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10-3270

10-3342

**IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

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

Plaintiffs-Appellants,

(caption continued on inside cover)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

**JOINT APPENDIX
VOLUME IV OF VI (Pages A-1 to A-872) – PUBLIC VERSION**

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v.

YOUTUBE, INC., YOUTUBE, LLC, GOOGLE, INC.,
Defendants-Appellees.

THE FOOTBALL ASSOCIATION PREMIER LEAGUE LIMITED, on behalf of
themselves and all others similarly situated, BOURNE CO., CAL IV
ENTERTAINMENT, LLC, CHERRY LANE MUSIC PUBLISHING COMPANY,
INC., NATIONAL MUSIC PUBLISHERS' ASSOCIATION, THE RODGERS &
HAMMERSTEIN ORGANIZATION, EDWARD B. MARKS MUSIC
COMPANY, FREDDY BIENSTOCK MUSIC COMPANY, dba Bienstock
Publishing Company, ALLEY MUSIC CORPORATION, X-RAY DOG
MUSIC, INC., FEDERATION FRANCAISE DE TENNIS, THE MUSIC FORCE
MEDIA GROUP LLC, SIN-DROME RECORDS, LTD., on behalf of themselves
and all others similarly situated, MURBO MUSIC PUBLISHING, INC., STAGE
THREE MUSIC (US), INC., THE MUSIC FORCE, LLC,
Plaintiffs-Appellants,

ROBERT TUR, dba Los Angeles News Service,
THE SCOTTISH PREMIER LEAGUE LIMITED,
Plaintiffs,

v.

YOUTUBE, INC., YOUTUBE, LLC, GOOGLE, INC.,
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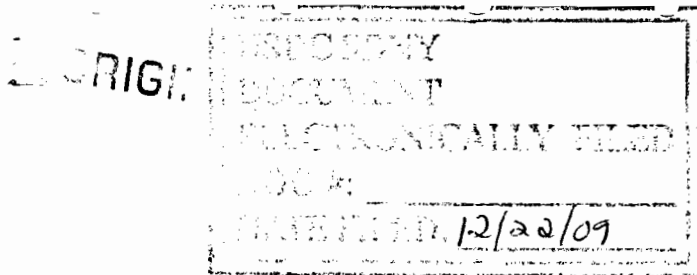
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HIGHLY CONFIDENTIAL

November 20, 2009

The Honorable Louis L. Stanton
United States District Court
Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Room 2250
New York, NY 10007

To The Clerk of The Court:
Please docket and place
this document in the public file,

LLS 12/21/09
Louis L. Stanton
U.S.DJ

Re: *Viacom Int'l Inc. v. YouTube, Inc.*, 07-cv-2103

Dear Judge Stanton:

On behalf of Defendants (“YouTube”), we write to request a Court conference to address Viacom’s recent attempt to unilaterally make material changes to its list of works in suit and alleged infringements.

On October 15, 2009, Viacom informed YouTube of its desire to remove from this case approximately 250 of the video clips that it had previously alleged infringed its copyrights. *See* Letter from Susan J. Kohlmann to Andrew H. Schapiro (Oct. 15, 2009) (Ex. A). While Viacom has not expressly admitted as much, its reason for wanting to do so is that discovery has shown that Viacom has no viable claim of infringement as to those clips, most notably because a significant number of them were posted to YouTube by Viacom itself or by its agents.

Viacom’s effort to withdraw its claims concerning such videos is significant because it undermines representations that Viacom has made throughout this case. In its original complaint, Viacom alleged that none of the videos clips it alleged as infringing were authorized to appear on YouTube. Viacom Cplt. ¶ 35. Viacom then repeatedly confirmed, over the next two and a half years, that such videos were properly part of this case. For example, in its First Amended Complaint, Viacom asserted that “YouTube and its users have not received a valid license, authorization, permission, or consent to use the copyrighted works . . . at issue in this action, including but not limited to those listed on Exhibit A hereto.” Viacom First Am. Cplt. ¶ 36. Viacom similarly told the Court in November 2008 that, “with respect to clips, we have not given them [YouTube] permission to put them up there.” 11/14/2008 Hearing Tr. at 42. And as recently this June, Viacom assured the Court that it is “not seeking damages” for the promotional clips that it uploaded to YouTube, and that this “lawsuit is not about” such clips. Letter from Susan Kohlmann to The Hon. Louis L. Stanton at 2 (June 4, 2009) (Ex. B).

But YouTube’s discovery efforts have refuted those representations. Our investigation has established that a substantial number of the videos that Viacom claimed as infringing were placed or permitted to remain on the YouTube service *by Viacom itself* as part of its extensive marketing efforts. Those videos therefore are expressly or impliedly licensed by Viacom to appear on YouTube. Exposing Viacom’s marketing efforts and their consequences required YouTube to expend significant time and resources in discovery. For example, YouTube deposed

multiple Viacom employees specifically to confirm that they had uploaded videos to YouTube that Viacom was nevertheless alleging as infringements in this case. Through these efforts, which required a painstaking video-by-video analysis of Viacom's alleged infringements, YouTube used up limited deposition hours that it might otherwise have allocated differently. Now, however, Viacom seeks to quietly drop from this case its claims concerning some of the very videos about which those employees were deposed.

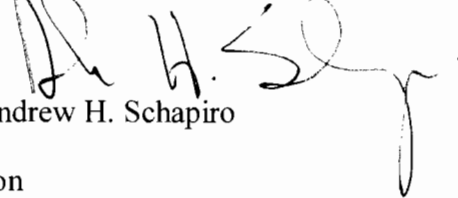
Perhaps better than any other evidence, this series of events belies Viacom's assertion that "[k]nowing that a clip is infringing is easy given the readily identifiable nature of Viacom's movies and television programs." Plaintiffs' Joint Opposition to Defendants' Motion to Compel at 8 (Feb. 28, 2008) (Ex. C). And it certainly undermines any argument that YouTube has the responsibility to determine, on pain of liability, whether a particular clip out of the hundreds of thousands uploaded each day is or is not authorized to be on the YouTube service. That is particularly true given the elaborate process that Viacom was supposedly employing to identify its alleged infringements in this case. Viacom explained to the Court that its process for selecting allegedly infringing clips was a "multi-step procedure designed to accurately identify infringing content." Declaration of Michael Housley ¶ 2 (Feb. 28, 2008) (Ex. D). Before being added to this case, every video clip at issue was "reviewed by one of a team of first-level reviewers to verify that it is infringing." *Id.* ¶ 5. Next, according to Viacom's account, each clip was examined again by "second-level reviewers, who perform[ed] quality control of the first-level reviewers' designations." *Id.* ¶ 6. The resulting data was then "reviewed for consistency and accuracy prior to being produced to defendants." *Id.* ¶ 9. This meticulous procedure was designed to ensure that Viacom was correctly identifying each allegedly infringing video and was cited by Viacom as a justification for why it needed more than two years to identify the universe of clips over which it was suing.

Yet, notwithstanding this rigorous process—and despite Viacom's access to far better information about its works and its marketing practices than YouTube has—Viacom was not able to reliably determine which videos were authorized or which clips its own employees or agents had posted on YouTube. In addition to contradicting various of Viacom's statements to the Court, that fact bears directly on some of the central issues in this case. After all, if Viacom cannot consistently make such determinations, even with regard to a closed universe of *its own content* reviewed by *its own counsel*, and against the backdrop of Rule 11, what basis is there for suggesting that YouTube can and must do better?

In any event, at this stage of the litigation, years after YouTube filed its Answer and on the eve of the discovery cutoff, Viacom is not permitted under Federal Rules of Civil Procedure 15 and 41 to amend its claims without either YouTube's stipulation or Court order. After receiving Viacom's amended list of alleged infringements last month, YouTube offered to stipulate to Viacom's withdrawal of the specified claims, so long as the prejudice to YouTube could be minimized. To that end, YouTube requested: (1) that Viacom agree to a stipulated, binding partial judgment on the withdrawn claims identifying YouTube as the prevailing party; and (2) that Viacom agree not to object to YouTube's use of the withdrawn claims as evidence in the case. *See* Letter from David H. Kramer to Susan J. Kohlmann (Oct. 23, 2009) (Ex. E). But Viacom refused, asserting that it is not required to obtain consent for its amendment. *See* Letter from Susan J. Kohlmann to David H. Kramer (Oct. 30, 2009) (Ex. F).

Particularly given the resources that YouTube has expended investigating these claims, and the relevance of Viacom's misidentifications, Viacom's position is untenable. Viacom has not learned anything about the clips at issue that it should not have known all along. Indeed, Viacom never should have asserted infringement claims over those videos in the first place. But having waited so long to first announce its desire to withdraw them, Viacom cannot simply make these claims disappear without leave and without consequence. YouTube therefore requests a conference so that the Court can address the proper resolution of Viacom's attempt to amend its claims at this late date. We look forward to discussing these issues with the Court.

Respectfully submitted,

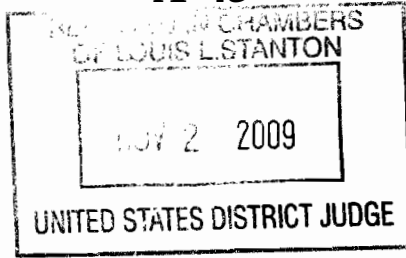


Andrew H. Schapiro

cc: All counsel in this action and the *Premier League* action

ORIGINAL

A-45



JENNER & BLOCK

November 25, 2009

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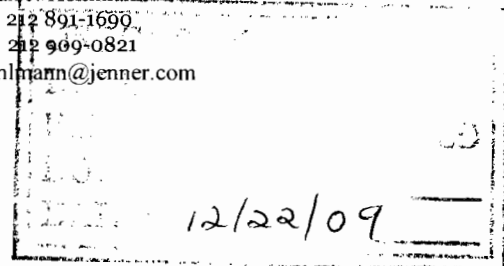
Chicago
Los Angeles
New York
Washington, DC

The Honorable Louis L. Stanton
United States District Court
Southern District of New York
Daniel Patrick Moynihan United
States Courthouse
500 Pearl Street, Room 2250
New York, NY 10007

**To The Clerk of The Court:
Please docket and place
this document in the public file,**

LLS 12/21/09
Louis L. Stanton
U.S.DJ

Susan J. Kohlmann
Tel 212 891-1699
Fax 212 909-0821
skohlmann@jenner.com



Re: *Viacom International Inc., et al. v. YouTube, Inc. et al.*, No 07 CV 2103 (LLS)

Dear Judge Stanton:

Plaintiffs Viacom International Inc. et al. ("Viacom") write in response to Defendants' November 20, 2009, letter to this Court, in which Defendants request a conference to address Viacom's withdrawal of roughly 250 "accused clips" from its prior responses to Defendants' discovery requests for identification of works in suit.

It is difficult to perceive the nature of Defendants' complaint. Their letter does not explain why they are writing to the Court or what relief they are seeking. As set forth below, Viacom has adhered to the Court's prescribed procedure imposing a deadline for adding infringing clips to the case. Viacom's subsequent withdrawal of a de minimis number of clips has the effect of narrowing, not expanding, the case, so there is no conceivable prejudice to Defendants or requirement to amend the pleadings. Defendants' accusation that Viacom made false representations to the Court is also baseless, indeed irresponsible. And Defendants' request for a generalized ruling in limine is plainly premature and unsupported.

The background is this. In response to document requests and interrogatories from Defendants, and in accordance with the procedure established by this Court, Viacom provided lists to Defendants on a rolling basis during discovery that identified video clips on YouTube that infringed Viacom's copyrights. Viacom completed this process on March 9, 2009, having identified 63,500 infringing YouTube clips to Defendants. Subsequently, on October 15, Viacom notified Defendants that it was withdrawing approximately 250 clips – 0.39% of the total – that Viacom had previously listed in its rolling identifications. Viacom did not add any clips to its lists after March 9.

Viacom has proceeded as directed by the Court. In March 2008, the parties could not reach agreement on the deadline for responding to Defendants' discovery requests for identifying infringing clips, and Defendants moved to compel discovery on this issue. (See Exhibit A, at 7-15). Ruling on that discovery motion, the Court imposed a deadline requiring identification of all additional clips by 90 days before the close of discovery. The Court explained:

Attachments Designated Highly Confidential

The Honorable Louis L. Stanton

November 25, 2009

Page 2

All claims of infringement of the works in suit must be identified in time to be explored by the defendants before trial. And in practical terms, that probably means 90 days before the close of discovery. I don't think you or I should expect additions to be made to the list thereafter. The case ultimately must be tried on a closed universe of claims. So we'll close the list 90 days before discovery and not expect later additions

Exhibit B, at 3:12-19 (emphasis added). The Court's order makes clear that it imposed a deadline for adding clips to the case so that there would be time to take discovery if needed on new claims of infringement. Consistent with that ruling, Viacom completed its identification of infringements in March 2009 – months before the 90-day deadline ordered by the Court. Also consistent with that ruling, Viacom has not sought to add any clips to its list of infringements since March 2009 – much less since the expiration of the 90-day deadline.

Unlike adding clips after the deadline, withdrawing a small number of clips cannot prejudice Defendants in any way. Further, there is no merit to Defendants' contention that Viacom's withdrawal of a small number of clips requires an amendment of the pleadings. That argument, too, is foreclosed by the Court's June 2008 Order. In the motion to compel leading up to that Order, Defendants insisted that Plaintiffs had to amend their complaints each time they identified new infringing clips in discovery. (See Exhibit A, at 7-15). In response, Viacom pointed out that rolling identifications of infringing clips in discovery would put Defendants on notice of the details of the claims against them, and that formal interim amendments to the complaint would serve no purpose, given that Defendants would be receiving that information in the course of discovery. (See Exhibit C, at 15-18; Exhibit D, at 3). When the Court addressed this issue, it rejected any requirement of interim amendments to the complaint:

I'm not sure of the need for formalistic amendments to the complaint as claims are added to the list. From my standpoint, a final list attached to the joint pretrial order might do equally as well, but there may be reasons clear to counsel why amendments to the complaint are better.

Exhibit B, at 5:8-13 (emphasis added). Consistent with that ruling, there is no need to make “formalistic amendments to the complaint as claims are added to” – or subtracted from – “the list.” Rather, as indicated by the Court, “a final list attached to the joint pretrial order” is the best way of dealing with this issue, particularly because discovery might reveal grounds for removing clips from the list to narrow the issues pretrial.

Indeed, Defendants' current letter to the Court suggests that their objective all along in demanding interim amendments to the Complaint has been to set a trap for Plaintiffs in the event any error was made in listing infringing clips – something that was inevitable given the vast scope of Defendants' infringement. Recall that Viacom has identified more than 63,000 infringing clips in response to Defendants' discovery requests. As we will show when we move for summary judgment, Defendants' massive infringement was intentional. Given the massive

The Honorable Louis L. Stanton

November 25, 2009

Page 3

scope of their infringement, Defendants can hardly be heard to complain that in responding to discovery requests, Viacom included roughly 250 clips (0.39% of the total) that it later withdrew.

This is just part of the normal process of the scope of claims being narrowed in the course of discovery leading up to the pretrial order. Defendants cannot explain how this might have prejudiced them in any way. And the law is clear that formalistic objections based on pleadings must be rejected where there is no prejudice – which Defendants have not shown and cannot show. *E.g.*, *Cruz v. Coach Stores, Inc.*, 202 F.3d 560, 569 (2d Cir. 2000) (“Under Fed. R. Civ. P. 15(b), a district court may consider claims outside those raised in the pleadings so long as doing so does not cause prejudice,” and to show prejudice “a party’s failure to plead an issue it later presented must have disadvantaged its opponent in presenting its case”).

Nor is there any basis for Defendants’ reckless accusation that Viacom has made misrepresentations to the Court. Defendants point to statements that Viacom is not suing for infringement based on clips that Viacom uploaded or authorized for upload to YouTube. Viacom stands by those statements. It is suing for unauthorized uploads. Precisely for that reason, and consistent with its representations, Viacom has withdrawn a relative handful of clips (roughly 100 of the 250 at issue here) that Viacom or its authorized agents uploaded to YouTube – typically with YouTube’s knowledge and encouragement. Again, it is impossible to discern why Defendants are complaining about that slight narrowing of the issues for trial. Further, as Viacom will show when it moves for summary judgment, the minute proportion of clips from its works on YouTube that were authorized – compared to more than 63,000 unauthorized clips – provides no excuse or defense for Defendants’ massive and intentional infringement.

Nor is there any basis at this stage for Defendants’ demand for a blank check to use the withdrawal of a handful of clips as evidence in the case. Here again, in its June 2008 Order the Court already rejected a request for just such a generalized ruling on this exact issue as premature and lacking context:

At this time I’m not making any ruling in limine with respect to the freedom of defendants to comment on the withdrawals by plaintiffs of particular works in suit. The more I think of that issue, the more I think it would not serve its best function given as a whole. Individual circumstances might justify comments, and individual circumstances might make comments unfair. And I’m not making any ruling on it in limine.

Exhibit B, at 4:15-22. Viacom agrees that any decision on this issue would be premature at this time. In particular, Viacom’s motion for summary judgment will provide much-needed context for this issue by demonstrating that Defendants’ infringement was intentional, and that Defendants had the right and ability to control that infringement and distinguish the enormous number of infringing clips that they intentionally allowed on their site from the minute number of authorized clips. After the Court has reviewed Viacom’s summary judgment filings, we respectfully submit that it will agree that Defendants’ attempt to present evidence at trial about Viacom’s withdrawal of a handful of clips in the course of discovery would be misleading and

The Honorable Louis L. Stanton
November 25, 2009
Page 4

prejudicial. In all events, any ruling on that issue should wait until after motions for summary judgment, when the pretrial order and motions in limine will be ripe.

Sincerely,

Susan J. Kohlmann/ss

Susan J. Kohlmann

cc: All counsel in this action and the *Premier League* action

ORIGINAL

To: The Clerk of Court A-49

MAYER • BROWN

LLS 12/21/09

U.S.D.J.

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HIGHLY CONFIDENTIAL

December 1, 2009

The Honorable Louis L. Stanton
United States District Court
Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Room 2250
New York, NY 10007

Re: *Viacom Int'l Inc. v. YouTube, Inc.*, 07-cv-2103

Dear Judge Stanton:

2009
12/22/09

On behalf of Defendants (“YouTube”), we write in reply to Viacom’s November 25, 2009 letter concerning Viacom’s recent effort to withdraw infringement claims in this case.

Viacom’s assertion that there is “no conceivable prejudice” to YouTube from its belated effort to withdraw hundreds of alleged infringements ignores the very real prejudice identified in our original letter. As we explained, YouTube engaged in extensive discovery aimed at many of the very clips that Viacom now seeks to withdraw. Those investigative efforts into which clips Viacom authorized to be on the YouTube service have been hard-fought. For example, when YouTube sought information about Viacom’s instructions to BayTSP to refrain from taking down authorized videos, it was met with ill-founded claims of privilege, leading to 18 months of motions and threatened motions to obtain the relevant documents. YouTube also devoted limited deposition hours to deposing Viacom employees responsible for Viacom’s stealth uploads of Viacom content to YouTube. Now that YouTube’s discovery efforts have established that Viacom’s claims of infringement were meritless, it would be unfair and unwarranted to allow Viacom to pretend that it never asserted those claims in the first place. That is particularly so given that Viacom has offered no explanation for why it waited until October 15, 2009—the original date for the close of document production—to first raise its desire to materially alter the universe of alleged infringements.

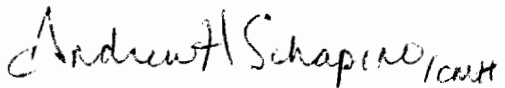
Nor does Viacom explain how it came to assert infringement claims over these videos in the first instance consistent with its Rule 11 obligations. Viacom itself purposefully uploaded many of these videos to YouTube and expressly authorized them to appear there. That Viacom then chose to sue YouTube over these very videos was not the result of typographical or data-entry errors. Rather, it could only have been the result of Viacom’s own inability to recognize whether a given video appearing on YouTube was or was not authorized to be there, notwithstanding Viacom’s elaborate multi-step identification process. It was not the purported “massive scope of Defendants’ infringement” that caused Viacom to make these bogus claims (Viacom Letter at 2-3); rather, it was Viacom’s own use of YouTube for marketing and promotional purposes that made it impossible for Viacom (and YouTube) to distinguish allegedly infringing videos from authorized ones.

Moreover, Viacom is wrong to characterize its attempt to withdraw infringement claims as merely amending discovery responses. In fact, Viacom is seeking to withdraw claims that it *expressly asserted* in its First Amended Complaint in April 2008, which included an Exhibit A listing the works in suit and allegedly infringing videos that Viacom had identified as of that time. Ninety-one of the videos Viacom now wants to abandon are specifically listed in that exhibit. *See* FAC, Ex. A. Likewise, the First Amended Complaint incorporates by reference the additional videos that Viacom identified in its subsequent “rolling” identifications. *See* FAC ¶¶ 36 (alleging unauthorized appearance on YouTube of the videos “at issue in this action, including but not limited to those listed on Exhibit A hereto”). Having formally put the identified videos at issue in its pleadings, Viacom must abide by the procedures established by Rule 15 or Rule 41 for any attempted withdrawal of those claims.¹

What is more, Viacom’s position that it is entitled to freely drop alleged infringements up until the pretrial order ignores serious case-management concerns. Between now and the pretrial conference, YouTube will be completing fact discovery and expert discovery, preparing summary judgment motions, and refining its trial strategies based upon the “closed universe” of claims that Viacom was ordered to have provided by August 17, 2009. Viacom’s argument that it can alter its claims at any time and without any consequences threatens further prejudice, as YouTube would have no certainty that the case it is preparing is actually directed to the clips that will ultimately be at issue for summary judgment or trial.

Finally, Viacom argues that it is seeking only to effect a “narrowing” of the case, which should not be objectionable to YouTube. Of course, YouTube has no desire to continue litigating claims that both parties agree are baseless, which is why YouTube offered to stipulate to Viacom’s proposed withdrawal of claims on terms that are fair and minimize the prejudice to YouTube. But Viacom refused that offer, leaving unresolved the parties’ dispute concerning the procedure, timing, and consequences of Viacom’s efforts to withdraw certain of its claims. YouTube respectfully requests a conference to obtain the Court’s assistance on those issues. In particular, we seek a ruling that YouTube is entitled to judgment on the claims of infringement that Viacom seeks to withdraw, and any other relief that the Court considers appropriate.

Respectfully submitted,



Andrew H. Schapiro

¹ While Viacom says that it is seeking to withdraw only a *de minimis* percentage of alleged infringements, its assertion of 250 concededly meritless claims of infringement is significant in absolute terms, potentially representing millions of dollars in statutory damages under Viacom’s theory of the case. In any event, Viacom’s percentage-based arguments are also not particularly helpful to its overall position. The 63,000 videos that Viacom identified as alleged infringements constitute less than 0.02% of the total videos uploaded by users to YouTube—an order of magnitude smaller than the percentage that Viacom itself characterizes as “*de minimis*.”

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

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

Plaintiffs,

v.

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

Defendants.

-----x

On the parties' letters to the Court dated November 20
and December 1, 2009 from defendants and November 25, 2009
from plaintiffs, and after due consideration, it is ORDERED
that:

Plaintiffs may withdraw "accused clips" by notice of
their dismissal with prejudice under Fed. R. Civ. P.
41(a)(2), which I will "So Order." Partial judgment in
defendants' favor on those claims will not be entered, lest
it give an appearance of having an effect beyond that
accorded by Rule 54(b).

Dated: December 18, 2009
New York, New York

RECEIVED
12/21/09

07 Civ. 2103 (LLS)

ORDER

Louis L. Stanton
Louis L. Stanton
U.S.D.J.

STANTON, S.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 3-10-10

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

Plaintiffs,

v.

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

Defendants.

Case No. 1:07-CV-02103-LLS
(Related Case No. 1:07-CV-03582-LLS)

**NOTICE OF DISMISSAL OF
SPECIFIED CLIPS WITH
PREJUDICE**

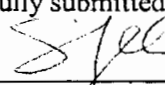
Pursuant to the Court’s Order of December 18, 2009, which provides that
“Plaintiffs may withdraw ‘accused clips’ by notice of their dismissal with prejudice under
Fed. R. Civ. P. 41(a)(2), which I will ‘So Order,’” and which further provides that
“Partial judgment in defendants’ favor on those claims will not be entered, lest it give an
appearance of having an effect beyond that accorded by Rule 54(b),” the plaintiffs in the
above-captioned action (“Viacom”) hereby provide notice of the dismissal with prejudice
under Fed. R. Civ. P. 41(a)(2) of the video clips listed on the attached Schedules A and B.
Viacom respectfully requests that the Court “So Order” this notice of dismissal.

Schedule A lists the 241 video clips that Viacom had previously removed from its
October 15, 2009 amended works in suit list, and lists six additional clips that were
inadvertently included in the amended works in suit list but should have been removed.
Schedule B lists 187 additional clips from four works as to which Viacom owns certain
exclusive rights under copyright. Viacom did not upload or authorize the upload to
YouTube of the clips listed in Schedule B, but in order to streamline the issues in this

case Viacom voluntarily withdraws its copyright infringement claims with respect to these clips. Viacom continues to pursue its infringement claims as to more than 63,000 infringing clips.

February 16, 2010

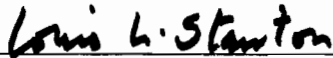
Respectfully submitted,



Susan J. Kohlmann (SK-1855)
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919 Third Avenue
37th Floor
New York, NY 10022-3908
(212) 891-1600 (t)
(212) 891-1699 (f)
skohlmann@jenner.com

LLS Don't expect to have been
revised, it's

SO ORDERED:



Hon. Louis L. Stanton, U.S.D.J.

h

Schedule A

YouTube URL	Video ID
http://www.youtube.com/watch?v= 4J1nPR9obl	4J1nPR9obl
http://www.youtube.com/watch?v= KDSYA5bEMc	KDSYA5bEMc
http://www.youtube.com/watch?v= sTgT76i3vc	sTgT76i3vc
http://www.youtube.com/watch?v= yr3Fu_LRE4	yr3Fu_LRE4
http://www.youtube.com/watch?v=0mZ8VNkSPaU	0mZ8VNkSPaU
http://www.youtube.com/watch?v=0ZO5f4q8b-g	0ZO5f4q8b-g
http://www.youtube.com/watch?v=1168T5BsmVY	1168T5BsmVY
http://www.youtube.com/watch?v=17kAJR7YbDE	17kAJR7YbDE
http://www.youtube.com/watch?v=1dWtA-nK-sQ	1dWtA-nK-sQ
http://www.youtube.com/watch?v=1LOjvymWwvI	1LOjvymWwvI
http://www.youtube.com/watch?v=29le85Vp8vI	29le85Vp8vI
http://www.youtube.com/watch?v=2TncOW-J6wA	2TncOW-J6wA
http://www.youtube.com/watch?v=3US2k6mTtEw	3US2k6mTtEw
http://www.youtube.com/watch?v=3wo2FcyjFP98	3wo2FcyjFP98
http://www.youtube.com/watch?v=4cn9XRW_qMQ	4cn9XRW_qMQ
http://www.youtube.com/watch?v=4nLoXLBwZv0	4nLoXLBwZv0
http://www.youtube.com/watch?v=5Esm9Mlt5Xo	5Esm9Mlt5Xo
http://www.youtube.com/watch?v=5gbI2_Kocug	5gbI2_Kocug
http://www.youtube.com/watch?v=5Hd_JzII1MA	5Hd_JzII1MA
http://www.youtube.com/watch?v=5kWtyVo-8k0	5kWtyVo-8k0
http://www.youtube.com/watch?v=5-tUPWwEMdk	5-tUPWwEMdk
http://www.youtube.com/watch?v=5vtDQVpq_o	5vtDQVpq_o
http://www.youtube.com/watch?v=6_SaSuqfGB4	6_SaSuqfGB4
http://www.youtube.com/watch?v=68kDGadsbvQ	68kDGadsbvQ
http://www.youtube.com/watch?v=6WhsXvOe2IU	6WhsXvOe2IU
http://www.youtube.com/watch?v=6xFe570faSI	6xFe570faSI
http://www.youtube.com/watch?v=73mubsIY4BA	73mubsIY4BA
http://www.youtube.com/watch?v=744Gh8MbTWg	744Gh8MbTWg
http://www.youtube.com/watch?v=7aGjJBalKgs	7aGjJBalKgs
http://www.youtube.com/watch?v=83KsT9D_6al	83KsT9D_6al
http://www.youtube.com/watch?v=88XvlfKnGwl	88XvlfKnGwl
http://www.youtube.com/watch?v=8AYnfxZ_BXl	8AYnfxZ_BXl
http://www.youtube.com/watch?v=8v8vhNKIAZ4	8v8vhNKIAZ4
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http://www.youtube.com/watch?v=9A-rgw-xkjg	9A-rgw-xkjg
http://www.youtube.com/watch?v=9UClweyrV_A	9UClweyrV_A
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http://www.youtube.com/watch?v=AfiV-gllgQQ	AfiV-gllgQQ
http://www.youtube.com/watch?v=AgGf_xso0HI	AgGf_xso0HI
http://www.youtube.com/watch?v=aITz05jvTlk	aITz05jvTlk
http://www.youtube.com/watch?v=AjG9o33dQRQ	AjG9o33dQRQ
http://www.youtube.com/watch?v=ALH9IfsORXo	ALH9IfsORXo
http://www.youtube.com/watch?v=aUonqu5RlcM	aUonqu5RlcM

Schedule A

http://www.youtube.com/watch?v=aWt-fduKFmo	aWt-fduKFmo
http://www.youtube.com/watch?v=B64MeRiGDY0	B64MeRiGDY0
http://www.youtube.com/watch?v=b8kFrT6Ni08	b8kFrT6Ni08
http://www.youtube.com/watch?v=BbWi_RN9ou8	BbWi_RN9ou8
http://www.youtube.com/watch?v=bdRNAUTDBqY	bdRNAUTDBqY
http://www.youtube.com/watch?v=BrCI7t5SU-s	BrCI7t5SU-s
http://www.youtube.com/watch?v=Bsq0CpNdwpM	Bsq0CpNdwpM
http://www.youtube.com/watch?v=C2kSoDWG404	C2kSoDWG404
http://www.youtube.com/watch?v=C9h5js3n1sw	C9h5js3n1sw
http://www.youtube.com/watch?v=cjhmH21ed-c	cjhmH21ed-c
http://www.youtube.com/watch?v=cpC6ElyLTx8	cpC6ElyLTx8
http://www.youtube.com/watch?v=-cQQVfrF8Zg	-cQQVfrF8Zg
http://www.youtube.com/watch?v=cR5BCbGyTkc	cR5BCbGyTkc
http://www.youtube.com/watch?v=CSs79sYQ1_o	CSs79sYQ1_o
http://www.youtube.com/watch?v=cuDIQ_dIsyA	cuDIQ_dIsyA
http://www.youtube.com/watch?v=CxVxzXCbeOw	CxVxzXCbeOw
http://www.youtube.com/watch?v=czg16nOL_Jc	czg16nOL_Jc
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http://www.youtube.com/watch?v=dMNgKJsmHwo	dMNgKJsmHwo
http://www.youtube.com/watch?v=DUTtBxd2KPQ	DUTtBxd2KPQ
http://www.youtube.com/watch?v=eGXV-oXzzUE	eGXV-oXzzUE
http://www.youtube.com/watch?v=eijhloJjg50	eijhloJjg50
http://www.youtube.com/watch?v=eRR_IDApRQs	eRR_IDApRQs
http://www.youtube.com/watch?v=eV9Z-W1jqvg	eV9Z-W1jqvg
http://www.youtube.com/watch?v=f5CpR7yR8iQ	f5CpR7yR8iQ
http://www.youtube.com/watch?v=F8VPEIt2zTM	F8VPEIt2zTM
http://www.youtube.com/watch?v=fAQw55ddPfA	fAQw55ddPfA
http://www.youtube.com/watch?v=FDXmujT4MZE	FDXmujT4MZE
http://www.youtube.com/watch?v=fNU05tW62M8	fNU05tW62M8
http://www.youtube.com/watch?v=fPbDpAmxYRw	fPbDpAmxYRw
http://www.youtube.com/watch?v=F-vuYx6d1XM	F-vuYx6d1XM
http://www.youtube.com/watch?v=g0nOEudbKOQ	g0nOEudbKOQ
http://www.youtube.com/watch?v=G3mjcRVnJV4	G3mjcRVnJV4
http://www.youtube.com/watch?v=g5ce_rOoGcc	g5ce_rOoGcc
http://www.youtube.com/watch?v=GgexPrquS2k	GgexPrquS2k
http://www.youtube.com/watch?v=gxjpdGjv59o	gxjpdGjv59o
http://www.youtube.com/watch?v=Gy3TrlInTvA	Gy3TrlInTvA
http://www.youtube.com/watch?v=GYKER0CR0yk	GYKER0CR0yk
http://www.youtube.com/watch?v=H0AQehIKRB4	H0AQehIKRB4
http://www.youtube.com/watch?v=H0ZLZTR-g5Y	H0ZLZTR-g5Y
http://www.youtube.com/watch?v=hAs5LPggFSo	hAs5LPggFSo
http://www.youtube.com/watch?v=hfPAw9MM69A	hfPAw9MM69A
http://www.youtube.com/watch?v=Hgu1RM2vbVM	Hgu1RM2vbVM
http://www.youtube.com/watch?v=hhXIVDxYzvg	hhXIVDxYzvg

Schedule A

http://www.youtube.com/watch?v=HM4b0wcMo_0	HM4b0wcMo_0
http://www.youtube.com/watch?v=hnKQ7xzDjQ4	hnKQ7xzDjQ4
http://www.youtube.com/watch?v=hSdMtP8qztA	hSdMtP8qztA
http://www.youtube.com/watch?v=hZYpL6Vdz4k	hZYpL6Vdz4k
http://www.youtube.com/watch?v=i3YBKlAXvvk	i3YBKlAXvvk
http://www.youtube.com/watch?v=I4pc-6V4IZc	I4pc-6V4IZc
http://www.youtube.com/watch?v=i55f6qUSq4A	i55f6qUSq4A
http://www.youtube.com/watch?v=InVHaTyS6X0	InVHaTyS6X0
http://www.youtube.com/watch?v=IZdKpTkQv8g	IZdKpTkQv8g
http://www.youtube.com/watch?v=J_LMd1WMyk4	J_LMd1WMyk4
http://www.youtube.com/watch?v=j4A-BqFSSL8	j4A-BqFSSL8
http://www.youtube.com/watch?v=jD9iQbQBHil	jD9iQbQBHil
http://www.youtube.com/watch?v=jP_AXwoCgws	jP_AXwoCgws
http://www.youtube.com/watch?v=JZwFUe2aXLA	JZwFUe2aXLA
http://www.youtube.com/watch?v=K4sS0wA_-lA	K4sS0wA_-lA
http://www.youtube.com/watch?v=k6CSyIS5528	k6CSyIS5528
http://www.youtube.com/watch?v=KcU0ye3nXtA	KcU0ye3nXtA
http://www.youtube.com/watch?v=kg2WUirHOhw	kg2WUirHOhw
http://www.youtube.com/watch?v=kgYL9-VnhoU	kgYL9-VnhoU
http://www.youtube.com/watch?v=KhIPvn26b1A	KhIPvn26b1A
http://www.youtube.com/watch?v=KiBDCZX7HQc	KiBDCZX7HQc
http://www.youtube.com/watch?v=KNeaHNwvvvM	KNeaHNwvvvM
http://www.youtube.com/watch?v=kpkmya7Mkzk	kpkmya7Mkzk
http://www.youtube.com/watch?v=KrTB3848mgQ	KrTB3848mgQ
http://www.youtube.com/watch?v=kvEeLZV1j-k	kvEeLZV1j-k
http://www.youtube.com/watch?v=L6a_iKo83RE	L6a_iKo83RE
http://www.youtube.com/watch?v=L8GYvvm_3bE	L8GYvvm_3bE
http://www.youtube.com/watch?v=L9h0BpdVMxA	L9h0BpdVMxA
http://www.youtube.com/watch?v=Le52xv31TTM	Le52xv31TTM
http://www.youtube.com/watch?v=LeSId8yY3Do	LeSId8yY3Do
http://www.youtube.com/watch?v=liblQ3NIAjE	liblQ3NIAjE
http://www.youtube.com/watch?v=lirJJiViWsE	lirJJiViWsE
http://www.youtube.com/watch?v=ln5zXFcssSc	ln5zXFcssSc
http://www.youtube.com/watch?v=lvb3QDrHxRA	lvb3QDrHxRA
http://www.youtube.com/watch?v=L-VLn6bEOvs	L-VLn6bEOvs
http://www.youtube.com/watch?v=LYGpcUofXbk	LYGpcUofXbk
http://www.youtube.com/watch?v=lz0JZvlMrOA	lz0JZvlMrOA
http://www.youtube.com/watch?v=LzIoLR5i9uw	LzIoLR5i9uw
http://www.youtube.com/watch?v=m_lOnAYAh18	m_lOnAYAh18
http://www.youtube.com/watch?v=meXedwbvCh8	meXedwbvCh8
http://www.youtube.com/watch?v=MGZbVuVW2wQ	MGZbVuVW2wQ
http://www.youtube.com/watch?v=mJkGJQyDNQ0	mJkGJQyDNQ0
http://www.youtube.com/watch?v=mk3uiuXo4dk	mk3uiuXo4dk
http://www.youtube.com/watch?v=MMWoRIaFZM8	MMWoRIaFZM8

Schedule A

http://www.youtube.com/watch?v=mOvZn9ebc8Q	mOvZn9ebc8Q
http://www.youtube.com/watch?v=MSGNvmqcZK0	MSGNvmqcZK0
http://www.youtube.com/watch?v=mTLMUWP13pE	mTLMUWP13pE
http://www.youtube.com/watch?v=MV9EB2EXGdk	MV9EB2EXGdk
http://www.youtube.com/watch?v=N0QCkXfxJs4	N0QCkXfxJs4
http://www.youtube.com/watch?v=N-4MT9u6LUUs	N-4MT9u6LUUs
http://www.youtube.com/watch?v=N7Q-vFtW8Lk	N7Q-vFtW8Lk
http://www.youtube.com/watch?v=n8wDRoQkN1c	n8wDRoQkN1c
http://www.youtube.com/watch?v=N9aNvjuTivY	N9aNvjuTivY
http://www.youtube.com/watch?v=nCHY88De2A0	nCHY88De2A0
http://www.youtube.com/watch?v=NdpArPebjFY	NdpArPebjFY
http://www.youtube.com/watch?v=NEB7-p0aq8M	NEB7-p0aq8M
http://www.youtube.com/watch?v=neyj1SyVjBs	neyj1SyVjBs
http://www.youtube.com/watch?v=Nr8fA2kX44E	Nr8fA2kX44E
http://www.youtube.com/watch?v=NThBETSknVQ	NThBETSknVQ
http://www.youtube.com/watch?v=nyLj0T9EKAo	nyLj0T9EKAo
http://www.youtube.com/watch?v=nZ3SdIb5NDI	nZ3SdIb5NDI
http://www.youtube.com/watch?v=o8pkZ38bLvU	o8pkZ38bLvU
http://www.youtube.com/watch?v=oCbmqsqoSqk	oCbmqsqoSqk
http://www.youtube.com/watch?v=oQUgal6CFsi	oQUgal6CFsi
http://www.youtube.com/watch?v=OUWSSmNxArs	OUWSSmNxArs
http://www.youtube.com/watch?v=oXmMicS1oZk	oXmMicS1oZk
http://www.youtube.com/watch?v=plilwcUpTbU	plilwcUpTbU
http://www.youtube.com/watch?v=Pa3J-L29iT8	Pa3J-L29iT8
http://www.youtube.com/watch?v=paveBpTiNqI	paveBpTiNqI
http://www.youtube.com/watch?v=pBHnokTr1xg	pBHnokTr1xg
http://www.youtube.com/watch?v=pE2MiuJT7Yg	pE2MiuJT7Yg
http://www.youtube.com/watch?v=Phap3WkYOpC	Phap3WkYOpC
http://www.youtube.com/watch?v=pIGQYawzv9c	pIGQYawzv9c
http://www.youtube.com/watch?v=Ppm3MIsqsK4	Ppm3MIsqsK4
http://www.youtube.com/watch?v=PRedB3aDGDg	PRedB3aDGDg
http://www.youtube.com/watch?v=PuqX26-GCWY	PuqX26-GCWY
http://www.youtube.com/watch?v=Pvz66FuaHso	Pvz66FuaHso
http://www.youtube.com/watch?v=pyP1JFa8bJc	pyP1JFa8bJc
http://www.youtube.com/watch?v=Q_z5Kzv8_A0	Q_z5Kzv8_A0
http://www.youtube.com/watch?v=q5nDYUqEKSA	q5nDYUqEKSA
http://www.youtube.com/watch?v=qFXA10IQiM4	qFXA10IQiM4
http://www.youtube.com/watch?v=QrROfhjqpDs	QrROfhjqpDs
http://www.youtube.com/watch?v=Q-VvGxYDGm0	Q-VvGxYDGm0
http://www.youtube.com/watch?v=r_c6W1bOG2M	r_c6W1bOG2M
http://www.youtube.com/watch?v=r0WZATT9P9g	r0WZATT9P9g
http://www.youtube.com/watch?v=rDOB6g2-3FU	rDOB6g2-3FU
http://www.youtube.com/watch?v=REQFHAKXrgw	REQFHAKXrgw
http://www.youtube.com/watch?v=rf3BHTB2RAY	rf3BHTB2RAY

Schedule A

http://www.youtube.com/watch?v=RhNehWcBADg	RhNehWcBADg
http://www.youtube.com/watch?v=rig59Nf9qRw	rig59Nf9qRw
http://www.youtube.com/watch?v=rkQ9C-9pWJg	rkQ9C-9pWJg
http://www.youtube.com/watch?v=RRrB_hitU-c	RRrB_hitU-c
http://www.youtube.com/watch?v=s0e_ifSMtIl	s0e_ifSMtIl
http://www.youtube.com/watch?v=S5pUWE1WGKw	S5pUWE1WGKw
http://www.youtube.com/watch?v=s8VLwpyYtB0	s8VLwpyYtB0
http://www.youtube.com/watch?v=scK1yTVqE3Y	scK1yTVqE3Y
http://www.youtube.com/watch?v=sIXfcdZbnUw	sIXfcdZbnUw
http://www.youtube.com/watch?v=SVIlle_fwMg	SVIlle_fwMg
http://www.youtube.com/watch?v=SwyufkyHfyU	SwyufkyHfyU
http://www.youtube.com/watch?v=sxNuomEUGG0	sxNuomEUGG0
http://www.youtube.com/watch?v=t2KaB51W8XA	t2KaB51W8XA
http://www.youtube.com/watch?v=T3ysjszEu1s	T3ysjszEu1s
http://www.youtube.com/watch?v=tbU_2WGlqkU	tbU_2WGlqkU
http://www.youtube.com/watch?v=TZv0POyzkpc	TZv0POyzkpc
http://www.youtube.com/watch?v=udfXAGkZCp0	udfXAGkZCp0
http://www.youtube.com/watch?v=UE8M1Pc8PIE	UE8M1Pc8PIE
http://www.youtube.com/watch?v=uJg2geqHK5U	uJg2geqHK5U
http://www.youtube.com/watch?v=uK8e9xY3eFM	uK8e9xY3eFM
http://www.youtube.com/watch?v=uSd7BLvN9KQ	uSd7BLvN9KQ
http://www.youtube.com/watch?v=USds5DhScmg	USds5DhScmg
http://www.youtube.com/watch?v=Ux6aFYuTYNY	Ux6aFYuTYNY
http://www.youtube.com/watch?v=UXmn2TS_ALQ	UXmn2TS_ALQ
http://www.youtube.com/watch?v=UZir_FlgXQg	UZir_FlgXQg
http://www.youtube.com/watch?v=v0u1Ayaq4p2o	v0u1Ayaq4p2o
http://www.youtube.com/watch?v=v5XPki6Nj6k	v5XPki6Nj6k
http://www.youtube.com/watch?v=vAGC2_ux-GE	vAGC2_ux-GE
http://www.youtube.com/watch?v=VbDA1XS6M6A	VbDA1XS6M6A
http://www.youtube.com/watch?v=VdFd278uM7U	VdFd278uM7U
http://www.youtube.com/watch?v=Vj9rdT-t8Lc	Vj9rdT-t8Lc
http://www.youtube.com/watch?v=vjQbOSjMuAU	vjQbOSjMuAU
http://www.youtube.com/watch?v=vlQhux5mXfY	vlQhux5mXfY
http://www.youtube.com/watch?v=vNgoUewhYTM	vNgoUewhYTM
http://www.youtube.com/watch?v=vPThnldeQTW	vPThnldeQTW
http://www.youtube.com/watch?v=vrwtQRZcg6U	vrwtQRZcg6U
http://www.youtube.com/watch?v=w-0x-Pwtbtw	w-0x-Pwtbtw
http://www.youtube.com/watch?v=W2CyxzhHgrw	W2CyxzhHgrw
http://www.youtube.com/watch?v=w4ONAjIFmJY	w4ONAjIFmJY
http://www.youtube.com/watch?v=WBxZLCDm2uo	WBxZLCDm2uo
http://www.youtube.com/watch?v=wcHwE01xHNU	wcHwE01xHNU
http://www.youtube.com/watch?v=wfWEjb3DtV0	wfWEjb3DtV0
http://www.youtube.com/watch?v=WLZfSH3j_Zg	WLZfSH3j_Zg
http://www.youtube.com/watch?v=wMHpbGDIdDE	wMHpbGDIdDE

Schedule A

http://www.youtube.com/watch?v=WNFBtL2vGc4	WNFBtL2vGc4
http://www.youtube.com/watch?v=WPsZQRv5Ukc	WPsZQRv5Ukc
http://www.youtube.com/watch?v=Wqq-lfH3NNc	Wqq-lfH3NNc
http://www.youtube.com/watch?v=wxhRkff16ys	wxhRkff16ys
http://www.youtube.com/watch?v=x1ycbHjePjM	x1ycbHjePjM
http://www.youtube.com/watch?v=X-8UmL4lpPI	X-8UmL4lpPI
http://www.youtube.com/watch?v=xbrJOLiv0qE	xbrJOLiv0qE
http://www.youtube.com/watch?v=xHVqXaC-NIA	xHVqXaC-NIA
http://www.youtube.com/watch?v=xiFajP-KVzE	xiFajP-KVzE
http://www.youtube.com/watch?v=xlvJ7C0x91U	xlvJ7C0x91U
http://www.youtube.com/watch?v=xmHsafia5jE	xmHsafia5jE
http://www.youtube.com/watch?v=Xo9TWFRIUN8	Xo9TWFRIUN8
http://www.youtube.com/watch?v=xWCkluxpGW8	xWCkluxpGW8
http://www.youtube.com/watch?v=YbCNhLX-mi8	YbCNhLX-mi8
http://www.youtube.com/watch?v=YJbL7euTy7s	YJbL7euTy7s
http://www.youtube.com/watch?v=yJ-LoP2jiLw	yJ-LoP2jiLw
http://www.youtube.com/watch?v=YS99-zJrGhU	YS99-zJrGhU
http://www.youtube.com/watch?v=ytFpCIL6ydU	ytFpCIL6ydU
http://www.youtube.com/watch?v=yVUAvM3fvXQ	yVUAvM3fvXQ
http://www.youtube.com/watch?v=Zk75nDsKjNw	Zk75nDsKjNw
http://www.youtube.com/watch?v=ZpVZoLTAiKY	ZpVZoLTAiKY
http://www.youtube.com/watch?v=Zr5qTqgZubA	Zr5qTqgZubA

Clips Inadvertently Included on October 15, 2009 Amended Works In Suit List	
YouTube URL	Video ID
http://www.youtube.com/watch?v=6w5MPpg1XpE	6w5MPpg1XpE
http://www.youtube.com/watch?v=8_Eaa7y_rq0	8_Eaa7y_rq0
http://www.youtube.com/watch?v=AEkerwX8IFo	AEkerwX8IFo
http://www.youtube.com/watch?v=S-hSrAGA4Gg	S-hSrAGA4Gg
http://www.youtube.com/watch?v=VQg9_eyp_AA	VQg9_eyp_AA
http://www.youtube.com/watch?v=z3cRGYXyRnl	z3cRGYXyRnl

Schedule B

ALFIE (2004)	
YouTube URL	Video ID
http://www.youtube.com/watch?v=BO5-4uPZXmw	BO5-4uPZXmw
http://www.youtube.com/watch?v=EX87URRiJdo	EX87URRiJdo
http://www.youtube.com/watch?v=Hbh90s4tpBc	Hbh90s4tpBc
http://www.youtube.com/watch?v=ldJ2A8yZjQk	ldJ2A8yZjQk
http://www.youtube.com/watch?v=PxbBwmtiKCM	PxbBwmtiKCM
http://www.youtube.com/watch?v=xzdeeXtJ-GM	xzdeeXtJ-GM
http://www.youtube.com/watch?v=_xM1wE3j-U8	_xM1wE3j-U8
http://www.youtube.com/watch?v=ejdmAR_pbe0	ejdmAR_pbe0
http://www.youtube.com/watch?v=S0KIA79b9Zk	S0KIA79b9Zk
http://www.youtube.com/watch?v=T1ThKDNGafs	T1ThKDNGafs
http://www.youtube.com/watch?v=jEpinkgZ_Mo	jEpinkgZ_Mo
http://www.youtube.com/watch?v=vLuGhhHfndo	vLuGhhHfndo
http://www.youtube.com/watch?v=f6i35YX40MQ	f6i35YX40MQ
http://www.youtube.com/watch?v=pHMRBoG5O4s	pHMRBoG5O4s
http://www.youtube.com/watch?v=urebQXHSmfQ	urebQXHSmfQ
http://www.youtube.com/watch?v=ZapOB1fQStE	ZapOB1fQStE

APOCALYPSE NOW	
YouTube URL	Video ID
http://www.youtube.com/watch?v=I-1wmt_odDU	I-1wmt_odDU
http://www.youtube.com/watch?v=itIDg6sXgbo	itIDg6sXgbo
http://www.youtube.com/watch?v=LDGHIt-AAJE	LDGHIt-AAJE
http://www.youtube.com/watch?v=LII4Qs_k6p0	LII4Qs_k6p0
http://www.youtube.com/watch?v=mAZrXJSPqqw	mAZrXJSPqqw
http://www.youtube.com/watch?v=n3L2QbSa7T8	n3L2QbSa7T8
http://www.youtube.com/watch?v=n7N46IENb_E	n7N46IENb_E
http://www.youtube.com/watch?v=nmfrNvbYISo	nmfrNvbYISo
http://www.youtube.com/watch?v=nUF2D_NjlqY	nUF2D_NjlqY
http://www.youtube.com/watch?v=osSUIPPk5Mk	osSUIPPk5Mk
http://www.youtube.com/watch?v=pwqdBkaWsTA	pwqdBkaWsTA
http://www.youtube.com/watch?v=RwnBWSdZDzQ	RwnBWSdZDzQ
http://www.youtube.com/watch?v=UemtjPU5sFc	UemtjPU5sFc
http://www.youtube.com/watch?v=uxw0bTVZ9JU	uxw0bTVZ9JU
http://www.youtube.com/watch?v=v34d9kKnv_w	v34d9kKnv_w
http://www.youtube.com/watch?v=VDMtwSkg528	VDMtwSkg528

Schedule B

http://www.youtube.com/watch?v=vjNtGHDRspo	vjNtGHDRspo
http://www.youtube.com/watch?v=-zkcNB0f5KI	-zkcNB0f5KI
http://www.youtube.com/watch?v=TAbmUGy3i6l	TAbmUGy3i6l
http://www.youtube.com/watch?v=XjYhTnh6Zaw	XjYhTnh6Zaw
http://www.youtube.com/watch?v=XKcTSKQeuYc	XKcTSKQeuYc
http://www.youtube.com/watch?v=XOxVjtZujcU	XOxVjtZujcU
http://www.youtube.com/watch?v=z5eXFeW0aI0	z5eXFeW0aI0
http://www.youtube.com/watch?v=zLRj5erjhP8	zLRj5erjhP8
http://www.youtube.com/watch?v=pViljel1tCZg	pViljel1tCZg

The Spirit of Christmas (Jesus vs. Frosty)	
YouTube URL	Video ID
http://www.youtube.com/watch?v=3MY1-1pbc5A	3MY1-1pbc5A
http://www.youtube.com/watch?v=BxWDPBibABw	BxWDPBibABw
http://www.youtube.com/watch?v=C8Wlu4Lji9o	C8Wlu4Lji9o
http://www.youtube.com/watch?v=EFhgW9LpSig	EFhgW9LpSig
http://www.youtube.com/watch?v=grchratYFn0	grchratYFn0
http://www.youtube.com/watch?v=JSR6u62qRow	JSR6u62qRow
http://www.youtube.com/watch?v=tZF8vTvxQuw	tZF8vTvxQuw
http://www.youtube.com/watch?v=Ud7Ga8zPga4	Ud7Ga8zPga4
http://www.youtube.com/watch?v=Zke-Cf-jtmk	Zke-Cf-jtmk
http://www.youtube.com/watch?v=zKTtir-ADs	zKTtir-ADs
http://www.youtube.com/watch?v=ZK-YTEmNM7s	ZK-YTEmNM7s
http://www.youtube.com/watch?v=Zse02bHcWqg	Zse02bHcWqg

The Spirit of Christmas (Jesus vs. Santa)	
YouTube URL	Video ID
http://www.youtube.com/watch?v= obmo_1b8P8	obmo_1b8P8
http://www.youtube.com/watch?v=- t4Xo1G4yo	- t4Xo1G4yo
http://www.youtube.com/watch?v=1Eb8MJX-EVY	1Eb8MJX-EVY
http://www.youtube.com/watch?v=1ndaYeMwhYI	1ndaYeMwhYI
http://www.youtube.com/watch?v=25BGqF7Hje4	25BGqF7Hje4
http://www.youtube.com/watch?v=2F10c5pxIAI	2F10c5pxIAI
http://www.youtube.com/watch?v=2k44sfPR6ig	2k44sfPR6ig
http://www.youtube.com/watch?v=2Q3QE3LL1Dk	2Q3QE3LL1Dk
http://www.youtube.com/watch?v=2s0UunMx1xs	2s0UunMx1xs
http://www.youtube.com/watch?v=3audz0BAyWY	3audz0BAyWY
http://www.youtube.com/watch?v=3CL9GIJl0Lk	3CL9GIJl0Lk
http://www.youtube.com/watch?v=3HY4aZAQFpk	3HY4aZAQFpk
http://www.youtube.com/watch?v=3NJAz1-ysGs	3NJAz1-ysGs
http://www.youtube.com/watch?v=3nrEwWVaEXY	3nrEwWVaEXY
http://www.youtube.com/watch?v=3qu-wh1ppZ8	3qu-wh1ppZ8
http://www.youtube.com/watch?v=4eASyLoHIJw	4eASyLoHIJw
http://www.youtube.com/watch?v=4icAtPkcSWw	4icAtPkcSWw
http://www.youtube.com/watch?v=4q3OImUHwdY	4q3OImUHwdY

Schedule B

http://www.youtube.com/watch?v=4V8KmrCgJzo	4V8KmrCgJzo
http://www.youtube.com/watch?v=4vu9_66O3Sg	4vu9_66O3Sg
http://www.youtube.com/watch?v=58s-ODz2tQQ	58s-ODz2tQQ
http://www.youtube.com/watch?v=59IJOyEs_og	59IJOyEs_og
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Schedule B

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http://www.youtube.com/watch?v=t6vvxnk5VFw	t6vvxnk5VFw
http://www.youtube.com/watch?v=tH7XD5az8XU	tH7XD5az8XU
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Schedule B

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http://www.youtube.com/watch?v=u-qIJ04T_QU	u-qIJ04T_QU
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http://www.youtube.com/watch?v=UyAkhMh9ukA	UyAkhMh9ukA
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http://www.youtube.com/watch?v=w2y1WP6RVOU	w2y1WP6RVOU
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http://www.youtube.com/watch?v=zqkK9yuzl04	zqkK9yuzl04
http://www.youtube.com/watch?v=zr8GZ53nUoY	zr8GZ53nUoY

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

<hr/>)
VIACOM INTERNATIONAL INC.,)
COMEDY PARTNERS, COUNTRY)
MUSIC TELEVISION, INC.,)
PARAMOUNT PICTURES) ECF Case
CORPORATION, and BLACK)
ENTERTAINMENT TELEVISION)
LLC,) Case No. 1:07-cv-02103 (LLS)
	Plaintiffs,)
)
	v.) DECLARATION OF ROELOF
) BOTHA
YOUTUBE, INC., YOUTUBE, LLC, and)
GOOGLE INC.,)
)
	Defendants.)
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I, Roelof Botha, declare, I am a partner with the venture-capital firm Sequoia Capital in Menlo Park, California. The following facts are true of my own personal knowledge and if called and sworn as a witness I could and would testify competently to them.

1. Sequoia is one of the best known and most successful venture capital firms in the world, with offices today in the United States, China, India, and Israel. Over the course of almost forty years of investing, the firm has provided capital to hundreds of companies, primarily in the technology sector. Some of the well-known companies in which Sequoia has been an early investor include Cisco Systems, Apple Computer, Oracle, Yahoo, and Atari. Sequoia was an early investor in Google Inc. and separately in YouTube, LLC. Sequoia was also a significant

investor in Atom Entertainment, now owned by Viacom, and it invested together with Viacom in an online service called Joost.

2. I was the Sequoia representative principally responsible for the firm's investment in YouTube, LLC. I learned of the YouTube service from a friend in roughly July 2005 and shortly thereafter began uploading personal videos that I had created to the service so that members of my family could view them. I also used the service to view personal videos uploaded by my own friends and family and on occasion by others as well.

3. Based on my initial experiences with the YouTube service and the way that the service described itself to users, it was my understanding that the service was designed and intended for this sort of sharing of "user-generated content." At the time, services that facilitated the sharing of other forms of user-generated content were already well known and successful. For example, services like Flickr, Shutterfly and Webshots and a host of others allowed users to easily share photographs with one another. Services like Blogger allowed ordinary users to express their views in writing on any topic and publish those thoughts to the world. I saw YouTube as a next step in the evolution of user-generated content services, one that would allow ordinary users to express themselves to the world through the medium of video. I felt that the growth potential for such a platform was enormous given the rapid spread of personal video cameras and the growing availability of broadband Internet connectivity to ordinary consumers.

4. Because of my personal experience as a user of the YouTube service and what I saw as its potential, I reached out to the company's founders, Chad

Hurley, Steve Chen and Jawed Karim in August 2005 to investigate whether there was an opportunity for Sequoia to invest in YouTube.

5. In at least two separate meetings in or about August or September 2005, the YouTube founders described their vision of the service to me and certain Sequoia partners. In those meetings, the founders emphasized that their aim was to develop a platform to be used for the sharing of user-generated content online. Attached hereto as Exhibit 1 is a true and correct copy of the presentation that the YouTube founders presented to me and certain partners at Sequoia regarding their vision for the service in September 2005. In describing the company's purpose, the founders stated: "The company's goal is to become the primary outlet of user generated video content on the Internet, and to allow anyone to upload, share, and browse this content." Their presentation to us went on to explain the reasons why they believed a service like YouTube was then poised for significant growth:

"Digital video recording technology is for the first time cheap enough to mass-produce and integrate into existing consumer products, such as digital photo cameras and cell phones, giving anyone the ability to create video content anytime, anywhere. As a result, user-generated video content will explode."

6. At no time during our pre-investment meetings with the YouTube founders did any of the founders express any interest in profiting from the sharing of unauthorized copyrighted material through the service or in having the service grow by virtue of the presence of such content. Indeed, the founders did not merely say that user-generated content was their focus, they offered that focus as the rationale for Sequoia to expect the company to grow, and as a means of differentiating YouTube from other online video services in existence at the time.

7. Following our meetings with the YouTube founders, I prepared an investment memorandum for the Sequoia partnership summarizing what the founders had communicated to us in our meetings and providing a recommendation that Sequoia invest in YouTube. A true and correct copy of the investment memorandum I prepared is attached hereto as Exhibit 2. I led off my memorandum by recounting the company's objective of becoming the "primary outlet of user generated video content on the Internet" and throughout the memorandum I highlighted statements from the founders about how such original user content was the engine that would drive the service.

8. Following my recommendation, Sequoia offered and YouTube accepted an investment in the company in the fourth quarter of 2005. Attached hereto as Exhibit 3 is a true and correct copy of the press release YouTube subsequently issued announcing Sequoia's investment. In that release, on behalf of Sequoia, I reiterated our vision of the YouTube service which mirrored that expressed to me repeatedly by the company's founders:

"We are very excited to be involved with YouTube at a time when consumers are poised to benefit from all the consumer electronics available. The demand for user-generated content continues to grow exponentially."

"We've already seen user-generated content blossom in text through blogging, in photographs through services like Flickr and Shutterfly, and in audio through podcasting. YouTube is pioneering the next wave to become Internet's premier video service."

9. In connection with Sequoia's investment, I became a member of YouTube's board of directors, and held that position until the company was acquired by Google in November 2006. Consistent with Sequoia's philosophy regarding

companies in which it invests, as a board member I discussed with management the company's strategic and policy decisions.

10. After Sequoia's initial investment, YouTube experienced extraordinary and rapid growth. As I had witnessed firsthand, the service made it simple for the average person to upload a video they wanted others to see. The service was just as intuitive and accessible for potential audiences. Within just a few months, as online video consumption soared, YouTube became the online destination of choice for anyone looking to share their videos, and correspondingly, the online destination of choice for those interested in watching those videos.

11. Very early on, professional content creators began to use YouTube as a promotional outlet. I know, for example, that in October 2005, the shoe company Nike uploaded an amateurish-looking, but professionally created video featuring Brazilian soccer star Ronaldinho engaged in a pre-game warm-up routine wearing Nike shoes (a version of the video is accessible at <http://www.youtube.com/watch?v=KNwLn85I75Y>). The video (including various versions of it) has been watched millions of times on the YouTube service. Such promotional use of YouTube is far too substantial and far too varied for anyone even to recognize a small fraction of it, let alone catalog it all.

12. I also have personal experience with the widespread use of the YouTube service by major media companies for promotional purposes. While companies regularly uploaded clips of their content to the service for such purposes, they also often chose simply to leave on the service clips of their content that ordinary users had uploaded. This phenomenon was powerfully illustrated for me

by our experience with the clip known as “Lazy Sunday”, a roughly three minute video that aired on the NBC television show Saturday Night Live in late 2005. That clip went “viral” on YouTube after someone uploaded it to the service – meaning that those who saw it often shared it with multiple others, growing the total audience at an extremely accelerated rate – and generated enormous press attention for the clip, for Saturday Night Live and for YouTube.

13. YouTube did not know who held the copyright in the Lazy Sunday clip, who had uploaded it to YouTube, whether that person had advance approval from the copyright holder to upload it, whether the copyright holder subsequently approved of the presence of the clip on YouTube even if the copyright holder had not done so in advance, or even whether such approval was required. But in light of the attention the clip had garnered, the company’s CEO, Chad Hurley, wrote to NBC Universal asking whether NBC was aware of the clip and whether NBC wanted it to remain on the service or wanted YouTube to immediately remove it. For five weeks, YouTube heard nothing at all from NBC, and with NBC’s knowledge, the Lazy Sunday video remained accessible on the YouTube service, continuing to generate large numbers of user views as well as national press attention.

14. The Nike and Lazy Sunday experiences and many others like them helped shape my thinking about how YouTube should handle the presence on the service of potentially unauthorized copyrighted materials. Throughout my tenure on YouTube’s board, this was one of the principal issues the company grappled with. From the start, YouTube recognized that in an environment in which users could upload content of their choosing to the service, some users would disregard the

company's prohibitions and desires and upload material to the service that they did not have the right to share. The company recognized, however, that it had no practical ability to make determinations regarding whether each of the tens of thousands of clips being uploaded to the service every day had been uploaded or approved by the copyright holder or was otherwise authorized by law. Accordingly, the company discussed and supported a host of innovations and policy measures aimed at reducing the incidence of unauthorized copyrighted material on the service. These included, among many others: (1) the institution of a ten minute time limit for the length of videos that could be uploaded to the service to prevent users from uploading full-length television episodes or films; (2) development of an easy-to-use interface through which content owners could identify what they claimed to be their content on the service and request that YouTube remove it at the touch of a button; and (3) fingerprinting technology that would block any user from uploading to the service a file that had previously been removed from the service based on allegations of copyright infringement. Later, the company selected and implemented a more robust, audio fingerprinting technology to assist content owners in locating videos on the service and allow them to determine whether they wanted those videos to remain.

15. During my association with the company, management and the board worked hard to strike the appropriate balance between preserving the ability of users to express themselves freely through the YouTube service while at the same time enabling content owners to detect and address what they perceived to be the unauthorized use of their material. At no time, however, based on my observations

and participation in the strategic and policy decisions the company made, did the company desire to profit from unauthorized copyrighted material on the service or to have the service used as a platform for the sharing of unauthorized copyrighted content.

16. I felt very strongly as a member of YouTube's board of directors that, legal issues aside, the company should not encourage, and that it should explicitly discourage, the sharing of unauthorized copyrighted material. I believed that the presence of such content on the service undermined YouTube's business objectives by alienating copyright holders, including major media companies, with whom YouTube had reached or wanted to reach advertising and content syndication deals. Moreover, from my perspective as a major investor in the company, I believed that if the company did not demonstrate its respect for copyright law, the service would be unattractive as an acquisition target and/or unable to sell its stock to the public. For these and related reasons, throughout my association with YouTube, the company actively cooperated with copyright holders to reduce the incidence of unauthorized copyrighted material on the service.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 26th day of February, 2010 in Menlo Park, CA



Roelof Botha

YouTube

Company Purpose:

To become the primary outlet of user-generated video content on the Internet, and to allow anyone to upload, share, and browse this content.

Problem:

Video content is currently difficult to share:

- Video files are too large to e-mail (E-mails with video attachments bounce).
- Video files are too large to host (viewing just fifty videos at 20 MB each means serving 1 GB of bandwidth – exceeding most website quotas).
- No standardization of video file formats. To view many video file formats means having to install many different video players and video codecs.
- Videos exist as isolated files. There is no interaction between viewers. There is no interrelation between videos.

Solution:

Consumers upload their videos to YouTube. YouTube takes care of serving the content to millions of viewers.

YouTube's video encoding backend converts uploaded videos to Flash Video, which works in any web browser supporting Flash. (Flash penetration is 97.6% of Web users according to Macromedia.com.) Flash Video is a highly compressed streaming format that begins to play instantly. Unlike other delivery methods, it does not require the viewer to download the entire video file before viewing.

YouTube provides a community that connects users to videos, users to users, and videos to videos. Through these integrating features, videos receive more views, and users spend more time on YouTube. Because these features are similar to Flickr, YouTube is often referred to as "the Flickr of Video".

Market Size:

YouTube's growth will come as a result of these recent developments:

- Digital video recording technology is for the first time cheap enough to mass-produce and integrate into existing consumer products, such as digital photo cameras and cell phones, giving anyone the ability to create video content anytime, anywhere. As a result, user-generated video content will explode.

- Broadband Internet in the home has finally reached critical mass, making the Internet a viable alternative delivery mechanism for videos. Viewers are flocking to the Internet because it offers more variety of content and allows people to choose when and how to see it. Traditional media want to enter this space because they want to follow the audience, and because content there is cheaper and easier to distribute. Early examples of video content that has reached more viewers on the Internet than on television: Indian Ocean Tsunami videos, Jon Stewart's Crossfire appearance, Janet Jackson's Superbowl wardrobe malfunction.

Initially, YouTube will target home-grown (user-generated) video content, because in the short term that represent the fastest-growing type of video content, possessing the fastest-growing audience. This phase will enable YouTube to establish itself as the dominant player for Internet video content. Once YouTube's audience reach rivals that of traditional media networks, it will then be positioned to syndicate traditional media content (news, entertainment, MTV, etc) as well.

Competition:

Big players:

- Google Video – going after Hollywood, not personal videos
- 24 hour laundry – going after pure video hosting technology, not community

Small players:

- dailymotion – good technology, no exposure
- vimeo – bad technology, has potential for exposure (owned by CollegeHumor)
- PutFile – focuses on file hosting, lacks community, bad revenue model

Product Development:

Demo basic functionality.

- Community
 - o Connects users to videos. Users find videos through:
 - Search
 - Related videos
 - Related tags
 - Top rated, top viewed, most discussed
 - User videos,
 - User favorites
 - o Connects users to users:
 - Video discussion groups
 - Video comments
 - Private messages
 - Private/public video sharing

- Social networking (Friends)
 - User videos
 - User favorites
- Connects videos to videos:
 - Related videos
 - Related tags
- Open architecture
 - Developer XML APIs
 - RSS feeds
 - Externally embeddable video player (“YouTube off YouTube.com”). By letting people embed YouTube videos right into their own web sites, YouTube’s audience reaches even beyond YouTube.com
- Target vertical markets with a need for video content:
 - Auction videos for eBay items (perfect for eBay Motors)
 - Real estate videos for houses/apartments for sale/rent (“Do-It-Yourself MTV Crib”)
 - Become the video platform for special interest websites: Car sites, Sports, Politics, etc
- Features currently in development:
 - Community features: groups, sharing, better ways to find videos
 - Driving external reach: external player, developer APIs

Sales & Distribution:

Revenue-generating options:

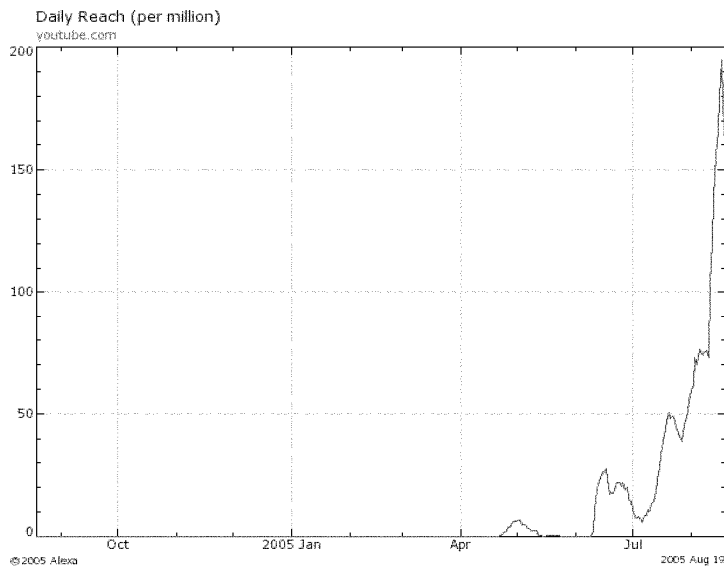
- Ads:
 - “Google Adwords” approach for YouTube: Allow advertisers to upload ad videos to YouTube. Thumbnails of these ad videos will be shown alongside other videos in video search results, and as “related videos”. As with Google Adwords, ad videos will only be shown when relevant, and will be clearly marked as ad videos.
 - Display interactive ads within the Flash video player, superimposed over the playing video.
 - Play a short video ad at the beginning of the actual video.
 - Display an ad image at the beginning of the actual video.
- Act as a for-pay distribution channel for promotional videos:
 - Events, conferences, concerts
- Charge members for premium features:
 - Ability to download original videos / view high resolution videos

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- Video editing features (within the browser, using Flash): video effects, transitions, titles, etc
- Advanced features for the externally embeddable video player
 - Offer specialized features for embedded auction/real estate videos (see **Product Development**)
- Charge viewers for premium content:
 - Allow members to sell their video content to YouTube viewers, with YouTube taking a cut of the proceeds.

Metrics:

Launched June 11th. Has already overtaken all previously existing competitors and is now the dominant player in this space.



Team:

Founders:

- Steve Chen:
 - Recruited by Max Levchin as one of PayPal's first engineers
 - University of Illinois, Computer Science
- Chad Hurley:
 - PayPal's first designer, responsible for PayPal site design, logo
- Jawed Karim:
 - Graduate student in Computer Science, Stanford University

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- Recruited by Max Levchin as one of PayPal's first engineers
- University of Illinois, Computer Science

To: Investors
Re: YouTube

From: RFB

September 2, 2005

Introduction

YouTube represents an interesting seed-stage investment opportunity. The company's goal is to become the primary outlet of *user-generated video content* on the Internet, and to allow anyone to upload, share, and browse this content.

The three entrepreneurs are scrappy and smart. They have built a very easy-to-use, fast growing service that taps several strong veins: user-generated content, online advertising, wide proliferation of inexpensive digital video capture devices, and continued broadband adoption.

The company has also developed code snippets that allow users to embed YouTube videos directly into other sites. In this way, the company is building a wide content distribution network, in addition to its direct-to-site traffic.

Deal

Our proposal is to invest \$1m in the seed stage, followed by a \$4m Series A once specific milestones are met. Sequoia would own ~30% post Series A, with a pool of ~17%.

Competition

There are several direct and potential competitors to YouTube. These include:

- direct competitors (dailymotion, vimeo)
- community photo sites (flickr, webshots)
- online photo sharing sites (ofoto, shutterly, snapfish)
- large internet players (Google & Yahoo video search)
- entertainment sites (big-boys, ebaumsworld)
- file sharing services (ourmedia.org, putfile)
- IPTV companies (Open Media Network, Brightcove)

YouTube appears to have a clear lead over its two direct start-up competitors. The other categories of potential competitors are not necessarily focused on video content, or are not focused on user-generated content within the context of a community-based site. Nevertheless, the company will need to stay very focused over the next 3-6 months to ensure that it builds a rich set of features and content depth to increase its defensibility.

Hiring plan

We need to help the company quickly hire a CEO and VP BD/Sales. The founding team is enthusiastic about bringing on an experience CEO to help lead the company. However, I'm not sure whether we can land a CEO before the Series A. I would appreciate any ideas on potential candidates for either role. My preference would be to launch a search immediately and to have a CEO in place within 90 days.

Two additional former PayPal engineers are set to join in the next week. Both are exceptional.

The plan is to house the company in our incubation area for the near term. That will help us frequently interact with the team until we can surround the company with an experienced management team.

Key risks

- o Competition/defensibility

As outlined above, YouTube faces significant potential competition. The company needs to remain laser focused on improving the user experience to ensure that it continues its early growth trajectory.

- o Revenue model

I believe that YouTube has a clear advertising revenue opportunity. However, we don't yet know what form of advertising would work best. Specifically, can the company develop attractive ad products that are not intrusive to the consumer experience? We can model revenue as follows: # unique videos streamed per day x % of videos monetized x CPM x 365 = estimated annual revenue. Several of the parameters are unknown:

- i. We don't know what CPM rates YouTube could command. Video ad CPMs could range from a low of \$5 to over \$30.
- ii. We don't know what percentage of inventory (videos served) could be monetized
- iii. We are not sure how much YouTube could grow from its current level of 100,000 videos served per day.

Below are different scenarios and their associated revenue potential:

	Videos served/day	CPM	% of videos monetized	Implied annual revenue
Scenario 1	10 million	\$10	15%	\$6m
Scenario 2	20 million	\$15	20%	\$22m
Scenario 3	30 million	\$20	25%	\$55m

We will need to test these assumptions carefully over the next few months to get an accurate handle on the company's revenue potential. We also need to test the success of the company's content distribution network, and whether we can generate advertising revenue from this network. (Google earns ~55% of its revenue from Google-owned sites, and 45% from Network websites.)

Serving 10-30 million videos may appear daunting, as it represents >100x increase over the company's current activity levels. But the company has achieved its current scale in only two months, and only has 15,000 videos today. (For point of comparison, Flickr and Webshots, two comparable photo community sites, serve 200-500x as many pageviews per day as YouTube.)

- o Scalability

As the table above indicates, YouTube will need to scale significantly from its current level for the company to achieve meaningful revenue. We need ensure that YouTube can inexpensively scale orders of magnitude from current levels.

- o Balancing growth

YouTube has already drawn the attention of larger media companies (e.g., Turner, Transcosmos) that see the potential of distributing YouTube content. As with any marketplace, we need to ensure that we balance demand and supply. It would be inadvisable to grow the viewer base significantly without a substantial increase in the number of videos available on the site. The company cannot afford to disappoint large numbers of customers due to inadequate depth of content.

- o Exit

We cannot point to many high comparable exit valuations.

A few comparable companies include Webshots, flickr, Ofoto, Shutterfly, and Snapfish. While these companies deal only with still images, there are some similarities with YouTube. None of these companies have had exceptional exits. CNET bought Webshots for ~\$70m, Yahoo! bought flickr for <\$50m. Apparently Shutterfly is preparing to file its IPO. Ofoto and Snapfish were acquired by Kodak and HP, respectively, although financial terms were not disclosed.

Another comparable is Blogger, acquired by Google in 2002 for an undisclosed amount.

There are some other examples of businesses that built successful models leveraging user-generated content, including Tripadvisor, acquired by IAC in 2004 years ago for over \$100m (to the best of my knowledge).

Recommendation

I first met with the company three weeks ago, and we are in pole position for the financing. Several VCs have been cold calling the company, and a few media companies have also approached YouTube. I'd like to give the company our decision on Monday.

I recommend that we proceed with the financing as proposed.

YouTube has a great founding team that has hit on several promising themes. The company follows a trend of user-generated content that started with text (blogs), images (flickr, webshots, ofoto), and audio (podcasting). Video is a natural next step, and YouTube is well positioned to capture the lead. The company has not yet enabled advertising revenue streams. But our checks with Yahoo! and Adbrite indicated very strong advertiser demand for online video advertising. We will rapidly need to surround the company with management talent, specifically a CEO.

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Investment summary

Founded by three early PayPal employees. Two engineers, one designer. Seed-stage investment opportunity. Top 10,000 internet site within two months of launch.

- **Business**
 - YouTube's goal is to become the primary outlet for *user-generated video content* on the internet. The company provides a very easy-to-use interface for users to upload, share, and browse their content.
 - Every digital camera now ships with digital video recording capability. But consumers have no easy way to share their personal video content – files are too large, hosting and bandwidth is expensive, and there are no standardized video file formats.
 - Users upload videos to YouTube. The encoding backend converts uploaded videos to Flash Video, which works on ~98% of web browsers. The streaming format means that no file downloading is required.
- **Market**
 - YouTube provides a platform and community for video self-publishing. We've seen similar self-publishing emerge for text (blogs), photos (flickr, webshots, hotornot), and audio (podcasting). This presents interesting advertising revenue opportunities.
 - There are also interesting vertical market opportunities: eBay auction videos (e.g., autos), real estate videos, etc.
- **Financials – TBD**
 - The company currently serves 100,000 videos per day, at an all-in hosting cost of \$4,000 per month.
 - The team has developed a software abstraction layer that enables it to use very inexpensive hardware and bandwidth to deliver videos.
- **Competition**
 - Big players: Google Video Search, Ourmedia.org, Open Media Network
 - Small players: DailyMotion, Vimeo, Putfile
- **Team**
 - Steve Chen. UIUC, CS. Recruited as one of PayPal's earliest engineers
 - Chad Hurley. PayPal's first designer, responsible for site design and logo
 - Jawed Karim. UIUC, CS. Graduate CS student at Stanford. Also one of PayPal's earliest engineers
- **Proposed terms**
 - Two-stage, milestone-based financing: \$1m seed stage, \$4m Series A.
 - SC to own ~30% after Series A.
 - Proposed Series A milestones:
 - Develop comprehensive business plan, including financial plan
 - Develop self-serve advertising product
 - Sign up at least five (5) advertisers who place \$5,000 or greater advertising orders
 - Ensure platform scalability to handle at least one million video views per day
 - Recruit a VP of Business Development

Competition

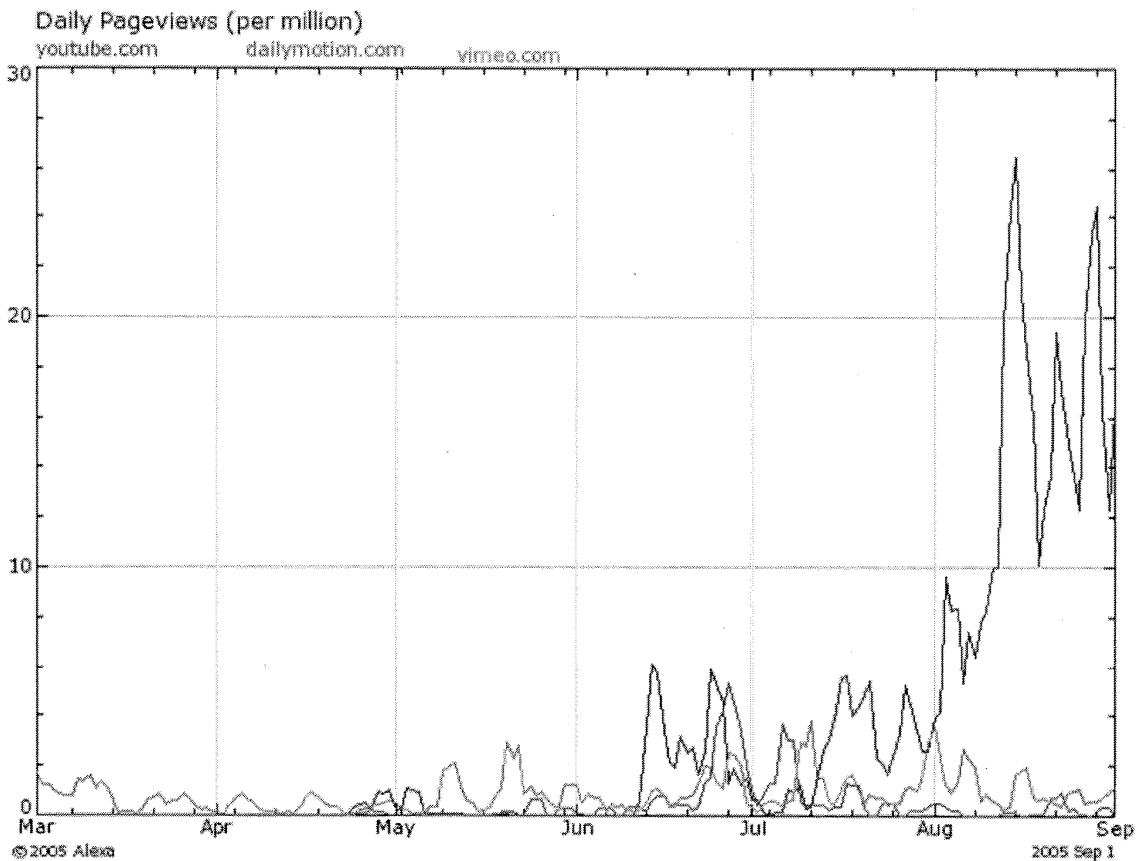
There are several potential and direct competitors to YouTube.

1. Direct competition

The two direct start-up competitors are Dailymotion and Vimeo.

- Dailymotion is based in France. It positions itself as a site to 'watch, publish, share.' The site has pretty good UI, but its navigation and layout is not as intuitive as for YouTube. All videos are encoded and rendered in Quicktime. Quicktime has lower penetration than Flash, so users may be faced with needing to download the player to experience the site.
- "Vimeo is for sharing your video clips." Vimeo was started by Connected Ventures in New York. Their mission is to "develop and manage good websites." They also run a popular site called CollegeHumor. They also claim to draw inspiration from flickr, and launched in February 2005. Vimeo also uses Quicktime. Their site layout is not very intuitive, and makes it hard to find content (e.g., there is no search capability).

The graph below shows the comparative daily pageviews for YouTube, Dailymotion and Vimeo. YouTube's traffic has rapidly overtaken that of these two competitors.



2. Community photo sites

Community photo sites share many features with YouTube: tagging, social networking, discussion groups, ease-of-use. However, they seem focused on still images rather than video.

YouTube admits that it drew inspiration from the popular site Flickr. Flickr has ~200-300x the number of daily pageviews of YouTube. Yahoo! acquired Flickr earlier this year for an undisclosed sum, believed to be ~\$30m. Reid Hoffman was an investor in Flickr, and assures the YouTube team that they have no plans to launch a video product in the next 1-2 years.

Webshots is another potential competitor. CNET acquired the company in 2004 for ~\$70m at a time that they forecast \$15-17m annual revenue. The founding team all just left the company, and it unclear how much new product innovation there is. Webshots seems very focused on photos for now.

3. Online photo sharing sites

The main online photo sharing services, Ofoto, Shutterfly, and Snapfish, are also potential competitors. They do not have community-like features. They also earn revenue primarily from printing. As a result, I think they will remain focused on photos.

4. Entertainment sites

There are several popular online entertainment sites that have significant traffic: Big-boys, ebaumsworld, ifilm.

According to YouTube: "Big-boys and ebaumsworld get a lot of traffic but that's to be expected for the type of content they host. You are guaranteed to have something interesting, something shocking to watch when you visit these sites. However, the disadvantage is that they can never transition their sites into an actual product. Due to the content on the site, they're forever stuck in that segment of the market. If I were to categorize the content on YouTube today, I would break it down into two large categories: personal videos and viral videos. The viral videos, due to copyrights and obscene content, I admit, big-boys and ebaumsworld may beat us there. Although, we have seen our share of viral videos on YouTube. The bigger draw for YouTube is all the personal videos, the ones of your pet, your kid, your family, your vacation, so on. Big-boys and ebaumsworld, due to their origins, can never transition their product into something that hosts these other types of files."

Big-boys and ebaumsworld also position themselves as much broader entertainment sites, offering "Jokes, Pictures, Office Humor, Flash Animation, Soundboards, Prank Calls, Audio, Video, Games, Illusions, Magic."

"IFILM is one of the leading video-entertainment destinations on the Web, offering channels of movies, short films, TV clips, video-game trailers, music videos, action sports and its celebrated Viral Videos collection. IFILM.com delivers more than 30 million streams per month, making it one of the top ten streaming media sites in the world." IFILM is a clear potential competitor, although they don't have the same focus on user-generated content, nor YouTube's community features.

5. Larger competitors

Google and Yahoo are building video search products. Google requires the user to download a new "Google Video Viewer" while Yahoo plays videos in the native file format. In neither case are they providing the simple consumer upload and share experience, nor the community features.

6. File storage services

Putfile and Ourmedia.org are examples of file storage providers that essentially provide a free, web interface to FTP. None of them seem to have a compelling product, and do not focus solely on user-generated video content.

7. IPTV

Finally, there are companies such as the Open Media Network and Brighcove that are focused on the delivery of mainstream video over the Internet. I do not believe that this competes directly with YouTube's proposition.

The table below attempts to summarize the competitive matrix:

	YouTube	Direct competition	Community photo sites	Photo sharing services	Entertainment sites	Large Internet players	File storage	IPTV
Ease of submitting video/degree of automation	Easy	Easy	N/A	N/A	Not easy or auto-mated	N/A	Easy	N/A
Focus	Video	Video	Photos	Photos	Varied	Varied	Varied	Video
Community features	Yes	Yes	Yes	No	No	Yahoo working on it	No	No
Rendering format	Flash	Quick-time	N/A	N/A	Quick-time	Varied	Varied	Varied

The Technology Infrastructure (company supplied)

=====

As mentioned previously, in order to keep costs down, our video distribution technology is built on clusters with multiple machines in each cluster for redundancy and higher throughput. When a video is uploaded to the site, it is sent to a single machine within a single cluster. This is chosen based on space and, in the future, cpu/bandwidth utilization on the machine and cluster. Newly uploaded videos are picked up by two services running on each of the machines, 1) convert and 2) replicate.

The converter will analyze the video and look at things like framerates, aspect ratios (16:9 vs 4:3), audio encoding (sampling rates, audio codec), and the video codec used on the original video. It uses these heuristics to best convert the video to play on YouTube with adjustments to things inserting the black bands on top/bottom of a 16:9 video, altering the sampling rate to best conform to the incoming sound, guess at frames per second of the incoming video, etc. As part of this process, video stills of each video are also generated.

At the end of this process, the video server communicates back to the central database changing the status from "Uploaded" to "Awaiting Replication".

While all this is going on, the replication service is standing by looking for videos that need to be replicated. When a video enters this queue, it's picked up by the replication service and the video is replicated to every machine within the video cluster. After the replication is finished, it talks to the database and marks the video as "Processed".

A newly uploaded video will go from a "Uploaded" -> "Awaiting Replication" -> "Processed" state in about 1-2 minutes.

The best part about this technology is that it really is infinitely scalable. We can add more capacity directly at the video conversion/transport layer at will.

The math for this comes out to:

By bandwidth --

\$239 / 1 machine / 1 month

1 machine has 2000 GB transfer / month

$2000 \text{ GB} * 1000 \text{ MB} / \text{GB} = 2,000,000 \text{ MB transfer} / \text{machine} / \text{month}$

7 MB average size of video

$2,000,000 / 7 = 285,714 \text{ videos served from each machine} / \text{month}$

$\$239.0 / 285,714 = \$0.00083 \text{ cost per video served.}$

By storage --

\$239 / 1 machine / 1 month

1 machine has 2x160 GB HD for 320 GB

$320 \text{ GB} * 1000 \text{ MB} / \text{GB} = 320,000 \text{ MB} / \text{machine}$

7 MB average size of video

$320,000 / 7 = 45,714 \text{ videos} / \text{video cluster}$

$\$239 / 45,714 = \$0.005228 \text{ cost per video stored.}$

$\$0.005228 * 2 \text{ machines} / \text{cluster} = \$0.010456 / \text{video replicated.}$

The video serving technology provides a substantial barrier to entry. The video clustering solution sounds obvious and straight-forward post implementation but it certainly wasn't when we were faced with the question of -- "how do we keep costs down while having access to massive storage/bandwidth?" There's also the encoding technology. We're constantly improving this side of the product by incorporating the latest codecs.

5

Team bios

Chad Hurley is a co-founder of YouTube. Chad has an experienced background in web development and graphic design. He was the first member of the PayPal design team, where he lead efforts to develop the interface for the original Palm-based program that enabled secure wireless money transfers between handhelds. As the product evolved, he effectively designed auction features which solidified PayPal's long term success and is a credited member of two critical auction patents. Chad looks forward to building an empowering video service for the world.

Jawed Karim is a co-founder of YouTube. He was previously a computer science student at the University of Illinois, where he was recruited by Max Levchin to become one of the earliest engineers at PayPal. There he helped the implementation of PayPal's first real-time anti-fraud models for credit card and bank payments, working closely with Roelof Botha. As part of PayPal's Architecture Team (a group of five out of a total of over 100 engineers), he later worked on challenging scalability problems to ensure PayPal's ability to scale to 80 million users and beyond. He is currently a graduate student in computer science at Stanford.

Steve Chen is a co-founder of YouTube. As the Chief Technology Officer for YouTube, he is responsible for leading the engineering efforts in distributed video clusters and meeting the high-availability demands of video. Before YouTube, Steve spent 6 years at PayPal on the technology team. At PayPal, he led the engineering teams behind products such as PayPal China, PayPal Developer XML APIs, and PayPal Shopping Cart.

6

YouTube

Company Purpose:

To become the primary outlet of user-generated video content on the Internet, and to allow anyone to upload, share, and browse this content.

Problem:

Video content is currently difficult to share:

- Video files are too large to e-mail (E-mails with video attachments bounce).
- Video files are too large to host (viewing just fifty videos at 20 MB each means serving 1 GB of bandwidth – exceeding most website quotas).
- No standardization of video file formats. To view many video file formats means having to install many different video players and video codecs.
- Videos exist as isolated files. There is no interaction between viewers. There is no interrelation between videos.

Solution:

Consumers upload their videos to YouTube. YouTube takes care of serving the content to millions of viewers.

YouTube's video encoding backend converts uploaded videos to Flash Video, which works in any web browser supporting Flash. (Flash penetration is 97.6% of Web users according to Macromedia.com.) Flash Video is a highly compressed streaming format that begins to play instantly. Unlike other delivery methods, it does not require the viewer to download the entire video file before viewing.

YouTube provides a community that connects users to videos, users to users, and videos to videos. Through these integrating features, videos receive more views, and users spend more time on YouTube. Because these features are similar to Flickr, YouTube is often referred to as "the Flickr of Video".

Market Size:

YouTube's growth will come as a result of these recent developments:

- Digital video recording technology is for the first time cheap enough to mass-produce and integrate into existing consumer products, such as digital photo cameras and cell phones, giving anyone the ability to create video content anytime, anywhere. As a result, user-generated video content will explode.

- Broadband Internet in the home has finally reached critical mass, making the Internet a viable alternative delivery mechanism for videos. Viewers are flocking to the Internet because it offers more variety of content and allows people to choose when and how to see it. Traditional media want to enter this space because they want to follow the audience, and because content there is cheaper and easier to distribute. Early examples of video content that has reached more viewers on the Internet than on television: Indian Ocean Tsunami videos, Jon Stewart's Crossfire appearance, Janet Jackson's Superbowl wardrobe malfunction.

Initially, YouTube will target home-grown (user-generated) video content, because in the short term that represent the fastest-growing type of video content, possessing the fastest-growing audience. This phase will enable YouTube to establish itself as the dominant player for Internet video content. Once YouTube's audience reach rivals that of traditional media networks, it will then be positioned to syndicate traditional media content (news, entertainment, MTV, etc) as well.

Competition:

Big players:

- OurMedia.org – Very technical and complicated for the average user
- Open Media Network – windows/IE only software, no community
- Google Video – going after Hollywood, not personal videos

Small players:

- dailymotion – good technology, no exposure
- vimeo – bad technology, has potential for exposure (owned by CollegeHumor)
- PutFile – focuses on file hosting, lacks community, bad revenue model

Product Development:

Demo basic functionality.

- Community
 - o Connects users to videos. Users find videos through:
 - Search
 - Related videos
 - Related tags
 - Top rated, top viewed, most discussed
 - User videos,
 - User favorites
 - o Connects users to users:
 - Video discussion groups
 - Video comments
 - Private messages

- Private/public video sharing
- Social networking (Friends)
- User videos
- User favorites
- Connects videos to videos:
 - Related videos
 - Related tags
- Open architecture
 - Developer XML APIs
 - RSS feeds
 - Externally embeddable video player (“YouTube off YouTube.com”). By letting people embed YouTube videos right into their own web sites, YouTube’s audience reaches even beyond YouTube.com
- Target vertical markets with a need for video content:
 - Auction videos for eBay items (perfect for eBay Motors)
 - Real estate videos for houses/apartments for sale/rent (“Do-It-Yourself MTV Cribs”)
 - Become the video platform for special interest websites: Car sites, Sports, Politics, etc
- Features currently in development:
 - Community features: groups, sharing, better ways to find videos
 - Driving external reach: external player, developer APIs

Sales & Distribution:

Revenue-generating options:

- Ads:
 - “Google Adwords” approach for YouTube: Allow advertisers to upload ad videos to YouTube. Thumbnails of these ad videos will be shown alongside other videos in video search results, and as “related videos”. As with Google Adwords, ad videos will only be shown when relevant, and will be clearly marked as ad videos.
 - Display interactive ads within the Flash video player, superimposed over the playing video.
 - Play a short video ad at the beginning of the actual video.
 - Display an ad image at the beginning of the actual video.
- Act as a for-pay distribution channel for promotional videos:
 - Events, conferences, concerts
- Charge members for premium features:

A-90

- Ability to download original videos / view high resolution videos
 - Video editing features (within the browser, using Flash): video effects, transitions, titles, etc
 - Advanced features for the externally embeddable video player
 - Offer specialized features for embedded auction/real estate videos (see **Product Development**)
- Charge viewers for premium content:
- Allow members to sell their video content to YouTube viewers, with YouTube taking a cut of the proceeds.

Metrics:

Launched June 11th. Has already overtaken all previously existing competitors and is now the dominant player in this space.

By bandwidth:

\$239 / 1 machine / 1 month

1 machine has 2000 GB transfer / month

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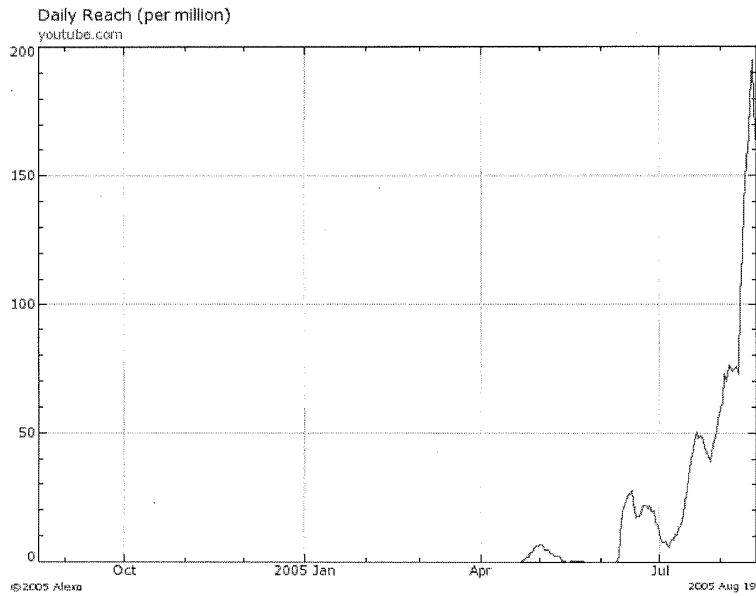
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7 MB average size of video

$320,000 / 7 = 45,714 \text{ videos} / \text{machine}$

2 machines / cluster

$(2 * \$239) / 45,714 = \$0.01 \text{ cost per video stored redundantly on a cluster.}$



Team:

Founders:

- Steve Chen:
 - o Recruited by Max Levchin as one of PayPal's first engineers
 - o University of Illinois, Computer Science
- Chad Hurley:
 - o PayPal's first designer, responsible for PayPal site design and feature development
- Jawed Karim:
 - o Graduate student in Computer Science, Stanford University
 - o Recruited by Max Levchin as one of PayPal's first engineers
 - o University of Illinois, Computer Science



Broadcast Yourself.

Company Purpose

[To become the primary outlet of user-generated video content on the Internet, and to allow anyone to upload, share, and browse this content.

Problem

- Video files are too large to e-mail.
- Video files are too large to host.
- No standardization of video file formats.
- Videos exist as isolated files.

Solution

- Consumers upload their videos to YouTube. YouTube takes care of serving the content to millions of viewers.
- YouTube's video encoding back-end converts uploaded videos to Flash Video.
- YouTube provides a community that connects users to videos, users to users, and videos to videos.

Market Size

— [Digital video recording technology is for the first time cheap enough to mass-produce and integrate into existing consumer products.

— [Broadband Internet in the home has finally reached critical mass, making the Internet a viable alternative delivery mechanism for videos.

Competition

— [OurMedia.org, Open Media Network, Google Video

— [PutFile, DailyMotion, Vimeo

Product Development

- Community
- Open architecture
- Target vertical markets with a need for video content
- Features currently in development

Sales & Distribution

- Advertising
- Act as a for-pay distribution channel for promotional videos
- Charge members for premium features
- Charge viewers for premium content

Team

— [Steve Chen: Recruited by Max Levchin as one of PayPal's first engineers; University of Illinois, Computer Science

— [Chad Hurley: PayPal's first designer, responsible for PayPal logo, main features, and design

— [Jawed Karim: CS Graduate student at Stanford University; Recruited by Max Levchin as one of PayPal's first engineers; University of Illinois, Computer Science

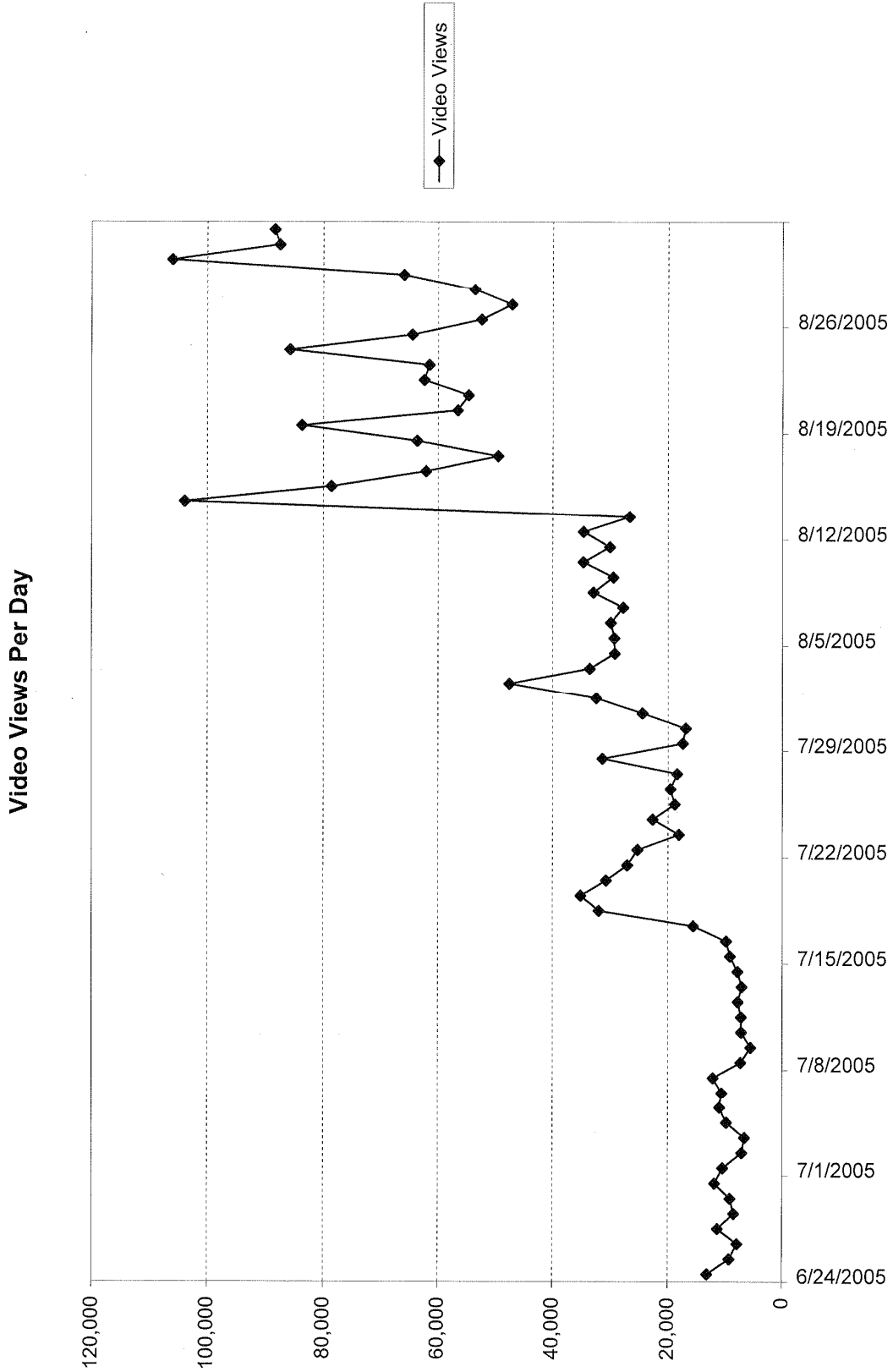
Metrics

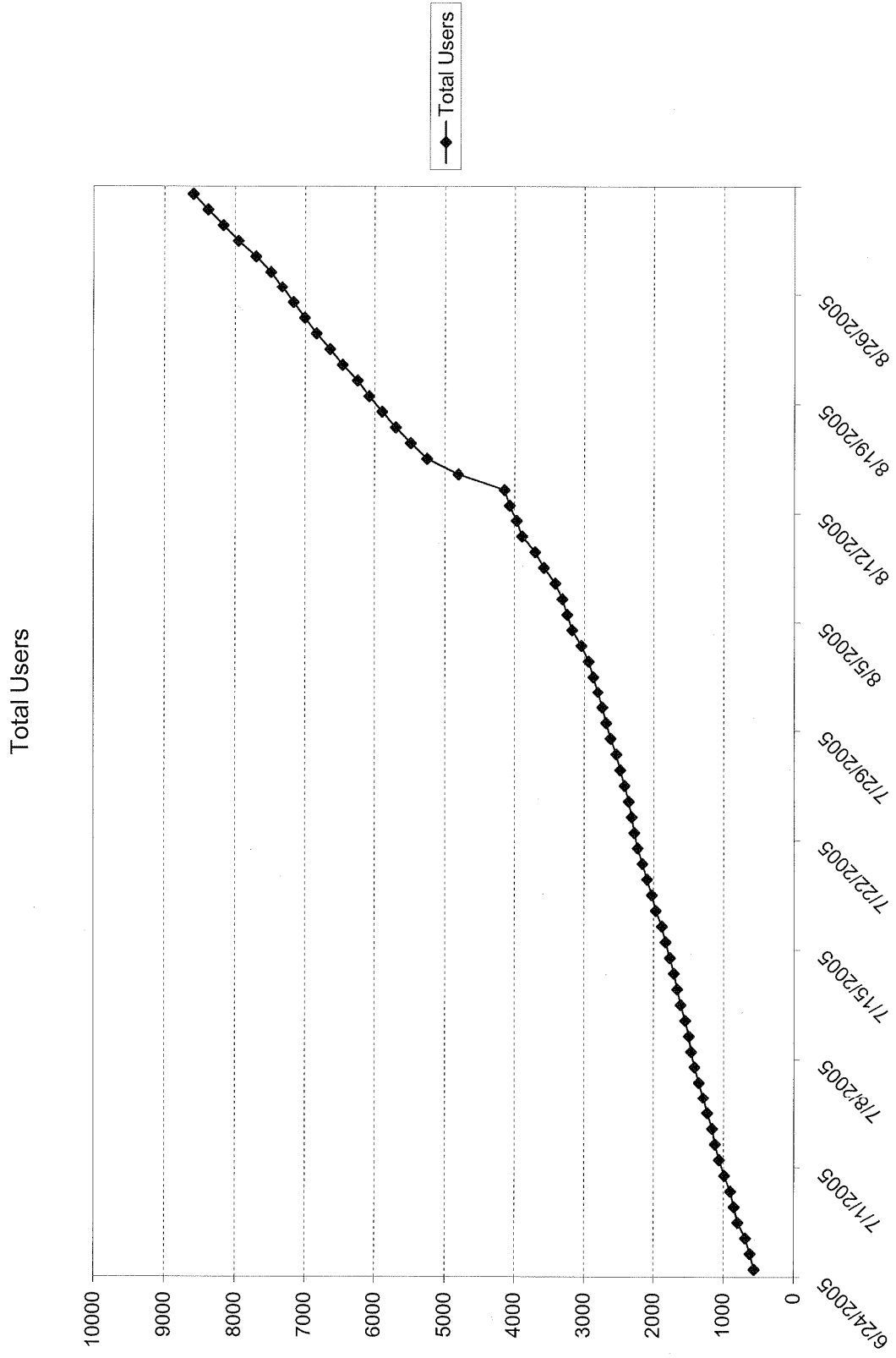
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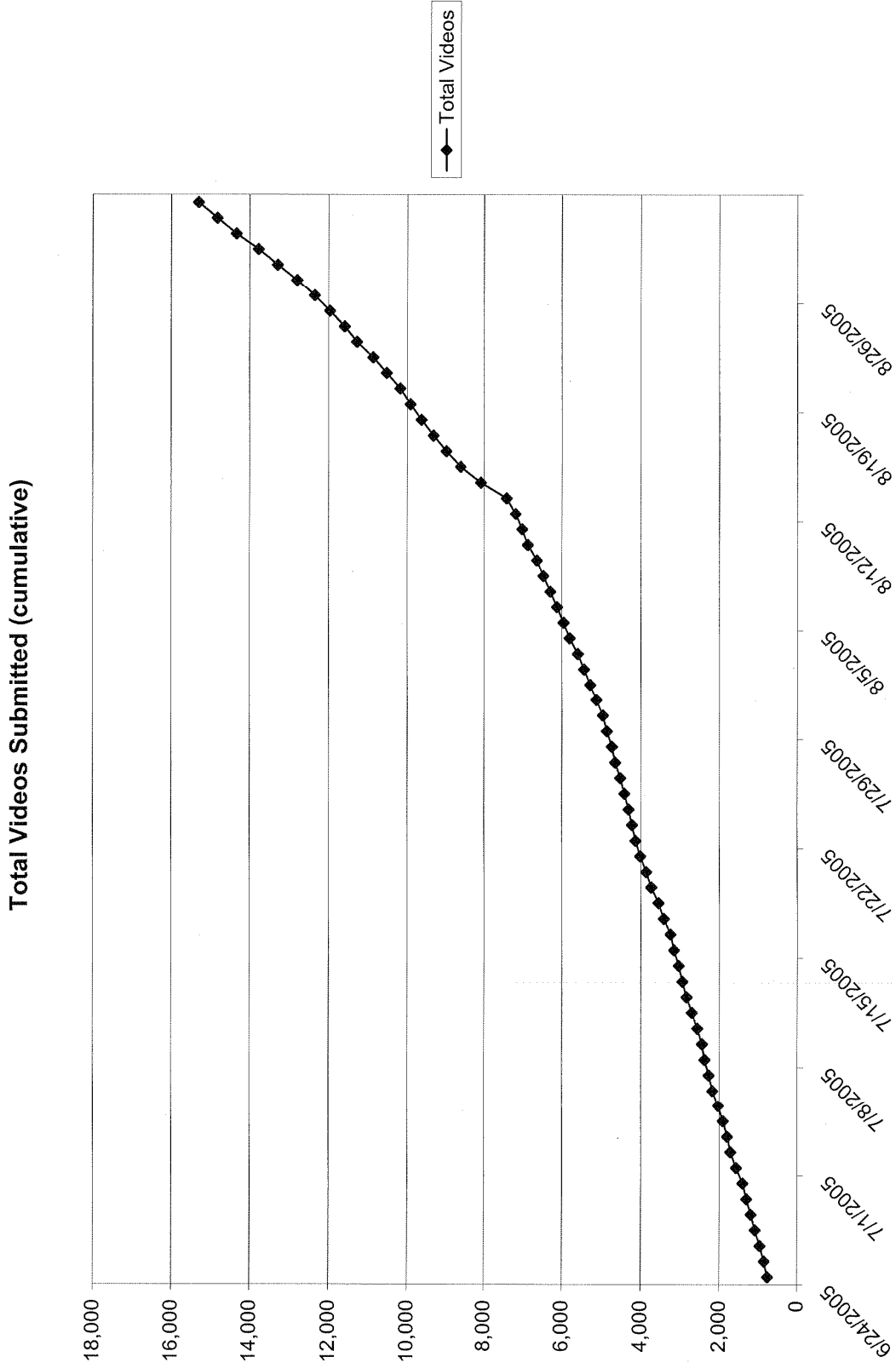
Company metrics

The attached three charts show three key metrics for YouTube since it launched about two months ago: videos served per day, registered users, and cumulative videos submitted.

The graphs show a healthy increase in all the key metrics so far.







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