtube.com/watch?v=py_1TJ2SXV0">http://www.youtube.com/watch?v=py_1TJ2SXV0</a>	April 9, 2007
Bolton v Everton, April 9, 2007	<a href="http://www.youtube.com/watch?v=03cTR7UkG7g">http://www.youtube.com/watch?v=03cTR7UkG7g</a>	April 9, 2007
Liverpool v Wigan, April 21, 2007	<a href="http://www.youtube.com/watch?v=wqw8K99pwHI">http://www.youtube.com/watch?v=wqw8K99pwHI</a>	April 21, 2007
Fulham v Blackburn, April 21, 2007	<a href="http://www.youtube.com/watch?v=BTa8c2WAyGY">http://www.youtube.com/watch?v=BTa8c2WAyGY</a>	April 22, 2007
West Ham v Everton, April 21, 2007	<a href="http://www.youtube.com/watch?v=tDaEBP2FkNM">http://www.youtube.com/watch?v=tDaEBP2FkNM</a>	April 21, 2007
Manchester United v Middlesbrough, April 21, 2007	<a href="http://www.youtube.com/watch?v=pjLvEaCpZy0">http://www.youtube.com/watch?v=pjLvEaCpZy0</a>	April 22, 2007
Tottenham v Arsenal, April 21, 2007	<a href="http://www.youtube.com/watch?v=1HOxSZdy8jg">http://www.youtube.com/watch?v=1HOxSZdy8jg</a>	April 21, 2007
Tottenham v Arsenal, April 21, 2007	<a href="http://www.youtube.com/watch?v=niPBCy1GMNk">http://www.youtube.com/watch?v=niPBCy1GMNk</a>	April 21, 2007

Chelsea v Bolton, April 28, 2007	<a href="http://www.youtube.com/watch?v=X8_7eCHcbJs">http://www.youtube.com/watch?v=X8_7eCHcbJs</a>	April 28, 2007
Everton v Manchester United, April 28, 2007	<a href="http://www.youtube.com/watch?v=ov3FxCriZdc">http://www.youtube.com/watch?v=ov3FxCriZdc</a>	April 28, 2007
Middlesbrough v Tottenham, April 28, 2007	<a href="http://www.youtube.com/watch?v=aF7xQ3HZ2Yw">http://www.youtube.com/watch?v=aF7xQ3HZ2Yw</a>	April 28, 2007
Middlesbrough v Tottenham, April 28, 2007 (re-posted)	<a href="http://www.youtube.com/watch?v=XdOTw6xdaG8">http://www.youtube.com/watch?v=XdOTw6xdaG8</a>	March 10, 2008
Wigan v West Ham, April 28, 2007	<a href="http://www.youtube.com/watch?v=sRTUDkdTxpg">http://www.youtube.com/watch?v=sRTUDkdTxpg</a>	April 28, 2007
Arsenal v Fulham, April 29, 2007	<a href="http://www.youtube.com/watch?v=dEBSIzmdBag">http://www.youtube.com/watch?v=dEBSIzmdBag</a>	April 29, 2007
Liverpool v Chelsea, August 19, 2007	<a href="http://uk.youtube.com/watch?v=njZz_0eWtsE">http://uk.youtube.com/watch?v=njZz_0eWtsE</a>	August 19, 2007
Liverpool v Chelsea, August 19, 2007 (re- posted)	<a href="http://uk.youtube.com/watch?v=4f0heMW6w9M">http://uk.youtube.com/watch?v=4f0heMW6w9M</a>	August 21, 2007
Liverpool v Chelsea, August 19, 2007 (re- posted)	<a href="http://uk.youtube.com/watch?v=Y1EWQ3DzyMo">http://uk.youtube.com/watch?v=Y1EWQ3DzyMo</a>	August 21, 2007
Liverpool v Chelsea, August 19, 2007 (re- posted)	<a href="http://uk.youtube.com/watch?v=pbAa9JUe-oQ">http://uk.youtube.com/watch?v=pbAa9JUe-oQ</a>	August 22, 2007
Liverpool v Chelsea, August 19, 2007 (re- posted)	<a href="http://uk.youtube.com/watch?v=56R6CnPnwTo">http://uk.youtube.com/watch?v=56R6CnPnwTo</a>	August 26, 2007
Liverpool v Chelsea, August 19, 2007 (re- posted)	<a href="http://uk.youtube.com/watch?v=3KdseQafeHw">http://uk.youtube.com/watch?v=3KdseQafeHw</a>	August 27, 2007
Liverpool v Chelsea, August 19, 2007 (re- posted)	<a href="http://uk.youtube.com/watch?v=MeB1bD652yc">http://uk.youtube.com/watch?v=MeB1bD652yc</a>	August 28, 2007
Liverpool v Chelsea, August 19, 2007 (re- posted)	<a href="http://uk.youtube.com/watch?v=8HFiLggrSx0">http://uk.youtube.com/watch?v=8HFiLggrSx0</a>	August 30, 2007

Manchester United v Tottenham, August 26, 2007	<a href="http://www.youtube.com/watch?v=nY2I2H8pUgU">http://www.youtube.com/watch?v=nY2I2H8pUgU</a>	August 26, 2007
Manchester United v Tottenham, August 26, 2007 (re-posted)	<a href="http://www.youtube.com/watch?v=N4Q0z_aF3xc">http://www.youtube.com/watch?v=N4Q0z_aF3xc</a>	May 17, 2008
Manchester United v Tottenham, August 26, 2007 (re-posted)	<a href="http://www.youtube.com/watch?v=qbZTX9XgvXA">http://www.youtube.com/watch?v=qbZTX9XgvXA</a>	August 27, 2007
Manchester United v Tottenham, August 26, 2007 (re-posted)	<a href="http://www.youtube.com/watch?v=sJ-lAJ9uAU0">http://www.youtube.com/watch?v=sJ-lAJ9uAU0</a>	August 27, 2007
Manchester United v Tottenham, August 26, 2007 (re-posted)	<a href="http://www.youtube.com/watch?v=8c_aATOMUgM">http://www.youtube.com/watch?v=8c_aATOMUgM</a>	August 28, 2007
Manchester United v Tottenham, August 26, 2007 (re-posted)	<a href="http://uk.youtube.com/watch?v=5pj8hAEZf_o">http://uk.youtube.com/watch?v=5pj8hAEZf_o</a>	August 28, 2007
Manchester United v Tottenham, August 26, 2007 (re-posted)	<a href="http://uk.youtube.com/watch?v=cHWZWOHkMSv">http://uk.youtube.com/watch?v=cHWZWOHkMSv</a>	August 30, 2007
Manchester United v Tottenham, August 26, 2007 (re-posted)	<a href="http://uk.youtube.com/watch?v=nX2GoOo2Z_g">http://uk.youtube.com/watch?v=nX2GoOo2Z_g</a>	August 30, 2007
Tottenham v Arsenal, September 15, 2007	<a href="http://www.youtube.com/watch?v=SR6s5phhTmU">http://www.youtube.com/watch?v=SR6s5phhTmU</a>	September 15, 2007
Tottenham v Arsenal, September 15, 2007 (re-posted)	<a href="http://www.youtube.com/watch?v=Iq4pQLwMKtc">http://www.youtube.com/watch?v=Iq4pQLwMKtc</a>	September, 16, 2007
BOURNE WORKS		
Inka Dinka Doo	<a href="http://www.youtube.com/watch?v=ZkukCCSThN8">http://www.youtube.com/watch?v=ZkukCCSThN8</a>	February 23, 2007
Inka Dinka Doo	<a href="http://youtube.com/watch?v=Ert30-HpbcU">http://youtube.com/watch?v=Ert30-HpbcU</a>	August 16, 2006
Inka Dinka Doo	<a href="http://youtube.com/watch?v=sCNFe_rulXg">http://youtube.com/watch?v=sCNFe_rulXg</a>	March 1, 2007
Let's Fall In Love	<a href="http://www.youtube.com/watch?v=oN9KaEDDP10">http://www.youtube.com/watch?v=oN9KaEDDP10</a>	December 13, 2006
Let's Fall In Love	<a href="http://www.youtube.com/watch?v=WqFxBY_YkXI">http://www.youtube.com/watch?v=WqFxBY_YkXI</a>	January 27, 2007
Let's Fall In Love	<a href="http://www.youtube.com/watch?v=sFo1LRcM-Gk">http://www.youtube.com/watch?v=sFo1LRcM-Gk</a>	March 21, 2008

(re-posted)		
Let's Fall In Love	<a href="http://www.youtube.com/watch?v=Twv_L1uBgP0">http://www.youtube.com/watch?v=Twv_L1uBgP0</a>	February 25, 2007
Let's Fall In Love	<a href="http://www.youtube.com/watch?v=Pn3rSLPIpvA">http://www.youtube.com/watch?v=Pn3rSLPIpvA</a>	March 23, 2007
Popcorn	<a href="http://www.youtube.com/watch?v=aSBqyuYKIWE">http://www.youtube.com/watch?v=aSBqyuYKIWE</a>	November 15, 2006
Popcorn	<a href="http://www.youtube.com/watch?v=TKI7Tcjqw0">http://www.youtube.com/watch?v=TKI7Tcjqw0</a>	August 17, 2006
Popcorn	<a href="http://www.youtube.com/watch?v=Pc3orYnY21o">http://www.youtube.com/watch?v=Pc3orYnY21o</a>	June 16, 2006
Popcorn (re-posted)	<a href="http://www.youtube.com/watch?v=vQumKuo6meE">http://www.youtube.com/watch?v=vQumKuo6meE</a>	December 10, 2007
Popcorn	<a href="http://www.youtube.com/watch?v=A85TskjFGxo">http://www.youtube.com/watch?v=A85TskjFGxo</a>	July 4, 2006
San Antonio Rose	<a href="http://www.youtube.com/watch?v=d0rhI62iJxs">http://www.youtube.com/watch?v=d0rhI62iJxs</a>	October 21, 2006
San Antonio Rose	<a href="http://www.youtube.com/watch?v=mHgyc7VrYTA">http://www.youtube.com/watch?v=mHgyc7VrYTA</a>	August 27, 2006
San Antonio Rose	<a href="http://www.youtube.com/watch?v=PTuIFJMEMaY">http://www.youtube.com/watch?v=PTuIFJMEMaY</a>	October 27, 2006
Smile	<a href="http://www.youtube.com/watch?v=7r9qwAZnI64">http://www.youtube.com/watch?v=7r9qwAZnI64</a>	July 15, 2006
Smile (re-posted)	<a href="http://www.youtube.com/watch?v=0k0OPxHtqgc">http://www.youtube.com/watch?v=0k0OPxHtqgc</a>	April 26, 2008
Smile	<a href="http://www.youtube.com/watch?v=IjccQo3DW-8">http://www.youtube.com/watch?v=IjccQo3DW-8</a>	December 17, 2006
Smile (re-posted)	<a href="http://www.youtube.com/watch?v=Y2eLk00mok">http://www.youtube.com/watch?v=Y2eLk00mok</a>	July 06, 2008
Smile	<a href="http://www.youtube.com/watch?v=zTWsUjupO3U">http://www.youtube.com/watch?v=zTWsUjupO3U</a>	January 27, 2007
Smile	<a href="http://www.youtube.com/watch?v=zTWsUjupO3U">http://www.youtube.com/watch?v=zTWsUjupO3U</a>	January 27, 2007
Far Away Places	<a href="http://www.youtube.com/watch?v=RN8o54yGJ6A">http://www.youtube.com/watch?v=RN8o54yGJ6A</a>	February 23, 2007
Far Away Places	<a href="http://www.youtube.com/watch?v=dr2h5u2zykM">http://www.youtube.com/watch?v=dr2h5u2zykM</a>	July 27, 2007
Confessin' (That I Love You)	<a href="http://www.youtube.com/watch?v=vZnLOJ590ks">http://www.youtube.com/watch?v=vZnLOJ590ks</a>	July 17, 2007
Confessin' (That I Love You)	<a href="http://www.youtube.com/watch?v=WtpSzkjFE0">http://www.youtube.com/watch?v=WtpSzkjFE0</a>	July 16, 2007
Confessin' (That I Love You)	<a href="http://www.youtube.com/watch?v=aa2vTi38qSA">http://www.youtube.com/watch?v=aa2vTi38qSA</a>	October 15, 2006
Confessin' (That I Love You) (re-posted)	<a href="http://www.youtube.com/watch?v=KA24SgIK_Ys">http://www.youtube.com/watch?v=KA24SgIK_Ys</a>	July 21, 2008
Confessin' (That I Love You)	<a href="http://www.youtube.com/watch?v=6AgxOT9Cjig">http://www.youtube.com/watch?v=6AgxOT9Cjig</a>	August 02, 2007

MURBO WORKS		
Black Magic Woman	<a href="http://www.youtube.com/watch?v=FQw5AFUEIqk">http://www.youtube.com/watch?v=FQw5AFUEIqk</a>	October 12, 2006
Black Magic Woman (re-posted)	<a href="http://www.youtube.com/watch?v=8nqDiBlvnRM">http://www.youtube.com/watch?v=8nqDiBlvnRM</a>	January 04, 2008
Black Magic Woman	<a href="http://www.youtube.com/watch?v=OMjMPQb2kJY">http://www.youtube.com/watch?v=OMjMPQb2kJY</a>	July 15, 2006
Black Magic Woman (re-posted)	<a href="http://www.youtube.com/watch?v=x80awArXSUY">http://www.youtube.com/watch?v=x80awArXSUY</a>	February 09, 2008
Black Magic Woman	<a href="http://www.youtube.com/watch?v=ltqF9q-H3cE">http://www.youtube.com/watch?v=ltqF9q-H3cE</a>	December 20, 2006
Black Magic Woman (re-posted)	<a href="http://www.youtube.com/watch?v=O1DROK_rOOOc">http://www.youtube.com/watch?v=O1DROK_rOOOc</a>	March 21, 2008
CHERRY LANE WORKS		
Afternoon Delight	<a href="http://www.youtube.com/watch?v=X5axMyJ_-Z8">http://www.youtube.com/watch?v=X5axMyJ_-Z8</a>	November 19, 2006
Afternoon Delight (re-posted)	<a href="http://www.youtube.com/watch?v=eaHYvkiH_QY">http://www.youtube.com/watch?v=eaHYvkiH_QY</a>	February 03, 2008
Afternoon Delight (re-posted)	<a href="http://www.youtube.com/watch?v=FfoinnTh690">http://www.youtube.com/watch?v=FfoinnTh690</a>	June 25, 2008
Afternoon Delight	<a href="http://www.youtube.com/watch?v=wSWYMIxIR20">http://www.youtube.com/watch?v=wSWYMIxIR20</a>	August 12, 2007
Afternoon Delight	<a href="http://www.youtube.com/watch?v=5FGgfluvHVE">http://www.youtube.com/watch?v=5FGgfluvHVE</a>	August 24, 2007
Thank God, I'm a Country Boy	<a href="http://www.youtube.com/watch?v=WRgcYDdzqik">http://www.youtube.com/watch?v=WRgcYDdzqik</a>	May 4, 2007
Thank God, I'm a Country Boy	<a href="http://www.youtube.com/watch?v=793xdkdz-zA">http://www.youtube.com/watch?v=793xdkdz-zA</a>	September 25, 2007
Thank God, I'm a Country Boy	<a href="http://www.youtube.com/watch?v=XEoTYCIGizM">http://www.youtube.com/watch?v=XEoTYCIGizM</a>	February 27, 2007
Thank God, I'm a Country Boy (re-posted)	<a href="http://www.youtube.com/watch?v=7A9uZRDIOhc">http://www.youtube.com/watch?v=7A9uZRDIOhc</a>	January 19, 2008
American Beauty	<a href="http://youtube.com/watch?v=XffvG1Kp6z8">http://youtube.com/watch?v=XffvG1Kp6z8</a>	August 21, 2007
American Beauty (re-posted)	<a href="http://www.youtube.com/watch?v=fsZONbfupJg">http://www.youtube.com/watch?v=fsZONbfupJg</a>	March 16, 2008
American Beauty	<a href="http://youtube.com/watch?v=KmnHFYZXygk">http://youtube.com/watch?v=KmnHFYZXygk</a>	October 16, 2006
Soul Bossa Nova	<a href="http://youtube.com/watch?v=eBPdrvyCz6s">http://youtube.com/watch?v=eBPdrvyCz6s</a>	October 18, 2006

Soul Bossa Nova	<a href="http://youtube.com/watch?v=hIPgWrRKQY4">http://youtube.com/watch?v=hIPgWrRKQY4</a>	September 25, 2006
Soul Bossa Nova	<a href="http://youtube.com/watch?v=iD0wwVmN2Vc">http://youtube.com/watch?v=iD0wwVmN2Vc</a>	February 7, 2007
Soul Bossa Nova	<a href="http://youtube.com/watch?v=JGsf1_KN5t0">http://youtube.com/watch?v=JGsf1_KN5t0</a>	June 16, 2007
Strawberry Letter #23	<a href="http://youtube.com/watch?v=uSDH2tmAxIQ">http://youtube.com/watch?v=uSDH2tmAxIQ</a>	September 1, 2007
Strawberry Letter #23 (re-posted)	<a href="http://www.youtube.com/watch?v=5Oi4kpHXujE">http://www.youtube.com/watch?v=5Oi4kpHXujE</a>	August 18, 2008
CAL IV WORKS		
If You're Going Through Hell	<a href="http://www.youtube.com/watch?v=LGLzgulIWk">http://www.youtube.com/watch?v=LGLzgulIWk</a>	July 3, 2007
If You're Going Through Hell	<a href="http://www.youtube.com/watch?v=xlfjyefCvk">http://www.youtube.com/watch?v=xlfjyefCvk</a>	July 2, 2007
If You're Going Through Hell (re-posted)	<a href="http://www.youtube.com/watch?v=O_50FKHkTYM">http://www.youtube.com/watch?v=O_50FKHkTYM</a>	May 12, 2008
If You're Going Through Hell	<a href="http://www.youtube.com/watch?v=vYf-fT7mSR8">http://www.youtube.com/watch?v=vYf-fT7mSR8</a>	June 28, 2007
If You're Going Through Hell (re-posted)	<a href="http://www.youtube.com/watch?v=ajtrUC2LfJI">http://www.youtube.com/watch?v=ajtrUC2LfJI</a>	March 24, 2008
If You're Going Through Hell (re-posted)	<a href="http://www.youtube.com/watch?v=N_Ki4TyXjfM">http://www.youtube.com/watch?v=N_Ki4TyXjfM</a>	August 5, 2006
If You're Going Through Hell (re-posted)	<a href="http://www.youtube.com/watch?v=zTgPI_HAYh0">http://www.youtube.com/watch?v=zTgPI_HAYh0</a>	December 30, 2007
If You're Going Through Hell	<a href="http://www.youtube.com/watch?v=PiXvLQvXUIw">http://www.youtube.com/watch?v=PiXvLQvXUIw</a>	July 8, 2007
If You're Going Through Hell	<a href="http://www.youtube.com/watch?v=D6ETF63wWMO">http://www.youtube.com/watch?v=D6ETF63wWMO</a>	October 16, 2007
If You're Going Through Hell	<a href="http://www.youtube.com/watch?v=aDgqWXzdTPY">http://www.youtube.com/watch?v=aDgqWXzdTPY</a>	September 13, 2007
Sharing The Night Together	<a href="http://www.youtube.com/watch?v=6IkNx2bDpzM">http://www.youtube.com/watch?v=6IkNx2bDpzM</a>	March 12, 2007
Sharing The Night Together (re-posted)	<a href="http://www.youtube.com/watch?v=8dYHsJ2F_4">http://www.youtube.com/watch?v=8dYHsJ2F_4</a>	January 10, 2008

Sharing The Night Together	<a href="http://www.youtube.com/watch?v=jODR0to0KQs">http://www.youtube.com/watch?v=jODR0to0KQs</a>	June 10, 2007
Sharing The Night Together	<a href="http://www.youtube.com/watch?v=ElbczVEgiy4">http://www.youtube.com/watch?v=ElbczVEgiy4</a>	July 10, 2007
TUR WORKS		
Certain YouTube URLs accessed and/or posted on dates previously provided to Defendants in prior proceedings in <u>Robert Tur, an individual, d/b/a Los Angeles News Service vs. YouTube, Inc.</u> , Case No. CV 06-4436-FMC (AJWx).		
RHO WORKS		
Bali Ha'I	<a href="http://www.youtube.com/watch?v=3uFPyrwyf-4">http://www.youtube.com/watch?v=3uFPyrwyf-4</a>	June 18, 2007
The Carousel Waltz	<a href="http://www.youtube.com/watch?v=HvN3viZHN_Y">http://www.youtube.com/watch?v=HvN3viZHN_Y</a>	July 13, 2007
The Carousel Waltz (re-posted)	<a href="http://www.youtube.com/watch?v=nMb_NMX8zbQ">http://www.youtube.com/watch?v=nMb_NMX8zbQ</a>	May 5, 2008
Climb Ev'ry Mountain	<a href="http://www.youtube.com/watch?v=Jd9dbMyJBeE">http://www.youtube.com/watch?v=Jd9dbMyJBeE</a>	July 9, 2007
Climb Ev'ry Mountain	<a href="http://www.youtube.com/watch?v=CkYzcV4K7IQ">http://www.youtube.com/watch?v=CkYzcV4K7IQ</a>	November 15, 2006
Do-Re-Mi	<a href="http://www.youtube.com/watch?v=zL2MQTuWk4g">http://www.youtube.com/watch?v=zL2MQTuWk4g</a>	February 8, 2007
Do-Re-Mi	<a href="http://www.youtube.com/watch?v=PXT1B2ozykM">http://www.youtube.com/watch?v=PXT1B2ozykM</a>	November 18, 2006
Edelweiss	<a href="http://www.youtube.com/watch?v=2UKkvEObQxM">http://www.youtube.com/watch?v=2UKkvEObQxM</a>	August 5, 2007
Getting to Know You	<a href="http://www.youtube.com/watch?v=5_N_jroffKg">http://www.youtube.com/watch?v=5_N_jroffKg</a>	June 29, 2006
STAGE 3 WORKS		
Walk This Way	<a href="http://youtube.com/watch?v=aBwcydLLD0g">http://youtube.com/watch?v=aBwcydLLD0g</a>	March 9, 2006
Dream On	<a href="http://www.youtube.com/watch?v=RF8VLPglMWo">http://www.youtube.com/watch?v=RF8VLPglMWo</a>	June 20, 2007
Dream On (re-posted)	<a href="http://www.youtube.com/watch?v=Pax76oITun0">http://www.youtube.com/watch?v=Pax76oITun0</a>	April 26, 2008
Dream On	<a href="http://www.youtube.com/watch?v=UNCPH0Ci0FQ">http://www.youtube.com/watch?v=UNCPH0Ci0FQ</a>	March 11, 2007
Dream On (re-posted)	<a href="http://www.youtube.com/watch?v=WEkLOG0aUGQ">http://www.youtube.com/watch?v=WEkLOG0aUGQ</a>	January 4, 2008
Dream On	<a href="http://youtube.com/watch?v=hV4kpOk3pbg">http://youtube.com/watch?v=hV4kpOk3pbg</a>	September 27, 2006
Back in the Saddle	<a href="http://www.youtube.com/watch?v=DkYn8TdFS9o">http://www.youtube.com/watch?v=DkYn8TdFS9o</a>	December 24, 2006



Sweet Emotion	<a href="http://www.youtube.com/watch?v=PFX46G9xGR8">http://www.youtube.com/watch?v=PFX46G9xGR8</a>	June 23, 2006
Sweet Emotion	<a href="http://www.youtube.com/watch?v=hlgNLLIOT5c">http://www.youtube.com/watch?v=hlgNLLIOT5c</a>	July 27, 2006
Sweet Emotion (re-posted)	<a href="http://www.youtube.com/watch?v=3ePFFMfsnlk">http://www.youtube.com/watch?v=3ePFFMfsnlk</a>	December 9, 2007
Sweet Emotion	<a href="http://www.youtube.com/watch?v=53nh61e8exo">http://www.youtube.com/watch?v=53nh61e8exo</a>	February 7, 2007
Sweet Emotion (re-posted)	<a href="http://www.youtube.com/watch?v=47GFyYmrvgs">http://www.youtube.com/watch?v=47GFyYmrvgs</a>	August 17, 2008
La Grange	<a href="http://www.youtube.com/watch?v=o0NOFOqTMgY">http://www.youtube.com/watch?v=o0NOFOqTMgY</a>	May 20, 2006
La Grange (re-posted)	<a href="http://www.youtube.com/watch?v=VDjgwIXtKLk">http://www.youtube.com/watch?v=VDjgwIXtKLk</a>	August 22, 2008
La Grange	<a href="http://www.youtube.com/watch?v=xwpajCyAO7A">http://www.youtube.com/watch?v=xwpajCyAO7A</a>	January 7, 2007
La Grange	<a href="http://www.youtube.com/watch?v=KWOPfAeJOTQ">http://www.youtube.com/watch?v=KWOPfAeJOTQ</a>	February 15, 2007
La Grange (re-posted)	<a href="http://www.youtube.com/watch?v=i5QmAM6Dgyl">http://www.youtube.com/watch?v=i5QmAM6Dgyl</a>	January 27, 2008
Tush	<a href="http://www.youtube.com/watch?v=O-z2SU-7Dhw">http://www.youtube.com/watch?v=O-z2SU-7Dhw</a>	August 27, 2006
Tush (re-posted)	<a href="http://www.youtube.com/watch?v=NmeBbkw5ulK">http://www.youtube.com/watch?v=NmeBbkw5ulK</a>	August 2, 2008
Tush	<a href="http://www.youtube.com/watch?v=Pvr8b4B3gyo">http://www.youtube.com/watch?v=Pvr8b4B3gyo</a>	May 21, 2007
Tush	<a href="http://www.youtube.com/watch?v=i5QmAM6Dgyl">http://www.youtube.com/watch?v=i5QmAM6Dgyl</a>	January 27, 2008
Sharp Dressed Man	<a href="http://www.youtube.com/watch?v=ksYUo1tfpyY">http://www.youtube.com/watch?v=ksYUo1tfpyY</a>	April 16, 2007
Legs	<a href="http://www.youtube.com/watch?v=ZH5imDXKlzs">http://www.youtube.com/watch?v=ZH5imDXKlzs</a>	November 14, 2006
Gimme All Your Lovin	<a href="http://www.youtube.com/watch?v=PCqlc00ffHM">http://www.youtube.com/watch?v=PCqlc00ffHM</a>	September 30, 2006
Gimme All Your Lovin	<a href="http://www.youtube.com/watch?v=ophq-mAzih8">http://www.youtube.com/watch?v=ophq-mAzih8</a>	March 11, 2007
EBMMCo WORKS		
I'd Do Anything For Love (But I Won't Do That)	<a href="http://www.youtube.com/watch?v=M7PuJazm9Vg">http://www.youtube.com/watch?v=M7PuJazm9Vg</a>	June 5, 2007
I'd Do Anything For Love (But I Won't Do That)	<a href="http://www.youtube.com/watch?v=ORi0qie8xYc">http://www.youtube.com/watch?v=ORi0qie8xYc</a>	July 20, 2007

God Bless the Child	<a href="http://www.youtube.com/watch?v=jywoMumO3mk">http://www.youtube.com/watch?v=jywoMumO3mk</a>	May 13, 2007
God Bless the Child	<a href="http://www.youtube.com/watch?v=e7Qnxz2fijQ">http://www.youtube.com/watch?v=e7Qnxz2fijQ</a>	June 3, 2006
God Bless the Child	<a href="http://www.youtube.com/watch?v=Dzqpni5gN98">http://www.youtube.com/watch?v=Dzqpni5gN98</a>	March 27, 2007
BIENSTOCK WORKS		
The Revolution Will Not Be Televised	<a href="http://www.youtube.com/watch?v=GPvmCoHSwo">http://www.youtube.com/watch?v=GPvmCoHSwo</a>	April 30, 2007
The Revolution Will Not Be Televised (re-posted)	<a href="http://www.youtube.com/watch?v=ssOGHVsZ-Y">http://www.youtube.com/watch?v=ssOGHVsZ-Y</a>	May 22, 2008
ALLEY WORKS		
I get the Sweetest Feeling	<a href="http://www.youtube.com/watch?v=C-HIHcGgROU">http://www.youtube.com/watch?v=C-HIHcGgROU</a>	May 5, 2007
I get the Sweetest Feeling (re-posted)	<a href="http://www.youtube.com/watch?v=iIs1klBOd_M">http://www.youtube.com/watch?v=iIs1klBOd_M</a>	December 6, 2007
X-RAY DOG WORKS		
Here Comes the King	<a href="http://www.youtube.com/watch?v=CfdBDqv-gFg">http://www.youtube.com/watch?v=CfdBDqv-gFg</a>	June 6, 2007
Here Comes the King (re-posted)	<a href="http://www.youtube.com/watch?v=CrGz-P_8tss">http://www.youtube.com/watch?v=CrGz-P_8tss</a>	July 23, 2008
Here Comes the King	<a href="http://youtube.com/watch?v=IQk-PEXTg4g">http://youtube.com/watch?v=IQk-PEXTg4g</a>	July 14, 2007
Here Comes the King (re-posted)	<a href="http://www.youtube.com/watch?v=OfkTKBtOarQ">http://www.youtube.com/watch?v=OfkTKBtOarQ</a>	March 29, 2008
Dethroned	<a href="http://www.youtube.com/watch?v=czXPNvX9Rvo">http://www.youtube.com/watch?v=czXPNvX9Rvo</a>	January 25, 2007
Dethroned (re-posted)	<a href="http://www.youtube.com/watch?v=MOMOcV8IRAc">http://www.youtube.com/watch?v=MOMOcV8IRAc</a>	May 14, 2008
Dethroned (re-posted)	<a href="http://www.youtube.com/watch?v=asdyxuYbvqs">http://www.youtube.com/watch?v=asdyxuYbvqs</a>	August 18, 2008
Dethroned (re-posted)	<a href="http://www.youtube.com/watch?v=pjYgKSbyfLk">http://www.youtube.com/watch?v=pjYgKSbyfLk</a>	June 30, 2008
Dethroned	<a href="http://www.youtube.com/watch?v=fHLIII0o-bA">http://www.youtube.com/watch?v=fHLIII0o-bA</a>	May 16, 2007
Dethroned (re-posted)	<a href="http://www.youtube.com/watch?v=t7JD0EO-aD8">http://www.youtube.com/watch?v=t7JD0EO-aD8</a>	March 24, 2008

Dethroned (re-posted)	<a href="http://www.youtube.com/watch?v=AcO-6o5mmyg">http://www.youtube.com/watch?v=AcO-6o5mmyg</a>	December 28, 2007
Dethroned (re-posted)	<a href="http://www.youtube.com/watch?v=JayW1ifeDdI">http://www.youtube.com/watch?v=JayW1ifeDdI</a>	June 03, 2008
FFT WORKS		
Roger Federer v Nicolay Davydenko, June 8, 2007	<a href="http://www.youtube.com/watch?v=WWivjvCidGM">http://www.youtube.com/watch?v=WWivjvCidGM</a>	July 6, 2007
Ernest Gulbis v Tim Henman, May 29, 2007	<a href="http://www.youtube.com/watch?v=OK63ObDqRrw">http://www.youtube.com/watch?v=OK63ObDqRrw</a>	September 3, 2007
Ana Ivanovic v Maria Sharapova, June 7, 2007	<a href="http://www.youtube.com/watch?v=MFtePq4uLd0">http://www.youtube.com/watch?v=MFtePq4uLd0</a>	July 26, 2007
THE MUSIC FORCE WORKS		
Stuck on You	<a href="http://youtube.com/watch?v=Q-L7oF1SoHY">http://youtube.com/watch?v=Q-L7oF1SoHY</a>	October 3, 2006
Stuck on You (re-posted)	<a href="http://www.youtube.com/watch?v=YqLqXq-QNkk">http://www.youtube.com/watch?v=YqLqXq-QNkk</a>	April 19, 2008
What You Won't Do For Love	<a href="http://youtube.com/watch?v=gLm3K_TnZZg">http://youtube.com/watch?v=gLm3K_TnZZg</a>	April 22, 2007
What You Won't Do For Love (re-posted)	<a href="http://www.youtube.com/watch?v=xc4Jq2KxpD8">http://www.youtube.com/watch?v=xc4Jq2KxpD8</a>	February 12, 2008
What You Won't Do For Love	<a href="http://youtube.com/watch?v=m9EwK8hbF3s">http://youtube.com/watch?v=m9EwK8hbF3s</a>	September 29, 2007

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

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

Plaintiffs,

v.

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

Defendants.

07 Civ. 3582 (LLS)

**DEFENDANTS' ANSWER TO SECOND  
AMENDED CLASS ACTION  
COMPLAINT AND DEMAND FOR JURY  
TRIAL**

Plaintiffs and their class action lawyers challenge 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 its end of the DMCA bargain, and indeed goes far beyond its legal obligations in assisting content owners to protect their works.

Defendants YouTube, Inc., YouTube, LLC and Google Inc. (collectively, “Defendants”), by their undersigned attorneys, hereby answer Plaintiffs’ – The Football Association Premier League Limited (“Premier League”), Bourne Co. (“Bourne”), Murbo Music Publishing, Inc. (“Murbo”), Cherry Lane Music Publishing Company, Inc. (“Cherry Lane”), Cal IV Entertainment LLC (“Cal IV”), Robert Tur d/b/a Los Angeles News Service (“Tur”), National Music Publishers’ Association (“NMPA”), The Rodgers & Hammerstein Organization (“RHO”), Stage Three Music (US), Inc. (“Stage 3”), Edward B. Marks Music Company (“EBMMCo”), Freddy Bienstock Music Company d/b/a Bienstock Publishing Company (“Bienstock”), Alley Music Corporation (“Alley”), X-Ray Dog Music, Inc. (“X-Ray Dog”), Fédération Française de Tennis (“FFT”), The Music Force Media Group LLC, The Music Force LLC, and Sin-Drome Records, Ltd.’s (collectively, “Music Force”) (and collectively, “Plaintiffs”) – Second Amended Class Action Complaint (the “Complaint”), as follows:

**NATURE OF ACTION**

1. Defendants admit that YouTube LLC and Google today operate an online service called “YouTube” which can be accessed at the website [www.youtube.com](http://www.youtube.com). Defendants deny that they have knowingly misappropriated and exploited Plaintiffs’ property for their own gain without payment or license to the owners of the intellectual property. Defendants are without

information sufficient to form a belief as to the remaining allegations of paragraph 1 of the Complaint, in part because such allegations are not simple, concise and direct averments as required by Federal Rule of Civil Procedure 8(e), and on that basis Defendants deny such allegations.

2. Defendants admit that the Plaintiffs purport to bring claims on behalf of a class that consists of copyright owners (together with the owners of exclusive rights in sound recordings protected under the state law). Defendants deny the remaining allegations of paragraph 2 of the Complaint.

3. Defendants deny the allegations of paragraph 3 of the Complaint.

4. Defendants admit that the YouTube service is popular, having millions of users as of July 2006. Defendants deny the remaining allegations of paragraph 4 of the Complaint.

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

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

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

8. Defendants admit that Google acquired YouTube, Inc. in a transaction announced on October 9, 2006 and closed on November 13, 2006 and that YouTube has noted that it was “one of the most talked-about acquisitions to date.” Defendants admit that at the time of the acquisition, Google operated its own video site called “Google Video.” Defendants deny the remaining allegations of paragraph 8 of the Complaint.

9. Defendants admit that Plaintiffs seek injunctive and other equitable relief and damages, but deny that Plaintiffs are entitled to any such relief. Defendants deny the remaining allegations of paragraph 9 of the Complaint.

**THE PARTIES**

**A. Plaintiffs**

10. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 10 of the Complaint, and therefore deny them.

11. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations regarding the “re-posting” of specific content to the site, and therefore deny those allegations. Defendants deny the remaining allegations of paragraph 11 of the Complaint.

12. Defendants are without sufficient information to form a belief as to the truth of the allegations of paragraph 12 of the Complaint concerning the knowledge or intentions of users, and therefore deny those allegations. Defendants deny the remaining allegations of paragraph 12 of the Complaint.

13. Defendants deny the allegations of paragraph 13 of the Complaint.

14. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 14 of the Complaint, and therefore deny them.

15. Paragraph 15 of the Complaint contains legal conclusions as to which no response is required. To the extent a response is required, Defendants dispute Plaintiffs’ conclusions and deny that Plaintiffs are entitled to any remedies. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations of paragraph 15 of the Complaint, and therefore deny them.

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

17. Defendants admit that Bourne identified five of the listed works in an Exhibit to the original Complaint in this action dated May 4, 2007 and in the First Amended Complaint, dated November 7, 2007. Defendants deny the remaining allegations of paragraph 17 of the Complaint.

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

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

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

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

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

23. Paragraph 23 of the Complaint contains legal conclusions as to which no response is required. To the extent a response is required, Defendants dispute Plaintiffs' conclusions. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations regarding the central purpose of the NMPA, and therefore deny them. Defendants deny the remaining allegations of paragraph 23 of the Complaint.

24. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 24 of the Complaint, and therefore deny them.

25. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 25 of the Complaint, and therefore deny them.



26. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 26 of the Complaint, and therefore deny them.

27. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 27 of the Complaint, and therefore deny them.

28. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 28 of the Complaint, and therefore deny them.

29. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 29 of the Complaint, and therefore deny them.

30. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 30 of the Complaint, and therefore deny them.

31. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 31 of the Complaint, and therefore deny them.

32. Paragraph 32 of the Complaint contains legal conclusions as to which no response is required. To the extent a response is required, Defendants dispute Plaintiffs' conclusions and deny that Plaintiffs are entitled to any remedies. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations of paragraph 32 of the Complaint, and therefore deny them.

33. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 33 of the Complaint, and therefore deny them.

**B. Defendants**

34. Defendants admit that the YouTube service became available to the general public on or about December 15, 2005. Defendants deny the remaining allegations of paragraph 34 of the Complaint.

35. Defendants admit that YouTube, LLC is a limited liability company organized and existing under the laws of the State of Delaware and with its principal place of business at 1000 Cherry Avenue, San Bruno, California. Defendants admit that YouTube, LLC is a wholly-owned subsidiary of Google and a successor to YouTube, Inc. Defendants otherwise deny the allegations of paragraph 35 of the Complaint.

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

37. Defendants admit that Google is a publicly held corporation organized and existing under the laws of the State of Delaware and with its principal place of business at 1600 Amphitheatre Parkway, Mountain View, California. Defendants further admit that Google has a place of business in New York State and the Southern District of New York at 76 Ninth Avenue, New York, New York, and that on or about November 13, 2006, Google closed its acquisition of YouTube. Defendants deny any remaining allegations of paragraph 37 of the Complaint.

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

39. Defendants deny the allegations of paragraph 39 of the Complaint.

**JURISDICTION AND VENUE**

40. Defendants admit that the Complaint purports to state a claim under the Copyright Act, 17 U.S.C. §§ 101 *et seq.* and under statutory and common law unfair competition laws, but deny that any such claims have been stated and that Plaintiffs are entitled to any relief and otherwise deny the allegations of paragraph 40 of the Complaint.

41. Defendants admit that the Court has subject matter jurisdiction over claims by Plaintiffs in this action for alleged copyright infringement of their United States works that were registered with the United States Copyright Office as of the institution of this action. Defendants

are without knowledge sufficient to form a belief as to the truth of the remaining allegations of paragraph 41 of the Complaint, and therefore deny them.

42. Defendants admit that this Court has personal jurisdiction over them for purposes of this action. Defendants further admit that Google maintains an office and employs personnel in New York State and in this District, and is physically present in this state. Defendants deny the remaining allegations of paragraph 42 of the Complaint.

43. Defendants admit that this Court has personal jurisdiction over them for purposes of this action. Defendants deny the remaining allegations of paragraph 43 of the Complaint.

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

**CLASS ACTION ALLEGATIONS**

45. Defendants admit that Plaintiffs purport to bring this action on behalf of themselves and as a class action. Defendants deny the remaining allegations of paragraph 45 of the Complaint.

46. Paragraph 46 contains legal conclusions to which no response is required, but to the extent a response is required, Defendants deny Plaintiffs' conclusions. To the extent that paragraph 46 contains factual allegations, Defendants deny the allegations of paragraph 46 of the Complaint.

47. Paragraph 47 contains legal conclusions to which no response is required, but to the extent a response is required, Defendants deny Plaintiffs' conclusions. To the extent that paragraph 47 contains factual allegations, Defendants admit that YouTube, Inc. has stated in a court filing that over 20 million unique visitors came to YouTube's website during July 2006. Defendants deny Plaintiffs' mischaracterizations of YouTube's press releases. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations in

the sixth and eighth sentences of paragraph 47 of the Complaint, and therefore deny them.

Defendants admit that the quotations from a document dated on or about February 28, 2006 are accurate, but deny Plaintiffs' mischaracterizations of such language and document. Defendants deny the remaining allegations of paragraph 47 of the Complaint.

48. Paragraph 48 contains legal conclusions to which no response is required, but to the extent a response is required, Defendants deny Plaintiffs' conclusions. To the extent that paragraph 48 contains factual allegations, Defendants deny the allegations of paragraph 48 of the Complaint.

49. Paragraph 49 contains legal conclusions to which no response is required, but to the extent a response is required, Defendants deny Plaintiffs' conclusions. To the extent that paragraph 49 contains factual allegations, Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 49, and therefore deny them.

50. Paragraph 50 contains legal conclusions to which no response is required, but to the extent a response is required, Defendants deny Plaintiffs' conclusions. To the extent that paragraph 50 contains factual allegations, Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 50 of the Complaint, and therefore deny them.

51. Paragraph 51 contains legal conclusions to which no response is required, but to the extent a response is required, Defendants deny Plaintiffs' conclusions. To the extent that paragraph 51 contains factual allegations, Defendants deny the allegations of paragraph 51 of the Complaint.

52. Paragraph 52 contains legal conclusions to which on response is required, but to the extent a response is required, Defendants deny Plaintiffs' conclusions. To the extent that paragraph 52 contains factual allegations, Defendants deny the allegations of paragraph 52 of the Complaint.

**ALLEGATIONS COMMON TO ALL CLAIMS FOR RELIEF**

53. Defendants admit that YouTube is a popular service that enables users to upload, view, and share video clips without charge. Defendants further admit that YouTube contains a wide variety of material, that YouTube enables users to post and view material without charge and that YouTube has grown rapidly since its founding in February 2005. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 53 concerning the growth rate of the service, its percentage of online video traffic and the Nielsen/Net Ratings online video traffic data, and therefore deny them. Defendants deny the remaining allegations of paragraph 53 of the Complaint.

54. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 54 of the Complaint, and therefore deny them.

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

56. Defendants admit that YouTube has received and complied with DMCA notices from the BBC, JASRAC and Viacom. Defendants deny the remaining allegations of Paragraph 56 of the Complaint.

57. Defendants admit that the quotation from the document dated on or about September 3, 2005 is accurate, but deny Plaintiffs' mischaracterizations of such language and document. Defendants deny the remaining allegations of paragraph 57 of the Complaint.

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

59. Defendants admit that the YouTube service has been localized for users in foreign countries including Brazil, France, Ireland, Italy, Japan, Netherlands, Poland, Spain, and the United Kingdom. Defendants deny the remaining allegations of paragraph 59 of the complaint.

60. Defendants admit they have an agreement with Apple to allow users to access YouTube's content through certain of Apple's devices and services. Defendants deny the remaining allegations of paragraph 60 of the Complaint.

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

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

63. Defendants admit that YouTube users are able to post comments in connection with certain materials accessible through its service. Defendants deny the remaining allegations of paragraph 63 of the Complaint.

64. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 64 of the Complaint, and therefore deny them.

65. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 65 of the Complaint, and therefore deny them.

66. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 66 of the Complaint, and therefore deny them.

67. Defendants admit that Google's website currently includes a capability for users to search for video clips and receive search results that include links to clips on YouTube's service. Defendants deny the remaining allegations of paragraph 67 of the Complaint.

68. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 68 of the Complaint, and therefore deny them.

69. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 69 of the Complaint, and therefore deny them.

70. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 70 of the Complaint, and therefore deny them.

71. Defendants admit that a list of URLs is contained within Exhibit A to the Complaint. Defendants deny the remaining allegations of paragraph 71 of the Complaint.

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

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

74. Defendants deny the allegations of paragraph 74 of the Complaint.

75. Defendants deny the allegations of paragraph 75 of the Complaint.

76. Defendants deny the allegations of paragraph 76 of the Complaint.

77. Defendants deny the allegations of paragraph 77 of the Complaint.

78. Defendants deny the allegations of paragraph 78 of the Complaint.

79. Defendants deny the allegations of paragraph 79 of the Complaint.

80. Defendants admit that the quotations from the document dated on or about June 15, 2005 are accurate, but deny Plaintiffs' mischaracterizations of such language and document. Defendants deny the remaining allegations of paragraph 80 of the Complaint.

81. Defendants admit that the quotations from the documents dated on or about July 10, 2005, August 9, 2005, and September 3, 2005 are accurate, but deny Plaintiffs' mischaracterizations of such language and documents. Defendants deny the remaining allegations of paragraph 81 of the Complaint.

82. Defendants admit that they meet the notice and takedown requirements of the Digital Millennium Copyright Act safe harbors. Defendants deny the remaining allegations of paragraph 82 of the Complaint.

83. Defendants admit that the quotations from the documents dated on or about September 7, 2005 and September 23, 2005 are accurate, but deny the Plaintiffs' mischaracterizations of such language and documents. Defendants deny the remaining allegations of paragraph 83 of the Complaint.

84. Defendants admit that the YouTube service enables users to designate video clips as private and thereby limit the audience of persons able to see video clips they upload to that service. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 84 regarding users' supposed statements regarding private videos and re-posting on the site, and therefore deny them. Defendants deny the remaining allegations of paragraph 84 of the Complaint.

85. Defendants deny the allegations of paragraph 85 of the Complaint.

86. Defendants deny the allegations of paragraph 86 of the Complaint.

87. Defendants deny the allegations of paragraph 87 of the Complaint regarding Defendants' supposed non-responsiveness and delay in responding to notices from Premier League. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations of paragraph 87 of the Complaint, and therefore deny them.

88. Defendants admit that the content verification program tool malfunctioned on or about October 28, 2008, during which time videos could not be removed using the tool. Defendants deny the remaining allegations of paragraph 88 of the Complaint.

89. Defendants deny the allegations of paragraph 89 of the Complaint.



90. Defendants deny the allegations of paragraph 90 of the Complaint.

91. Defendants admit there is a ten-minute time limit on clips uploaded to the YouTube service. Defendants deny the remaining allegations of paragraph 91 of the Complaint.

92. Defendants admit that they do not enable downloading of copies of clips available through the YouTube service. Defendants deny the remaining allegations of paragraph 92 of the Complaint.

93. Defendants admit that the document dated on or about November 24, 2005 contains the language “copyright stuff,” “Family Guy, South Park, and full-length anime episodes,” but deny Plaintiffs’ mischaracterizations of such language and document. Defendants deny that there is a document dated September 3, 2005 with the language quoted. Defendants deny the remaining allegations of paragraph 93 of the Complaint.

94. Paragraph 94 of the Complaint improperly references a privileged document which Defendants have clawed back and no response is made to such allegations. Plaintiffs should remove all references to this document from the Complaint. Defendants deny the remaining allegations of paragraph 94 of the Complaint.

95. Defendants admit that the quotations from the documents dated on or about May 10, 2006 and July 17, 2006 are accurate, but deny Plaintiffs’ mischaracterizations of such language and documents. Defendants deny the remaining allegations of paragraph 95 of the Complaint.

96. Defendants deny the allegations of paragraph 96 of the Complaint.

97. Defendants admit that there were communications between Cherry Lane and Defendants on or about October 25, 2007, November 30, 2007, and February 19, 2008 concerning YouTube making certain technology available to content owners. Defendants are

without sufficient knowledge or information to form a belief as to the truth of the allegations in the last two sentences in paragraph 97, and therefore deny them. Defendants deny the remaining allegations of paragraph 97 of the Complaint.

98. Defendants deny the allegations of paragraph 98 of the Complaint.

99. Defendants admit that the quotations from the *New York Times* article dated on or about August 16, 2008 are accurate, but are without sufficient knowledge of information to form a belief as to the truth of the remaining allegations of the third sentence of paragraph 99 of the Complaint, and therefore deny them. Defendants deny the remaining allegations of paragraph 99 of the Complaint.

100. Defendants deny the allegations of paragraph 100 of the Complaint.

101. Defendants deny the allegations of paragraph 101 of the Complaint.

102. Defendants deny the allegations of paragraph 102 of the Complaint.

103. Defendants admit that the quotation from the *Times (UK)* article dated on or about July 10, 2008 is accurate, but are without sufficient knowledge of information to form a belief as to the truth of the remaining allegations of the third sentence of paragraph 103 of the Complaint, and therefore deny them. Defendants deny the remaining allegations of paragraph 103.

104. Defendants deny the allegations of paragraph 104 of the Complaint.

105. Defendants admit that they have entered into license agreements with a number of major media companies. Defendants deny the remaining allegations of paragraph 105 of the Complaint.

106. Defendants deny the allegations of paragraph 106 of the Complaint.

107. Defendants deny the allegations of paragraph 107 of the Complaint.

108. Defendants deny the allegations of paragraph 108 of the Complaint.

109. Defendants deny the allegations of paragraph 109 of the Complaint.

110. Defendants admit that they qualify for the protections of the Digital Millennium Copyright Act and satisfy the requirements of one or more of the Act's safe harbors. Defendants deny the remaining allegations of paragraph 110 of the Complaint.

111. Paragraph 111 contains legal conclusions to which no response is required, but to the extent a response is required, Defendants deny Plaintiffs' conclusions. To the extent that paragraph 111 contains factual allegations, Defendants deny the allegations of paragraph 111 of the Complaint.

112. Defendants deny the allegations of paragraph 112 of the Complaint.

113. Defendants admit that they have entered into license agreements with a number of content companies. Defendants deny the remaining allegations of paragraph 113 of the Complaint.

114. Defendants deny the allegations of paragraph 114 of the Complaint.

115. Defendants deny the allegations of paragraph 115 of the Complaint.

116. Defendants deny the allegations of paragraph 116 of the Complaint.

117. Defendants deny the allegations of paragraph 117 of the Complaint.

118. Defendants deny the allegations of paragraph 118 of the Complaint.

119. Defendants deny the allegations of paragraph 119 of the Complaint.

120. Defendants deny the allegations of paragraph 120 of the Complaint.

121. Defendants admit that they have announced and publicly-offered a video identification technological solution to provide content owners with yet another tool to control the use of their content online. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegation that "in the meantime" other websites have

implemented tools to block or filter uploads, and therefore deny it. Defendants deny the remaining allegations of paragraph 121 of the Complaint.

122. Defendants deny the allegations of paragraph 122 of the Complaint.

123. Defendants deny the allegations of paragraph 123 of the Complaint.

124. Defendants deny the allegations of paragraph 124 of the Complaint.

125. Defendants admit that Google has not placed a bid with Premier League for certain media rights to footage from football matches. Defendants deny the remaining allegations of paragraph 125 of the Complaint.

126. Defendants deny the allegations of paragraph 126 of the Complaint.

**CLAIMS FOR RELIEF**

**FIRST CLAIM FOR RELIEF**

127. Defendants incorporate by reference their responses to paragraphs 1-126 as if set forth herein.

128. Defendants deny the allegations of paragraph 128 of the Complaint.

129. Defendants deny the allegations of paragraph 129 of the Complaint.

130. Defendants deny the allegations of paragraph 130 of the Complaint.

131. Defendants deny the allegations of paragraph 131 of the Complaint.

**SECOND CLAIM FOR RELIEF**

132. Defendants incorporate by reference their responses to paragraphs 1-131 as if set forth herein.

133. Defendants deny the allegations of paragraph 133 of the Complaint.

134. Defendants deny the allegations of paragraph 134 of the Complaint.

135. Defendants deny the allegations of paragraph 135 of the Complaint.

136. Defendants deny the allegations of paragraph 136 of the Complaint.

137. Defendants deny the allegations of paragraph 137 of the Complaint.

**THIRD CLAIM FOR RELIEF**

138. Defendants incorporate by reference their responses to paragraphs 1-137 as if set forth herein.

139. Defendants deny the allegations of paragraph 139 of the Complaint.

140. Defendants deny the allegations of paragraph 140 of the Complaint.

141. Defendants deny the allegations of paragraph 141 of the Complaint.

142. Defendants deny the allegations of paragraph 142 of the Complaint.

143. Defendants deny the allegations of paragraph 143 of the Complaint.

**FOURTH CLAIM FOR RELIEF**

144. Defendants incorporate by reference their responses to paragraphs 1-143 as if set forth herein.

145. Defendants deny the allegations of paragraph 145 of the Complaint.

146. Defendants deny the allegations of paragraph 146 of the Complaint.

147. Defendants deny the allegations of paragraph 147 of the Complaint.

148. Defendants deny the allegations of paragraph 148 of the 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 or others with rights to grant them.

**THIRD DEFENSE (FAIR USE)**

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

**FOURTH DEFENSE (LACK OF SUBJECT MATTER JURISDICTION)**

The Court lacks subject matter jurisdiction in whole or in part.

**FIFTH DEFENSE (FAILURE TO STATE A CLAIM)**

Plaintiffs' allegations fail to state a claim for copyright infringement under federal, foreign or state common law.

**SIXTH DEFENSE (INNOCENT INTENT)**

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

**SEVENTH DEFENSE (COPYRIGHT PREEMPTION)**

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

**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 (LACK OF STANDING)**

Plaintiffs lack standing to pursue some or all of the claims they seek to pursue.

**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.

**THIRTEENTH DEFENSE (FAILURE TO MITIGATE)**

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

**FOURTEENTH DEFENSE (FOREIGN LAWS)**

To the extent Plaintiffs seek to assert claims arising under or based upon the laws of foreign countries, they have failed to identify any such laws or countries. Defendants may have numerous affirmative defenses arising under such laws, but cannot identify them unless and until Plaintiffs identify any foreign copyrights they purport to assert and foreign laws under which they purport to bring their claims, and accordingly Defendants reserve their right to assert those affirmative defenses in a timely fashion.

**FIFTEENTH DEFENSE (PUTATIVE CLASS MEMBERS)**

Defendants allege that this lawsuit cannot proceed as a class action. Should the Court determine otherwise, Defendants may have numerous affirmative defenses and counterclaims against individual members of any alleged class, and accordingly Defendants reserve their right to assert those affirmative defenses and counterclaims in a timely fashion.

**RELIEF REQUESTED**

WHEREFORE, Defendants respectfully request the following relief:

1. A judgment in favor of Defendants denying Plaintiffs and the putative plaintiff class all relief requested in their Complaint in this action and dismissing Plaintiffs' 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: January 16, 2009  
New York, New York

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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

07 Civ. 3582 (LLS)  
(related case no. 07 Civ. 2103 (LLS),  
the "Viacom action")

**ECF CASE**

**CLASS PLAINTIFFS'**  
**NOTICE OF MOTION FOR**  
**PARTIAL SUMMARY**  
**JUDGMENT**

PLEASE TAKE NOTICE THAT, pursuant to Fed. R. Civ. P. 56 and L. Civ. R. 56.1, the Class Plaintiffs shall move this Court, before the Hon. Louis L. Stanton, at the United States Court House, 500 Pearl Street, New York, New York, at a date and time to be set by the Court, for an Order granting partial summary judgment dismissing with prejudice Defendants' First Defense (DMCA Safe Harbor Defense) asserted in Defendants' Answer to the Second Amended Class Action Complaint, and for such other and further relief as the Court deems just.

PLEASE TAKE FURTHER NOTICE, that in support of this motion, the Class Plaintiffs shall rely on the accompanying Declaration of Elizabeth A. Figueira and the exhibits annexed thereto, the Class Plaintiffs' Statement of Uncontroverted Facts, the Class Plaintiffs' legal memorandum, all pleadings and prior proceeding in this action and the related *Viacom* action, and to minimize duplication the additional evidence and arguments submitted by Viacom in support of its contemporaneous motion for partial summary judgment in its related action. The materials referenced above are being filed under seal pursuant to the stipulated protective order in this case, pending court rulings and/or agreements by the parties with respect to unsealing.

Dated: New York, New York  
March 5, 2010

Respectfully submitted,

/s/ Louis M. Solomon

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*Attorneys for Defendants*

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UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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

Plaintiffs,

v.

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

Defendants.

Case No. 07 Civ. 3582 (LLS)

**CLASS PLAINTIFFS' STATEMENT  
OF UNCONTROVERTED  
MATERIAL FACTS IN SUPPORT  
OF THEIR MOTION FOR PARTIAL  
SUMMARY JUDGMENT**

Redacted Pursuant to  
Protective Order at  
Request of Defendants

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**INTRODUCTION**

Class Plaintiffs (hereinafter “the Class” or “Class Plaintiffs”) submit this Statement of Uncontroverted Material Facts (“SUF”), with references to supporting record evidence, pursuant to Local Rule 56.1. By reason of these facts, the Class Plaintiffs demonstrate that there is no genuine dispute that Defendants YouTube, Inc., YouTube, LLC, and Google, Inc. (collectively, “Defendants”) do not satisfy one or more of the essential elements of their affirmative defense to copyright liability under the Digital Millennium Copyright Act (“DMCA”), 17 U.S.C. § 512 (1998), with respect to the Class Plaintiffs. As a consequence, any other DMCA factual disputes that may exist have been rendered immaterial, and no genuine issues of material fact remain with respect to Defendants’ First Defense (DMCA Safe Harbor) (“Safe Harbor Defense”) asserted in Defendants’ Answer to Second Amended Class Action Complaint. Pursuant to Rule 56 of the Federal Rules of Civil Procedure, Class Plaintiffs thus are entitled to partial summary judgment dismissing Defendants’ Safe Harbor Defense as a matter of law.

In order to minimize the burden on the Court, Class Plaintiffs hereby incorporate, as if fully set forth herein, the Statement of Uncontroverted Facts submitted by the plaintiffs in *Viacom Int’l. Inc., et al v. YouTube Inc., et al*, No. 07 Civ. 2103 (LLS). This separate SUF addresses other issues applicable to Class Plaintiffs. Except where otherwise noted, all materials cited herein are exhibits to the accompanying Declaration of Elizabeth Anne Figueira In Support of Class Plaintiffs’ Motion for Partial Summary Judgment. For ease of reference, the tab of the Figueira Declaration containing the referenced materials is noted with each citation.

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Statement of Unconverted Facts ("SUF")	
Parties	
<p>1. The Class Plaintiffs include named plaintiffs The Football Association Premier League Limited, Bourne Co. (Together With Its Affiliate Murbo Music Publishing, Inc.), Cherry Lane Music Publishing Company, Inc., Cal IV Entertainment LLC, Robert Tur d/b/a/ Los Angeles News Service, National Publishers' Association, The Rodgers &amp; Hammerstein Organization, Stage Three Music (US), Inc., Edward B. Marks Music Company, Freddy Bienstock d/b/a Bienstock Publishing Company, Alley Music Corporation, Fédération Française de Tennis, The Music Force LLC and Sin-Drome Records, Ltd.</p>	<p>Second Amended Complaint (11/26/08) ¶¶ 2, 3, 10-33, 45. (Tab 138)</p>
<p>2. Defendants are YouTube LLC, YouTube, Inc., and Google, Inc., which are affiliated entities involved in the management and/or operation of the YouTube website (www.youtube.com) ("YouTube").</p>	<p>Second Amended Answer (1/16/09) ¶¶ 34, 35, 37. (Tab 139)</p>
<p>3. YouTube is a major media entertainment company, which has over 98 million visitors per month and more than 17.5 billion pageviews per month in the United States.</p>	<p>Google to Acquire YouTube for \$1.65 Billion in Stock, Google Press Center, October 9, 2006 ("Founded in February 2005, YouTube is a consumer media company... [that] has quickly become the leading destination on the Internet for video entertainment... with 65,000 new videos per day were being uploaded daily." (Tab 134)</p> <p>October 9, 2006 – Fair Disclosure Wire – Google To Acquire YouTube for \$1.65 Billion in Stock – Final: "YouTube is a "global media platform." (Tab 135)</p> <p>July 17, 2008 – Fair Disclosure Wire – Q2 2008 Google Earnings Conference Call – Final (YouTube is "a new form of video entertainment." (Tab 136)</p> <p>"YouTube Fall 2009"</p>

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	<p><a href="http://www.gstatic.com/youtube/engagement/platform/autoplay/advertise/downloads/YouTube_InTheKnow.pdf">http://www.gstatic.com/youtube/engagement/platform/autoplay/advertise/downloads/YouTube_InTheKnow.pdf</a> [last accessed March 4, 2010] ("July 2009: 98.1 million unique visitors, and 17.5 billion page views per month... 8.9 video views in July 2009.") (Tab 148)</p>
<p>From Its Inception, YouTube Management Knew Copyrighted Content Generated Substantial Traffic to the Site.</p>	
<p>4. Prior to Google's acquisition of YouTube in October 2006, YouTube management recognized the vast amount of unlicensed copyrighted content on the website and its value in attracting users to the site.</p>	<p>C. Hurley Ex. 41 (JK00007416) (Tab 47) (Chen: 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... who don't we just remove the XXX stuff for now?").</p> <p>Dunton Ex. 5 (GOO001-00507535-GOO001-00507540) (Tab 15) (Dunton to "tunawarrior" [Steve Chen]: "I did a little exercise on friday and went through all the most viewed/most discussed [sic]/top favorites/top rated to try and figure out what percentage is or has copyrighted material. it was over 70%.") (p. 8)</p> <p>C. Hurley Ex. 33 (JK00005929) (Tab 45) (Chen: "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 on the site. third, we're going to be adding advertisements in the future so this gets them used to it. i'm asking for a couple more weeks.")</p> <p>C. Hurley Ex. 38 (GOO001-01424047-48) (Tab 46) (Chen: "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 gets in touch with cnn legal. 2 weeks later, we get a cease &amp; desist letter. we take the video down.") (GOO001-01424047)</p> <p>Karim Ex. 25 (JK00009933-34) (Tab 62) (Karim: "I'd just remove the obviously copyright infringing stuff... none of the most favorite [sic] videos are movies or tv</p>

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	<p>shows. we're ok cracking down on this content. <i>we'll leave music videos, news clip and comedy shows for now.</i>") (JK00009933) (emphasis added)</p> <p>Karim Ex. 40 (JK00006166-6169) (Tab 64) (Chen: "In other news, 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 another site and trying to get everyone to see it.")</p> <p>C. Hurley Ex. 6 (GOO001-00660582-83) (Tab 42) (Chen: "right, i understand those goals but, at the same time, we have to keep in mind that we need to attract traffic, how much traffic will we get from the personal videos? remember, the only reason why our traffic surged was due to a video of this type [the movies].") (GOO001-00660582)</p>
<p>5. YouTube management did not remove valuable copyrighted content from YouTube despite being aware of its extensive and unauthorized presence.</p>	<p>Karim Ex. 38 (JK00007479) (Tab 63) (Chen: "That way, the <i>perception</i> is that we are concerned about this type of material and we're actively monitoring it. [But the] actual removal of this content will be in varying degrees. That way, . . . <i>you can find truckloads</i> of . . . copyrighted content . . . [if] you [are] actively searching for it."). (emphasis added)</p> <p>Karim Ex. 25 (JK00009933-34) (Tab 62) (Karim: "I'd just remove the obviously copyright infringing stuff... none of the most favorite videos are movies or tv shows. we're ok cracking down on this content. we'll leave music videos, news clip and comedy shows for now.") (JK00009933)</p> <p>C. Hurley Ex. 38 (GOO001-01424047-48) (Tab 46) (Chen states that content should remain on the site.)</p> <p>C. Hurley Ex. 41 (JK00007416) (Tab 47) (Chen states that YouTube can "presumably claim" that they are unaware of infringing content and wait for a DMCA notice).</p> <p>Karim Ex. 40 (JK00006166-6169) (Tab 64) (YouTube founder uploads unlicensed video to the site.)</p>

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	<p>Karim Ex. 22 (JK00004969) (Tab 61) (Chen: “for these mixed videos with music backgrounds, will we get in trouble for them because the music is copyrighted?... Hurley: I wouldn’t be too concerned for now.”)</p> <p>C. Hurley Ex. 6 (GOO001-00660582-83) (Tab 42) (Premium content causes user traffic to “surge”.)</p> <p>C. Hurley Ex. 33 (JK00005929) (Tab 45) (Chen: “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 on the site. third, we’re going to be adding advertisements in the future so this gets them used to it. I’m asking for a couple more weeks.”)</p> <p>Dunton Ex. 5 (GOO001-00507535-GOO001-00507540) (Tab 15) (discussing the percentage of copyrighted videos on YouTube.)</p>
<p>6. YouTube has been and is capable of identifying and removing copyright infringing and other “inappropriate” content from the website through, among other things, proactive searches by YouTube personnel and “community flagging” by users; it deploys such practices when removal corresponds to its financial interests.</p>	<p>Schaffer Ex. 12 (GOO001-00561567-82) (Tab 107) (“Introduction to Content SQUAD, Google Sales Conference 2007”) (“Community Flagging... • Users police YouTube by flagging inappropriate content for review”</p> <ul style="list-style-type: none"> <li>• All flagged videos are reviewed by the YouTube Content SQUAD, 24 hours a day, 365 days a year</li> <li>• Flagged videos are routed into queues, team members are able to collaborate and escalate difficult decisions to higher tiers</li> <li>• 75% Of all flagged videos are reviewed within three minutes, most are reviewed within 30 seconds</li> <li>• Child pornography is typically flagged and removed within minutes of being uploaded</li> <li>• Pornography is typically flagged and removed within the first 100 views”) (GOO001-00561577)</li> </ul> <p>Gillette Ex. 1 (GOO001-00757950) (Tab 27) (Gillette: “This content should be <i>removed</i> from the FAQ immediately. It in itself makes it so we are not protected by the DMCA: What are you doing to prevent content that violates your policies from appearing in YouTube?: <i>We do a preliminary review on uploaded videos through both a manual and automated process.</i> Although we try our best to detect and remove videos that violate our policy guidelines, our review process is primarily focused on removing adult content or obvious copyright</p>

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	<p>violations, and is not bulletproof. However, we encourage our viewers to notify us when they discover policy violations or copyright issues -- we <i>have</i> a process for reviewing reported policy violations, and respond to reported copyright violations under the Digital Millennium Copyright Act.”)</p> <p>Schaffer Ex. 6 (GOO001-00839895) (Tab 105)          (Schaffer: “Hey guys, Weezer is on our list of content that we pro-actively scan for (as per the RIAA). We should probably de-feature this <a href="http://www.youtube.com/watch?v=IU6sdCeY1Q8">http://www.youtube.com/watch?v=IU6sdCeY1Q8</a> even though it's a cover band, it still needs to be cleared... :( It'll probably wind up Copyright Reject w/ Strike next time we scan for Weezer.”)</p> <p>Schaffer Ex. 8 (GOO001-00840004-06) (Tab 106)          (YouTube chart for tracking entertainment content proactively on the site.)</p> <p>Gillette Ex. 4 (GOO001-00839851) (Tab 28) (Gillette: “Need help with proactive scans [...] a list of all of the earlier infringement notifications that we have received, and I would like you to cycle through this once a day and search for their content on our site. If you see a lot for any of the content owners, you could also ask whoever is working that day in support to help you to ferret more out.”)</p> <p>B. Hurley Ex. 7 (GOO001-00629095) (Tab 40) (B. Hurley: “please reject any nudity/porn and any death videos, along with anything else that’s glaringly inappropriate. As far as copyright stuff is concerned , be on the look out for Family Guy, South Park, and full-length anima episodes... music videos and news programs are fine to approve.”)</p> <p>Dunton Ex. 5 (GOO001-00507535-GOO001-00507540) (Tab 15)</p> <p>Gillette Tr. 94:12-99:6 (Tab 32) (Explanation of YouTube review process)</p>
<p>7. For a brief period in September 2005, YouTube’s “community flagging” feature permitted users to</p>	<p>Karim Ex. 38 (JK00007479) (Tab 63) (Chen: “we’ve implemented a flagging system so you can flag videos as being inappropriate or copyrighted.”)</p>

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<p>flag unauthorized copyrighted content, but YouTube discontinued it in order to claim ignorance of the copyright infringing content on the site.</p>	<p>C. Hurley Ex. 11 (JK00008043) (Tab 43) (Chad Hurley: “can we remove the flagging link for ‘copyrighted’ today? we are starting to see some 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.”)</p> <p>B. Hurley Ex. 3 (JK00008393) (Tab 39) (Chad Hurley: “we took it down, because, as stated in the Digital Millennium Copyright Act, we’re only obligated to remove content when contacted directly by the copyright owner. We don’t want random users to flag things as copyrighted because they don’t own the content.”)</p>
<p>8. YouTube no longer undertakes proactive searches generally for copyright infringing content (but only for select partners).</p>	<p>Levine Ex. 10 (GOO001-00839903) (Tab 84) (Gillette: “Other than American idol and SNL, please stop the stop the scans so that we can spend more time on email.”)</p> <p>Gillette Tr. 73:22-74:10 (Tab 31) (“A: I do not recall actually the -- the periods where we did proactive scanning when -- when exactly they were. Q: Do you recall when it -- well, did it ever stop? A: Yes, it did. Q: Okay. Do you recall when? A: I recall that it was pre-acquisition. I’m fairly sure. I do not recall how early on we actually decided to stop doing that. Q: Who at YouTube made that decision to stop doing that? A: I believe legal. It was a legal decision.”)</p>
<p>9. By exploiting unlicensed copyrighted material, YouTube’s founders/management effectively implemented a plan to derive financial benefits from both the operation of the site and the eventual sale of the site.</p>	<p>Google to Acquire YouTube for \$1.65 Billion in Stock, Google Press Center, October 9, 2006 (“Founded in February 2005, YouTube is a consumer media company... [that] has quickly become the leading destination on the Internet for video entertainment.” (Tab 134)</p> <p>Dunton Ex. 4 (GOO001-00507525-32) (Tab 14) (Chen: “concentrate all of our efforts in building up our numbers as aggressively as we can through whatever tactics, however evil.”) (GOO001-00507526)</p> <p>Karim Ex. 9 (JK00009871-72) (Tab 60) (Karim: “Our</p>

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	<p>goal is to use funding to pursue a two-phased approach. First we will further grow our audience and reach to secure our position as the #1 place for personal videos on the internet. Then we will monetize the audience we have acquired by hosting video ads.”) (JK00009871)</p> <p>C. Hurley Ex. 38 (GOO001-01424047-48) (Tab 46) (Hurley emphasizes that “serious traffic” will allow them to sell YouTube for “big money.”)</p> <p>C. Hurley Ex. 12 (Tab 44) C. Hurley Tr. 107:14- 108:20 (Tab 49) (SPEAKER 1: “It was like pretty impressed. You’re basically right. It’s like anywhere on the Internet you have a little that can control and, you know, basically serve up ads, and the whole of things with tags and, you know, what our viewers have seen before the flash. It’s pretty -- SPEAKER 2: So if we get them involved, at what point would we tell them our dirty little secret, which is that <i>we actually just want to sell out quickly?</i> SPEAKER 1: Are you filming? You’re going to actually have to erase this. SPEAKER 2: No. It won’t be released until after the acquisition.” MR. BROWNE: Q: Now, Mr. -- stop that. Now, Mr. Hurley, have you ever seen that video before? A: I don’t remember it. Q: Okay. Did you recognize the two individuals that were on camera during that video? A: I recognize Steve and myself, and it sounded like Jawed’s voice. Q: Okay. And it sounded like -- and Mr. Karim’s voice on the video, you recognized that? A: It sounded like it. Q: Did you hear yourself say on -- on -- on that video that -- that you have to -- something like “we’ll have to erase the file”? A: I mean, yeah, it seemed like a pretty sarcastic remark to his sarcastic comment.”)</p>
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<p>10. The YouTube founders had extensive experience building internet businesses, and their explicit goal was to build an audience as quickly as possible to maximize value in an expected sale of the business.</p>	<p>Karim Ex. 1 (Resume – PayPal employee 2000-2005) (Tab 59)</p> <p>Karim Tr. 16:12-17:3 (Tab 65)</p> <p>C. Hurley Tr. 16:20-17:16 (Tab 48) (YouTube’s founders had significant experience developing internet businesses through prior job experience at PayPal.)</p> <p>Ebay Press Release (October 3, 2002)  <a href="http://investor.ebay.com/releasedetail.cfm?ReleaseID=91641">http://investor.ebay.com/releasedetail.cfm?ReleaseID=91641</a> (Tab 133) (ebay bought Paypal in 2002 for \$1.5 billion)</p>
<p>Google Purchased YouTube After Failing to Succeed with A Competing Website and Adopted YouTube’s Policies.</p>	
<p>11. Google acquired YouTube for more \$1.65 billion in October 2006, because YouTube had attracted substantially more users than Google’s competing website, known as Google Video.</p>	<p>Google to Acquire YouTube for \$1.65 Billion in Stock, Google Press Center, October 9, 2006 (Tab 134)</p> <p>Schmidt Tr. 53:9-24 (Tab 110) (“Q And as best you can recall, can you tell us what reasoning you explained [to the Board]? A Sure. This is a company with very little revenue, <i>growing quickly with user adoption, growing much faster than Google Video</i>, which was the product that Google had.... And we ultimately concluded that 1.65 billion included a premium for moving quickly and making sure that we could participate in the user success of YouTube.”) (emphasis added)</p> <p>Kordestani Ex. 10 (GOO001-00496021-62) (Tab 78) (“Google Video... Topics discussed at this GPS... discuss competitive position vs YouTube and MySpace Video”) (GOO001-00496023)</p> <p>Schmidt Ex. 2 (CSSU003560-86) (Tab 108) (Storm Duncan – Credit Suisse – Project Snowmass: “60% of total video streams on Yellow [codename for YouTube] website are ‘Premium’ ... 40% of total video streams non Yellow [YouTube] are non-Premium... Non-Premium Content is user generated videos and is segmented between high value and regular content”) (CSSU003570)</p> <p>Walker Ex. 14 (GOO001-00502527-54) (Tab 118)</p>

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	<p>(“GV can be the best partner to content owners... Respect copyrights of premium content owners (we should beat YouTube by improving features and user experience, not being a ‘rogue enabler’ of content theft”)) (GOO001-00502536)</p>
<p>12. Prior to its acquisition of YouTube in October 2006, Google Video implemented policies and practices to identify and remove infringing content that appeared on Google Video through, among other things, proactive screening of uploads, when removal corresponded with its financial interests.</p>	<p>GOO001-00923351-52 (Tab 152) (P. Walker: “I’ll be attending a seminar on Wednesday (tomorrow) in Dublin with heads of several major sports teams and leagues. I would be much appreciated if you could have a quick look through the index and post on the sparrow page/take down any clearly infringing, official broadcast footage that you notice from these right holders below... Liverpool Football FC... Chelsea Football FC... Manchester United Football Club... Arsenal Football Club... Sky Sports.”) (GOO001-00923351)</p> <p>Narasimhan Ex. 4 (GOO001-00794737-58) (Tab 93) (June 28, 2006 email and attached deck on GV review of illegal uploads. Narasimhan writes to Eun: “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.”) (GOO001-00794737)</p> <p>Kordestani Ex. 10 (GOO001-00496021-62) (Tab 78) (“Today – zero tolerance on copyright, violence and hate... enforced with proactive screening before the video goes live... reject mixed use if more than 50% is recognizable copyright”) (GOO001-00496037)</p> <p>Eun Tr. 130:3-17 (Tab 26) (“Q: So the existing policy at the time of this draft document was a zero tolerance on copyright as well as porn, violence and hate. And that was enforced with proactive screening before the video went live, correct? A: Yeah. I have no reason to dispute that what this is is the current policy was not, you know, was not anything but the current policy back then.”)</p> <p>Patrick Walker Ex. 9 (Tab 117) (Bill Kipp: “Authoritative 3rd party data sources for movie titles, song lists, etc... Patrick [Walker] create a nice list of sports-related content providers and subjects to help us with our search for unauthorized content... Soccer</p>

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	<p>(Football) Most Followed Leagues (use both league/competition names and team/club names)... English Premier League... German Bundesliga... Scottish Premier League... Tennis... Top Competitions: Wimbledon, US Open, Australian Open, Roland Garros (French Open)...”) (GOO001-00313643-00313646)</p>
<p>13. Google analyzed YouTube prior to and during the acquisition process and concluded that YouTube contained and displayed substantial quantities of copyrighted material that was not authorized to appear on the site.</p>	<p>Eun Ex. 12 (GOO001-00496651-54) (Tab 23) (“I think we should beat YouTube – and all competitors – but not at all costs. A large part of their traffic is from pirated content. When we compare our traffic numbers to theirs, we should acknowledge that we are comparing out ‘legal traffic’ to their mix of traffic from legal and illegal content.”) (GOO001-00496651)</p> <p>Walker Ex. 14 (GOO001-00502527-54) (Tab 118) (Google concluded that YouTube was a ‘rogue enabler’ of content theft.”) (GOO001-00502536)</p> <p>Schmidt Ex. 2 (CSSU003560-86) (Tab 108) (Credit Suisse Analysis had calculated percentages of Premium content.) (CSSU003570)</p> <p>Schmidt Ex. 8 (GOO001-00496614-47) (Tab 109) (Content Acquisition Strategy Update: “Premium Content Owners... perceive You Tube as trafficking mostly illegal content – it’s a Video Grokster.... YouTube is getting more traffic and engagement than Google Video today.... Qualitative research in 4 countries reveals the reasons behind this... YouTube’s content is all free, and much of it is highly sought after pirated clips.”) (GOO001-00496619-20; GOO001-004966330)</p> <p>Storm Duncan Ex. 13 (CSSU002686) (Tab 176) (Ullah: “Snowmass video analysis [of YouTube]... Prem/rem ... 63%... Premium/removed- means the content is copyright (either in whole or in substantial part) and removed were links that were taken down.”)</p> <p>Duncan 30(b)(6) Tr. 89:24-90:6 (Tab 177); 92:20-93:17 (Tab 178) (“A: My recollection of the 424 is that it’s a - - it says at the top of the e-mail, ‘Some manual analysis we did,’ was that it was a study that the Google folks had performed studying, you know, a number of randomly generated or chosen videos, and that 424 is</p>

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	<p>the number that they had randomly chosen and -- and were able to categorize with these subcategorizations.” 92:20-93:17 (Tab 178) (“Q: And the premium/removed category includes content that is copyrighted in whole or substantial part, plus removed, which are links that were taken down; right? A: Yeah, that's how it's categorized here from -- from the Google folks. Q: And the no category is categorized here by the people from Google as no copyright but includes commercials, trailers, public service, promos, and true UGC; right?...”)</p>
<p>14. Google management recognized the risk of infringement liability arising from YouTube’s policies and practices, but nonetheless sought to expand its business by continuing those policies and practices.</p>	<p>Schmidt Ex. 2 (CSSU003560-86) (Tab 108) (Credit Suisse Analysis had calculated percentages of Premium content.) (CSSU003570)</p> <p>Schmidt Tr. 109:20-21 (Tab 111) (“our policy from acquisition was to grow the user base.”)</p> <p>Yu Ex. 9 (SC009721-26) (Tab 125) (Term Sheet for the Acquisition of YouTube, Inc. By Google, Inc. – “Indemnification of Google... the representations and warranties related to intellectual property shall survive for three years.”) (SC009725)</p> <p>Schmidt Ex. 8 (GOO001-00496614-00496647) (Tab 109) (Google perceived You Tube as “trafficking mostly illegal content – it’s a Video Grokster.”) (GOO001-00496619-20; GOO001-004966330)</p> <p>Narasimhan Ex. 8 (GOO001-06555098-99) (Tab 94) (“Google Video Community Policing Change... “tonight we are planning on changing our process for reviewing videos on Google Video... Videos under 11 mins will be indexed and will go live without review... “on the front end, users will be able to flag videos as inappropriate and will be able to specify from one of the following categories: pornography, obscenity, graphic violence, racially or ethnically hateful content, and other content inappropriate for young viewers.”) (GOO001-06555098)</p>
<p>Defendants Have Clear Knowledge of Extensive Infringing Content on YouTube.</p>	<p>[Redacted]</p>
<p>15. YouTube identifies “premium” content on its site and</p>	<p>Maryrose Dunton Tr. 84:12-85:9; 89:5-18 (Tab 18) (Tab 18) (“Q: Okay. Then you respond ‘oh, what I meant to</p>

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understands that this content is copyrighted, routinely uploaded without authorization, and a major attraction that generates traffic. --

say after I found that 70%, I went and flagged it all for review.' What does it mean to flag it for review? A: At the time, it meant it goes into a queue that somebody at YouTube reviews. Q: Reviews for what purpose? A: They can review it for many different purposes. Things are flagged because users find them inappropriate. Anything that users feel break our Terms of Use. Q: Okay. But you did not flag it all for review; did you? A: I don't know. I don't believe I flagged the videos I saw on the most viewed for review. Q: Okay. This is a joke; right? You're being sarcastic -- A: Which part? Q: -- in the IM? A: Which part? Q: That you went and flagged it all for review? A: I'm probably being sarcastic, yes... "Q: You then say 'because we've got to work towards having a site 100% free of copyrighted material, ya know.' You were being sarcastic there again; weren't you? A: I don't know if I was being sarcastic. As I said, we used the terms 'copyrighted' and 'premium -- ' we exchanged those two terms quite a bit. I thought it was -- yes, this is true. I didn't think it was possible to have a site 100 percent free, nor why would we want to, of premium, of professionally produced content. We had premium professional produced content since the beginning of YouTube.")

July 16, 2009 – Fair Disclosure Wire – Q2 2009 Google Earnings Conference Call – Final (Tab 142) (“HEATH TERRY: And in terms of being able to monetize the non-professional side of that inventory? ERIC SCHMIDT: It has not been our focus. It is probably possible to do so, but the fact of the matter is that the majority of the non-professional content has a relatively small number of viewers. It is difficult to target it accurately. There is too much variation and so forth, whereas the professional here, and remember, professional here just doesn't mean big studios.”) (p. 10)

April 16, 2009 – Fair Disclosure Wire – Q1 2009 Google Q&A Session – Final (Tab 141) (Jonathan Rosenberg: “what we're hearing from both viewers and advertisers is that they want premium content and the premium viewing experience.”) (p. 4)

Eun Ex. 27 (GOO001-00238624-25) (Tab 25) (Eun: “Our preliminary analysis indicates that anywhere from ~ 40% to as high as ~70% of search queries may

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involve premium terms. While the playbacks evidence a far smaller percentage of premium clips (as far as we can tell without digging too much under the hood), *it seems that premium content/brands are an important element to bringing people into the YT house. My guess is that once they're in, they decide to stay a while.* I've asked to see if there's a difference in total views for people who come in through search vs. browsing vs. links in email; and whether there's a difference for those who have searched for premium terms.” (GOO001-00238624) (June 26, 2007) (emphasis added)

Ellerson Ex. 10 (GOO001-02519867-73) (Tab 22)  
 (Ellerson: “Our opinion – based in particular on the recent analysis... done on query stream data... is that Chad’s initial conclusion [that ‘users... don’t want to watch professionally produced content’] is not correct. This data suggests that our users do want to watch professional content, be we haven’t yet licensed the content that they’re looking for.... Of the Top 100 Playback Queries... Music = ██████████ .. Non –Music Premium = ██████████ Of ‘Premium’ content queries: ... Sports = ██████████ .. News = ██████████) (GOO001-02519871)

B. Hurley Ex. 18 (GOO001-01016964-86) (Tab 41)  
 (Content Lead Discussion – June 26, 2007: “users are searching for lots of things, but primarily for premium content.”) (GOO001-01016969)

King Ex. 2 (GOO001-01403792-93) (Tab 66) (Tony Lee, Technical Product Manager: “Music content is a key element to Youtube’s success. Premium music content is the most watched genre of content on YouTube. Thus, it is imperative that we acquire, and allow content owners to claim, as much content as possible to promote the growth and success of YouTube.”) (GOO001-01403792)

Reider Ex. 7 (GOO001-00074410-11) (Tab 98) (George Strompolos: “There are three kinds of YouTube content partnerships: 1. Premium. Premium partnerships are usually established with large, mainstream content providers such as TV networks, cable stations, sports leagues, large content hosting websites, and film studios. These are typically negotiated deals that may involve content commitments and promotional

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	<p>guarantees.”) (GOO001-00074410)</p> <p>Schmidt Ex. 2 (CSSU003560-86) (Tab 108) (Credit Suisse Analysis had calculated percentages of Premium content.) (CSSU003570)</p>
<p>16. Defendants conducted analyses of “query streams” (search results) and identified with specificity premium content across a broad range, including infringing content, that is popular among YouTube’s users.</p>	<p>Ellerson Ex. 10 (GOO001-02519867-73) (Tab 22) (Ellerson: “Our opinion – based in particular on the recent analysis... done on query stream data... is that Chad’s initial conclusion [that ‘users... don’t want to watch professionally produced content’] is not correct. This data suggests that our users do want to watch professional content, but we either haven’t yet licensed the content that they’re looking for, or, for content that we have licensed, we are not doing the best job that we can to surface that content for users... Of the Top 100 Playback Queries... Music = ██████... Non –Music Premium = ██████ Of ‘Premium’ content queries: ... Sports = ██████... News = ██████”) (GOO001-02519871)</p> <p>Eun Ex. 25 (GOO001-00986823-26; GOO001-00986825-997) (Tab 24) (“Top 10K queries... “Searches do reflect popularity pretty well... Fresh content is being searched for consistently... Music, TV Shows, Movies, Celebrities, Sports, etc, are definitely our top categories to attack...” (GOO001-00986823)</p> <p>Zameczkowski Ex. 23 (GOO001-01316227-29.0019) (Tab 132) (“Weekly report with top searches of April 25”) (GOO001-01316227-29.0013)</p> <p>Zameczkowski Ex. 14 (GOO001-00214966-67) (Tab 127) (Walker: “[...] there’s a deadline mid next week to put in a proposal for English Premier League rights globally and we’re trying to run some commercial models to gauge [sic] value based on video usage in the categories listed below... [which] might become a recurring need... For the following terms:</p> <ol style="list-style-type: none"> <li>1. soccer</li> <li>2. football</li> <li>3. Premier League (sp?)</li> </ol> <p>...what are:</p> <ol style="list-style-type: none"> <li>a. # searches for the above done on YT daily</li> <li>b. # titles with tagged with the above</li> <li>c. # titles with the above in the title text”) (GOO001-00214966) </li></ol>

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	<p>Levine Ex. 21 (GOO001-00707313) (Tab 85) (“... there are millions of Football goals on YouTube... Here are several copies of the video that other people have uploaded  <a href="http://www.youtube.com/results?search_query=saha+fulham&amp;search=Search">http://www.youtube.com/results?search_query=saha+fulham &amp;search=Search</a>”)</p> <p>King Ex. 2 (GOO001-01403792-93) (Tab 66) (Tony Lee: “music content is a key element to YouTube’s success. Premium music content is the most watched genre of content on YouTube.”) (GOO001-01403792)</p> <p>GOO001-00923351-52 (Tab 152) (P. Walker: “I’ll be attending a seminar on Wednesday (tomorrow) in Dublin with heads of several major sports teams and leagues. I would be much appreciated if you could have a quick look through the index and post on the sparrow page/take down any clearly infringing, official broadcast footage that you notice from these right holders below... Liverpool Football FC... Chelsea Football FC... Manchester United Football Club... Arsenal Football Club... Sky Sports.”) (GOO001-00923351)</p>
<p>17. Defendants adhere to a policy that they would only take down videos in response to a formal DMCA notice, and then only remove the specific URLs listed in the individual notice and only future uploads that specifically match the unique “hash mark” known as a “md5 hash” that YouTube created for each URL.</p>	<p>Gillette Ex. 13 (GOO001-00041715-20) (Tab 30) (The YouTube Team to user: “To file a notice of infringement with us, you must provide a written communication that sets forth the items specified below. To expedite our ability to process your request, please use the following format (including section numbers): 1. Identify in sufficient detail the copyrighted work that you believe has been infringed upon, including the owner of the work. For example, ‘The copyrighted work at issue is the video titled ‘My Video produced by me.’ ... 2. Identify the material that you claim is infringing the copyrighted work listed in item #1 above. YOU MUST IDENTIFY EACH VIDEO THAT ALLEGEDLY CONTAINS INFRINGING MATERIAL. This requires you to specify the URL of the playback page for that video (like this: <a href="http://www.youtube.com/watch?v=QCVxQ_3Ejkg">http://www.youtube.com/watch?v=QCVxQ_3Ejkg</a>.”) (GOO001-00041718)</p> <p>C. Hurley Ex. 38 (GOO001-01424047-48) (Tab 46) (Chen advised that videos should remain on the site</p>



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	<p>regardless of knowledge until YouTube receives as “cease &amp; desist letter.”) (GOO001-01424047)</p> <p>C. Hurley Ex. 41 (JK00007416) (Tab 47) (Chen stated that YouTube can “presumably claim” that they are unaware of infringing content and wait for a DMCA notice).</p> <p>P. Walker Tr. 222:17-223:12 (Tab 122) (“Q: You said that YouTube makes tools available to content owners to monitor their rights. What tools are you referring to? Do they have names? A: There is the standard DMCA notification process, which is submitting either in bulk or on an individual URL basis the content they would like to be removed, which we do remove. And there is the development of a tool that we call CVT or content verification program, which would allow them to use search tools to pull up clips that had -- that responded to the queries that they insert. Then they would be able to look at those clips that came up in response to their search queries. They would then be able to, within that tool, review those videos and determine whether or not it was, in fact, in their opinion, an unauthorized use. They could tick a box indicating removal, click a button, and we would have a batch list sent to us that would be automatically removed.”)</p> <p>P. Walker Tr. at 216:25-218:4 (Tab 121) (THE WITNESS: When anyone, including the Premier League, indicates to me that their content is on YouTube, what I tell each and every one of them is, why is it still there if you don't want it there? The tools are available to you to have it removed if you object to its presence there. Q: And you said that to the Premier League officials? A: Yes. Q: And what did they say in response? A: They said that we should, meaning YouTube should take it down. To which I responded, you are the only one that knows which clips are the ones that might be unauthorized, and you must follow procedures for its removal through the DMCA process.”)</p> <p>Matthew Liu Ex. 15 (GOO001-07171324-07171353) (Tab 89) (“MD5 Hashes - YouTube uses the checksum of the video binary that the user uploads to create an MD5 hash. YouTube then compares that MD5 hash to a</p>
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	<p>database of reference hashes. Hash comparisons work most effectively when two videos are completely identical.”) (GOO001-07171347)</p> <p>K. Walker Tr. 130:14-18 (Tab 116) (“YouTube had a system called MD5 hashing, which identified unique copies of a given video, and when we received a DMCA notice for one version, I believe we would block other versions that also had that same hash.”)</p> <p>Cuong Do Tr. 134:21-135:2 (Tab 11) (“Q. And I think you said if you have exactly the same content in another file as the original video file, it would produce the exact same Hash. Is that right? A. That's right. Q. But if you change the content one iota, it produces a different Hash? A. That's right.”)</p>
<p>18. Defendants permit videos containing content that had been the subject of DMCA takedowns to be reposted on the website.</p>	<p>Levine Ex. 24 (GOO001-01918032) (Tab 86) (Fuji Television: “Even if a video of a certain program is deleted, the same content is uploaded, again, over and over. We are very disappointed at how unproductive this process is...”)</p> <p>Gillette Ex. 13 (GOO001-00041715-20) (Tab 30) (Copyright owner submits DMCA notices and states “I expect that there will be more videos uploaded this evening and into the night. I will continue to use the verification tool to request that you remove the videos that are infringing on our copyrights.”) (GOO001-00041716)</p> <p>Videos from YouTube (Tab 188) (Display of reposted clips of Class Plaintiffs’ works.)</p>
<p>19. By their own analysis of content, including infringing content, on YouTube, Defendants recognize professionally produced sports programming as among the array of content attracting substantial viewership.</p>	<p>Ellerson Ex. 10 (GOO001-02519867-73) (Tab 22) (Ellerson: “Our opinion – based in particular on the recent analysis... done on query stream data... is that Chad’s initial conclusion [that ‘users... don’t want to watch professionally produced content’] is not correct. This data suggests that our users do want to watch professional content, but we either haven’t yet licensed the content that they’re looking for, or, for content that we have licensed, we are not doing the best job that we can to surface that content for users... Of the Top 100 Playback Queries, Music = ██████████... Non –Music Premium = ██████████ Of ‘Premium’ content queries: ...</p>

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	<p><i>Sports</i> = [REDACTED]... News = [REDACTED] (emphasis added) (GOO001-02519869)</p> <p>Ellerson Ex. 9 (GOO001-03065453-306467) (Tab 21) (Ellerson: “Attached is the recommendation that we made to Dave [Eun]... Potential Target... English Premier League.”)</p> <p>C. Hurley Ex. 41 (JK00007416) (Tab 47) (“take down whole movies. take down entire TV shows. take down XXX stuff. everything else keep including <i>sports</i>, commercials, news, etc.”) (emphasis added)</p> <p>Zameczkowski Ex. 13 (GOO001-02341604-09) (Tab 126) (Premier League was “world’s biggest and most recognized sporting leagues” and “already popular” on GV and YouTube.) (GOO001-02341605)</p> <p>Zameczkowski Ex. 18 (GOO001-00716143-45) (Tab 130) (Redic: “We are working on estimating the potential value of various sports content to YouTube. This requires us to estimate the number of video views that we could potentially experience if the content of certain content providers was on the site. For example, if we had UEFA [Union of European Football Associations] in 2008, what would be the potential number of views that we could see.”) (GOO001-00716143)</p> <p>Zameczkowski Ex. 19 (GOO001-01655883-84.0003) (Tab 131) (“Premier League” is listed as a Tier 1 content partner, part of “Sporting organizations and clubs with international recognition.”) (GOO001-01655883)</p> <p>Patrick Walker Ex. 9 (Tab 117) (Bill Kipp: “Authoritative 3rd party data sources for movie titles, song lists, etc... Patrick [Walker] create a nice list of sports-related content providers and subjects to help us with our search for unauthorized content... Soccer (Football) Most Followed Leagues (use both league/competition names and team/club names)... English Premier League... German Bundesliga... Scottish Premier League... Tennis... Top Competitions: Wimbledon, US Open, Australian Open, Roland Garros (French Open)...”) (GOO001-00313643-</p>
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	<p>00313646)</p> <p>Walker Ex. 19 (GOO001-00922380-81) (Tab 119) (“FAPL Opportunity... Why do the deal?... <i>avoiding possible litigations for copyright infringements</i>... Proposed deal terms... Estimate license fee: between 5 to 10% of the International TV rights (• 20 million [sic] over 3 years).”) (GOO001-00922380) (emphasis added)</p> <p>Ellerson Ex. 9 (GOO001-03065453-306467) (Tab 21) (Ellerson: “Attached is the recommendation that we made to Dave [Eun]....Potential Target...English Premier League.”)</p>
<p>20. YouTube has been repeatedly informed that sports content is being exploited on YouTube without authorization.</p>	<p>Zameczkowski Ex. 16 (GOO001-00221953) (Tab 128) (German Football League, Bundesliga, indicated to Defendant’s employee Anthony Zameczkowski that it may join the class action lawsuit)</p> <p>Zameczkowski Ex. 17 (GOO001-02339707-13) (Tab 129) (La Liga (Spanish football) threatened litigation due to the presence of unlicensed content on YouTube) (GOO001-02339710)</p> <p>King Ex. 13 (12/12/08) (GOO001-01519154-55) (Tab 71) (Adam Coates emails: “I just had an interesting meeting with Ligue 1 who are considering joining the Premiership class action to sue YouTube.”) (GOO001-01519154)</p> <p>Scottish Premier League (First Amended Complaint ¶ 33) (Tab 137)</p>
<p>21. Defendants concluded that Premier League was a sports entity with content on YouTube that could be exploited financially for YouTube’s benefit.</p>	<p>Zameczkowski Ex. 13 (GOO001-02341604-09) (Tab 126) (“FAPL [Football Association Premier League] and YouTube... Why Do the Deal?... Prime content with which we can test and improve advertising in various geographies... Running models now. Aim for roughly \$40MM over three years – which is what we believe is roughly in range of competitive bids.”) (GOO001-02341605; GOO001-02341609)</p> <p>Walker Ex. 19 (GOO001-00922380-81) (Tab 119) (See above)</p> <p>Zameczkowski Ex. 14 (GOO001-00214966-67) (Tab</p>

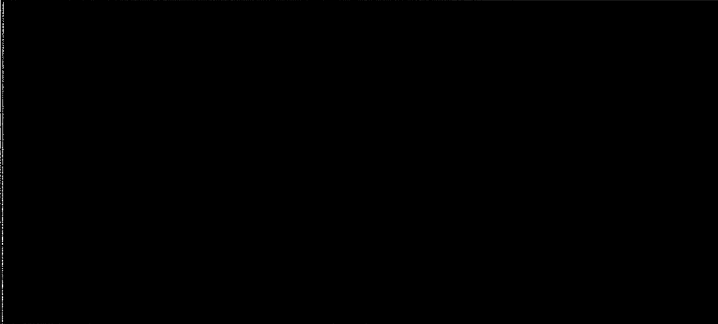
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	<p>127) (Walker: “[...] there’s a deadline mid next week to put in a proposal for English Premier League rights globally and we’re trying to run some commercial models to gauge [sic] value based on video usage in the categories listed below... [which] might become a recurring need... For the following terms:</p> <ol style="list-style-type: none"> <li>1. soccer</li> <li>2. football</li> <li>3. Premier League (sp?)</li> </ol> <p>...what are:</p> <ol style="list-style-type: none"> <li>a. # searches for the above done on YT daily</li> <li>b. # titles with tagged with the above</li> <li>c. # tales with the above in the title text”) (GOO001-00214966) <p>Zameczkowski Ex. 18 (GOO001-00716143-45) (Tab 130) (YouTube estimations of Premier League video views in excess of 30 million.) (GOO001-00716143; GOO001-00716145) (See above)</p> <p>Ellerson Ex. 10 (GOO001-02519867-73) (Tab 22) (See above)</p> </li></ol>
<p>22. YouTube did not license Premier League content despite knowledge that videos of Premier League footage on YouTube were unauthorized.</p>	<p>Molnar Ex. 19 (GOO001-01211705-14) (Tab 92) (Zameczkowski: “Dear Paul and Phil, I am working with Patrick Walker in the YouTube/Google Video EMEA team. According to the ITT you sent us on January 24th, the bidding form was supposed to be supplied 7 days after the date of issue of this ITT but we didn't receive it. Are you able to send us the bidding form shortly?”) (GOO001-01211707)</p> <p>P. Walker Tr. 227:10-228:14 (Tab 123) (YouTube “decided not to make a bid for these rights.”)</p> <p>Zameczkowski Ex. 14 (GOO001-00214966-67) (Tab 127) (YouTube personnel requested searches for Premier League materials.)</p> <p>Levine Ex. 21 (GOO001-00707313) (Tab 85) (“millions of Football goals on YouTube.”)</p> <p>GOO001-00923351-52 (Tab 152) (P. Walker: “I’ll be attending a seminar on Wednesday (tomorrow) in Dublin with heads of several major sports teams and leagues. I would be much appreciated if you could have</p>

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	<p>a quick look through the index and post on the sparrow page/take down any clearly infringing, official broadcast footage that you notice from these right holders below... Liverpool Football FC... Chelsea Football FC... Manchester United Football Club... Arsenal Football Club... Sky Sports.”) (GOO001-00923351)</p>
<p>23. By their own analysis of content, including infringing content, on YouTube, Defendants recognize professionally-produced music as among the array of content attracting substantial viewership.</p>	<p>Ellerson Ex. 10 (GOO001-02519867-73) (Tab 22) (Ellerson: “Our opinion – based in particular on the recent analysis... done on query stream data... is that Chad’s initial conclusion [that ‘users... don’t want to watch professionally produced content’] is not correct. This data suggests that our users do want to watch professional content, but we either haven’t yet licensed the content that they’re looking for, or, for content that we have licensed, we are not doing the best job that we can to surface that content for users... Of the Top 100 Playback Queries... Music = ██████████... Non-Music Premium = ██████████... Of ‘Premium’ content queries: ... Sports = ██████████... News = ██████████) (GOO001-02519869) (emphasis added)</p> <p>King Ex. 2 (GOO001-01403792-93) (Tab 66) (Tony Lee, Technical Product Manager: “Music content is a key element to Youtube’s success. Premium music content is the most watched genre of content on YouTube. Thus, it is imperative that we acquire, and allow content owners to claim, as much content as possible to promote the growth and success of YouTube.”) (GOO001-01403792)</p> <p>Eun Ex. 25 (GOO001-00986823-26; GOO001-00986825-997) (Tab 24) (Seth: “Top 10K queries... “Searches do reflect popularity pretty well... Fresh content is being searched for consistently... Music, TV Shows, Movies, Celebrities, Sports, etc, are definitely our top categories to attack... beckham, rooney (wayne), christiano ronaldo, steven gerrard, fernando torres.”) (GOO001-00986823)</p> <p>B. Hurley Ex. 18 (GOO001-01016964-86) (Tab 41) (Content Lead Discussion – June 26, 2007: “users are searching for lots of things, but primarily for premium content... Music Videos ██████████”) (GOO001-01016969)</p> <p>King Ex. 4 (GOO001-01404022) (Tab 67) (King:</p>

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	<p>“From a copyright perspective, clearing music inventory is our most important initiative, so it is highly unfortunate if this does not coincide with our monetization capabilities.”)</p> <p>Karim Ex. 25 (JK00009933-34) (Tab 62) (Karim: “I’d just remove the obviously copyright infringing stuff... “none of the most favorited videos are movies or tv shows. we’re ok cracking down on this content. we’ll leave <i>music videos</i>, news clip and comedy shows for now.”) (JK00009933) (emphasis added)</p>  <p>G00001-00021120 (Tab 149) (“So the Cherry Lane thing sucks. Had we been in touch and they still sued? I’m just wondering if we should be devoting the entire team’s time to just publishers (and big indies) to try to stem litigation?”)</p>
<p>24. Defendants were aware that the exploitation of music requires the execution of licenses with multiple entities, including publishers, record labels, and performance societies.</p>	<p>King Ex. 18 (G00001-01905256-64) (Tab 72) (Music Copyright – March 2007 – David King: “Right type: Reproduction, Performance, Distribution, Synchronization... Label – Sound Recordings... Publisher – Compositions... Complex ownership and administration arrangements, and constant movement between publishers...” (G00001-01905259)</p> <p>K. Walker Tr. 71:24-72:7 (Tab 115) (“music content is perhaps uniquely legally complex because of the number of overlapping and sometimes inconsistent rights associated with it. There are a wide number of different rights that are owned by the performer, the creator, the -- the publishers, the labels, the collecting societies in Europe, et cetera, and each of those entities can own multiple rights, which sometimes align and sometimes do not.”)</p> <p>G00001-01027023-44 (Tab 154) (“Copyright 101 for YouTube Partners,” to “get permission” when “using</p>

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	<p>other people's property", with the presentation notes indicating that "ASCAP, BMI and SESAC are excellent resources for identifying the copyright holder for a particular piece of music [sic].") (GOO001-01027036)</p> <p>Levine Ex. 3 (GOO001-03424419) (Tab 83) (Levine: "need to discuss YouTube's protection against lawsuits from publishers")</p> <p>GOO001-01609294-95) (Tab 158) (Chastagnol: "Music publishing reporting: meeting notes... Priority: 1. Get publisher data from all 4 US labels 2. Setup business relationship with HFA. Eng should be involved to make sure contract terms related to YT/HFA integration make sense.") (GOO001-01609294)</p> <p>King Tr. 215:24:-217:7 (Tab 76) (King: "publisher data was publicly accessible through a variety of websites.")</p> <p>GOO001-01609294-95 (Tab 158) (Chastagnol: "Publisher aggregators: who are they? - HFA is one (Harry Fox) -any other"; setup business relationship with HFA. Eng should be involved to make sure that contract terms related to YT/HFA integration make sense.") (GOO001-01609294) (10/29/2007)</p> <p>GOO001-00053573-74 (Tab 150) ("Where is the universal database of all the copyrights and trickled down ownership splits? should someone in the industry create/ allow self-population of such a universal database. and then maybe someone even serve as a third-party clearinghouse... should 'we' (google/youtube) do it?") (GOO001-00053573)</p> <p>GOO001-00980438-39 (Tab 153) (Chastagnol: In the risks I would add: business may not succeed having Music Labels agreeing to provide us with music publisher data... business may not succeed in getting a 3d party (such as Harry Fox) to collaborate with us to clear remaining music publishing rights.") (11/12/2007)</p> <p>Levine Tr. 19:6-12 (Tab 88) [Levine believed the Harry Fox "represented... somewhere between 65 and 75 percent [of the market.]")</p> <p>Zahavah Levine Tr. 13-14, 18 (Tab 87) (Levine's prior</p>
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	<p>work experience at Real Networks)</p> <p>Zahavah Levine Ex. 1 (GOO001-01040767-70) (Tab 82) (Resume: “Managed all aspects of domestic and international digital music licensing for all company music products and services, including Rhapsody Subscription Service RadioPass (webcasting service), SuperPass (video content Subscription service), RealPlayer Music Store (download store) and Music Videos... Negotiated all major label agreements &amp; managed negotiation of indie label agreements... Negotiated all publishing agreements and managed relations with Harry Fox Agency, ASCAP, BMI &amp; SESAC.” (GOO001-01040767)</p> <p>Karim Ex. 22 (JK00004969) (Tab 61) (Chen: “for these mixed videos with music backgrounds, will we get in trouble for them because the music is copyrighted?”)</p> <p>GOO001-1315683-85 (Tab 175) (Shiva Rajaraman: “There should be no zero rate house ads on Partner Watch. Only zero rate blockers should be Music Partners inventory on the regions we cannot monetize due to music publisher agreements that need to be negotiated.”) (GOO001-01315685)</p> <p>King Ex. 2 (GOO001-01403792-93) (Tab 66) (Tony Lee, Technical Product Manager: “Thus, it is imperative that we acquire, and allow content owners to claim, as much content as possible to promote the growth and success of YouTube... YouTube cannot monetize content that does not have publisher data, as we have no way to report to and pay publishers, who share ownership of songs with music labels; currently, only music label data is available to us. By opening up our systems to ingest publisher data as well as label data per song, content on YouTube can then be claimed and monetized. In addition, the ingestion of audio files will allow us to match against audio portions of videos, thus giving content owners the ability to claim more content... Reporting / Collection societies (Owner) need to report to the collection societies # of views for songs, and the collection societies will handle payment to the publishers (EMEA) / Publisher (Owner) will get information on # of views, and will be paid directly Aggregator Labels (Owner) will get reporting</p>
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	<p>information by publisher and # of views.”) (GOO001-01403792)</p>
<p>25. Defendants refused to negotiate and secure licenses from music rights owners whose works appear on YouTube without authorization, in situations where the specific content owner represents only a “small market share.”</p>	<p>Hauprich Tr. 274:24-275:12 (Tab 36) (Chris Maxcy informed Cherry Lane’s Vice President of Business Affairs Keith Hauprich that YouTube would not enter into license negotiations because Cherry Lane represented a “small market share”.)</p> <p>GOO001-00021120 (Tab 149) (“So the Cherry Lane thing sucks. Had we been in touch and they still sued? I’m just wondering if we should be devoting the entire team’s time to just publishers (and big indies) to try to stem litigation?”)</p>
<p>26. By their own analysis of content, including infringing content, on YouTube, Defendants recognized professionally produced news and other programming as among the array of content attracting substantial viewership.</p>	<p>B. Hurley Ex. 7 (GOO001-00629095) (Tab 40) (Brent Hurley: “music videos and news programs are fine to approve.”) (“take down XXX stuff. everything else keep including sports, commercials, news, etc.”)</p> <p>C. Hurley Ex. 38 (GOO001-01424047-48) (Tab 46) (Karim “Re: monitoring videos...let’s keep short news clips for now. we can become stricter over times, just [sic] not overnight.”) (GOO001-01424047)</p> <p>Karim Ex. 25 (JK00009933-34) (Tab 62) (referencing news content)</p>
<p>27. Movies and TV shows are other examples of premium content that</p>	<p>Schaffer Ex. 8 (GOO001-00840004-06) (Tab 106) (YouTube chart for tracking entertainment content</p>

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<p>Defendants exploit without authorization on YouTube.</p>	<p>proactively on the site.) Ellerson Ex. 10 (GOO001-02519867-73) (Tab 22) Eun Ex. 25 (GOO001-00986823-26; GOO001-00986825-997) (Tab 24)</p>
<p>Defendants Restricted Use of Technical Measures to Avoid Knowledge of Infringing Content</p>	<p>[Redacted]</p>
<p>28. YouTube designed systems and databases, including Claim Your Content (“CYC”), to monitor, manage, and monetize infringing content, but only made these tools available to favored, select counterparties.</p>	<p>Sony BMG (“SME”) (GOO001-0968681-09684719) (Tab 172) (“Schedule 2: Content Identification, Claiming and Blocking... It is the intent of the parties that these content identification claiming and blocking services will enable SME to easily identify audio and audiovisual materials that are owned or controlled by SME and enable SME to elect to either <i>license</i> it in connection with the Video Service on the terms and conditions prescribed in the Online Video MOU in which case the applicable audiovisual materials will be deemed User Generated Video under the Online Video MOU or remove it from the Video Service.”) (emphasis added)</p> <p>[Redacted]</p>

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[Redacted]

WMG Productions, LLC (GOO001-02250887-02250904) (Tab 167) (4.3. “Content Management Tools and User Video Matches. The Content Management Tools will compare User Videos against the ID Files and apply the Usage Policies assigned by Provider to any matches. The Content Management Tools may also provide Provider the capability to perform text searches for User Videos that may contain the Works and assign Usage Policies for such materials. Provider shall select the Monetize, Track, or Block Usage Policy for each match, or’ other usage policies as Google may make available from time to time... Definitions. ‘Monetize’ means the Usage Policy available to Provider in the Content Management Tools for Provider to license to Google in the Territories pursuant to this Agreement a User Video matching an ID File or claimed by Provider using the search functionality that may be offered by the Content ManagementTools.”)

Google-SESAC Agreement (March 25, 2008) (GOO0001-02245062-02245067) (Tab 166) (Paragraph 2b: The term ‘Composition’ is defined to mean ‘all of the musical works for which SESAC is authorized to license the public performance right... Paragraph 5 – Music Usage Reports: (“LICENSEE will report, on a calendar quarterly basis using the metadata available to he LICENSEE, all streams to users in the Territory of content that LICENSEE has identified as incorporating

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	<p>Compositions.”) (GOO001-02245063-2245064)</p> <p>SonyATV (GOO001-09684819-850 ) (Tab 170) (2(a): “The Content Identification Solution. YouTube shall promptly after the execution hereof implement within the Covered Services a content identification and filtering solution at least as good as the industry standard solution for similar services that shall be designed to identify User Generated Videos embodying... Publisher Compositions... (b) Solution must include each of the following functionalities (i) Audio fingerprinting... [to] determine, based on the metadata, whether not... the Compositions embodied herein [are] authorized for exploitation... (ii) Search and Claim. The Content Identification Solution shall include text-based searches defined by Publisher in its sole discretion if any of User-Generated metadata for User-Generated Videos Publisher Keywords to match the titles of Publisher Compositions, Relevant Master Recordings, songwriter or artist names, or other keywords designated by Publisher to identify Relevant User-Generated Videos (“the Tool”)... Hash Comparisons. YouTube shall regularly compare all User Generated Videos... against a library of ‘hashes’ of video files that have previously been removed, filtered or blocked...”)</p> <p>EMI Music Marketing (GOO001-01907142-7190) (Tab 161) (Schedule 2: “utilize audio fingerprinting;” employ audio fingerprinting of all sound recordings submitted by EMI as well as user-generated videos that EMI claimed as embodying EMI content; YouTube agreed to submit existing “legacy” videos through the fingerprint reference files; adhere to a list of “blocked content” provided by EMI and to remove all videos that matched the reference files of those fingerprinted sound recordings... Schedule 2(c) – “Text &amp; Tag Searching. For EMI content not identified by Video Hashing or Audio Fingerprinting, YouTube shall on EMI’s behalf, at least once a day, run text-based searches in the User-inputted metadata for videos uploaded to the Video Service to locate matches for titles of EMI Sound Recordings and EMI Videos, or artist names, or other key words designated by EMI and designed to detect Blocked Content (“EMI Keywords”).</p> <p>GOO001-02241782-1835 (Universal) (Tab 164)</p>
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	<p>G00001-03424742-78 (Warner) (Tab 171)</p> <p>G00001-01523629-30 (Tab 156) (“on the policy backend, we imported music publisher information from UMG, giving us a complete license picture of their catalog... All of this information is stored within the label claim... As the license information is completed is completed, we now have an automated process that exports a build list to Audible Magic.”) (G00001-01523629)</p> <p>G00001-01905862-65 (Tab 160) (“consolidate publisher rights... We will receive fractional ownership information from publishers. We must consolidate this information to produce a Y/N decision on track rights. This is the barebones ability to manage publisher rights... Store publisher metadata... Publishers will send us lists of blocked artists, metadata and split information. We must be able to store this data without overwriting information received from other sources such as labels. This a more full-featured ability to manage publisher rights using data provided by publishers, and mapping those views back to label data.”) (G00001-01905863; G00001-01905865)</p> <p>G00001-01179621 (Tab 157) (“more publisher questions... We will most definitely receive conflicting information about the same song from various sources. I think the best way to manage this is to ‘add’ rather than to ‘update’ information as it comes in. Much of the data ends up serving reporting needs so as long as you give people back the same garbage they provided, it is ok to have discrepancies... <i>Multiple policies for the same song. I assume that a label could set policy on a song to be ‘rev share’ and then a publisher could upload info about this song and set policy to ‘block’ in which case, the policy for the song will just become block.</i> Unfortunately, it only takes one block to screw up everyone else’s rev share, but we should still keep the info we got from everyone in case we can convince the one blocking partner to change their mind.”) (emphasis added)</p> <p>King Ex. 6 (G00001-01517864) (Tab 68) (“actually we don’t want to turn on fingerprint matching for music partners [in April 2007], because we don’t have clear</p>
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	<p>licenses for them (publisher issue).”)</p> <p>GOO001-01053199-205 (Tab 155) (“met up with EMI to explain our ID service, and the option of using Audible Magic within our platform. Also walked them through our needs of licensing information, and particular need for music publisher information to fully clear their catalog. This was our chance to talk to the technical leadership of EMI, and make our case. Hopefully this unlocks their catalog.”) (GOO001-01053201)</p> <p>Chastagnol Ex. 12 (GOO001-01676559-62) (Tab 9) (“(Audible Magic) “suggested we check [fingerprints] against their entire reference database and then have flags for the Warner content (ignore other matches). This is not only a hassle but probably violates DMCA safe harbors.”) (GOO001-01676559)</p> <p>Ikezoye Ex. 16 (AM001620-22) (Tab 51) (“would you be able to populate the live DB but ‘wire-off’ matches for Sony and Universal ? because I’m thinking another strategy would be to populate the DB with Warner+ Sony+Universal. At launch, return matches only on Warner content. Then at some point in time wire-on Universal content, then Sony.... please for now only include Warner catalog.”) (AM001620)</p> <p>GOO001-02910519-02910523 (Tab 182) (Maxcy: “I thought we weren’t allowing co’s to use UGC as reference material... King: the guidelines are, only give the feature to partners that ask for it (we can toggle the feature off in admin).”)</p>
<p>29. When financially beneficial to Defendants in relationships with favored, select counterparties, the Defendants offer certain content owners technical measures, commonly known as “fingerprinting,” to match sound or video reference files with copyrighted content on YouTube.</p>	<p>Ikezoye Tr. 15:10-16:11 (Tab 52) (“Q: We’ll obviously be talking more about this as the day goes on, but can you describe, in a very general sense, what it is Audible Magic does for its digital media customers when you’ve said ‘identify copyrighted content’? A: We use a technology called fingerprinting, and what fingerprinting is, is a mechanism to uniquely identify a piece of copyrighted content. There are -- these fingerprints are measurements of the content that become unique to a sound recording or to a soundtrack or to a -- an image, and so we work with copyright</p>

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	<p>holders to register their works so we know what known content is. We take these measurements, and then we put these measurements into a database. Then with our customers, the UGC sites, we give them software to take measurements of unknown content, and when -- after they take these measurements, then we can compare it to our database of known references and identify and match the content. The way we provide services to the Web 2.0 customers is, they do have software. Users may upload content to these sites, and they use our services to -- to identify the -- the -- the copyrighted content using our services.”).</p> <p>K. Walker Tr. 71:23-72:16 (Tab 114) (“There’s another distinction as well, which is, music content is perhaps uniquely legally complex because of the number of overlapping and sometimes inconsistent rights associated with it. There are a wide number of different rights that are owned by the performer, the creator, the - - the publishers, the labels, the collecting societies in Europe, et cetera, and each of those entities can own multiple rights, which sometimes align and sometimes do not. As a result of that, there are complexities associated with that, which I believe the Audible Magic system had been optimized for, both in terms of the technological operation of the system and the assembly of a database, which was designed to track all of the -- the complex music rights associated with it. As the name Audible Magic itself suggests, it was a music tool, at least that was my understanding.”)</p> <p>Chastagnol Ex. 9 (GOO001-00174229-30) (Tab 7) (Discussion of Audible Magic, Gracenote and Shazam as fingerprinting services) (GOO001-00174229-30)</p> <p>Oliver Weingarten (12/16/09) Tr. 246:1-247:2 (Tab 124) (“Q”: Did you understand that -- let me ask it this way: Did YouTube tell Premier League that, in order to participate in the trial of the video fingerprinting technology, that it would need to license content to YouTube?... A: They did at a meeting prior to this date. Q: They said what? A: They said that the technology was being offered to those who they had commercial partnerships with... Q: I am talking specifically about the YouTube video fingerprinting technology that was the subject of some of these e-mails?... A: That, to me,</p>
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	<p>is the video, which is still digital fingerprint technology. <i>Q: So the question is, did YouTube ever tell Premier League that the video fingerprinting technology would only be available to Premier League if Premier League licensed content to YouTube? A: Yes.</i>) (emphasis added)</p> <p>Hauprich (9/24/09) Ex. 6 (GOO-CH-0001-07) (Tab 33) (YouTube emailed a draft “Content ID &amp; Management Agreement” with instructions to sign and return it to YouTube.)</p> <p>Hauprich (9/24/09) Ex. 7 (GOO-CH-0008-09) (Tab 34) (After finally receiving a draft Content Identification &amp; Management Agreement in February 2008 (three months after his initial inquiry), Mr. Hauprich submitted questions and comments on the draft in April 2008.)</p> <p>Hauprich (9/24/09) 95:3-13 (Tab 37) Q. When did Cherry Lane first become aware of YouTube's fingerprinting technology? A. I believe I found something that I submitted my interest in the form of an E-mail or a click here, maybe in October of 2007. It was a link I found that said click here for your -- you know, if you are interested in video identification services on YouTube.</p> <p>Hauprich (9/24/09) Tr. 107:19-108:3 (Tab 38) – Q: Did YouTube ever tell that is was non-negotiable? A: Pursuant to their actions of ignoring my letter dated April 23<sup>rd</sup> until January of 2009, by their failure to negotiate this with me in good faith for more than two years, their performance has certainly told me it is non-negotiable.</p> <p>Drummond Ex. 31 (GOO001-01511226-27) (Tab 13) (February 15, 2007 – “<i>Our CYC tools are now live as well and are only offered to partners who enter into a revenue deal with us...</i>” “The new CYC system has... 3) Advanced text search tool. Enables partners to enter in any number of search terms or strings. Partners can send these terms to YouTube in an XML feed or enter them manually. Searches can be narrowed or broadened and all searches can be saved. YouTube will ‘push’ search results to the partner in the form of a daily email showing and matches. Partner gets a nice admin</p>
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	<p>interface showing all the matches. Partner is responsible for reviewing the matches and per the DMCA identifying their content. If the partner identifies content they are given the choice to either license or block the content. Any content the partner identifies is automatically audio fingerprinted and placed in the Audible Magic database so the entire process gets smarter over time.”) (GOO001-01511226-27)</p> <p>King Ex. 13 (12/12/08) (GOO001-01519154-55) (Tab 71) (Sathya Sen writes: The best that I can suggest, the same as Canal +, is 3 business days, with a cap on the number of claims (for Canal + it was a max of 10 over 3 days) they can make... We don't want them using the test period to take down every piece of content they think violates copyright. We want to minimize the number of requests. <i>If they want to use our tools to help them monitor copyright content and claim them, they will have to work with us as a partner.</i>”) (emphasis added) (GOO001-01519154)</p>
<p>30. Rather than avail itself of existing third party technology, Google’s strategy was to develop its own proprietary fingerprinting technology to create a product it could license to third parties, even though that both limited and delayed copyright protection tools for content owners.</p>	<p>Chastagnol Ex. 9 (GOO001-00174229-30) (Tab 7) (Doig: “I think this is core technology we need to build and control ourselves. So the current approach is to only use AM as little as possible and proceed with building our own database at the same time. This would require us either getting all the source files (preferred) or distributing fingerprinting tools which content providers use.”) (GOO001-00174229)</p> <p>King Ex. 23 (12/12/08) (GOO001-02191925-27) (Tab 74) (King: “our position has been that we first want to have a pilot with [G]oogle video fingerprinting” and that by “remaining ignorant of the intricacies of industry solutions,” [Defendants could] “proceed untainted by others IP.”) (GOO001-02191925)</p> <p>King Ex. 2 (12/12/08) (GOO001-01403792-93) (Tab 66) (Tony Lee, Technical Product Manager: “Audio Fingerprinting is the YouTube’s next step in allowing music copyright owners to claim and monetize content. Currently, Audible Magic, a 3rd party matching service, allows YouTube to conduct audio matching of content. However, this service is imprecise, and YouTube has to pay a fee to use the service. <i>Thus it is vital that YouTube develop its own audio matching service, along with the requisite reference database.</i>”) (GOO001-01403792)</p>

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	<p>King Ex. 21 (12/12/08) (GOO001-01613336-38) (Tab 73) (Kyle Harrison to King: “The purpose of this project is to explore opportunities to open Video Identification API to third party UGC sites... Why would third party UGC sites use such a service? The problems this service could solve for them include: Identification. We could identify copyrighted content across their site and within new uploads... Basic Requirements and Timing... To offer the core service of Identification, the following items in place: Fingerprint Generator. Partners need to be able to generate fingerprints of their content to deliver to YouTube. We cannot expect to require them to give us their original content.”) (GOO001-01613336-37)</p> <p>David King (12/12/08) Tr. 229:17- 231:5 (Tab 77) (“Q: Okay. Before we get into this document in any depth, Mr. King, are you aware of discussions internally at YouTube/Google to turn any of the content identification systems or technology into products that YouTube/Google licensed to third party websites?”) MR. HART: Could license to third parties.... THE WITNESS: <i>I think our video identification platform is a -- is a platform that we're proud of, and we have considered making it available to third-party websites.</i>”) (emphasis added)</p> <p>Ikezoye Ex. 10 (AM000836-844) (Tab 50) (Chastagnol: “By owner I meant which media company represents the artist (Warner, Sony, Viacom,...). Initially, we will ask you to populate the reference fingerprint DB with the catalog of only one of those companies. (BTW, I assume this is something you can do, correct?) But as we sign new contracts, we will add catalogs from other companies. So from fingerprint match API response, we would need a way to tell if it is a match for a Warner item, a Sony item, etc...”) (AM000836-837)</p> <p>Ikezoye Tr. 81:7-24 (Tab 53) (Q. “So your understanding of the arrangement -- is it your understanding of the arrangement that as YouTube signed new contracts with content owners, YouTube would then request that that content owners’ fingerprints be put into the YouTube custom database?... A: That was my understanding, and yes. Q: Okay. Is that -- is that</p>
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	<p>hypothetical, or is that actually what happened, if you know? ...A: <i>I know, in general, that the database was a subset. I don't know if every piece of content in there was related to a company that had a licensing agreement.</i>") (emphasis added)</p> <p>Chastagnol Ex. 11 (AM002946-53) (Tab 8) (Jim Schrempp of Audible Magic to Chastagnol: "you will remember that the business side of YouTube wanted an extremely cheap – really, really, really cheap – deal from us. They were willing to cut out all kinds of features to get the price lower.") (AM002946)</p> <p>King (1/13/10) Ex. 6 (GOO001-00981006-10) (Tab 69) (Jim Schrempp of Audible Magic: "For your application a reference fingerprint should come from an offset of 0 and a duration of 60. You may remember that we had discussed doing a more expensive search of the YT database, but that was decided to be out of scope.") (GOO001-00981008)</p>
<p><b>Defendants Capitalized on Infringing Content Rather Than Remove It.</b></p>	
<p>31. In situations where it advances their financial interests, Defendants have a practice of offering licenses to favored, selected licensors of content, both in the United States and in other territories.</p>	<p>SonyATV (GOO001-09684819-850) (Tab 170)          EMI Music Marketing (GOO001-01907142-7190) (Tab 161)          Universal (GOO001-02241782-1835) (Tab 164)          Warner (GOO001-03424742-78) (Tab 171)          SESAC (GOO001-02245062-02245067) (Tab 166)</p> <p>MCPS-PRS (GOO001-02242093-02242149) (Tab 165) (2.1 Grant of Licence: Subject to and conditional upon compliance with the terms... MCPS grants the Licensee a non-exclusive licence during the Term, to reproduce (including by way of synchronization) Repertoire Works... for the sole purpose of transmitting the same to Users... in the UK by means of the Licensed Services.")</p> <p>GEMA (GOO001-02240224-36) (Tab 163) (2.1 Licensor grants Licensee and its Affiliates a license to (a) reproduce Repertoire Works... including by way of synchronization, (b) communicate Repertoire Works... to the public in particular by transmitting or making available to the public and to authorise to transmit or make available to the Public Repertoire Works.")</p>


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	<p>Ellerson Ex. 10 (GOO001-02519867-73) (Tab 22) (Ellerson: “Minimum Guarantees Recommendation Memo... paying guarantees could provide an incentive for some of these potential partners to do deals more quickly... by failing to provide content for our users who are searching for it (see data re premium content searching attached), we may lose customers.”) (GOO001-02519870)</p>
<p>32. Defendants did not seek licenses for certain content despite knowledge that they were exploiting it on YouTube.</p> <p><i>See also</i> <i>SUF</i> ¶ 28</p>	<p>P. Walker Tr. 227:10-228:14 (Tab 123) (YouTube “decided not to make a bid for these rights.”)</p> <p>Maxcy Tr. 201:24-202:15 (Tab 90) (“a record label might know that they have – that they pass us information about who the artist is and the track of a particular sound recording, and they may or may not know who the various publishers are, the composers of that particular song...”)</p> <p>Maxcy Tr: 233:21-234:2 (Tab 91) - “I recall having a conversation [with Mr. Hauprich] and explaining that we were working with major record labels, and that we were trying to work with those labels to clear synchronization rights for our music and that we were trying to rely on the record labels to clear the synchronization with the publishers, but what we were running into was two issues. One was incomplete data and, two, historical acrimony between music publishers and record labels, and so it was very difficult to identify who the publishers were to even work with them, but the premise of the conversation was that we were relying on the record labels to clear the synchronization rights that we needed for publishers.”</p> <p>Hauprich (11/4/08) Tr. 274:24-275:12 (Tab 36) – “I made it apparent to Mr. Maxcy that Cherry Lane represented 60,000 copyrights. I gave him names of certain of the clients within our catalog. I told him we were willing and eager to engage in a strategic alliance, and that I would welcome any proposal YouTube wanted to make, and I would consider any proposal that YouTube wanted to make. I was summarily told that YouTube had no interest in Cherry Lane given its small market share.”</p>


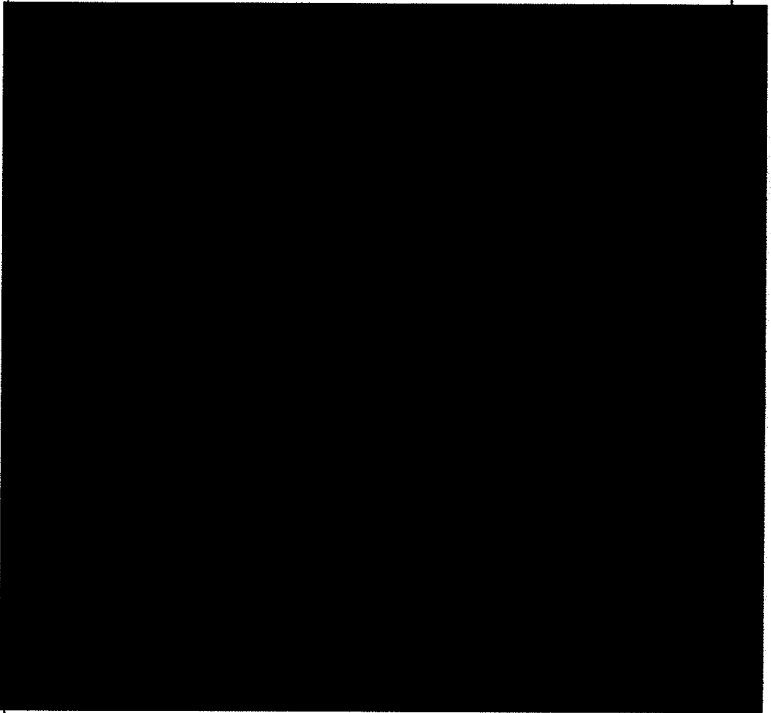
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	<p>King Tr. at 151:12-24 (Tab 75) (“Do you have any idea what that statement means, we don't have publishing for certain videos as a way to keep them live on YouTube?... “what this would be referring to is, at times, for specific sound recordings where the – the publishing has not been identified”)</p> <p>King Ex. 7 (GOO001-01998280-81) (Tab 70) (“Offer UMG the ad-inventory for the videos that we don't have publishing (we would have to run this by compliance) as a way to keep them live on YT (Block embeds)”) (GOO001-01998280)</p> <p>GOO001-00980438-39 (Tab 153) (Chastagnol: In the risks I would add: business may not succeed having Music Labels agreeing to provide us with music publisher data... business may not succeed in getting a 3d party (such as Harry Fox) to collaborate with us to clear remaining music publishing rights.”) (11/12/2007)</p> <p>Levine Ex. 3 (GOO001-03424419) (Tab 83) (Levine: “need to discuss YouTube’s protection against lawsuits from publishers”)</p> <p>GOO001-01609294-95) (Tab 158) (Chastagnol: “Music publishing reporting: meeting notes... Priority: 1. Get publisher data from all 4 US labels 2. Setup business relationship with HFA. Eng should be involved to make sure contract terms related to YT/HFA integration make sense.”) (GOO001-01609294)</p> <p>CH00050892 (Tab 147) (Attorney for Cherry Lane – Marc Jacobson: “rather than assert a claim of infringement in this letter, our clients asked us to contact you with regard to developing an innovative strategy where rights can be exploited, revenue generated and an appropriate division of that revenue be accomplished.”)</p> <p>CH00001663-CH00001669 (Tab 144) (Follow up letter attached disc of musical compositions owned or controlled by Cherry Lane and another exhibit with some exemplar URLs.)</p> <p>CH00017947-48 (Tab 145) (DMCA takedown notice – March 27, 2007)</p>
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	CH00035504-08 (Tab 146) (DMCA takedown notice – May 17, 2007)
33. YouTube indexes its inventory of videos by, among other things, a title and certain descriptives provided by users (“metadata”), and uses that metadata a variety of purposes, including associating advertising with particular videos.	<p>Defendants’ Highly Confidential Responses and Objections to Plaintiffs Second Set of Interrogatories, No. 5 (1/11/10): “... in addition to the information YouTube collects from its users upon registration and at various other times and places during their use of the YouTube service, YouTube has collected the following unverified information from general registered users upon the upload of videos... keywords... title... description... 1-3 video categories (e.g. ‘autos,’ ‘how tos’)... private.” (Tab 140)</p> <p>SonyATV (GOO001-09684819-850) (Tab 170) (3(a): “The Content Identification. YouTube shall promptly after the execution hereof implement within the Covered Services a content identification and filtering solution at least as good as the industry standard solution for similar services... (b)(ii) Search and Claim. The Content Identification Solution shall include text-based searches defined by Publisher in its sole discretion, if any, of User-Generated metadata for User-Generated Videos (“Publisher Keywords”) to match the titles of Publisher Compositions, Relevant Master Recordings, songwriter or artist names, or other key words designated by Publisher to identify Relevant User-Generated Videos (“the Tool”)</p> <p>EMI Music Marketing (GOO001-01907142-7190) (Tab 161) EMI Music Marketing: Schedule 2(c) – “Text &amp; Tag Searching. For EMI content not identified by Video Hashing or Audio Fingerprinting, YouTube shall on EMI’s behalf, at least once a day, run text-based searches in the User-inputted metadata for videos uploaded to the Video Service to locate matches for titles of EMI Sound Recordings and EMI Videos, or artist names, or other key words designated by EMI and designed to detect Blocked Content (“EMI Keywords”). (GOO001-01907181)</p> 

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	<p>Drummond Ex. 31 (GOO001-01511226-27) (Tab 13) (February 15, 2007 – “The new CYC system has... 3) <i>Advanced text search tool. Enables partners to enter in any number of search terms or strings. Partners can send these terms to YouTube in an XML feed or enter them manually. Searches can be narrowed or broadened and all searches can be saved. YouTube will ‘push’ search results to the partner in the form of a daily email showing and matches. Partner gets a nice admin interface showing all the matches. Partner is responsible for reviewing the matches and per the DMCA identifying their content. If the partner identifies content they are given the choice to either license or block the content. Any content the partner identifies is automatically audio fingerprinted and placed in the Audible Magic database so the entire process gets smarter over time.”)</i></p>
34. YouTube internally	Dunton Ex. 21 (GOO001-00829702-18) (Tab 16) (Matt



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<p>acknowledged that providing a tool that would alert a copyright owner that an uploaded video contained a specified keyword associated with the copyright owner “isn’t hard” to provide, but “hate[d] making it easier” for copyright owners.</p>	<p>Rizzo explained that setting up that tool “isn’t hard” and would only “take another day or w/e [weekend].” But Dunton said “[I] hate this feature. I hate making it easier for these aholes” – referring to copyright owners – and directed the engineer “to forget about this.” As she explained, “we’re just trying to cover our asses so we don’t get sued.” (GOO001-00829704)</p>
<p>35. Defendants refer to videos on YouTube as “inventory” for purpose of selling to advertisers and otherwise monetizing.</p>	<p>King Ex. 4 (GOO001-01404022) (Tab 67) (YouTube wanted more “sports content to monetize... From a copyright perspective, clearing music inventory is our most important initiative...”)</p> <p>Reider Ex. 3 (GOO001-00305115-52) (Tab 97) (“Advertising with YouTube” Presentation, March 2007)... Professional inventory available across YouTube content categories.” (GOO001-00305135) “Premium UGC inventory meets acceptability standards and contains no potentially infringing content” (3051356) “YouTube Premium content inventory increases daily as new partners create channels and upload videos” (305137) “Advertisers can purchase inventory run-of or by category (premium content not sold by-brand or partner name)” (GOO001-00305137)</p> <p>July 16, 2009 – Fair Disclosure Wire – Q2 2009 Google Earnings Conference Call – Final (Tab 142) (“HEATH TERRY: And in terms of being able to monetize the non-professional side of that inventory? ERIC SCHMIDT: It has not been our focus. It is probably possible to do so, but the fact of the matter is that the majority of the non-professional content has a relatively small number of viewers. It is difficult to target it accurately. There is too much variation and so forth, whereas the professional here, and remember, professional here just doesn't mean big studios. It also means smaller studios, new entrants, startups who are professional quality, and you can tell a professional quality video from a user-generated one. It is easy enough. You can tell the difference between the two.”) (p. 10)</p> <p>Chang Ex. 37 (GOO001-01004547-49) (Tab 5) (Chang:</p>

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	<p>“Also, content partners are an essential part of YT business, as they provide monetizable inventory for our ad sales team to sell against. Given copyright concerns, we don't monetize against user generated content. We want to be able to close these big partnerships and hopeful that higher rev share will ease that slightly.” (GOO001-01004547)</p> <p>Kordestani Ex. 22 (GOO001-00237661-63) (Tab 80) (Hoffner: “This means BOTH monetizable via partners and user unmonetizable. (There is a third bucket down below we need to attack aggressively as well). We need this to get more inventory so that the search numbers continue to go up (concept of unlimited choice rings through here) and more watch pages occur... Another way to get more monetizable inventory in the index is to aggressively expand our torso efforts to online sign-up.”) (GOO001-00237661)</p> <p>Drummond Ex. 9 (GOO001-02656593-94) (Tab 12) (“for legal reasons [...] all ads/monetization on the watch pages for user generated content will need to come down. This will have a tremendous impact on inventory.”) (GOO001-02656593)</p>
<p>36. Defendants sell advertising in connection with videos, including contents that infringe the rights of Class Plaintiffs. Those ads are displayed both on the pages where the videos are viewed (“watch pages”) and on the search pages that list the videos generated by a user search (“search result pages.”) The advertising is contextually targeted to these videos by subject, title and other metadata associated with the videos.</p>	<p>Exhibits 1-8, Declaration of Robert F. Tur (Tab 113) (C.D. Cal. November 14, 2006) (screenshots of YouTube watch pages displaying advertising)</p> <p>Drummond Ex. 9 (GOO001-02656593-94) (Tab 12) (“for legal reasons [...] all ads/monetization on the watch pages for user generated content will need to come down. This will have a tremendous impact on inventory.”) (GOO001-02656593)</p> <p>Chang Ex. 36 (GOO001-00375061-65) (Tab 4) (“User uploads, which make up &gt;95% of the playbacks, are ad-free in order to maintain our DMCA safe harbor.”) (GOO001-00375065)</p> <p>Chang Ex. 37 (GOO001-01004547-49) (Tab 5) (Chang: “Given copyright concerns, we don’t monetize against user generated content.”) (GOO001-01004547)</p> <p>CH00117359 (Tab 35) (Watch page for “Thank God</p>

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	<p>I'm a Country Boy" with advertising)</p> <p>Screenshots of Search Pages from YouTube generated on March 3, 2010 (Tab 183-187) (Search terms are associated with the named Class Plaintiffs.)</p>
<p>37. YouTube concluded that tying advertisements to the videos on search result pages is the most profitable because users are drawn to YouTube in the first instance to search for so-called "premium" content .</p>	<p>Eun Ex. 27 (GOO001-00238624-25) (Tab 25) (June 26, 2007: "Our preliminary analysis indicates that anywhere from ~40% to as high as ~70% of search queries may involve premium terms. While the playbacks evidence a far smaller percentage of premium clips (as far as we can tell without digging too much under the hood), <i>it seems that premium content/brands are an important element to bringing people into the YT house. My guess is that once they're in, they decide to stay a while.</i> I've asked to see if there's a difference in total views for people who come in through search vs. browsing vs. links in email; and whether there's a difference for those who have searched for premium terms.") (GOO001-00238624) (emphasis added)</p> <p>Kordestani Ex. 20 (GOO001-01295801-02) (Tab 79) ("Inventory... From a monetization perspective, the largest opportunity for revenue resides on the YouTube Search pages.") (GOO001-01295802)</p> <p>Reider Ex. 11 (GOO001-00907818-19) (Tab 100) (Reider: "we believe search will be stronger than watch (for now)- simply because it will take such a long time for all the watch content to be claimed and (for inventory levels to get huge - today all watch page inventory that can be sold is less than 20 million impressions/month so even at a \$10 cpm that is \$200,000 - split 70/30 among all partners.") (GOO001-00907818)</p> <p>Gillette Ex. 9 (GOO001-00951481-83) (Tab 29) (Michelle Schlachta to YouTube -All: "In many cases, the very existence of YouTube is the reason why users are creating their content in the first place. <i>Many people admittedly started using YouTube just to watch some of the copyrighted stuff</i>, but were very drawn into the community aspect - and that's what makes them want to stic= [sic] around as dedicated Tubers today. When asked what keeps them here, this = s [sic] what some users told us.") (GOO001-00951482)</p>

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<p>38. YouTube’s business model was and is to create a substantial inventory of videos, including those with infringing content, in order to attract users for advertising and other monetization.</p>	<p>April 16, 2009 – Fair Disclosure Wire – Q1 2009 Google Q&amp;A Session – Final (Tab 141) (Jonathan Rosenberg: “what we're hearing from both viewers and advertisers is that they want premium content and the premium viewing experience.”) (p. 4)</p> <p>Schmidt Tr. 109:20-21 (Tab 111) (“our policy from acquisition was to grow the user base.”)</p> <p>Dunton Ex. 4 (GOO001-00507525-32) (Tab 14) (Chen: “concentrate all of our efforts in building up our numbers as aggressively as we can through whatever tactics, however evil.”) (GOO001-00507526)</p> <p>Karim Ex. 9 (JK00009871-72) (Tab 60) (Karim: “Our goal is to use funding to pursue a two-phased approach. First we will further grow our audience and reach to secure our position as the #1 place for personal videos on the internet. Then we will monetize the audience we have acquired by hosting video ads.”) (JK00009871)</p> <p>C. Hurley Ex. 33 (JK00005929) (Tab 45) (Commercials drive traffic to YouTube and prepared users for YouTube’s eventual introduction of advertising)</p> <p>King Ex. 7 (GOO001-01998280-81) (Tab 70) (“Offer UMG the ad-inventory for the videos that we don’t have publishing (we would have to run this by compliance) as a way to keep them live on YT (Block embeds)” (GOO001-01998280)</p> <p>King Ex. 2 (GOO001-01403792-93) (Tab 66) (Tony Lee, Technical Product Manager: “Music content is a key element to Youtube’s success. Premium music content is the most watched genre of content on YouTube. Thus, it is imperative that we acquire, and allow content owners to claim, as much content as possible to promote the growth and success of YouTube... In addition, the ingestion of audio files will allow us to match against audio portions of videos, thus giving content owners the ability to claim more content.”) (GOO001-01403792)</p> <p>Chastagnol Ex. 8 (GOO001-01529251) (Tab 6) (“the only thing I would be concerned is if we open the tool</p>
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	<p>and they use it only for takedown without signing a deal with youtube to upload some of their content. because then just facilitate take downs.”)</p> <p>Chang Ex. 32 (GOO001-00059035) (Tab 3) (“As agreed upon last week, we will also employ a sliding scale on rev shares for deals in which partner does *not* sell, with increases between 52 and 70% being based on the following subjective criteria:... <i>Willingness to ‘claim’ all user uploads unless they have not been cleared for online distribution.</i>”) (emphasis added)</p> <p>Chastagnol Ex. 19 (GOO001-00103004-06) (Tab 10) (Chastagnol writes: “I’m trying to get to the business the hardware and maintenance cost of adding 1 hour of video to the reference fingerprint database. <i>The idea is that we may bill some of the companies wanting to block content on YT. And we would use this per hour cost for as price tag...</i> Assumption is 300,000 lookup daily, with 5 min long lookup videos.”) (GOO001-00103004)</p> <p>Ellerson Ex. 7 (GOO001-02875707-19) (Tab 20) (“We will *not* generate ref fingerprint upon claiming by partner of UGC &gt; video thru desc search. The reason we will no longer allow this feature [is] because we are going to open up CYC to non-partners who we do not think [we] can trust to review the content carefully enough. CYC should have the [same] level of functionality for partners and non-partners.”) (GOO001-02875707)</p> <p>King Ex. 13 (12/12/08) (GOO001-01519154-55) (Tab 71) (Sathya Sen writes: “The best that I can suggest, the same as Canal +, is 3 business days, with a cap on the number of claims (for Canal + it was a max of 10 over 3 days) they can make. The reasons for this, even though it is a test setup, any claims they make will have to be processed and considered as a valid take down request. We don't want them using the test period to take down every piece of content they think violates copyright. We want to minimize the number of requests.”) (GOO001-01519154)</p>
<p>39. YouTube edits, reviews, promotes and distributes its inventory of videos across multiple media</p>	<p>Seth Ex. 14 (GOO0001-02027618-02027619) (Tab 112) (“We are being very proactive at this time and reaching out to users - however, we have to be very cautious and</p>

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<p>platforms.</p>	<p>make sure that users in this program know about copyright laws and obey them to the fullest extent possible. That is the tricky part. We provide online training, as well as use technology (Video Identification) and some human review.”)</p> <p>YouTube Help Center ‘Uploading... Promoting Videos... (“Tag definition’... Tags are keywords that describe videos. For example, a surfing video might be tagged with ‘<i>surfing</i>,’ ‘<i>water</i>,’ and ‘<i>waves</i>.’ Users who enjoy watching surfing videos can then search for any of those terms and the video associated with these tags will show up in their search results. Tags help you label videos you upload so that other people can find them more easily... “Spotlight Videos”... YouTube's members rate videos they like, and we pluck out some highly-rated and recent videos for consideration in the “Spotlight Videos” section of the home page and the spotlight videos on the “Categories” page. In addition, our programming team takes suggestions from users at editor@youtube.com and is always on the lookout for videos of interest.”) (Tab 143)</p> <p>Dunton Tr. 29:23-30:6 (Tab 17): Q: Okay. And I’m asking what the people – what were the duties of the people who you referred to as ‘content editors’? A: They were responsible for interacting with the community. They were generally the voice to the community. They were also responsible for choosing videos that would be featured on the YouTube.com Homepage.</p> <p>Dunton Tr. 94:9-14 (Tab 19): (A: Featured videos are videos on the YouTube.com Homepage that are selected from our -- from our base of videos. Q: Selected for what purpose? A: To highlight, to show entertaining, relevance, content for our community.”)</p> <p>Patterson Tr. 15:6-9 (Tab 95) (“Q: One category of partners to whom YouTube syndicates content are wireless carriers and mobile handset device manufacturers, right? A: That’s correct.”)</p> <p>Patterson Tr. 18:18-19:4 (Tab 96) (“When did YouTube first begin syndicating content to partners in the devices that connect to televisions space? A: So in the most</p>
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	<p>liberal interpretation, which would be a PC that can connect to a television, it would be when we started allowing YouTube videos to be embedded in other websites. Q: Okay. A: Or actually even just when we launched the YouTube service 'cause you can connect to a PC that has a browser. Q: If we exclude PCs from the equation – A: Okay. Q: -- and we are talking about things like set top boxes and gaming consoles and devices of that category. When did YouTube begin syndicating content to partners in that space? A: I believe the first partnership of that sort was also with Apple, and it was around Apple TV, and it may have been the exact same agreement that -- through which we made YouTube service available on iPhone.”)</p> <p>Kacholia Tr. 49:11-16 (Tab 55): (“Q: How does the search engine identify duplicates?...A: Based on a fingerprint of the video.”)</p> <p>Kacholia Tr. 163:16-19 (Tab 56) (“But the functionality does omit duplicate copies of videos that are returned in response to a query; is that correct? A That’s correct.”)</p> <p>Kacholia Tr. 165:3-11 (Tab 57) (“Q Okay. Would you explain then in lay terms how it is that the search functionality determines which among the duplicates to display in response to a query? A Search functionality only displays one video. It filters out all the rest of the duplicates. And the video which is selected to be displayed is the highest-ranking video based on how this search function -- the algorithms that had ordered them.”)</p>
<p>40. Defendants generate revenue from the sale of advertising space on search result pages by matching keywords from searches with the metadata of the videos in YouTube’s</p>	<p>Chang Ex. 36 (GOO001-00375061-65) (Tab 4) (“Revenue will be generated from ads primarily on Search pages (40%) ... The most popular queries are for head content -- Music, Movies, TV, Celebrities, and Sports – whose rights holders require negotiated</p>

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inventory. By selling advertising space that is tied to key words, advertising is thus targeted to the videos being searched on YouTube, including videos that infringe the rights of Class Plaintiffs.

partnerships for us to obtain... "Head, torso, and top user content also drive YouTube's monetary success two-fold. First, more partnerships means more content, which means more user searches. Searches command top ad CPMs (data here), and YouTube retains all Search revenue. Second, partnerships, especially with attractive media brands, bolster ad sales packages and also create inventory for ads via their playbacks. Advertising potential is a deal priority in every region, particularly in EMEA and APLA.") (GOO001-00375065)

GOO001-00798356-57 (Tab 151) (Eun: "Preliminary analysis suggests that: users don't pay that much attention to what's in the chrome; as attractive as potential for display and other ads are for watch pages on YT, *ads on search results can be significantly more lucrative* (so arguing over rev shares of in-display [sic] or contextual ads with content owners is much ado about relatively little when compared to our 100% of search results).") (GOO001-00798356)

Kordestani Ex. 20 (GOO001-01295801-02) (Tab 79) ("Inventory... From a monetization perspective, the largest opportunity for revenue resides on the YouTube Search pages.") (GOO001-01295802)

Kordestani Tr. 71:16-22 (Tab 81) Q. And that's AdSense for content. There's also something called "AdSense for search." How does that work? A It's similar to searches on Google. So if a site has a web search where a user is searching on a different, let's say, Ask.com, then ads are triggered based on search terms.

GOO001-02816985-88 (Tab 169) (Chen: "I was hoping to do something quick to monetize that search results page in the mean time but not at all excluding future opportunities to further segment and target.") (GOO001-02816986)

Reider Ex. 11 (GOO001-00907818-19) (Tab 100) (Reider: "we believe search will be stronger than watch (for now)- simply because it will take such a long time for all the watch content to be claimed and (for inventory levels to get huge - today all watch page inventory that can be sold is less than 20 million



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	<p>impressions/month so even at a \$10 cpm that is \$200,000 - split 70/30 among all partners.”) (GOO001-00907818)</p> <p>GOO001-07165570-7165572 (Tab 174) (Matthew Liu: “Here at YT we have a very high priority in monetizing YT search pages. YT search is fundamentally different from Google.com, in that keywords are not always the best proxy for what a user may be interested in (it’s less of a seek for information/products as a looser browse experience in many cases). Throw in some additional business/legal policy, we decided to roll forward with targeting search verticals instead of keywords. Basically, we wanted to have a keyword to vertical mapping system to bucket search queries into marketable categories that advertisers can purchase.”) (GOO001-07165570)</p> <p>GOO001-02816985-2816988 (Tab 169) (Byrne: “We bundle inventory (site-wide category-targeted video ads / banners) or approve Category targeting in Search ... I believe we can figure out a way to do this without violating safe harbor... Chad’s idea of using how the individual videos on the results page are categorized to project a Category for the entire Search Results page makes the most sense to me... (I have a hard time understanding how we can target by Category on Watch Pages, but not in Search)”) (GOO001-02816985)</p> <p>GOO001-02737286-87 (Tab 168) (Walk: “If Partner Monetization is the focus should we work less on monetizing the site for ourselves (search page monetization) and focus those efforts on making money for partners? Take that 300x250 slot and put it below the promoted videos?”) (GOO001-02737286)</p> <p>Chang Ex. 29 (GOO001-00500181-85) (Tab 2) (“The one caveat I would issue is that if we are able to open up watch pages to monetization through video fingerprinting and user-partner type programs, the monetization potential of watch changes significantly. Ultimately I think we will solve these problems, but these projections stand under current conditions.”) (GOO001-00500181)</p> <p>Reider Ex. 9 (“YouTube Video Ads”) (Tab 99)</p>
--	---

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	<p>“Benefits... • Search and Category pages present content related to user interests at the moment of relevance, creating an attractive, contextually-relevant placement... • Target placements on Search pages by selecting from among YouTube’s hundreds of content categories, triggered by relevant user keyword queries”</p> <p>Armstrong Ex. 18 (GOO001-00906824-52) (Tab 1) (Category-Based Sales Approach – Targeting... Music... Sports) (GOO001-00906837)</p> <p>GOO001-01644802-03 (Tab 159) (“YT Custom Taxonomy/Mapping* - Continuing efforts with Santa Monica office to create a new taxonomy and automated classification of search query terms and videos - Interested parties are core product for community and ads targeting for monetization - joint effort - New YT categories/subcategories to defined by next meeting”) (GOO001-01644803)</p> <p>GOO001-06510250-06510252 (Tab 181) (Liu: “Updating Targeting Methodology for YouTube Search... YouTube will take the search query and ping the CAT2 vertical server to return an ad vertical ( e.g. ‘nba’ query maps to Sports/Basketball’ vertical”)</p> <p>Reider Tr. 33:7-17 (Tab 104) (“Q: And does YouTube still engage with remnant networks today, or is that something that YouTube only did in the past? A: Today we have one. I believe one network, and that’s the AdSense network. Q: What is AdSense? A: AdSense is – it’s a Google -- it’s a Google product. It’s – it’s a -- I don’t even know how to describe what it is. Q: What does it do? A It serves ads.”)</p> <p>P. Walker Tr. 200:8-22 (Tab 120) (“Is AdSense applied to designating which ads appear on YouTube content? A: AdSense is an advertising system where text ads, currently text ads, might appear against certain types of content. Q: It’s applicable to YouTube? A: We do use AdSense on YouTube. Q: Is there any other system or technology that’s used for matching ads with the YouTube content?... AdSense provides ads currently in text form against certain types of content. We also have in-video ads. It’s a different system.”)</p>
--	---

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Kordestani Tr. 68:21-69:14 (Tab 81) (“Q How exactly does AdSense work? Can you describe the process to me? A: It's basically a website identifies an area on their website where they like to have ads appear, and ads are either targeted based on keywords, if they have a search page, or if they have content on their page, we have a system that identifies relevant ads to the content on that page. Q: So, for example, if you go to the last page of this Exhibit 2 that I've put in front of you, in the middle of page it says, 'AdSense for content automatically crawls the content of your pages and delivers text and image ads that are relevant to your audience and your site content.' A: Yes. Q: Is that what you were describing, it crawls the content? A: Yes.”

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	<p>G00001-01332719-01332722 (Tab 179) (Chan: "Even if the intent/explanation doesn't hold true - there are certain DMCA limitations which don't allow us to monetize against certain keywords (e.g., if we find out South Park is heavily searched, we wouldn't necessarily be able to monetize that keyword in search)").</p> <p>G00001-07220441 (Tab 180) ("A new ad tag (e.g. you.results/blacklistterm) will be used so that the frequency of blacklisted terms can be tracked.")</p>
<p>41. Defendants sold advertisements that appear on search result pages that display and link users to unauthorized copyrighted content of the named Class Plaintiffs.</p>	<p>Reider Ex. 13 (Tab 101) ("English Premier League 2008" results)</p> <p>Reider Ex. 14 (Tab 102) ("manchester united" results with suggestions)</p> <p>Reider Ex. 15 (Tab 103) ("English Premier League 2008" results)</p> <p>Screenshots of Search Pages from YouTube generated on March 3, 2010 (Tab 183-187) (Search terms are associated with the named Class Plaintiffs.)</p>

Dated: New York, New York  
March 15, 2010

Respectfully submitted,




---

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*Attorneys for Defendants*

Redacted Pursuant to Protective Order  
at Request of Defendants

FILED 03-18-10  
Figueira Decl. Tab  
4

To: "David Eun" <deun@google.com>, "Chad Hurley" <chad@youtube.com>, "Maxcy" <chris@youtube.com>, "Jordan Hoffner" <jhoffner@google.com>, "Wendy Chang" <wchang@google.com>  
From: "kyen@google.com" <kyen@google.com>  
Cc:  
Bcc:  
Received Date: 2007-11-09 02:21:59 CST  
Subject: EMG Strategy -- Monetization "chapter"

The attached captures my thoughts and suggestions on YT Partner Monetization. It will be merged into an uber doc/report, but wanted to provide a preview in case anyone is interested.

Looking fwd to syncing on this Fri AM (but thoughts more than welcomed before that, too).

--  
Regards,  
Kevin A. Yen  
Google/YouTube, Strategic Partnerships  
[Redacted]

If you received this communication by mistake, please don't forward it to anyone else (it may contain confidential or privileged information), please erase all copies of it, including all attachments, and please let the sender know it went to the wrong person. Thanks.

Attachments:

YT Monetization- EMG Strategy 2008.doc

Cheng  
EXHIBIT NO. 34  
7-11-08  
A. IGNACIO HOWARD CSR, NPR



**YOUTUBE: 2008 PARTNER MONETIZATION PLAN – CORE THOUGHTS**

Kevin Yen, 11/08/07

4-0002

**I. CONTENT PARTNERSHIP'S YOUTUBE MISSION**

Obtain for users the most comprehensive collection of online video anywhere, by offering to content providers the best, sustainable value proposition (money, promotion, data) in the industry.

**II. EXECUTIVE SUMMARY**

In 2008, we will extend leadership in segments where we are #1 today, and establish key successes in segments where we are not yet #1.

Our current partners have been pleased thus far with the promotional benefits of being on YouTube but are demanding greater returns, mainly monetary, on their efforts. We will increase partner payouts, as well as our value proposition as a whole.

**I. Plans Benefiting All Partners**

We will increase every aspect of the value proposition across all our partners:

- A. **Increase Monetization:** through improved ad sales, better discovery, inventory optimization
  - Key Dependencies: Packaging for ad sales; product navigation/search; control of promotions
- B. **Strengthen Promotion:** through formal studies, better discovery, and promotion commitments
  - Key Dependencies: Results of studies; product navigation/search; balance with ad sales org
- C. **Deepen Insight:** through more detailed data and reporting
  - Key Dependencies: Product reporting tools
- D. **Plus, Manage Content** with Content ID, especially in the Head
  - Key Dependencies: Partner willingness; ROI for partner, especially rights; product accuracy

**2. Segment-Specific Plans**

We will also continue to pursue each segment based on our success in each segment:

- A. **Head** – Create key successes to build on
  - Concentrate on only the best online-performing head content and willing partners
  - [EMG ASK] Commit ~~XXX~~MG to catalyze progress, re-assess deal environment
  - Importance: Users always want top content; key to ad sales/packaging; competition still intense
  - Dependencies: Partner willingness; ad blocking; monetization rate; protected streams
- B. **Torso (niche):** Create success cases, extend #1 position
  - Create strong revenue success cases, with Sports, Comedy, Health/Beauty, Music
  - Increase scalable acquisition efforts, especially in top verticals
  - Importance: Niche content is sustainable, competitive advantage
  - Dependencies: Current path ok
- C. **Torso (orig web series):** Support, size the opportunity
  - Assess user demand
  - Assess advertiser attractiveness
  - Importance: New, emerging model for production
  - Dependencies: Competition aggressively vying for this content
- D. **Top User:** Extend #1 position
  - Open User Partner program to more users
  - Importance: Central to and popular with YT community

- Dependencies: Current path ok

4-0003

**III. DETAILED STRATEGIC PLAN AND ANALYSIS**

	HEAD	TORSO (niche)	TORSO (original web)	TOP USER
<b>2008 MAIN GOAL</b>	Create key successes to build on	Create success cases Extend #1 position	Support, size the opportunity	Extend #1 position
Target Content (sample)	NFL Maybe others	Emeril Ultimate Fighting This Old House	Quarter Life	numerous
Existing Partners (sample)	CBS NBA Universal Music	National Geo NHL Ford Models	Next New Networks Lonely Girl	Smosh LisaNova theWineKone
<b>2007 PERFORMANCE</b>				
#, % partners (% on rev share agmt)				
#, % titles				
#, % playbacks				
Ad sell-through rate				
\$ payouts: Aggregate top 3 median				
<b>2008 PLAN/ACTIONS</b>				
Increase Monetization	Optimize promotion systems for ad inventory Create demographic bundles for ad sales (Zurich tool). Tie in to major, sponsored promotions (e.g., YouChoose) Work with Product to improve discovery of partner content. Continue to evangelize with ad sales.			
- Segment-Specific	Highlight in sales package Allow partner to sell own ads	Create scalable, success cases with Sports, Music, Comedy, Healthy/Beauty (Subsidize if necessary). Have partners commit to schedule of top content. Use head content to sell overall media bundle Deploy AFC with		Open to more users

		select partners		4-0004
		Allow partner to sell own ads		
- Est Increase (med)	\$, %	\$, %	\$, %	\$, %
Strengthen Promotion	Quantify benefit using Toolbar data. Create promotions program with Marketing and Ad Sales. Work with Product to improve discovery of partner content.			
Deepen Insight	Provide increased details in reports (MicroStrategy rollout)			
Manage Content (Content ID)	(subsidize?)			
<b>INTERNAL DEPENDENCIES</b>				
Product	Improved Discovery Toolbar data Capabilities for "Partner Sells" Ad blocking Protected streams			
Marketing/Sales	Promotional placements/packages			
Ad Sales	Attractiveness of content/bundles CPMs Sell-through rate Ad blocking			
<b>KEY EXTERNAL VARIABLES</b>	Hulu performance. "Scarcity" approach (WVG). Daillyshow.com performance. Partner willingness.		MySpace aggressiveness.	
<b>EMG ASKS</b>	\$ZM pool for MG			

**IV. ROLE OF CONTENT PARTNERSHIPS IN YOUTUBE'S SUCCESS**

Content partners -- across the head, torso, and top users -- are critical to YouTube's success in every way:

- User Experience (comprehensiveness)
- Search (queries)
- Ad Sales (searches, brands, inventory)

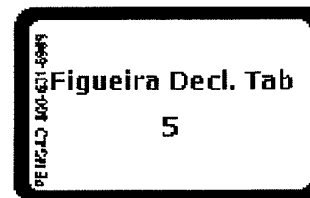
→ The most popular queries are for head content -- Music, Movies, TV, Celebrities, and Sports -- whose rights holders require negotiated partnerships for us to obtain. Torso content is a sustainable,

strategic differentiator for us, as the torso strengthens Google/YouTube's leadership in comprehensiveness and is extremely costly for competitors to duplicate. Our revenue programs for top users allow us to continue our primacy in originally created content, another key video category. All these partnerships are paramount in YouTube's continued success, as competition grows unabated (e.g., Hulu and thedailyshow.com launches) and is always just a click away.

Head, torso, and top user content also drive YouTube's monetary success two-fold. First, more partnerships means more content, which means more user searches. Searches command top ad CPMs (data here), and YouTube retains all Search revenue. Second, partnerships, especially with attractive media brands, bolster ad sales packages and also create inventory for ads via their playbacks. Advertising potential is a deal priority in every region, particularly in EMEA and APLA.

Revenue will be generated from ads primarily on Search pages (40%), and, secondarily, on the Homepage (15%) and Partner Content watch pages (15%). Landing pages, sponsorships, and remnant backfill comprise the remainder. User uploads, which make up >95% of the playbacks, are ad-free in order to maintain our DMCA safe harbor. [Get latest, official % from Finance]

To: "Thomas Meehan-Ritter" <tritter@google.com>  
From: "Wendy Chang" <wchang@google.com>  
Cc: "David Rolefson" <drolefson@google.com>  
Bcc:  
Received Date: 2008-03-11 11:40:01 CST  
Subject: Re: FW: [Deal\_review] Re: FMG: YT deals under 70%?



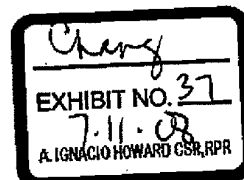
I hear you. Given that only 2% of YT playbacks are monetizable, I'm thinking it will take us a long time to get there – unfortunately. For the most part, the team is trying to give them up to 100% revshares for the first 6 months, and then go back down to the 55% revshare thereafter, so hopefully there won't be too many with high revshares indefinitely.

On Tue, Mar 11, 2008 at 4:24 PM, Thomas Meehan-Ritter <tritter@google.com> wrote:

> That makes sense. Thanks for the additional color, Wendy.  
>  
> As I'm sure you know, the hard part will be reducing these revenue shares  
> over time once we have built up the business. We have been able to get rid  
> of most media buys and guarantee deals in AdSense but we haven't had much  
> success in reducing revenue shares for Direct partners. Revenue shares have  
> only grown over time. We're hoping to reverse that trend this year :)  
>  
> Thanks,  
> -Thomas  
>  
> \_\_\_\_\_  
> \*From:\* Wendy Chang [mailto:wchang@google.com]  
> \*Sent:\* Tuesday, March 11, 2008 1:28 PM  
> \*To:\* Thomas Meehan-Ritter  
> \*Cc:\* David Rolefson  
> \*Subject:\* Re: FW: [Deal\_review] Re: FMG: YT deals under 70%?  
>  
> Hi Thomas --  
>  
> Thanks for reaching out. The nature of YT business model is very  
> different from traditional AdSense business. First, we're still at a very  
> nascent stage of our business cycle, and are therefore still trying to  
> significantly build our partnership base. I think if you look at  
> traditional AdSense revshares, you would likely see that we initially gave  
> away higher revshares or even guarantees to grow that business initially.

> Also, content partners are an essential part of YT business, as they  
> provide monetizable inventory for our ad sales team to sell against. Given  
> copyright concerns, we don't monetize against user generated content. We  
> want to be able to close these big partnerships and hopeful that higher  
> revshare will ease that slightly. Further, the higher revshares are thought

> to be an incentive for our partners to claim content (e.g. if a user  
> uploads a video that includes partner content, then we want the partner to  
> "claim" that video and allow us to monetize against it). We have seen that  
> for partners that are incentivized to claim, they generally are doing more  
> of it, and thus allowing us to build up monetization.  
>  
> To be clear, however, the higher revshare are not for all partners. All  
> of our torso and user partners are at 55%. The higher revshares are only  
> for a select short list of partners, those who would normally request a



> guarantee, but in which we are not giving (with exception of music which is  
 > a whole other model, we are not giving any guarantees). EMG has approved to  
 > go up to 80% revshares for this upper tier of partnerships.  
 >  
 > Wendy  
 >  
 > On Tue, Mar 11, 2008 at 1:21 PM, Thomas Meehan-Ritter <tritter@google.com>  
 > wrote:  
 >  
 >> Hi Wendy,  
 >>  
 >> Do we really want/need to go this high on YT deals? This would be 70%  
 >> of recognized, right, (with no deductions)?  
 >>  
 >> I'm just bringing it up as part of our company-wide initiative to take a  
 >> hard look at our TAC and find opportunities to reduce TAC margins (while  
 >> maintaining or increasing Net Revenue on an absolute basis).  
 >>  
 >> We have agreed to reduce the Online revenue share for several products  
 >> (Mobile AFC Online, AdSense for Games Online) and are actively considering a  
 >> reduction in AFC Online. On the Direct AdSense side, we are working on new  
 >> revenue share guidelines that will likely decrease TAC by 5 to 10 percentage  
 >> points across the board.  
 >>  
 >> Thanks,  
 >> -Thomas  
 >>  
 >> -----  
 >> \*From:\* David Eun [mailto:deun@google.com]  
 >> \*Sent:\* Tuesday, March 11, 2008 10:33 AM  
 >> \*To:\* Talia Dear  
 >> \*Cc:\* Deal Review Team  
 >> \*Subject:\* [Deal\_review] Re: FMG: YT deals under 70%?  
 >>  
 >> Talia,  
 >>  
 >> If I recall, I just reminded Jordan to revise everyone's understanding  
 >> of our standard YT deals, i.e., from 55% to up to 70%. I think anything  
 >> "non-standard" should continue to come to FMG, where we can continue to  
 >> determine whether it makes sense to send to EMG.  
 >>  
 >> Agree?  
 >> D-  
 >>  
 >> On Mon, Mar 10, 2008 at 11:02 PM, Talia Dear <talia@google.com> wrote:  
 >>  
 >>> Hi Dave, how are you?  
 >>> I talked with Jordan today - it sounds like you may not want to  
 >>> continue seeing YT content deals in FMG as long as they are under 70% rev  
 >>> share (and don't have any other aspects that would send it to FMG). Is this  
 >>> accurate?  
 >>>  
 >>> Let me know if you no longer need to see these deals in FMG -  
 >>> otherwise, we will continue to send deals with over 55% rev share to FMG  
 >>> (over 70% / 80% claimed to EMG).  
 >>>  
 >>> Thank you, and have a good night!  
 >>> Talia

5-0003

>>>

>>>

>>> -

>>> Talia Dear

>>> Google, Inc.

>>> Compliance Specialist

>>> 1600 Amphitheatre Parkway

>>> Mountain View, CA 94043

>>>

>>>

>>>

>>> "If you received this communication by mistake, please don't forward  
>>> it to anyone else (it may contain confidential or privileged information),  
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>>> sender know it went to the wrong person. Thanks."

>>

>>

>>

>>

>> --

>> David Eun

>> NY: 212-565-8070

>> CA: 650-253-1993

>>

>> =====

>> "CONFIDENTIALITY. This email may be confidential or privileged. If you  
>> received this communication by mistake, please don't forward it to anyone  
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>>

>>

>>

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>> know it went to the wrong person. Thanks.

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anyone else (it may contain confidential or privileged information), please  
erase all copies of it, including all attachments, and please let the sender  
know it went to the wrong person. Thanks.

---

To: Wendy Chang <wchang@google.com>  
From: Alex Ellerson <ellerson@google.com>  
Cc: Tracy Patrick Chan <tracyc@google.com>  
Bcc:  
Received Date: 2007-06-12 14:59:03 CST  
Subject: Re: [REDACTED]

2007-06-12 14:59:03  
**Figueira Decl. Tab**  
**21**

Redacted Pursuant to  
Protective Order at  
Request of Defendants

Hey Wendy,

Attached is the MG recommendation that we made to Dave. Likely more than you want to read, so you might want to just look at the Exec Sum on top, and perhaps also the third recommendation in section II, which is revisiting rev share terms.

In even shorter sum, we are recommending that [REDACTED]  
[REDACTED]

Best,  
Alex

On 6/11/07, Wendy Chang wrote:

>  
> Alex -- any updates as to [REDACTED]  
[REDACTED]

> On 6/11/07, Alex Ellerson wrote:

>>  
>> That would be perfect. Thanks very much, Tracy.

>>  
>> On 6/11/07, Tracy Patrick Chan wrote:

>>>  
>>> That makes sense, I'll see what data I can mine...in the product  
>>> release later this week, we'll be getting in partner flags in the database,  
>>> so I can work with the data mining team to get some (hopefully) really  
>>> insightful data. That said, can we put a deadline on this for early next  
>>> week?

>>> On 6/11/07, Alex Ellerson wrote:

>>>>  
>>>> Hey Wendy & Tracy:

>>>> We've received some guidance from Sales to the effect that it will  
[REDACTED]  
[REDACTED]

tabbles  
**EXHIBIT**  
9  
5/21/09



21-0002

>>>>  
>>>> Does that make sense?

>>>>  
>>>> Thanks very much.

>>>>  
>>>> Best,  
>>>> Alex

>>>>

>>>

>>>

>>>

>>> --

>>> -----

>>> Tracy Patrick Chan

>>> Sales Finance

>>> Phone: [REDACTED]

>>>

>>> \*This email and the information it contains are confidential and may  
>>> be privileged. If you have received this email in error please notify  
>>> me immediately. You should not copy it for any purpose, or disclose  
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>>> secure and, therefore, Google does not accept legal responsibility for  
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> suspect the message may have been intercepted or amended please call me.

>

Attachments:

- MG Overview for Content Partnerships 03-27-2007 FINAL.ppt
- Minimum Guarantee Recommendation Memo -6.1.07-.doc



## Content Partnerships Partner Payment Overview

March 26, 2007

21-0003  
Google Confidential and Proprietary