

## A-601

73

1           A.     I do not recall seeing this  
2           document before.

3           Q.     This document represents  
4           instructions from Paramount to BayTSP  
5           11:45:54   on how to search for one of their  
6           properties called "Jack Ass."   Isn't  
7           that right?

8                     MS. KOHLMANN:   I'm going to  
9           object and also note that the document  
10          11:46:05   is from October, 2006 and outside the  
11          scope of this 30(b)(6).

12          Q.     Mr. Solow, please take a moment  
13          to review the document.

14                    MR. RUBIN:   Ms. Kohlmann, again,  
15          11:46:20   there are important foundational issues  
16          with respect to how the mass takedown  
17          occurred.   This is well within the  
18          scope of the mass takedown and I  
19          reiterate, if you allow the deposition  
20          11:46:31   to proceed, I think it will all become  
21          very clear.

22                    MS. KOHLMANN:   Here I'm going to  
23          object because I think first you have  
24          to establish that anything that  
25          11:46:38   happened in October, 2006 relates to

1 the takedown by asking our corporate  
2 representative and then you can  
3 determine whether or not this is  
4 something that is within the scope.

5 11:46:48 MR. RUBIN: You're -- you're  
6 entitled to make any objection you  
7 want. I've provided you my -- my  
8 answer. I --

9 MS. KOHLMANN: I'm going to  
10 11:46:53 allow him -- you can ask him a few  
11 questions on this and then I'm going to  
12 direct him not to answer, so go ahead.

13 MR. RUBIN: I think that would  
14 be an exceptionally unwise move.

15 11:47:04 MS. KOHLMANN: It wouldn't be  
16 the first time that I did something you  
17 thought was unwise.

18 MR. RUBIN: No, and those are.  
19 And you resulted in blocking relevant  
20 11:47:10 testimony at the outset of this case  
21 that was overruled by Judge Stanton  
22 multiple times.

23 MS. KOHLMANN: That is incorrect  
24 and I am --

25 11:47:17 MR. RUBIN: I would remind you

1 to read Mr. Housley's deposition  
2 transcripts and then you can review the  
3 stimulated order on the questions  
4 related to stealth marketing.

5 11:47:28 MS. KOHLMANN: I think that is  
6 completely incorrect and irrelevant to  
7 the deposition and you're going to have  
8 Mr. Solow as a fact witness. You can  
9 ask him what you want as a fact witness  
10 11:47:37 as we've painstakingly gone through the  
11 30(b)(6) as directed to question 5A  
12 through F and I think that you are well  
13 beyond the scope of the 30(b)(6).

14 MR. RUBIN: I recognize that is  
15 11:47:52 your position, Susan. But we disagree  
16 with you.

17 Q. Mr. Solow, have you had an  
18 opportunity to review the document?

19 A. I -- I still am. I'm sorry. I  
20 11:48:05 was -- I was eavesdropping on your  
21 conversation and not focusing on what I  
22 was asked to do.

23 I've read it.

24 Q. Do you see that the first in  
25 11:48:30 time e-mail subject line is "Jack Ass"

1 YouTube search procedures?

2 A. Yes.

3 Q. And the intro is procedure for  
4 determining whether to approve or  
5 11:48:43 decline?

6 A. Yes.

7 Q. Do you understand what that  
8 means?

9 MS. KOHLMANN: Objection.

10 11:48:53 Document speaks for itself.

11 A. In general terms, yes.

12 Q. In this context what does it  
13 mean to approve?

14 MS. KOHLMANN: In what context?

15 11:49:04 In the context of the document?

16 Q. In the context of this document,  
17 Mr. Solow, what does it mean to  
18 approve, as it's written in the first  
19 in time e-mail?

20 11:49:16 A. I believe approve means --  
21 approve means a designation of a -- of  
22 a -- that a clip is infringing, is --  
23 is not an authorized upload.

24 Q. Approved means that BayTSP was  
25 11:50:36 authorized to send a DMCA takedown

1 statement. I am simply telling you  
2 that you first need to establish that  
3 something that occurred in October of  
4 2006 relates to the February, 2007 mass  
5 11:54:05 takedown request that is the subject of  
6 the 30(b)(6). Once you do that, I will  
7 not obstruct you from asking him  
8 questions about it. But you are not  
9 to -- allowed to ask him a series of  
10 11:54:17 questions then ask that, perhaps  
11 determine that it has nothing to do  
12 with the mass takedown request and then  
13 you will have been allowed to ask on  
14 the record a series of questions that  
15 11:54:28 have nothing to do with the scope of  
16 this examination. So you have my  
17 position.

18 If there is a question pending,  
19 you can raise it and -- and we will go  
20 11:54:37 from there. And I am more than happy  
21 to have that be the way in which we are  
22 going to conduct a 30(b)(6) because in  
23 my belief that is the proper way to  
24 conduct a 30(b)(6).

25 11:54:49 MR. RUBIN: That's fine. It

1 will be case-wide from now on.

2 Q. Mr. Solow, I'm sorry. I hope  
3 you weren't distracted by that colloquy  
4 as well.

5 11:54:58 A. No. I have nothing else to do.

6 Q. What was the rule in place for  
7 which clips would be included in the  
8 February 2nd, 2007 mass takedown?

9 A. I do not -- I -- I don't believe  
10 11:55:24 that I could list out all the rules as  
11 they existed for that mass takedown off  
12 the top of my head.

13 Q. You were designated to testify  
14 on that topic today, weren't you?

15 11:55:41 A. Yes.

16 Q. And you prepared to testify on  
17 that topic today, didn't you?

18 A. Yes.

19 Q. And you're unable to do so?

20 11:55:47 MS. KOHLMANN: Objection.  
21 Misstates the record.

22 A. I -- if I were testifying as to  
23 the, you know, the substance of crime  
24 and punishment, I would hope that I  
25 11:56:04 would not be asked to recite crime and

1 punishment verbatim from memory.

2 Q. Is it your testimony that the  
3 rule set for which clips will be  
4 removed from YouTube in connection with  
5 11:56:16 the February 2nd, 2007 mass takedown is  
6 as complicated as crime and punishment?

7 MS. KOHLMANN: Objection.

8 A. It could be for some people.

9 Q. Would it that be complicated for  
10 11:56:25 YouTube?

11 MS. KOHLMANN: Objection.

12 A. No. Because they would be able  
13 to refer to a list of rules as opposed  
14 to being asked to do it off the top of  
15 11:56:36 their head.

16 Q. Has YouTube been provided the  
17 list of rules?

18 MS. KOHLMANN: Objection, lacks  
19 foundation.

20 11:56:41 A. I don't know.

21 Q. As you sit here testifying on  
22 behalf of Viacom as a corporate  
23 representative, you don't know whether  
24 YouTube had been provided the list of  
25 11:56:49 rules that governed which clips were

1 included and excluded from the February  
2 2nd, 2007 mass takedown?

3 MS. KOHLMANN: Objection as to  
4 form. You can answer.

5 11:57:01 A. I do not.

6 Q. Were the rules set forth in  
7 Exhibit 2 the rules that governed the  
8 February 2nd, 2007 mass takedown?

9 A. No.

10 11:57:19 Q. In what way did the rules in  
11 Exhibit 2 differ from the rules that  
12 established which clips would be  
13 included in the February 2nd, 2007 mass  
14 takedown?

15 11:57:33 A. I don't know specifically how  
16 they differed. I do know that the fall  
17 and winter of '06, going into '07, was  
18 a time where with every day we were  
19 acquiring additional knowledge as to

20 11:57:57 the characteristics of the massive  
21 infringement going on at YouTube and we  
22 learned at the time --

23 Q. I'm not asking for a speech  
24 about Viacom's litigation position, I'm  
25 11:58:08 actually asking for a very specific



1 that -- that use the term.

2 Q. In fact, Mr. Solow, you first  
3 saw that term at least in connection  
4 with this deposition in September of  
5 13:39:50 this year when you reviewed the  
6 deposition notice for this deposition,  
7 didn't you?

8 A. Yes.

9 Q. And you discussed that term  
10 13:39:59 extensively with the individuals with  
11 whom you prepared for this deposition,  
12 didn't you?

13 MS. KOHLMANN: Objection.  
14 Misstates the record. You can answer.

15 13:40:12 A. I don't know that I discussed  
16 the definition of that term  
17 extensively. That term was -- was  
18 discussed and it's -- yes. I did see  
19 the deposition notice in September and  
20 13:40:24 at that time I didn't know that I would  
21 be the -- the designee.

22 Q. And you explained at the outset  
23 of this deposition that you understood  
24 the term to refer to the takedown of  
25 13:40:39 100,000 plus clips in a DMCA takedown

1 notice that was transmitted on Viacom's  
2 behalf by BayTSP to YouTube on February  
3 2nd, 2007?

4 A. I -- I will let the record stand  
5 13:40:54 for whatever I said, but I do know that  
6 throughout the course of this  
7 deposition I have and perhaps I've  
8 articulated some discomfort or  
9 ambiguity around the definition of a  
10 13:41:07 term that has -- is not or has not been  
11 part of my personal lexicon.

12 Q. Do you understand there was a  
13 takedown sent by BayTSP on Viacom's  
14 behalf for in excess of 100,000 clips  
15 13:41:21 on February 2, 2007?

16 A. Yes.

17 Q. That is what I am referring to  
18 by the mass takedown.

19 A. Yes.

20 13:41:29 Q. Okay?

21 A. Okay.

22 Q. Does that clear it up?

23 A. Perhaps but perhaps not in  
24 relation to the question that led to  
25 13:41:41 this attempt at clarity around the term

1 BayTSP -- around mass takedown.

2 Q. The question regarded Exhibit 4  
3 and the purpose of Exhibit 4 and  
4 particularly language indicating what  
5 13:41:58 the circumstances of Exhibit 4 are.

6 A. Mm-hmm.

7 Q. Exhibit 4, a document created by  
8 BayTSP titled BayTSP streaming video  
9 project, that describes a project that  
10 13:42:13 started on September 18, 2006.

11 MS. KOHLMANN: Sorry. I think  
12 it December.

13 MR. RUBIN: Pardon me. Did I  
14 misspeak?

15 13:42:20 Q. That describes a project that  
16 started on December 18, 2006, refers to  
17 the -- the accumulation of clips that  
18 were ultimately included in the DMCA  
19 takedown notice sent to YouTube on  
20 13:42:38 February 2nd, 2007. Isn't that right?

21 MS. KOHLMANN: Objection.  
22 Misstates the document. You can  
23 answer.

24 A. This is a document that I'm  
25 13:42:49 assuming memorializes BayTSP's

1 form.

2 A. That was a component of -- of  
3 those decisions.

4 Q. It wasn't in order to increase  
5 16:21:54 the clip count that would be included  
6 in the takedown?

7 A. It was --

8 MS. KOHLMANN: Objection as to  
9 form. You can answer.

10 16:22:00 A. Sorry. It was to more  
11 comprehensively identify our content on  
12 the YouTube service.

13 Q. Some -- a comprehensive  
14 identification that had not been  
15 16:22:13 theretofore taking place, right?

16 A. A comprehensive identification  
17 that gets better as a project matures.

18 Q. In fact, the content had been  
19 identified, it just had not been taken  
20 16:22:33 down because the rules were different  
21 at that time. Isn't that right?

22 MS. KOHLMANN: Objection.

23 A. I think there were a number of  
24 factors around why that content hadn't  
25 16:22:45 been taken down earlier.

1 Q. One of which is that based on  
2 clip length Viacom had advised BayTSP  
3 not to issue takedown notices, isn't  
4 that right?

5 16:22:55 MS. KOHLMANN: Objection. Asked  
6 and answered.

7 A. Based in part on a lack of  
8 experience and understanding of the  
9 nature of the infringement that they  
10 16:23:08 would be seeing.

11 Q. And based on the clip length,  
12 isn't that right?

13 MS. KOHLMANN: Objection. Asked  
14 and answered.

15 16:23:17 A. Right. As I said earlier, it  
16 is -- one can be more confident in the  
17 identification of a clip that is longer  
18 than one that is shorter. If I --

19 Q. I understand. Eventually BayTSP  
20 16:23:39 was instructed to take down any clip  
21 with a Viacom related logo on it, isn't  
22 that right?

23 MS. KOHLMANN: Objection as to  
24 form.

25 16:23:47 A. I believe the instruction was to

1 take down clips that included the -- a  
2 Viacom or Viacom entity chiron.

3 Q. Is another word for chiron bug?

4 A. Yes.

5 16:24:03 Q. Did you perceive any problems in  
6 requesting that clips identified as  
7 alleged infringement to be taken down  
8 based from YouTube -- strike that.

9 Did you perceive any problems in  
10 16:24:15 requesting that clips be taken down --  
11 of alleged infringements to be taken  
12 down from YouTube based only on the  
13 presence of a MTVN related bug or  
14 chiron on the clip?

15 16:24:25 MS. KOHLMANN: Objection as to  
16 form.

17 A. No.

18 Q. No? That instruction led to a  
19 lot of music videos to be included in  
20 16:24:44 the mass takedown request sent on  
21 February 2nd, 2007, didn't it?

22 MS. KOHLMANN: Objection as to  
23 form.

24 A. There were music videos in the  
25 16:24:58 February 2nd notice.

1 Q. Was there ever any concern that  
2 Viacom did not actually own the rights  
3 to the music videos that it instructed  
4 BayTSP to include on the list of clips  
5 16:25:09 included in the February 2nd, 2007 DMCA  
6 takedown notice sent to YouTube?

7 MS. KOHLMANN: Objection.

8 A. Viacom had a good faith believe  
9 that they had sufficient rights to take  
10 16:25:23 down those clips.

11 Q. Viacom had a good faith belief  
12 that it owns the copyright in those  
13 clips?

14 MS. KOHLMANN: Objection. Asked  
15 16:25:32 and answered.

16 A. Viacom has a good faith belief  
17 that they have a -- a trademark  
18 interest in the clips that included our  
19 chiron.

20 16:25:46 Q. And does Viacom believe that a  
21 trademark interest is a sufficient  
22 basis for issuing a takedown notice  
23 pursuant to the DMCA?

24 MS. KOHLMANN: Objection to the  
25 16:25:56 extent it calls for a legal conclusion.

1 You can answer.

2 A. I don't know the answer to that.

3 Q. What is the basis for Viacom's  
4 belief that it has a trademark interest  
5 16:26:10 in those clips?

6 MS. KOHLMANN: Same objection.

7 A. I don't know.

8 Q. Does Viacom have a good faith  
9 belief that it has a copyright interest  
10 16:26:24 in music videos?

11 A. In some music videos.

12 Q. Does Viacom believe it has a  
13 copyright interest in the music videos  
14 that it requested YouTube take down in  
15 16:26:36 the February 2nd, 2007 DMCA takedown  
16 notice sent by BayTSP?

17 MS. KOHLMANN: Objection. You  
18 can answer.

19 A. Viacom has a belief that it had  
20 16:26:45 sufficient rights to take down those --  
21 the clips that it took down.

22 Q. And you identified in your  
23 response that the rights for the music  
24 videos that it believed it had were  
25 16:26:55 trademark rights, isn't that so?



1 A. In some cases.

2 Q. In the cases in which that was  
3 the basis for the takedown, did Viacom  
4 also believe it had sufficient  
5 16:27:04 copyright rights to issue the takedown?

6 MS. KOHLMANN: Objection. Asked  
7 and answered.

8 A. I don't believe Viacom took  
9 those clips down on the basis of a  
10 16:27:21 copyright claim. It was a trademark  
11 claim.

12 Q. And do you believe issuing a  
13 takedown notice pursuant to the DMCA  
14 based on trademark rights is a valid  
15 16:27:42 use of the DMCA takedown mechanism?

16 MS. KOHLMANN: Objection. Calls  
17 for legal conclusion.

18 A. I don't know.

19 MR. RUBIN: I'd like to  
20 16:28:43 introduce Exhibit 15.

21 (Exhibit 15 is received and  
22 marked for identification.)

23 Q. Mr. Solow, Exhibit 15 is a  
24 document produced by BayTSP bearing the  
25 16:29:16 Bates number BAYTSP 003717001 -- pardon

1 me. This is an e-mail BayTSP sent to  
2 representatives of Paramount, including  
3 Al Perry, dated January 17, 2007 with  
4 the subject Team America. Do you see  
5 16:29:46 that?

6 A. Yes.

7 Q. Do you know who Courtney Nieman  
8 is?

9 A. Yes.

10 16:29:52 Q. Who is Courtney Nieman?

11 A. Courtney was an employee of  
12 BayTSP.

13 Q. Did Ms. Nieman work on MTVN and  
14 Viacom related projects at BayTSP?

15 16:30:07 A. Yes.

16 Q. Did you believe she was  
17 competent in her job?

18 A. Well, she's a vendor and, you  
19 know -- from the client's critique, but  
20 16:30:18 she did a -- she did a fine job.

21 Q. In this e-mail Ms. Nieman wrote  
22 "MTVN is asking permission to gather  
23 any clips regardless of the type on the  
24 YouTube protocol" -- I believe she  
25 16:30:36 wrote it YT -- "then use them as part

**Schapiro Exhibit 222**

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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

Plaintiffs, )

vs. ) NO. 07-CV-2203

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

Defendants. )

----- )  
THE FOOTBALL ASSOCIATION PREMIER )  
LEAGUE LIMITED, BOURNE CO., et al., )  
on behalf of themselves and all )  
others similarly situated, )

Plaintiffs, )

vs. ) NO. 07-CV-3582

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

Defendants. )

----- )  
VIDEOTAPED DEPOSITION OF ROELOF BOTHA  
MENLO PARK, CALIFORNIA  
WEDNESDAY, AUGUST 5, 2009

JOB NO. 17298

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AUGUST 5, 2009

9:04 a.m.

VIDEOTAPED DEPOSITION OF ROELOF BOTHA,  
SHEARMAN & STERLING LLP, 1080 Marsh Road,  
Menlo Park, California, pursuant to notice, and  
before me, ANDREA M. IGNACIO HOWARD, CLR, RPR,  
CRR, CSR License No. 9830.

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

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A P P E A R A N C E S (Continued.)

FOR THE WITNESS ROELOF BOTHA:

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ALSO PRESENT: Lou Meadows, Videographer.

---oOo---

1 R. BOTHA

2 13:09:44 section for this type of content; do you see that?

3 13:09:48 A I see that I pose a question here in the

4 13:09:50 e-mail to the founders saying, "Should we create a

5 13:09:56 mature section for this content or -- or should we put

6 13:09:59 in the equivalent of safe search function, just like

7 13:10:04 Google image -- well, just as Google has for its image

8 13:10:08 search.

9 13:10:08 Q And do you know if either of those were ever

10 13:10:10 adopted by YouTube?

11 13:10:13 MR. KRAMER: Objection; vague.

12 13:10:15 Either of what?

13 13:10:17 THE WITNESS: I don't recall whether the

14 13:10:18 company -- so subsequent -- I believe subsequent to

15 13:10:26 this e-mail, the company made a strategic decision

16 13:10:33 that the image of YouTube was not consistent with

17 13:10:38 pornographic material, that it was a service aimed at

18 13:10:42 user-generated content and that we wanted it to be a

19 13:10:45 safe place for people to upload personal videos of,

20 13:10:48 you know, their families and content of that nature.

21 13:10:51 And there was belief that if the neighborhood

22 13:10:55 was tainted by material that was pornographic, it

23 13:10:59 would alienate those types of users, and so we felt

24 13:11:05 that we should portray an image that YouTube does not

25 13:11:08 stand -- YouTube does not represent a service



1 R. BOTHA

2 13:11:11 purporting to service users who want to upload and

3 13:11:15 view pornographic material.

4 13:11:17 MS. CUNHA: Q. And was there also a concern

5 13:11:20 that such material might alienate potential

6 13:11:24 advertisers on the website?

7 13:11:27 MR. TANGRI: Objection; ambiguous.

8 13:11:29 MR. KRAMER: Vague as to time.

9 13:11:33 THE WITNESS: I don't recall whether at the

10 13:11:37 time we made -- we, the company, YouTube made a

11 13:11:41 decision not to -- not to -- I don't know what the

12 13:11:48 right word is -- let me think about this.

13 13:11:51 At the time we -- YouTube made the decision

14 13:11:53 that it did not want to have pornographic material

15 13:11:56 displayed on its website, I don't recall whether we

16 13:12:02 had a specific conversation about whether that was

17 13:12:04 advertiser related. In other words, that advertisers

18 13:12:07 would not want to advertise because there is

19 13:12:10 pornographic material. I believe -- I -- I do

20 13:12:15 remember that we were motivated by a desire not to

21 13:12:19 alienate the user base that we were aiming to attract,

22 13:12:24 as referenced in this e-mail, don't alienate the moms

23 13:12:28 that are uploading videos on the site.

24 13:12:30 MS. CUNHA: Q. And do you know if any

25 13:12:31 mechanisms were put in place to keep the pornographic

1 R. BOTHA

2 13:12:33 material off the site?

3 13:12:37 A Could you just repeat the question for a

4 13:12:39 second?

5 13:12:39 Q Sure.

6 13:12:40 Do you know if any mechanisms or processes

7 13:12:43 were put in place to try to keep the pornographic

8 13:12:46 material off the site once YouTube decided that that

9 13:12:50 wasn't the direction it wanted to go?

10 13:12:52 A I do recall certain processes implement --

11 13:12:55 implemented by the company, and I can -- the -- the

12 13:13:06 principle -- well, there are a few different

13 13:13:08 mechanisms. The first is that we spelled it out in

14 13:13:11 the company's Terms of Service, so whenever a user

15 13:13:15 creates an account, which, at that time, I believe was

16 13:13:17 necessary in order to upload a video.

17 13:13:20 By opening the account, you had to agree with

18 13:13:23 the company's Terms of Service and, as I recall, the

19 13:13:26 Terms of Service would have spelled out that the

20 13:13:29 company does not allow the uploading of explicit or

21 13:13:33 pornographic material.

22 13:13:37 I don't recall this for certain, but I

23 13:13:40 suspect that the upload process on the site, after

24 13:13:45 you'd created an account, the process by which you

25 13:13:47 upload a video may also have had additional

**Schapiro Exhibit 417**

# A-628

Username	Name given at registration	Email address given at registration
beheard		beheard@freedomwriters.com
bestweekever	VH1	jim.jazwiecki@mtvnmix.com
bestweekevertv		rohit.sang@mtvnmix.com
BroadwayJoe		chipper102410@yahoo.com
broadwayjoe415		broadwayjoe415@hotmail.com
chu2007		chu@mindtheline.com
damonjohnson	Damon	damonjohnsonvc@yahoo.com
demansr		vfang@hotmail.com
dreamworksfansite	Jawad Mir	contact@dreamworksfansite.com
fan2band		fanservices@fan2band.com
fanscapemtv		alliew@fanscape.com
fanscapevideos	Fanscape	alliew@fanscape.com
FanscapeVideos4U		alliew@fanscape.com
Fanscapevids		fanscapenews@yahoo.com
fivechemical		fivechemical@gmail.com
FunFunFunnyVideo		SinCityBoArDeR@aol.com
funnyvids222		michelles@wiredset.com
GossipGirl40		gossipgirl40@yahoo.com
HGiantVid		hgvideol@gmail.com
HotRodMovie		hotrodmovie@gmail.com
isitfridayyet		is.it.friday.yet@hotmail.com
JackassTwoMovie		tamar_teifeld@paramount.com
jerseymouth1		marissa.grasso@mtvnmix.com
keithhn		jahpablo77@yahoo.com
LakeshoreEnt	Lakeshore	bkane@lakeshoreentertainment.com
LakeshoreRecords	Lakeshore Records	lakeshorerecords@gmail.com
mosjef73		jinkoy@aol.com
MTV2		cuong.nyc@gmail.com
MTV2AllThatRocks		mtv2.youtube@gmail.com
mtvfanscape		lsammak@fanscape.com
mtvnewsinterns		mtvnewsinterns@gmail.com
MTVSneakAttack		sky.gellatly@mtvn.com
mysticalgirl8		mysticalgirl8@yahoo.com
NMarketing		alicia.reich@mtvnmix.com
paraccount	Paramount	Tamar_Teifeld@paramount.com
Paramount2009		Kyle_Bonnici@paramount.com
Paramount2010		Kyle_Bonnici@paramount.com
ParamountClassics	Andrew	paramountvantage@gmail.com
ParamountGermany	None	paramountgermany@inpromo.de
ParamountPictureShow		press@waytoblue.com
ParamountVantage	Andrew	paramountvantage@gmail.com
parkmyvibe		parkmyvibe@hotmail.com
pinkstrawberry		pinkstrawberry05@yahoo.com
PinkStrawberry1	Lauryn Adofo	crystalglow@btinternet.com
reaction2006	carl epps	carlepps2@yahoo.com
reno911miami	Reno911 Miami	kwebster@specialopsmedia.com
SnackBoard	Gregg	chrisc@fanscape.com
soundoff2007		soundoff2007@yahoo.com
SpikeTV		steve.farrell@spiketv.com
strangewildernessuk		matt_waite@paramount.com
StuntManForever		hotrodkimble@yahoo.com

# A-629

<b>Username</b>	<b>Name given at registration</b>	<b>Email address given at registration</b>
tastefullymine	Latham	tastefullymine@tempinbox.com
thatisalsofunny		thatisalsofunny@hotmail.com
thatsfunny		scottisfunny@hotmail.com
thatsnotfunny		footyfan_87@hotmail.com
the110th		the110th2007@yahoo.com
thinkmtv		tina.bul@mtvnmix.com
veehonerockz		vhlmarkintern@mtvn.com
vhlstaff	dk	deborah.kadetsky@vhlstaff.com
virtualmtv		mtvm80@yahoo.com
waytobluefrance		aurelie@waytoblue.com
Wiredset		video@wiredset.com
wiredsetassets		katrinaa@wiredset.com
Wiredsetvideo		michelles@wiredset.com
baypls1t		csm@baytsp.com
rapyab		youtube@baytsp.com
cbnyab		youtube@baytsp.com
ynosyab		josephal@baytsp.com
xofyab		youtube@baytsp.com
renrawyab		youtube@baytsp.com
vlt2m		youtube@baytsp.com
mocalilv	Courtney	youtube@baytsp.com
ekilpls		arianh@baytsp.com
ydemlolc		arianh@baytsp.com
t1mlc		arianh@baytsp.com
xlofpst		web_fox@baytsp.com
m2g1m		youtube@baytsp.com
etagsnoilyab		youtube@baytsp.com
b1t1t1c1f		atatar+bayTSP2CVP@google.com
b1t1v1i		atatar+BayTSP2CVP@google.com
Fanscape		amys@fanscape.com
mrthomas323		mr_thomas323@hotmail.com
PJoseph73		patrickjdoody@mac.com
1premier1		tknox@premierleague.com
1lp1f		timc@nr-online.com
yrrelh1c		vsandberg@cherrylane.com

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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VIACOM INT'L INC., ET AL., )

Plaintiffs, )

v. )

YOUTUBE, INC., ET AL., )

Defendants )

---

ECF Case  
Civil No. 07-CV-2103 (LLS)

THE FOOTBALL ASSOCIATION )  
PREMIER LEAGUE LIMITED, ET AL., )  
on behalf of themselves and all others )  
similarly situated, )

Plaintiffs, )

v. )

YOUTUBE, INC., ET AL., )

Defendants. )

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ECF Case  
Civil No. 07-CV-3582 (LLS)

**DECLARATION OF MICHAEL SOLOMON IN SUPPORT OF DEFENDANTS'  
OPPOSITION TO PLAINTIFFS' MOTIONS FOR SUMMARY JUDGMENT**

I, Michael Solomon, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am currently a Senior Staff Engineer at YouTube, Inc. ("YouTube"). On March 3, 2010, I executed a declaration in support of YouTube's motion for summary judgment in this case ("Opening Declaration"). In addition to the aspects of my YouTube-related work that I described in my Opening Declaration, my work at YouTube also focused on improving the scalability of the website in light of the always increasing traffic that the site experienced. I have read the materials that Viacom submitted in connection with its motion for summary judgment that discuss the

technical operations of YouTube and submit this declaration in response to certain assertions that Viacom has made. I have personal knowledge of the facts set forth herein and, if called as a witness, I could and would testify competently to them.

Processes Automatically Initiated When a User Uploads or Views a Video on YouTube

2. As I explained in detail in paragraphs 6 to 10 of my Opening Declaration, several processes are automatically initiated when a user selects a video and uploads it to YouTube. These include the processes for transcoding and storing videos, as well as making them available for viewing at the request of visitors to the YouTube website.

*Viewing YouTube Videos through Third Party Platforms*

3. When a user chooses to view a YouTube video from his personal computer, his mobile phone, or from another consumer electronic device, playback of that video is initiated at the user's request. To enable YouTube users around the world to view videos on the site from platforms other than Internet browsers, YouTube developed application protocol interfaces ("APIs") and provided them to third parties that created other platforms to access YouTube, such as Apple, Sony, Panasonic, and TiVo. APIs are not specific to YouTube, they broadly describe the class of software that enables system-to-system, computer-level communication. In this instance, the instructions include advising third parties on how to configure their software so that it communicates with YouTube in the way needed to access and playback users' stored videos. Specifically, it enables these systems to tell YouTube – in connection with a user's request for a video playback – which file format the video should be served in so that the video can be viewed by the user, much like what happens when a user requests a video playback using a standard Internet browser. Once the request is received, the YouTube system automatically serves the video in

the format requested. As YouTube entered into agreements to make YouTube videos accessible on different platforms, the system was setup to automatically re-encode videos so that they would be playable on these new systems, such as the iPhone, which did not support the existing file formats. The system did this by starting with the most popular videos, such as that were “most viewed,” and working through the catalog until the process was complete.

4. As I have explained, when a user submits a playback request for a certain video, that video is streamed to the user’s personal computer or other device. In the context of a personal computer, if a user’s Internet browser is configured in certain ways, the video streamed may remain in the user’s Internet browser cache. A browser cache a method of temporarily storing data so that future requests for that data may be complied more quickly by the local computer. The browser cache does not discriminate with regard to the data it stores. That is, no matter which website a viewer visits and no matter what he views, if the browser software is configured to store what the viewer is viewing, it will be temporarily stored. Whether a viewed YouTube video remains on a user’s computer, and for how long, is wholly dependent on how the user’s Internet browser cache is configured to store information, and has nothing to do with the operation of the YouTube system, which is not designed to allow for downloading of videos uploaded in the normal course. Moreover, with regard to a video that has been streamed from YouTube to a system set to temporarily save material to the cache, the cached version of that video may or may not be complete depending on whether the user allows the streaming process to finish.

5. With regard to how YouTube streams videos to users who request videos for playback, at most points throughout its history YouTube has utilized a content distribution network (“CDN”) in order to increase the efficiency of that process and to lessen the burden on the YouTube system. A CDN is an automated file-serving



infrastructure that helps companies like YouTube respond to the requests of a large number of users distributed across a wide geographic area. An example of a CDN that YouTube has worked with is Limelight Networks. In working with LimeLight, the YouTube system operated as it normally did, except that it employed an algorithmic formula to mathematically determine that streaming certain videos to users was more efficiently handled from LimeLight's CDN than from YouTube's regular video servers. Specifically, the algorithm analyzed the size of the user's stored video file and the frequency with which the file was requested for viewing by YouTube users. YouTube colloquially referred to the videos identified by the algorithm as "popular" videos. The YouTube system would "flag" these identified videos, designating them to be served to requested users via LimeLight's CDN. By serving such videos in conjunction with a CDN, the burden on the YouTube system was decreased and the user's experience was enhanced by speeding playback. Although YouTube has used other CDN systems, they have all operated on the same fundamental principles.

**Other Automatic Operations of the YouTube Website Based on User Input**

6. The YouTube system automatically keeps track of certain generic information for the hundreds of millions of videos users have uploaded to the website. This includes the number of times the videos have been watched and the number of times users have "favorited" them. To allow our users to more easily discover content that might be of interest to them, automated lists of "most viewed," "top favorites" and so on are presented to users. The YouTube system relies on the aggregated data produced by its users interacting with the website to automatically populate these lists. YouTube employees are not actively involved in selecting the videos that fall into these categories.

7. At various places throughout the YouTube website, the YouTube system also shows “thumbnail” images of videos alongside text supplied by the users who uploaded them. This takes place on various pages of the YouTube site, including the search results page and video watch pages under the heading “related videos,” at the end of videos after users view them, and has been part of a feature called “videos being watched now.” A thumbnail image is a still image created from a frame in an uploaded video that is used to represent the video so that users can see what the video is.

8. No matter where (or how often) a thumbnail image appears on the site, it always functions as a link back to the stored video uploaded by the user. The thumbnail image is not itself a copy of the video and no copy of the video is made to create the image used to represent the video. Rather, the thumbnail image is extracted during the upload process. When a video is uploaded, the YouTube system automatically creates three thumbnail images of that video, one from the beginning, one from the middle, and one from the end of the video. The uploading user is then allowed to choose which of those thumbnails will represent the video on the YouTube service. As with the “top viewed” and “top favorites” lists, the search system, the related videos feature, and the videos being watched now function, these thumbnails would not exist without user interaction and YouTube employees are not actively involved in selecting the thumbnails that appears in connection with these functions of the website.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration is executed the 28th day of April 2010, at Palo Alto, California.

  
Michael Solomon

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

VIACOM INT'L INC., ET AL.,	)	
	)	
Plaintiffs,	)	ECF Case
v.	)	Civil No. 07-CV-2103 (LLS)
	)	
YOUTUBE, INC., ET AL.,	)	
	)	
Defendants	)	
	)	
THE FOOTBALL ASSOCIATION	)	
PREMIER LEAGUE LIMITED, ET AL.,	)	
on behalf of themselves and all others	)	
similarly situated,	)	ECF Case
	)	Civil No. 07-CV-3582 (LLS)
	)	
Plaintiffs,	)	
v.	)	
	)	
YOUTUBE, INC., ET AL.,	)	
	)	
Defendants.	)	
	)	

**DECLARATION OF DAVID KING IN FURTHER SUPPORT OF  
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

I, DAVID KING, pursuant to 28 U.S.C. § 1746, declare as follows:

- I work at Google as a Product Manager for YouTube's Content ID system. On March 1, 2010, I executed a declaration in support of YouTube's motion for summary judgment in this case. On April 29, 2010, I executed a declaration in support of YouTube's opposition to plaintiffs' summary judgment motions. My previous declarations discussed YouTube's content-management systems, including "Claim Your Content" (CYC) and Content ID. I understand in opposing YouTube's motion for summary judgment, Viacom has made certain assertions about

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YouTube's policies for assigning copyright "strikes" to users whose videos were "blocked" using CYC. I have first-hand knowledge of YouTube's policies in this area, and I submit this declaration to respond to Viacom's assertions.

2. For a brief period following the roll-out of YouTube's new CYC platform in February 2007, videos blocked using the tools available to rights holders using that platform did not result in copyright "strikes" under YouTube's repeat-infringer policy. There were two reasons for that. First, as a policy matter, when CYC launched, it was an untested system that for the first time gave right holders the ability to block the upload of videos automatically, often without anyone looking at those videos and without the submission of a formal DMCA notice. CYC was a powerful tool, and we were concerned about it being misused. Thus, we wanted to make sure the system was being used properly before taking the step of issuing strikes to users' accounts. Second, at a technology level, CYC was a complex and novel undertaking that relied in large part on a third-party service provider, Audible Magic. Linking up CYC to our existing system for tallying copyright "strikes" introduced an additional layer of engineering complexity. It took us some time to develop that additional functionality and to ensure that when we actually linked up the two systems, strikes would be tallied accurately.

3. During the period when CYC was not yet linked to YouTube's strike system, copyright owners were always free to send regular DMCA notices (via mail, fax, or email) or to use YouTube's Content Verification Program, which allowed rights holders to transmit automated takedown notices with the click of a button.

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Takedowns processed through the regular DMCA process or CVP resulted in a strike to the account of the user who had posted the video, in accordance with YouTube standard practices.

4. In the summer of 2007, just a few months after CYC launched, we completed the task of linking it up with our strike-tallying system. From then on, when rights holders submitted a “block” request using the manual “claiming” functionality that was available via CYC, YouTube assigned a strike to the account of the user who had uploaded the video, just as if it were an ordinary DMCA notice. At the same time, we decided that when a block resulted exclusively from an automated match using fingerprinting technology—rather than from a claim manually submitted by the rights holder after it actually reviewed the video in question—that a strike should not be assigned. The reason for that has to do with the nature of an automated fingerprinting block.

5. YouTube’s policy is to assign strikes to users who post videos that a copyright owner identifies in a DMCA notice as allegedly using its copyrighted material in an unauthorized way. A DMCA notice includes a statement from the rights holder made under penalty of perjury. But when a video is identified and blocked using YouTube’s fingerprinting technology, that is not like a DMCA notice. In that situation, the fingerprinting system identifies some portion of the uploaded video as matching some portion of a reference file submitted by a copyright owner who has designated a policy of “block” for videos that match its reference. The video is blocked automatically. The copyright owner has never looked at the blocked


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video and has not provided a sworn statement to YouTube that the video is using its copyrighted material in an unauthorized way.

6. YouTube's policy is to assign strikes where the copyright owner makes an affirmative representation to YouTube that a video is infringing its copyright based on a human review of a particular video. But YouTube does not believe it appropriate to assign strikes to a user when the user uploads a video that is blocked in an entirely automated process without human confirmation from the rights holder that the video is an alleged infringement

7. YouTube's policy of not assigning strikes based on entirely automated blocks using our fingerprinting tools is not a secret. It is explained to rights holders who sign up for YouTube's content-management tools. To my knowledge, no copyright owner has objected to it. When we launched Content ID in October 2007, I participated in a press conference to describe the technology and how it worked. I remember explaining to reporters that videos automatically blocked using Content ID would not result in a strike for the user who posted the video.

Dated: San Bruno, California  
June 2, 2010

  
David King

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

VIACOM INT'L INC., ET AL.,	)	
	)	
Plaintiffs,	)	ECF Case
v.	)	Civil No. 07-CV-2103 (LLS)
	)	
YOUTUBE, INC., ET AL.,	)	
	)	
Defendants	)	
	)	
<hr/>		
THE FOOTBALL ASSOCIATION	)	
PREMIER LEAGUE LIMITED, ET AL.,	)	
on behalf of themselves and all others	)	
similarly situated,	)	ECF Case
	)	Civil No. 07-CV-3582 (LLS)
Plaintiffs,	)	
v.	)	
	)	
YOUTUBE, INC., ET AL.,	)	
	)	
Defendants.	)	
	)	
<hr/>		

REPLY DECLARATION OF MICHAEL RUBIN  
IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

I, Michael Rubin, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am a partner with the firm of Wilson Sonsini Goodrich & Rosati, attorneys for Defendants Google Inc., YouTube, LLC, and YouTube, Inc., (collectively "YouTube"). I submit this declaration in support of Defendants' Reply in support of their Motion for Summary Judgment. On March 5, 2010, I submitted a declaration in support of Defendants' Motion for Summary Judgment ("Opening Declaration"). I

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have been involved in these cases from their outset and am familiar with the documents produced in discovery by the parties and by third parties. I have also reviewed the opening and opposition papers submitted by all parties in connection with their summary judgment motions. The following facts are true of my personal knowledge and if called and sworn as a witness I could competently testify to them.

**I. Selected Materials Regarding the Uploading of Content to YouTube by Viacom and Viacom's Agents.**

2. Attached hereto as Exhibit 1 is a table that I prepared showing a small selection of the many videos uploaded to YouTube by Viacom employees, agents or others showing a variety of their attributes. The table also sets forth evidence demonstrating that the videos were uploaded with authorization from Viacom. These videos can be categorized as follows:

- (i) videos described as being part of a full episode of a television show;
- (ii) videos that bear "time codes" or markings designed to make them appear "roughed up;" and
- (iii) videos that appear to be clips excerpted directly from somewhere within a longer piece of content.

Exhibits 250A to 355B, referenced in the foregoing attached table, constitute the videos themselves. The "A" version is the original file format and the "B" version is a copy of the same file converted to the MPEG file format. The Version A files are "Flash" (or ".flv") video files, as stored on YouTube's servers, and were obtained directly from YouTube. (Similar references to video exhibits "A" and "B" in this declaration follow the same convention.) True and correct copies of the documents identified in the table, which show the authorized nature of these videos, are attached



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hereto as Exhibits 2 to 13, or were attached to my Opening Declaration or other papers submitted in conjunction with YouTube's summary judgment papers, and are so designated in the table.

3. Attached hereto as Exhibit 14 is a table showing that certain accounts used by Viacom's third party agents have uploaded over 5,954 videos to YouTube. I obtained the data reflected on that table by working with YouTube employees who collected it from YouTube's system. True and correct copies of the documents identified in the table are attached hereto as Exhibits 15 to 37, or were attached to my Opening Declaration or other papers submitted in conjunction with YouTube's summary judgment papers, and are so designated in the table.

**II. Selected Documents Regarding YouTube Accounts Used by Viacom and Its Agents to Upload Content to YouTube.**

4. Attached hereto as Exhibits 38 and 39, respectively, are two tables that I prepared showing a noncomprehensive selection of certain YouTube accounts used by Viacom or its agents to upload videos to YouTube. These accounts can be categorized as follows:

- (i) Accounts for which a review of the discovery produced in this action reveals no evidence that it was the subject of communications between Viacom and a YouTube employee in which Viacom's affiliation with the account was referenced. *See* Exhibit 38 attached hereto.
- (ii) Accounts for which Viacom contacted YouTube after having mistakenly taken down videos it had authorized to be uploaded to those accounts. *See* Exhibit 39 attached hereto.

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True and correct copies of the documents identified in these tables are either attached hereto as Exhibits 40 to 71, or were attached to my Opening Declaration or other papers submitted in conjunction with YouTube’s summary judgment papers, and are so designated in the table. Collectively, these accounts uploaded 2,445 videos to YouTube. I obtained this data by working with YouTube employees who collected it from YouTube’s system.

5. I have reviewed the Declaration of Scott B. Wilkens in Support of Viacom’s Opposition to Defendants’ Motion for Summary Judgment. In Paragraphs 18 to 19 that Declaration, Mr. Wilkens describes his attempt to estimate the number of videos uploaded by certain YouTube “director accounts and branded channels used by Viacom.” He represents that these accounts collectively uploaded 609 videos to YouTube by May 1, 2008. The users of those Viacom accounts continued to upload videos to YouTube even after May 1, 2008. Based on data I obtained by working with YouTube employees who collected it from YouTube’s system, the following table demonstrates the number of videos uploaded to the accounts identified by Viacom through the present day:

<i>Account Name</i>	<i>Total Videos Uploaded</i>
Paraccount	139
MTV2	11
mtv2allthatrocks	54
beheard	51
Spiketv	162
vh1staff	39
ParamountVantage	2
ParamountClassics	7
Bestweekever	158
theloveguru	33

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strangewildernessuk	20
Total Videos Uploaded	676

6. Collectively, the accounts I described in Paragraphs 3 to 6 of this Declaration uploaded 7,254 videos to YouTube.

7. Additionally, certain of the “director accounts and branded channels used by Viacom” identified by Mr. Wilkens in his declaration were subject to takedown requests from Viacom. I described certain documents reflecting examples of this in my Opening Declaration at Exhibits 54-55 (SpikeTV), 56-57 (Paraccount).

**III. Comparison of Data Associated with Certain Clips in Suit and Certain Clips Viacom Withdrew from Suit.**

8. I have reviewed the Declaration of Scott B. Wilkens in Support of Viacom’s Opposition to Defendants’ Motion for Summary Judgment. Paragraph 2 of that declaration includes a table containing details regarding 20 Clips in Suit. Attached as Exhibit 79 is a table repeating the data included in Paragraph 2 of Mr. Wilkens’s Declaration, but adding metadata from YouTube’s system regarding those videos, such as the video title, and the username and email address of uploader of the video. That additional data was produced to Plaintiffs. Attached hereto as Exhibit 80 is a table containing the same categories of data for an additional 20 YouTube clips, all of which were dismissed from this suit by Viacom. *See* Rubin Opening Declaration ¶ 12 & Ex. 122. Versions A and B of the videos referenced in Exhibit 80 are attached hereto ranging from Exhibits 250A to 355B.

**IV. Comparison of Video Clips Viacom Has Withdrawn from the Case to Those that Remain Clips In Suit.**

9. As I described in my Opening Declaration, on February 26, 2010, Viacom dismissed with prejudice its infringement claims as to 434 clips it had previously asserted as clips in suit. *See* Rubin Opening Declaration ¶ 12 & Ex. 122.

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10. I reviewed the clips over which Viacom has withdrawn its infringement claims, and compared them to certain clips over which Viacom continues to assert an infringement claim. Based on my analysis, I prepared a table identifying a selection of Clips in Suit that I observed to be either identical or effectively indistinguishable from those clips over which Viacom has dismissed its infringement claims. The following table shows a selection of 21 such Clips in Suit.

<i>Work in Suit</i>	<i>Dismissed Clip (Video ID)</i>	<i>Located at Ex.</i>	<i>Clip in Suit (Video ID)</i>	<i>Located at Ex.</i>	<i>Nature of Similarity</i>
Drillbit Taylor	5kWtyVo-8k0	269A/B	05-rpbKib-c	255A/B	Identical
Drillbit Taylor	5kWtyVo-8k0	269A/B	28xcyE87EWM	260A/B	Indistinguishable in kind and format
Drillbit Taylor	sxNuomEUGG0	335A/B	2dZ66NoxefY	261A/B	Identical
Drillbit Taylor	sxNuomEUGG0	335A/B	2x1i2SCkRh0	262A/B	Indistinguishable in kind and format
Drillbit Taylor	AgGf_xso0HI	279A/B	a4nSnBS-Yno	274A/B	Identical
The Heartbreak Kid	g5ce_rOoGcc	297A/B	SHWyzGNIIQ	333A/B	Identical
The Heartbreak Kid	g5ce_rOoGcc	297A/B	jgg9pIPqcuk	308A/B	Indistinguishable in kind and format
The Heartbreak Kid	g5ce_rOoGcc	297A/B	z0d_wjgerjM	354A/B	Indistinguishable in kind and format
Hot Rod	6xFe570faSI	271A/B	_zPnAMSIzOI	254A/B	Indistinguishable in kind and format
Hot Rod	6xFe570faSI	271A/B	4ImcoZoPHdY	267A/B	Indistinguishable in kind and format
Iron Man	DUTtBxd2KPQ	291A/B	7FZx2Ykf0l0	272A/B	Identical

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<i>Work in Suit</i>	<i>Dismissed Clip (Video ID)</i>	<i>Located at Ex.</i>	<i>Clip in Suit (Video ID)</i>	<i>Located at Ex.</i>	<i>Nature of Similarity</i>
Jamie Kennedy's Blowin Up (101)	k6CSyIS5528	311A/B	zdvpptWbSv4	355A/B	Identical
Jamie Kennedy's Blowin Up (103)	88XvlfKnGwI	273A/B	rjQ3idh6Whk	331A/B	Identical
Sweeney Todd	Gy3TrIlnTvA	299A/B	_HdZSFfXfDs	252A/B	Identical
The Andy Milonakis Show	_sTgT76i3vc	253A/B	LNKunwTCtH A	316A/B	Indistinguishable in kind and format
Transformers	gxjpdGjv59o	298A/B	4j3nWwCY4N Q	268A/B	Identical
Transformers	hfPAw9MM69A	300A/B	rSVdjKXmVDo	332A/B	Identical
Transformers	hfPAw9MM69A	300A/B	i6nh-vJl3n0	304A/B	Identical
Transformers	xWCkluxpGW8	351A/B	ijN91rPxcMo	305A/B	Indistinguishable in kind and format
Transformers	j4A-BqFSSL8	306A/B	JF5XI1hJ_30	307A/B	Indistinguishable in kind and format
Transformers	1168T5BsmVY	258A/B	1JqB_xvmWXw	259A/B	Indistinguishable in kind and format

Attached hereto as Exhibit 81 is an expanded version of this table, which also includes the usernames of the users who uploaded the identified videos.

**V. Viacom’s Continuing Assertion of Infringement Claims Regarding Clips It Uploaded to YouTube.**

11. In Viacom’s most recent iteration of its infringement claims (its October 15, 2009 “Amended Production of Works in Suit,” as modified by its February 26, 2010 Request for Dismissal), Viacom continues to assert infringement claims against YouTube for the videos set forth in the following table. The table also contains

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excerpts of data produced by YouTube in response to Plaintiffs' discovery requests that shows the uploader's YouTube username, email address provided at registration, user-supplied video title, and user-supplied video description information for these Clips in Suit:

<i>Video Id</i>	<i>Username</i>	<i>Email</i>	<i>Title</i>	<i>Description</i>
SPEexW7gXMw	fcreetus		Jamie Kennedy on Sunset Blvd. in a Marble bag!	Clip of Jamie Kennedy from his Blowin Up show, running across Sunset Blvd. in Hollywood wearing nothing but a marble bag...yikes!
W4UW2CBWrO4	MissTilaTequila		TILA TEQUILA ON THE SHOWBIZ SHOW WITH DAVID SPADE	Here I am with ma man David Spade! Awesome!
jlwMQBzfm4	BrokenBridgesMovie		"Broken" by Lindsey Haun from Broken Bridges movie	DVD AVAILABLE IN STORES JANUARY 9TH! This is the official music video for "Broken" by Lindsey Haun. It appears on the Broken Bridges soundtrack. For more info, click here - <a href="http://pushplayer.com/brokenbridgesmo...">http://pushplayer.com/brokenbridgesmo...</a>

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cGrnebuquSk	NateDernComedy		Rob Riggle iPhone, with Nate Dern and other TDS interns	From the June 28, 2007 Daily Show with Jon Stewart, this is a very funny piece done by Rob Riggle on the iPhone. You can see me and some of the other TDS interns spattered throughout the vid. I'm the bearded on playing Jenga. <a href="http://natedern.com">http://natedern.com</a>
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**VI. Viacom’s Use of YouTube’s CVP Tool Through its Agent BayTSP Starting in 2006.**

12. The following table lists accounts that Viacom’s agent BayTSP created and uses in connection with YouTube’s Content Verification Program (“CVP”). It appears that the account naming convention employed is generally to spell the Viacom’s division name backwards and to insert the number “1” between the letters. For example, the account for Viacom’s BET division is “t1e1b.”

<i>Account Creation Date</i>	<i>Viacom Entity</i>	<i>CVP Account Name</i>	<i>Evidence of Creation Date &amp; Connection to Viacom/BayTSP</i>
Apr. 17, 2006	BET	t1e1b	Rubin Reply Exs. 82, 83
Jun. 21, 2006	Paramount	rapyab	Rubin Reply Ex. 84
Sep. 8, 2006	MTVN	v1t2m	Rubin Reply Ex. 83, 85
Sep. 8, 2006	Viacom	mocalilv	Rubin Reply Ex. 83, 85

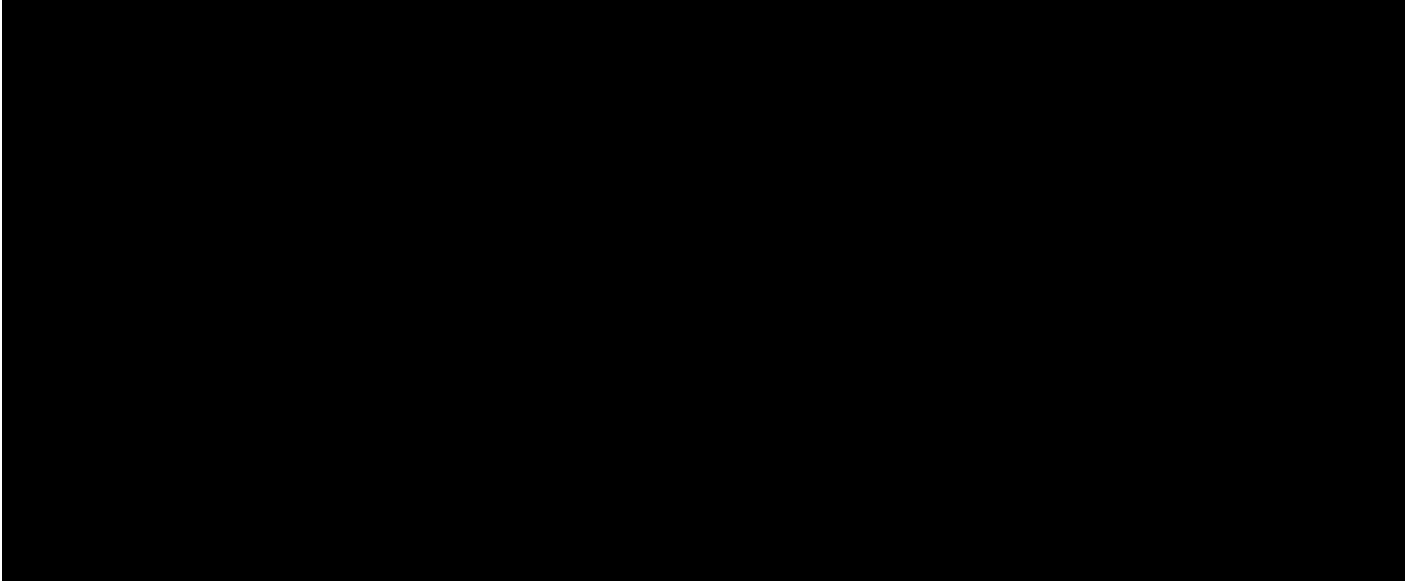
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Sep. 13, 2006	Atom Entertainment	moltla	Rubin Reply Ex. 83, 86
Oct. 9, 2006	Spike	ekilpls	Rubin Reply Ex. 87, 88
Oct. 9, 2006	Comedy Central	ydemlolc	Rubin Reply Ex. 87, 88
Oct. 9, 2006	Country Music Television	tlmlc	Rubin Reply Ex. 87, 88

The documents referenced in the foregoing table are attached hereto as Exhibits 82 to 88.<sup>1</sup>

**VII. Logging Database Data.**

13. In consultation with plaintiffs, YouTube produced certain non-anonymized data from its Logging Database for certain agreed-upon YouTube accounts that are associated with the parties' employees and/or agents. That produced data bears Bates numbers GOO DB DATA 024-25.



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<sup>1</sup> Exhibits 89 to 160 intentionally left blank.



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**VIII. Removals of Certain Videos from YouTube.**

15. On October 3, 2006, YouTube proactively removed the video referenced in Hohengarten Exhibit 32 (LPQRtuvuYAU) when enforcing its repeat infringer policy. On March 7, 2007, a YouTube user uploaded the video clip referenced in Hohengarten Ex. 73 (Tht2iCpQ0J0). YouTube removed the video on March 9, 2007 in response to a DMCA takedown notice. On May 21, 2008, YouTube proactively removed the video referenced in Hohengarten Exhibit 77 (NpqqWW0Z7vM) when enforcing its repeat infringer policy. I obtained the foregoing data by working with YouTube employees who collected it from YouTube's system.

**IX. Discovery in these Actions.**

**a. Limited Party Document Discovery.**

16. Discovery in these actions did not proceed strictly according to the Federal Rules of Civil Procedure. The parties entered in stipulated agreements that altered certain aspects of the standard rules. In one significant departure, the parties agreed that they would not be obligated to search the files of all employees likely to have responsive information. Rather, the parties negotiated and agreed upon a "Custodian Agreement" whereby only the files of certain designated employees, or "custodians," would be searched. In the *Premier League* Action, counsel for the

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Premier League Plaintiffs made an initial selection, which was later supplemented by additional custodians selected by YouTube. In the *Viacom* Action, both the initial and all subsequent sets of custodians were selected by the opposing sides. In addition to the production of documents from the files of designated custodians and various individuals falling into special categories, the parties also agreed to produce documents from noncustodial sources in accordance with the Federal Rules.

17. In total, 100 custodians were effectively identified from the Viacom plaintiffs. Of those, only 15 were employees in one of Viacom's many marketing departments.

18. The parties also stipulated that party documents postdating January 1, 2008 would not be produced except in agreed-upon circumstances.

19. As a result of these agreements, YouTube did not receive a comprehensive document production from the expansive set of marketing departments at Viacom's various subsidiaries.

**b. YouTube's Limited Ability to Take Discovery of Viacom's Third Party Marketers.**

20. YouTube was unable to issue subpoenas to or depose every one of Viacom's numerous third party marketers. Nor does YouTube believe it is aware of all of Viacom's marketing agents, as Viacom never identified them. Viacom did not include any third party marketing agents in its initial disclosures. Attached hereto as Exhibit 161 is a true and correct copy of Viacom's initial disclosures. Viacom also limited its answer to YouTube's Interrogatory No. 9 (asking Viacom to identify "each individual who has knowledge of marketing or public relations efforts for Your content involving uploading video of such content to websites for online viewing, including without limitation each individual involved in uploading or authorization

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for uploading of all videos that Viacom directly or indirectly caused to be uploaded to YouTube”) to Viacom employees, thereby excluding all third parties from its response. Attached hereto as Exhibits 162 and 163 are true and correct copies of Viacom’s initial and supplemental responses to YouTube’s Interrogatory No. 9.

**c. Viacom’s Deficient Interrogatory Responses.**

21. Viacom’s Response to YouTube’s Interrogatory No. 9 was also deficient by its own self-imposed limitations. On September 8, 2008, Viacom identified 59 Viacom employees who it represented were “most knowledgeable about Viacom’s uploading of content on websites for marketing and public relations purposes.” At the time, Viacom promised to supplement its response “in due course.” *See* Exhibit 162 (Viacom’s Responses to YouTube’s Second Set of Interrogatories). One-and-a-half years later, on January 8, 2010, Viacom’s supplemental response to Interrogatory No. 9 identified another 31 Viacom employees “who are knowledgeable about Viacom’s uploading of content on websites for marketing and public relations purposes.” *See* Exhibit 163 (Viacom’s Amended and Supplemental Responses to YouTube’s Second Set of Interrogatories).

22. Viacom’s supplemental response to Interrogatory No. 9 was served on YouTube after the close of document discovery, and a few days prior to the end of fact depositions, but after all such depositions had been scheduled. Nonetheless, that response was still deficient because it fails to identify at least the following Viacom employees who, as revealed during YouTube’s depositions of Viacom personnel, also play a role in marketing Viacom’s content: Joe Armenia, Nicole Browning, Erica Cantwell, Kat Cheng, Michelle Clark, David Cohen, Megan Crowell, Robb Dickehut, Eric Flannigan, Michelle Ganeless, Kristina Griswold, Carolyn Hu, Pete Jacobs,

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Kevin Kay, Jeffery Keaton, Scott Lapatine, Kevin Mackall, Duncan McDonald, Dee McLoughlin, Sonia Ocasio, Wendy Perez, Phil Pirrello, Lisa Preston, Peter Rosati, Deena Stern, Julie Sun, Benjamin Taylor, Joseph Ternesky, David Toth, Bryan Warman, Lauren Weinstein, and Jolena Wong. Attached hereto as Exhibits 164 (36:8-38:23), 165 (21:6-22:3), 166 (9:23-11:6), 167 (85:10-18), 168 (10:21-24, 11:17-18, 14:2-18, 103:2-104:16), 169 (55:16-58:21), 170 (82:21-84:11, 88:8-90:3), 171 (8:14-21, 9:19-10:7, 166:5-17), 172 (13:16-14:12, 34:16-37:8), 173, 174 (35:2-37:13), 175 (55:15-57:9), 176 (71:10-72:3), and 177 (33:17-34:7), are true and correct excerpts from the depositions of Viacom employees identifying themselves or their co-workers as being familiar with Viacom's marketing practices. The timing of Viacom's supplemental response also prevented YouTube from deposing any of the newly revealed marketing personnel.

23. YouTube also served its Interrogatory No. 23 on Viacom asking it to "[i]dentify each Work In Suit uploaded in whole or in part to the YouTube website by Viacom or with Viacom's authorization and the date of each such authorized upload." Viacom initially refused to provide an answer to this Interrogatory, claiming no clips from the Works in Suit had been uploaded to YouTube with Viacom's authorization, and asserted that the information sought was not relevant. Attached hereto as Exhibit 178 is a true and correct copy of Viacom's initial answer to Interrogatory No. 23. After meeting and conferring with YouTube, Viacom agreed to provide a complete response. Despite that, Viacom only provided a limited and incomplete answer to Interrogatory No. 23. Viacom limited its answer to information it found in its own document production, which was limited to the custodians and time period explained in Paragraphs 18 to 21. Viacom excluded from its answer any documents from

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YouTube's production or any of the third party productions. Viacom also did not seek information that existed outside that limited set of its own documents. Attached hereto as Exhibit 179 is a true and correct copy of Viacom's supplemental response to Interrogatory No. 23. Even by its own measure, Viacom has been unable to provide a complete response. My review of the documents Viacom identified from its own production reveals Viacom failed to include numerous documents that evidence the authorized uploading of clips from Works in Suit by Viacom to YouTube that it did not identify in its interrogatory response. Attached hereto as Exhibits 37, 44, and 180 to 186 are examples of additional documents, produced by Viacom, that demonstrate that Viacom's answer to Interrogatory No. 23 is incomplete.

**d. Limited and Deficient Deposition Testimony.**

24. As with document discovery, the parties agreed that certain limitations would be placed on the cumulative number of hours each side could depose witnesses from the opposing party. Accordingly, YouTube was limited in its ability to depose the large number of Viacom employees who were involved in Viacom's marketing efforts.

25. Ultimately, YouTube was able to depose roughly 20 current or former Viacom employees who were familiar with Viacom's online marketing practices. As I mentioned in Paragraph 21, however, between its two responses to YouTube's Interrogatory No. 9, Viacom identified 90 employees who are knowledgeable about Viacom's uploading of content on websites for marketing and public relations purposes. And Viacom's list omitted at least, an additional 32 employees with marketing knowledge, some of whom are included in the 20 current or former employees that YouTube was able to depose despite Viacom's omission (Nicole

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Browning, Eric Flannigan, and Michelle Ganeless). Of those Viacom employees who had knowledge of Viacom's marketing practices that YouTube deposed, only four appear in Viacom's initial answer to Interrogatory No. 9 (Kyle Bonici, Steve Farrell, Amy Powell, Tamar Teifeld).

26. Of the 20 marketing witnesses that YouTube was able to depose, including many who Viacom identified as having knowledge of its online marketing practices in its interrogatory response, numerous witnesses refused to provide answers to basic questions regarding those practices. Attached hereto are excerpts from the deposition transcripts of Todd Apmann (Ex. 164: 18:19-30:20, 34:23-35:2, 98:3-100:15), Damon Burrell (*see* Schapiro Opp. Ex. 259), Kyle Bonici (Ex. 187: 20:14-22:19, 33:14-34:20, 35:10-14, 38:13-40:4, 43:14-22, 46:12-25, 50:25-51:22), Steve Farrell (Ex. 169: 46:20-48:14), Amy Powell (Ex. 174: 38:6-24, 40:15-42:24, 50:15-51:11, 91:13-95:1), Tamar Teifeld (Ex. 175: 164:21-165:3, 171:10-19, 175:21-176:13), and Megan Wahtera (Ex. 177: 27:20-29:13, 34:14-38:17, 39:24-41:11, 61:25-63:20, 72:17-73:15).

**X. Viacom's Resistance to Production of "whitelists".**

27. On January 19, 2010, after the close of document discovery, I wrote to Viacom after learning of its failure to produce the aggregate data it allegedly maintained regarding the uploading of promotional videos by its many agents and subsidiaries. The existence of this data was not revealed until the last deposition taken in the case and after the close of document discovery, despite being called for by YouTube's discovery requests. A true and correct copy of my January 19, 2010 letter to Viacom is attached hereto as Exhibit 188.

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28. Viacom responded by producing one such list of authorized accounts on January 25, 2010. Attached hereto as Exhibit 189 is a true and correct copy of Viacom's response and the attached list. That list, however, did not appear complete, and I wrote back to Viacom the next day, January 26, 2010, to request the complete list of authorized accounts and urls described by Viacom's witness. Attached hereto as Exhibit 190 is a true and correct copy of YouTube's January 26, 2010 response to Viacom. On January 29, 2010, Viacom wrote back claiming that no other responsive lists existed. Attached hereto as Exhibit 191 is a true and correct copy of Viacom's January 29 letter. I then spoke with counsel for Viacom questioning the veracity of the claims in their letter. Then, on February 9, 2010, Viacom agreed to produce additional documents containing lists of accounts Viacom wished to protect from takedown requests from its agents, which were referred to by Viacom and in my Opening Declaration as "whitelists." Attached hereto as Exhibit 192 is a true and correct copy of Viacom's correspondence regarding these additional lists, and the lists themselves.

29. In providing these whitelists to YouTube, Viacom marked them "Highly Confidential," which means that no one at YouTube is entitled to see them (outside of a narrow set of attorneys pursuant to a stipulation executed in connection with summary judgment briefing). Attached hereto as Exhibit 193<sup>2</sup> is a true and correct copy of a communication with Viacom's counsel in which he confirmed that Viacom did not want the information about its "whitelisted" accounts shared with YouTube's employees as recently as January of this year.

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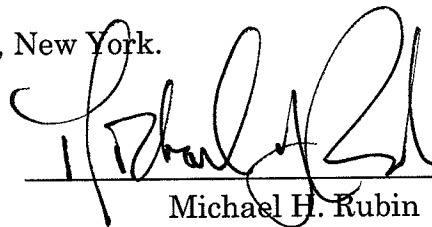
<sup>2</sup> Exhibits 194 to 249 intentionally left blank.

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**XI. Viacom's Acknowledged Failure to Preserve Relevant YouTube-related Marketing Documents.**

30. Viacom acknowledges that it failed to preserve YouTube-related marketing documents after it sued YouTube. As a result, tens of thousands of such documents unavailable to YouTube. For example, on May 8, 2009, Viacom's counsel Susan Kohlmann confirmed to me that Viacom had failed to preserve the documents of Paramount marketing employee Kristina Tipton when she left Viacom in September 2007, six months after Viacom sued YouTube. Attached hereto at Exhibit 72 is a copy of Ms. Kohlmann's letter to me. Ms. Tipton testified at her deposition that she was heavily involved with Paramount's YouTube-related marketing activities, and that she had tens of thousands of emails in her email outbox when she left Viacom. Viacom only produced 6 custodial documents from Ms. Tipton's files. See Schapiro Opp. Decl. Exs. 378, 379.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration is executed the 4th day of June 2010, at New York City, New York.



Michael H. Rubin



# **Rubin Reply Exhibit 1**

## A-658

### Selected Viacom-authorized videos that are described as being part of a full episode of a television show

<i>Video ID</i>	<i>Located at Ex. No.</i>	<i>Evidence of Approval</i>
wO5t1Nhdxs	318A/B	Rubin Reply Dec. Exs. 2 - 3
k6CSyIS5528	311A/B	Ostrow Opening Dec. ¶¶ 3-4
lirJJIViWsE	315A/B	Ostrow Opening Dec. ¶¶ 3-4
oQUgal6CFSI	325A/B	Ostrow Opening Dec. ¶¶ 3-4
i55f6qUSq4A	303A/B	Ostrow Opening Dec. ¶¶ 3-4
N7Q-vFtW8Lk	319A/B	Ostrow Opening Dec. ¶¶ 3-4
88XvlfKnGwI	273A/B	Ostrow Opening Dec. ¶¶ 3-4
Ux6aFYuTYNY	340A/B	Ostrow Opening Dec. ¶¶ 3-4
pIGQYawzv9c	328A/B	Ostrow Opening Dec. ¶¶ 3-4
K4sS0wA_-lA	310A/B	Ostrow Opening Dec. ¶¶ 3-4
2Ym_xbwGp7g	263A/B	Rubin Reply Dec. Exs. 4 - 6; Ostrow Opening Dec. ¶¶ 3-4

### Selected Viacom-authorized videos that bear “time codes” or other markings designed to make them appear “roughed up”

<i>Video ID</i>	<i>Located at Ex. No.</i>	<i>Evidence of Approval</i>
NyTvPGHScsY	323A/B	Rubin Reply Dec. Ex. 7, at 150
afuhSi13YAs	278A/B	Rubin Opening Dec. Ex. 20, 21; Schapiro Opening Ex. 140
UGFJpm--RW0	338A/B	Rubin Opening Dec. Ex. 31
jraCXjYcr_Q	309A/B	Rubin Opening Dec. Ex. 31
PPB-alJMTmI	329A/B	Rubin Opening Dec. Ex. 31; Rubin Reply Dec. Exs. 8 - 9
4DJClhc7sbg	266A/B	Rubin Opening Dec. Ex. 31
c-A8i73llOA	287A/B	Rubin Opening Dec. Ex. 26, 112
t2x6N4qnGdM	336A/B	Rubin Reply Dec. Exs. 10 - 11
xLUPs8zZ-mA	350A/B	Rubin Reply Dec. Exs. 10 - 11
bl49uILa674	283A/B	Rubin Opening Dec. Ex. 60

### Selected Viacom-authorized videos that appear to be clips excerpted directly from somewhere within a longer piece of content

<i>Video ID</i>	<i>Located at Ex. No.</i>	<i>Evidence of Approval</i>
_3Uz_7Pv9Os	250A/B	A. Chan Opening Dec. ¶¶ 5-6
_bI6wLLD294	251A/B	Rubin Opening Dec. Ex. 31
0c5ZqEMxgu8	256A/B	Rubin Opening Dec. ¶ 14
3v1NUJze4nI	264A/B	Rubin Reply Dec. Ex. 12
49zOwm8ojD4	265A/B	Rubin Opening Dec. Ex. 110
A5-AiREdFZ8	275A/B	Rubin Opening Dec. Ex. 31
ABeJNFyj26o	276A/B	Rubin Opening Dec. ¶ 14
AcdgLrw82Lk	277A/B	Rubin Opening Dec. Ex. 31

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<b><i>Video ID</i></b>	<b><i>Located at Ex. No.</i></b>	<b><i>Evidence of Approval</i></b>
BRbM2qfD08U	284A/B	Rubin Opening Dec. Ex. 86
BxIElHZAiA	286A/B	A. Chan Opening Dec. ¶¶ 5-6
-cQQVfrF8Zg	288A/B	Rubin Opening Dec. ¶ 14, Ex. 87
d93VlMvqhiA	289A/B	A. Chan Opening Dec. ¶¶ 5-6
Esyyx1i1_nQ	293A/B	Rubin Reply Dec. Ex. 12
evB-1D9A9CI	294A/B	Rubin Reply Dec. Ex. 13
fyCNSWALU6k	296A/B	Rubin Reply Dec. Ex. 12
hSu8M4oxd88	302A/B	A. Chan Opening Dec. ¶¶ 5-6
NTU5Eq0sf_E	321A/B	Rubin Opening Dec. Ex. 31
NWiSfnjkzvE	322A/B	Rubin Opening Dec. Ex. 53
O6ykhnygmR0	324A/B	Rubin Opening Dec. Ex. 58
P5h99BIL_iA	326A/B	Rubin Reply Dec. Ex. 13
pAkp_Hr5rN4	327A/B	Rubin Opening Dec. Ex. 86
sQiO5I56h9M	334A/B	A. Chan Opening Dec. ¶¶ 5-6
tckEWbOvmrY	337A/B	Rubin Opening Dec. ¶ 14
uJdf1Mnr15s	339A/B	A. Chan Opening Dec. ¶¶ 5-6
VG3OjK41Q8E	341A/B	Rubin Reply Dec. Ex. 12
wZREL0QN-HQ	347A/B	Rubin Reply Dec. Ex. 12
xHVqXaC-NIA	348A/B	Rubin Opening Dec. Ex. 59
YHYW6GLCcyQ	353A/B	Rubin Opening Dec. Ex. 89

**Rubin Reply Exhibit 14**

**Certain Accounts Used by Viacom's Third Party Agents**

<i>Account Name</i>	<i>Videos Uploaded</i>	<i>Evidence Showing Connection to Viacom</i>
BrienTA	231	Ostrow Opening Dec. ¶2-6; Rubin Reply Ex. 15
broadwayjoe415	5	Rubin Opening Ex. 87 (Response to RFA 32, 33); Rubin Reply Exs. 16-19
fanscapemtv	18	Schapiro Opp. Ex. 417; Rubin Opening Ex. 31, 116
fanscapevideos	1142	Schapiro Opp. Ex. 417; Rubin Opening Exs. 31, 87 (Response to RFA 67); Rubin Reply Exs. 20-25
fanscapevideos4u	38	Schapiro Opp. Ex. 417; Rubin Opening Exs. 31, 116; Rubin Reply Ex.26
GossipGirl40	7	Rubin Opening Exs. 31, 66 (Response to RFA 66), 107
isitfridayet	30	Rubin Opening Exs. 86, 87 (Response to RFA 64); Rubin Reply Ex. 27, 28
mtvfanscape	15	Schapiro Opp. Ex. 417; Rubin Reply Ex. 29; Rubin Opening Ex. 116
OfficialReno911	20	Rubin Reply Exs. 30, 31
parkmyvibe	3	Rubin Opening Exs. 87 (Response to RFA 36), 96; Rubin Reply Ex. 16
Snackboard	26	Rubin Reply Ex.33; Rubin Opening Ex. 87 (Response to RFA 65)
Tesderiw	5	Rubin Opening Exs. 46-48
thatisalsofunny	7	Rubin Opening Exs. 87 (Response to RFA 30), 115; Rubin Reply Exs. 7, 18, 34
thatsfunny	158	Rubin Opening Ex. 87 (Response to RFA 29), 115; Rubin Reply Ex. 35

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<i>Account Name</i>	<i>Videos Uploaded</i>	<i>Evidence Showing Connection to Viacom</i>
TNAwrestling	3518	Rubin Opening Ex. 87 (Response to RFA 99); Rubin Reply Exs. 60, 61
waytblue	109	Rubin Opening Ex. 87 (Response to RFA 85); Rubin Reply Ex. 36
waytbluefrance	66	Schapiro Opp. Ex. 417; Rubin Opening Ex. 87 (Response to RFA 88)
Wiredset	556	Schapiro Opp. Ex. 417; Rubin Opening Ex. 87 (Response to RFA 63); Rubin Reply Exs. 28, 37
<b>Total Videos Uploaded</b>	<b>5,954</b>	

**Rubin Reply Exhibit 38**

# A-664

## Accounts for which a review of the discovery produced in this action reveals no evidence that it was the subject of communications between Viacom and a YouTube employee in which Viacom's affiliation with the account was referenced

Account Name	Videos Uploaded	Evidence Showing Connection to Viacom
114th	0	Rubin Reply Ex. 40
alexmtransformers	4	Rubin Opening Ex. 126; Rubin Reply Ex. 41
BAAFamily	3	Rubin Reply Ex. 42; Rubin Reply Ex. 43
BroadwayJoe	26	Rubin Opening Exs. 87 (Response to RFA 32), 96; Rubin Reply Ex. 19
BroadwayJoe415	5	Rubin Opening Exs. 87 (Response to RFA 33), 96; Rubin Reply Exs. 17, 44
damonjohnson	82	Rubin Opening Exs. 86, 87 (Response to RFA 68); Rubin Reply Ex. 28
demansr	3	Rubin Opening Exs. 87 (Response to RFA 61), 88; Rubin Reply Ex. 45
FiveChemical	3	Rubin Opening Exs. 87 (Response to RFA 37), 96; Rubin Reply Ex. 46
funfunfunnyvideo	1	Rubin Opening Exs. 112, 113
Globe427	3	Rubin Opening Exs. 102, 103; Rubin Reply Ex. 47;
gooddrugy	2	Rubin Opening Ex. 96; Rubin Reply Ex. 48
gossipgirl40	7	Rubin Opening Exs. 31, 87 (Response to RFA 66), 107
isitfridayet	30	Rubin Opening Ex. 86, 87 (Response to RFA 64); Rubin Reply Ex. 28
jerseymouth1	8	Rubin Opening Exs. 86, 87 (Response to RFA 69); Rubin Reply Ex. 28
keithhn	120	Rubin Opening Exs. 87 (Response to RFA 43), 108, 109; Rubin Reply Ex. 49
Live2rhyme88	2	Rubin Opening Exs. 102, 104; Rubin Reply Ex. 50
markblu22	2	Rubin Opening Ex. 126



# A-665

Account Name	Videos Uploaded	Evidence Showing Connection to Viacom
MrTsNumberOneFan	13	Rubin Opening Ex. 86; Rubin Reply Exs.51, 52
NMarketing	25	Rubin Opening Ex. 87 (Response to RFA 56)
ParkMyVibe	3	Rubin Opening Exs. 87 (Response to RFA 36), 96; Rubin Reply Ex. 53
PinkStrawberry	0	Rubin Opening Exs. 87 (Response to RFA 34), 96
PinkStrawberry1	3	Rubin Opening Exs. 87 (Response to RFA 35), 96
reaction2006	7	Rubin Opening Exs. 86, 87 (Response to RFA 62); Rubin Reply Exs. 28, 54
strangewildernessuk	20	Rubin Opening Ex2. 87 (Response to RFA 39), 114
StuntManForever	25	Rubin Reply Exs. 55-58
thatisalsofunny	7	Rubin Opening Exs. 87 (Response to RFA 30), 96, 115; Rubin Reply Ex.34
thatsnotfunny	0	Rubin Opening Exs. 87 (Response to RFA 31), 96
the110th	0	Rubin Opening Ex. 105; Rubin Reply Ex. 59
ultrasloppyjoe	1	Rubin Opening Ex. 96; Rubin Reply Ex. 62
waytobluefrance	66	Rubin Opening Ex. 87 (Response to RFA 88)
<b>Total Videos Uploaded</b>	<b>471</b>	

**Rubin Reply Exhibit 39**

**Accounts for which Viacom contacted YouTube after having mistakenly taken down videos it had authorized to be uploaded to those accounts**

<i>Account Name</i>	<i>Videos Uploaded</i>	<i>Evidence Showing Connection to Viacom</i>	<i>Evidence of Mistaken Takedown</i>
BrienTA	231	Ostrow Opening Dec. ¶2-6; Rubin Reply Ex. 15	Rubin Reply Ex. 63
bullrunvideo	179	Rubin Opening Ex. 87 (Response to RFA 105); Rubin Opening Ex. 49; Rubin Opening Ex. 50; Rubin Reply Ex. 60	Rubin Opening Ex. 50
fanscapevideos	1142	Rubin Opening Ex. 87 (Response to RFA 67); Rubin Opening Ex. 31; Rubin Reply Ex. 20; Rubin Reply Ex. 25; Rubin Reply Ex. 22; Rubin Reply Ex. 23; Rubin Reply Ex. 24	Rubin Reply Ex. 64; Rubin Reply Ex. 21
FanscapeVideos4U	38	Rubin Opening Ex. 31; Rubin Reply Ex. 26; Rubin Opening Ex. 116	Rubin Reply Ex. 65
HGiantVid	58	Rubin Reply Ex. 66; Rubin Reply Ex. 67	Rubin Reply Ex. 68
tastefullymine	14	Rubin Reply Ex. 87 (Response to RFA 87); Rubin Reply Ex. 10	Rubin Reply Ex. 10
Tesderiw	5	Rubin Opening Ex. 46; Rubin Opening Ex. 47; Rubin Opening Ex. 48	Rubin Opening Ex. 47

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<i>Account Name</i>	<i>Videos Uploaded</i>	<i>Evidence Showing Connection to Viacom</i>	<i>Evidence of Mistaken Takedown</i>
thatsfunny	158	Rubin Opening Ex. 87 (Response to RFA 29); Rubin Opening Ex. 115; Rubin Reply Ex. 35	Rubin Reply Ex. 69
TheFilmFactoryUK	25	Rubin Opening Ex. 125	Rubin Reply Ex. 70
waytblue	109	Rubin Opening Ex. 87 (Response to RFA 85); Rubin Reply Ex. 36	Rubin Reply Ex. 36
zachbraffdotcom	15	Rubin Opening Ex. 99; Rubin Opening Ex. 100	Rubin Reply Ex. 71
<b>Total Videos Uploaded</b>	<b>1974</b>		

**Rubin Reply Exhibit 193**

-----Original Message-----

From: Cox, James C. [mailto:JamesCox@jenner.com]  
Sent: Tuesday, February 16, 2010 8:06 PM  
To: Rubin, Michael  
Cc: Kohlmann, Susan J.  
Subject: RE: Viacom Int'l v. YouTube: Whitelist Documents

Michael --  
That is correct.  
Regards,  
Jay

---

From: Rubin, Michael [mrubin@wsgr.com]  
Sent: Tuesday, February 09, 2010 9:50 PM  
To: Cox, James C.  
Cc: Kohlmann, Susan J.  
Subject: RE: Viacom Int'l v. YouTube: Whitelist Documents

Jay--

The whitelist documents bearing Bates Nos VIA-SUPP000001 - VIA-SUPP000016 are all designated HIGHLY CONFIDENTIAL pursuant to the parties' Protective Order. Am I to understand that Viacom does not want these disclosed to YouTube? Please advise.

Regards,  
Michael.

---

MICHAEL H. RUBIN  
WILSON SONSINI GOODRICH & ROSATI  
650 Page Mill Road | Palo Alto, CA 94304 mrubin@wsgr.com | www.wsgr.com  
Direct: 650.849.3311 | Office: 650.493.9300

-----Original Message-----

From: Cox, James C. [mailto:JamesCox@jenner.com]  
Sent: Tuesday, February 09, 2010 2:33 PM  
To: Rubin, Michael  
Cc: Kohlmann, Susan J.  
Subject: Viacom Int'l v. YouTube: Whitelist Documents

Michael:

In response to our conversation yesterday, please find attached a set of documents bearing the Bates numbers VIA-SUPP000004 - VIA-SUPP000016. The documents are designated Highly Confidential pursuant to the parties' protective order. Together with the document Bates numbered VIA-SUPP000001 - VIA-SUPP000003, which we provided as an attachment to Susan

Kohlmann's January 23, 2010 letter, ~~these documents are all of the~~ **A-671** documents from after January 1, 2008 in the custody of Jenner & Block or Shearman & Sterling.

Regards,

Jay

This email and any attachments thereto may contain private, confidential, and privileged material for the sole use of the intended recipient. Any review, copying, or distribution of this email (or any attachments thereto) by others is strictly prohibited. If you are not the intended recipient, please contact the sender immediately and permanently delete the original and any copies of this email and any attachments thereto.

**HIGHLY CONFIDENTIAL**  
**FILED UNDER SEAL**

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

VIACOM INTERNATIONAL INC., ET	)	
AL.,	)	
	)	ECF Case
Plaintiffs,	)	
v.	)	Civil No. 07-CV-2103 (LLS)
	)	
YOUTUBE, INC., ET AL.,	)	
	)	
Defendants.	)	
<hr/>		
THE FOOTBALL ASSOCIATION	)	
PREMIER LEAGUE LIMITED, ET AL.,	)	
on behalf of themselves and all others	)	ECF Case
similarly situated,	)	
	)	Civil No. 07-CV-3582 (LLS)
Plaintiffs,	)	
v.	)	
	)	
YOUTUBE, INC., ET AL.,	)	
	)	
Defendants.	)	
<hr/>		

**DECLARATION OF ANDREW H. SCHAPIRO**  
**IN FURTHER SUPPORT OF DEFENDANTS’**  
**MOTION FOR SUMMARY JUDGMENT**

Andrew H. Schapiro, pursuant to 28 U.S.C. § 1746, hereby declares as follows:

1. I am a partner at the firm of Mayer Brown LLP, attorneys for Defendants YouTube, Inc., YouTube, LLC, and Google Inc. (collectively, “YouTube”) in the above-captioned matters. I submit this Declaration in further support of Defendants’ Motion for Summary Judgment.

2. Attached hereto are true and correct copies of the following documents. Documents with the following Bates prefixes were produced by the following party or non-party in these actions:



**HIGHLY CONFIDENTIAL**  
**FILED UNDER SEAL**

- Documents with the Bates prefix “GOO001” were produced by YouTube in these actions.
- Documents with the Bates prefix “VIA” were produced by plaintiffs Viacom International Inc., Comedy Partners, Country Music Television, Inc., Paramount Pictures Corporation and Black Entertainment Television LLC (collectively, “Viacom”) in these actions.
- Documents with the Bates prefix “MPAA” were produced by non-party Motion Picture Association of America pursuant to a subpoena.
- Documents with the Bates prefix “AM” were produced by non-party Audible Magic pursuant to a subpoena.
- Documents with the Bates prefix “CAL” were produced by named plaintiff Cal IV Entertainment, LLC.
- Documents with the Bates prefix “BAYTSP” were produced by non-party BayTSP, Inc. pursuant to a subpoena.
- Documents with the Bates prefix “FS” were produced by non-party Fanscape Inc. pursuant to a subpoena.
- Documents with the Bates prefix “JK” were produced by non-party Jawed Karim pursuant to a subpoena.
- Documents with the Bates prefix “TA” were produced by non-party Total Assault pursuant to a subpoena.

<b>Exhibit</b>	<b>Description</b>
1	Excerpts of the Deposition of Mika Salmi (Oct. 16, 2009)
2	Excerpts of the Deposition of Tom Freston (Sept. 11, 2009)
3	Brief for Defendants-Appellees, <i>Kane v. Comedy Partners</i> , No. 03-9136 (2d Cir. Feb. 4, 2004)
4	BAYTSP 003749923 – BAYTSP 003749928
5	VIA11788422 – VIA11788425
6	FS000085
7	VIA11918325 – VIA11918330
8	VIA00857400 – VIA00857401
9	VIA10391714
10	VIA00346037 – VIA00346039
11	FS048711 – FS048716
12	FS008462 – FS008465
13	Excerpts of the Deposition of John Eddow (Nov. 12, 2009)
14	GOO001-09681139 – GOO001-09681150

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**FILED UNDER SEAL**

<b>Exhibit</b>	<b>Description</b>
15	Excerpts of the Deposition of Lee L'Archevesque (Feb. 18, 2010)
16	Excerpts of the Deposition of Mark Hall (Feb. 23, 2010)
17	Excerpts of the Deposition of Warren Solow (Jan. 14, 2010)
18	VIA16072901 – VIA16072922
19	BAYTSP 001125759
20	BAYTSP 001093517 – BAYTSP 001093523
21	VIA11787337 – VIA11787338
22	BAYTSP 003723588
23	VIA12077787 – VIA12077788
24	VIA02074233 – VIA02074235
25	VIA11918145
26	BAYTSP 004313354 – BAYTSP 004313364
27	BAYTSP 004296418
28	VIA11918146 – VIA11918148
29	FS043068 – FS043070
30	BAYTSP 004342189 – BAYTSP 004342190
31	G00001-00222788 – G00001-00222789
32	VIA01603890 – VIA01603912
33	BAYTSP 004133220 – BAYTSP 004133233
34	VIA11988578 – VIA11988601
35	BAYTSP 004295213
36	VIA01492305 – VIA01492306
37	G00001-00629095
38	VIA16853903 – VIA16853909
39	AM 003814 – AM 003842
40	Letter from S. Kohlmann to Hon. Louis L. Stanton (May 20, 2010)
41	VIA02074915 – VIA02074916
42	MPAA004280 – MPAA004314
43	G00001-00021505
44	G00001-07091995
45	G00001-06126509 – G00001-06126512
46	Excerpts of the Rule 30(b)(6) Deposition of YouTube, by Christopher Maxcy (Jan. 14, 2010)
47	Excerpts of the Deposition of Matthew Liu (Nov. 13, 2009)
48	Excerpts of the Deposition of Varun Kacholia (Jan. 8, 2010)
49	YouTube “Help” Section (Sept. 23, 2005), retrieved from Internet Archive ( <a href="http://web.archive.org/web/20050923182608/www.youtube.com/help.php">http://web.archive.org/web/20050923182608/www.youtube.com/help.php</a> )
50	G00001-01279682 – G00001-01279683
51	YouTube Terms of Use (Oct. 28, 2005), retrieved from Internet Archive ( <a href="http://web.archive.org/web/20051028091308/www.youtube.com/terms.php">http://web.archive.org/web/20051028091308/www.youtube.com/terms.php</a> )
52	VIA16075524 – VIA16075525
53	VIA15022945 – VIA15022946

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<b>Exhibit</b>	<b>Description</b>
54	Transcript of Oral Argument, <i>MGM Studios, Inc. v. Grokster, Ltd.</i> , 545 U.S. 913 (2005) (No. 04-480)
55	YouTube screenshot of <a href="http://www.youtube.com/user/FiveYear">http://www.youtube.com/user/FiveYear</a>
56	The Official YouTube Blog (March 26, 2006), retrieved from <a href="http://youtube-global.blogspot.com/2006/03/your-15-minutes-of-fameummmmake-that-10.html">http://youtube-global.blogspot.com/2006/03/your-15-minutes-of-fameummmmake-that-10.html</a>
57	VIA01673620 – VIA01673638
58	Oct. 23, 2009 Hearing Transcript, <i>Viacom Int’l Inc., et al. v. YouTube, Inc. et al.</i> (No. 07-CV-2103) and <i>The Football Ass’n Premier League Ltd., et al. v. YouTube, Inc. et al.</i> (No. 07-CV-3582)
59	Excerpts of the Deposition of Robert Tur (Nov. 12, 2009)
60	Excerpts of the Rule 30(b)(6) Deposition of X-Ray Dog, by Timothy Stithem (Dec. 8, 2009)
61	Excerpts of the Deposition of Nancy DiTuro (Nov. 10, 2008)
62	Excerpts of the Deposition of Seigo Takeshima (Aug. 25, 2008)
63	CAL00000747 – CAL00000780
64	Excerpts of the Deposition of Brian Bradford (Mar. 12, 2009)
65	Excerpts of the Deposition of Alex Ellerson (May 22, 2009)
66	Excerpts of the Deposition of Micah Schaffer (July 23, 2008)
67	Excerpts of the Deposition of Deborah Kadetsky (Aug. 18, 2009)
68	Plaintiffs Viacom International Inc. et al.’s Responses to Defendants’ First Set of Requests for Admission (Jan. 8, 2010)
69	Excerpts of the Deposition of Michael Fricklas (Sept. 22, 2009)
70	VIA15023626 – VIA15023627
71	VIA00220642
72	G00001-00853898 – G00001-00853900
73	G00001-06048929 – G00001-06049221
74	G00001-04983155 – G00001-04983156
75	G00001-00241683
76	Excerpts of the Deposition of Michael Wolf (Apr. 17, 2009)
77	Excerpts of the Deposition of Amy Powell (Dec. 15, 2009)
78	VIA00565284 – VIA00565285
79	VIA00558182 – VIA00558184
80	JK00000106 – JK00000122
81	JK00000102
82	Excerpts of the Deposition of Jawed Karim (June 9, 2009)
83	BAYTSP 003743122 – 003743148
84	BAYTSP 004133087
85	VIA02689261 – VIA02689264
86	G00001-01859813 – G00001-01859814
87	VIA00369555
88	G00001-06030607 – G00001-06030610

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<b>Exhibit</b>	<b>Description</b>
89	GOO001-00866497 – GOO001-00866498
90	GOO001-00858580
91	GOO001-01385428 – GOO001-01385430
92	Excerpts of the Deposition of Megan Wahtera (Dec. 4, 2009)
93	Declaration of Yu Jin Kang, <i>Viacom Int'l, Inc., et al. v. YouTube, Inc., et al.</i> , dated Nov. 24, 2008
94	Data re: YouTube Video ID: 49zOwm8ojD4
95	VIA00378823 – VIA00378826
96	VIA02359391
97	VIA02364299 – VIA02364300
98	FS43167 – FS43168
99	YouTube screenshot of <a href="http://www.youtube.com/watch?v=5_Wx-qI4Rs0">http://www.youtube.com/watch?v=5_Wx-qI4Rs0</a>
100	YouTube screenshot of <a href="http://www.youtube.com/watch?v=ONHxYF2u3gc">http://www.youtube.com/watch?v=ONHxYF2u3gc</a>
101	GOO001-05027749
102	BAYTSP 004174340 – BAYTSP 004174342
103	BAYTSP 002045787
104	BAYTSP 003927252 – BAYTSP 003927253
105	Excerpts of the Deposition of Michelena Hallie (Dec. 10, 2009)
106	BAYTSP 003766865
107	BAYTSP 004182969
108	BAYTSP 004283313
109	VIA10197825 – VIA10197827
110	VIA01918077 – VIA01918192
111	VIA00853644
112	VIA01893418 – VIA01893419
113	VIA00456983
114	“Comedy Central clips back on YouTube,” <i>Ars Technica</i> , Nov. 1, 2006 ( <a href="http://arstechnica.com/business/news/2006/11/8126.ars">http://arstechnica.com/business/news/2006/11/8126.ars</a> )
115	“Fake News Back on YouTube,” <i>The New York Post</i> , Oct. 31, 2006
116	GOO001-00856889
117	GOO001-00868425
118	VIA01129508 – VIA01129509
119	VIA00329104
120	VIA00471804 – VIA00471805
121	VIA00329124
122	VIA00883852 – VIA00883854
123	VIA00613122
124	VIA02047549
125	VIA00343418
126	VIA02048414
127	VIA00173554 – VIA00173556
128	VIA00173127

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<b>Exhibit</b>	<b>Description</b>
129	VIA00905517 – VIA00905518
130	VIA00883751 – VIA00883752
131	VIA00225564 – VIA00225565
132	Excerpts of the Deposition of Erik Flannigan (Oct. 16, 2008)
133	VIA01183721
134	BAYTSP 001110371
135	BAYTSP 003724700
136	GOO001-05885499 – GOO001-05885502
137	TA000197 – TA000199
138	Excerpts of the Deposition of Damon Burrell (Apr. 14, 2009)
139	Excerpts of the Deposition of Tina Exarhos (Feb. 23, 2009)
140	YouTube screenshot of <a href="http://www.youtube.com/watch?v=1HDRtaUG11w">http://www.youtube.com/watch?v=1HDRtaUG11w</a>
141	Excerpts of the Deposition of Tamar Teifeld (Feb. 18, 2009)
142	VIA01173532 – VIA01173538
143	Excerpts of the Deposition of Jason Witt (Sept. 25, 2008)
144	Excerpts of the Deposition of Judy McGrath (July 29, 2009)
145	Excerpts of the Deposition of Doug Herzog (Jan. 16, 2009)
146	Excerpts of the Deposition of Sumner Redstone (May 20, 2009)
147	VIA10391650 – VIA10391670
148	VIA00200735 – VIA00200737
149	VIA00399022
150	Excerpts of the Deposition of Theodora Michaels (Sept. 24, 2009)
151	VIA00561303 – VIA00561304
152	VIA02509711 – VIA02509714
153	VIA01999495
154	VIA11789373 – VIA11789375
155	VIA02349964 – VIA02349981
156	<i>American Beauty</i> , Original Motion Picture Score
157	Screenshot of <a href="http://www.youtube.com/watch?v=WoH85zHD8Sk">http://www.youtube.com/watch?v=WoH85zHD8Sk</a>
158	Screenshot of <a href="http://www.youtube.com/watch?v=TRgRz3nSG7o">http://www.youtube.com/watch?v=TRgRz3nSG7o</a>
159	Screenshot of <a href="http://www.youtube.com/watch?v=HGRFvus8v5M">http://www.youtube.com/watch?v=HGRFvus8v5M</a>
160	Screenshot of <a href="http://www.youtube.com/watch?v=LwXHwDz0cXg">http://www.youtube.com/watch?v=LwXHwDz0cXg</a>
161	Screenshot of <a href="http://www.youtube.com/watch?v=PsDONpFSADM">http://www.youtube.com/watch?v=PsDONpFSADM</a>
162	Screenshot of <a href="http://www.youtube.com/watch?v=PzRHlpEmr0w">http://www.youtube.com/watch?v=PzRHlpEmr0w</a>
163	Screenshot of <a href="http://www.youtube.com/watch?v=6GQ0z5rBci4">http://www.youtube.com/watch?v=6GQ0z5rBci4</a>
164	Screenshot of <a href="http://www.youtube.com/watch?v=ovugcliWMEk">http://www.youtube.com/watch?v=ovugcliWMEk</a>

3. Defendants' Reply Brief In Support Of Defendants' Motion For Summary Judgment refers to a number of videos from the YouTube website.

**HIGHLY CONFIDENTIAL**  
**FILED UNDER SEAL**

Attached hereto are true and correct copies of those videos. Version “A” of each video is provided in the “Flash Video,” or “.flv,” format, as stored on YouTube’s servers. (See Declaration of Michael Solomon, filed on March 5, 2010, at ¶ 12, which explains the manner in which those videos were captured from YouTube’s servers.) For the Court’s convenience, we have also converted each video to the “MPEG-1” format, and include that format as version “B.”

<b>Exhibit</b>	<b>Description</b>
165A	3DKQ1-W37AM (.flv format)
165B	3DKQ1-W37AM (MPEG-1 format)
166A	rXi0--gREZo (.flv format)
166B	rXi0--gREZo (MPEG-1 format)
167A	cWpKb_5u6lk (.flv format)
167B	cWpKb_5u6lk (MPEG-1 format)
168A	trNExuaIGig (.flv format)
168B	trNExuaIGig (MPEG-1 format)
169A	S4wv33PhRbw (.flv format)
169B	S4wv33PhRbw (MPEG-1 format)
170A	HX0twHa8hoY (.flv format)
170B	HX0twHa8hoY (MPEG-1 format)
171A	Q90toG3a8BY (.flv format)
171B	Q90toG3a8BY (MPEG-1 format)
172A	JabwaEuiaTY (.flv format)
172B	JabwaEuiaTY (MPEG-1 format)
173A	7AqmLH9z9Qw (.flv format)
173B	7AqmLH9z9Qw (MPEG-1 format)
174A	u0GkseyIY_M (.flv format)
174B	u0GkseyIY_M (MPEG-1 format)
175A	2EsRenCKMNE (.flv format)
175B	2EsRenCKMNE (MPEG-1 format)
176A	AYnA98Rmla8 (.flv format)
176B	AYnA98Rmla8 (MPEG-1 format)
177A	rf3BHTB2RAY (.flv format)
177B	rf3BHTB2RAY (MPEG-1 format)
178A	cR5BCbGyTkc (.flv format)
178B	cR5BCbGyTkc (MPEG-1 format)
179A	hSdMtP8qztA (.flv format)

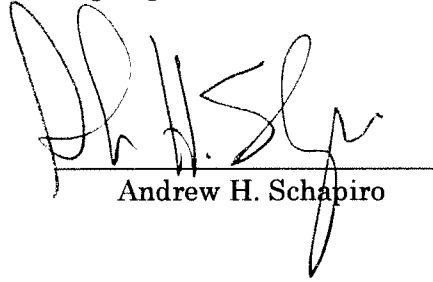
**HIGHLY CONFIDENTIAL**  
**FILED UNDER SEAL**

<b>Exhibit</b>	<b>Description</b>
179B	hSdMtP8qztA (MPEG-1 format)
180A	WoH85zHD8Sk (.flv format)
180B	WoH85zHD8Sk (MPEG-1 format)
181A	TRgRz3nSG7o (.flv format)
181B	TRgRz3nSG7o (MPEG-1 format)
182A	HGRFvus8v5M (.flv format)
182B	HGRFvus8v5M (MPEG-1 format)
183A	LwXHwDz0cXg (.flv format)
183B	LwXHwDz0cXg (MPEG-1 format)
184A	PsD0NpFSADM (.flv format)
184B	PsD0NpFSADM (MPEG-1 format)
185A	PzRHlpEmr0w (.flv format)
185B	PzRHlpEmr0w (MPEG-1 format)
186A	6GQ0z5rBci4 (.flv format)
186B	6GQ0z5rBci4 (MPEG-1 format)
187A	ovugclIWMEk (.flv format)
187B	ovugclIWMEk (MPEG-1 format)
188A	II4oaRpA81E (.flv format)
188B	II4oaRpA81E (MPEG-1 format)
189A	eijhloJjg50 (.flv format)
189B	eijhloJjg50 (MPEG-1 format)
190A	DkXAFeiZCs0 (.flv format)
190B	DkXAFeiZCs0 (MPEG-1 format)
191A	CKMhcoopYuM (.flv format)
191B	CKMhcoopYuM (MPEG-1 format)
192A	5_Wx-qI4Rs0 (.flv format)
192B	5_Wx-qI4Rs0 (MPEG-1 format)
193A	ONHxYF2u3gc (.flv format)
193B	ONHxYF2u3gc (MPEG-1 format)
194A	SPEexW7gXMw (.flv format)
194B	SPEexW7gXMw (MPEG-1 format)
195A	W4UW2CBWrO4 (.flv format)
195B	W4UW2CBWrO4 (MPEG-1 format)
196A	jlwMQBzfm4 (.flv format)
196B	jlwMQBzfm4 (MPEG-1 format)
197A	cGrnebuquSk (.flv format)
197B	cGrnebuquSk (MPEG-1 format)
198A	HPB9tq7f_1k (.flv format)
198B	HPB9tq7f_1k (MPEG-1 format)

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I certify under penalty of perjury that the foregoing is true and correct.

Dated: New York, NY  
June 14, 2010



Andrew H. Schapiro



**Schapiro Exhibit 5**

---

From: "Kim, Clara" <Clara.Kim@mtvstaff.com>  
Date: Tue, 10 Oct 2006 14:00:49 -0400  
To: "Hallie, Michelena" <Michelena.Hallie@mtvn.com>, "Cheeks, George"  
<George.Cheeks@mtvstaff.com>, "West, Joella" <Joella.West@comedycentral.com>  
Cc: "Shapiro, Andra" <Andra.Shapiro@mtvstaff.com>, "Farrell, Steve"  
<Steve.Farrell@spiketv.com>, "Weinstein, Caleb" <Caleb.Weinstein@mtvn.com>, "Spina, Dario" <Dario.Spina@spiketv.com>  
Subject: Re: Youtube Bay Tsp Initial Analysis

Yes- as I said on the all hands call re: filtering week before last, Spike provides Youtube with clips to promote various network initiatives. Youtube is a powerful marketing platform that most networks are using for promotion. As far as I know, there is no formal agreement with youtube concerning the promotional clips, so we really need to reach out to our marketing/online people.

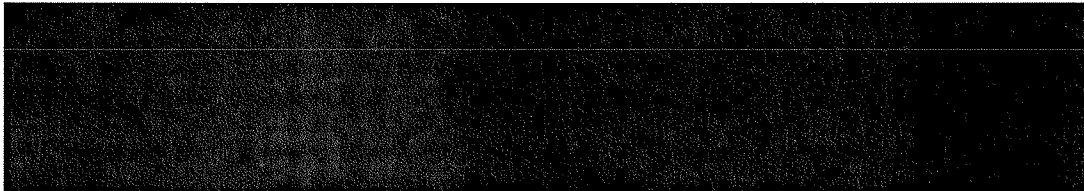
Steve + Dario, Do we have a list of the clips we've given youtube? Can one be prepared?

CLARA

-----  
Sent from my BlackBerry Wireless Handheld

-----Original Message-----

From: Hallie, Michelena  
To: Cheeks, George; Kim, Clara; West, Joella  
CC: Shapiro, Andra  
Sent: Tue Oct 10 11:38:03 2006  
Subject: RE: Youtube Bay Tsp Initial Analysis



-----Original Message-----

From: Cheeks, George  
Sent: Tuesday, October 10, 2006 11:24 AM  
To: Hallie, Michelena; Kim, Clara; West, Joella  
Cc: Shapiro, Andra  
Subject: RE: Youtube Bay Tsp Initial Analysis

I spoke to the VH1 senior management team yesterday and they told me there are A LOT of clips they have seeded to you tube.



-----Original Message-----

From: Hallie, Michelena  
Sent: Tuesday, October 10, 2006 11:03 AM  
To: Cheeks, George; Kim, Clara; West, Joella  
Cc: Shapiro, Andra  
Subject: Fw: Youtube Bay Tsp Initial Analysis

Hi guys. Any info on programs we've licensed to youtube? Thanks.

---

-----Original Message-----

From: Hallie, Michelena  
To: Cheeks, George; Kim, Clara; Shapiro, Andra; West, Joella  
CC: Matthews, Beth; Sussman, David  
Sent: Mon Oct 09 09:20:08 2006  
Subject: FW: Youtube Bay Tsp Initial Analysis

[REDACTED] we need to identify any uploads of MTVN content onto youtube which we have authorized. It is my understanding that several such deals have been struck most probably through channel marketing and development groups. Please check within your channels and let us know as soon as possible today whether your group has authorized such postings, and a description of such authorized material.

As always, call with any questions. Michelena

-----Original Message-----

From: Hallie, Michelena  
Sent: Friday, October 06, 2006 7:15 PM  
To: Matthews, Beth; Norman, Christina; Toffler, Van; Zarghami, Cyma; Philips, Brian - CMT; Calderone, Tom; Ascheim, Tom; Herzog, Doug  
Cc: Sussman, David; Bakish, Robert; Fricklas, Michael; Cheeks, George; Kim, Clara; Shapiro, Andra; West, Joella; Browning, Nicole - MTVN; Ashendorf, Sandy - MTVN; Witt, Jason; Cahan, Adam; Cucci, John; Wolf, Michael; Simon, Joe; McGrath, Judy; Harrison, Blair - iFilm; Weinstein, Caleb; Kirshbaum Levy, Sarah; Eigendorff, Rich; Hurvitz, Lauren  
Subject: Re: Youtube Bay Tsp Initial Analysis

[REDACTED]

-----Original Message-----

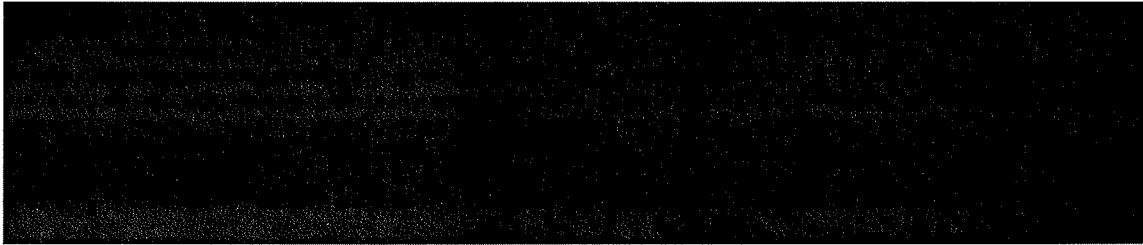
From: Matthews, Beth  
To: Norman, Christina; Toffler, Van; Zarghami, Cyma; Philips, Brian - CMT; Calderone, Tom; Ascheim, Tom; Herzog, Doug  
CC: Hallie, Michelena; Sussman, David; Bakish, Robert; Fricklas, Michael; Cheeks, George; Kim, Clara; Shapiro, Andra; West, Joella; Browning, Nicole - MTVN; Ashendorf, Sandy - MTVN; Witt, Jason; Cahan, Adam; Cucci, John; Wolf, Michael; Simon, Joe; McGrath, Judy; Harrison, Blair - iFilm; Weinstein, Caleb; Kirshbaum Levy, Sarah;

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Eigendorff, Rich; Hurvitz, Lauren  
Sent: Fri Oct 06 17:59:51 2006  
Subject: Youtube Bay Tsp Initial Analysis

ATTORNEY CLIENT PRIVILEGED COMMUNICATION

Hi,



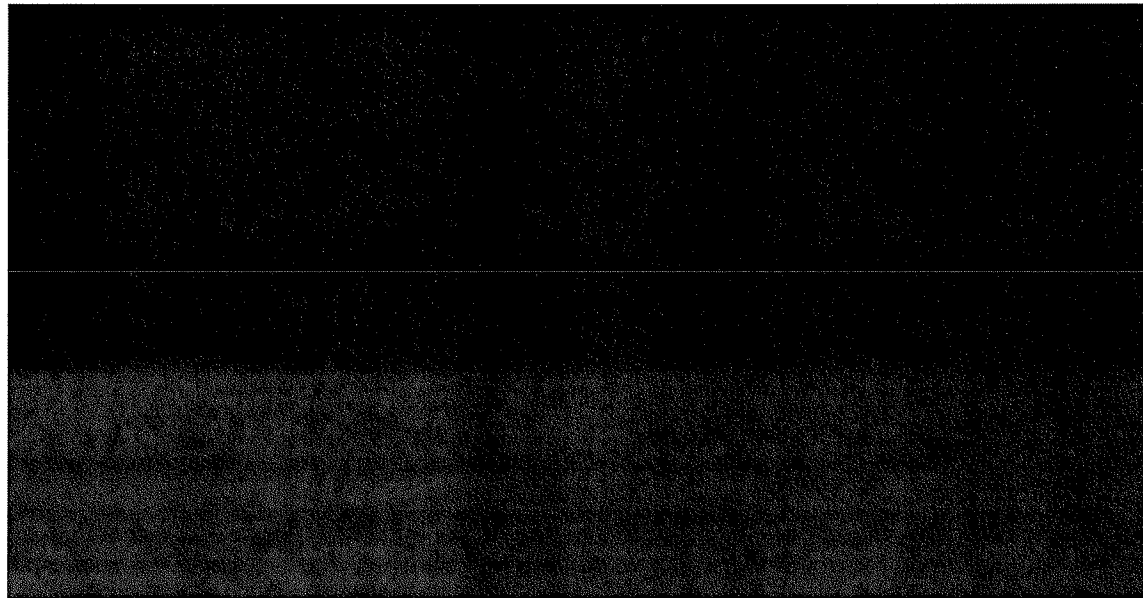
Thanks,

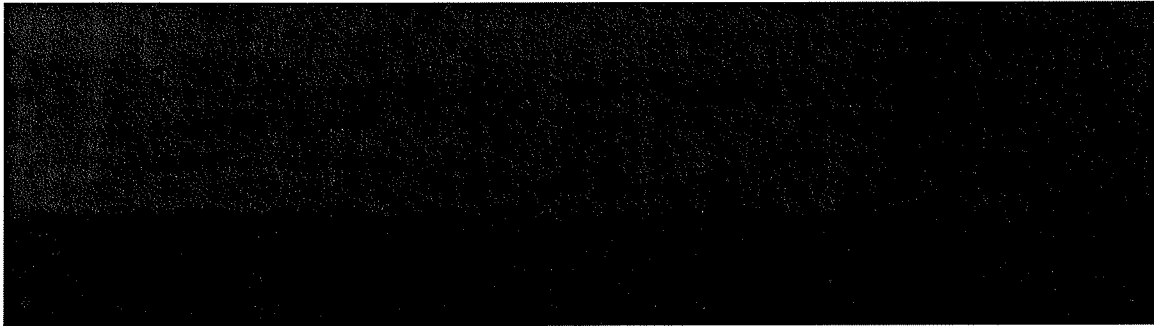
Beth

---

From: Hallie, Michelena  
Sent: Thursday, October 05, 2006 3:59 PM  
To: Ashendorf, Sandy - MTVN; Cheeks, George; Dominguez, Chris - iFilm; Fricklas, Michael; Harrison, Blair - iFilm; Herzog, Doug; Hurvitz, Lauren; Kim, Clara; Matthews, Beth; Moosnick, Heather - MTVN; Shapiro, Andra; Simon, Joe; Sussman, David; Weinstein, Caleb; Wen, Pauline; West, Joella; Williams, Reggie; Wolf, Michael  
Cc: Morales, Cindy; Rodriguez, Roxelana  
Subject: Youtube Bay Tsp Initial Analysis  
Importance: High

PRIVILEGED AND CONFIDENTIAL





And as always, call with any questions/thoughts/ideas.

Michelena Hallie  
Senior Vice President  
Deputy General Counsel, Intellectual Property MTV Networks, Business and Legal Affairs  
1515 Broadway, 34th Floor  
New York, New York 10036



**Schapiro Exhibit 7**

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Subject: Fw: Variety stories:Privileged and Confidential  
From: "Powell, Amy - Paramount" <EX:/O=VIACOM/OU=PARAMOUNT/CN=RECIPIENTS/CN=POWELLAM>  
To: Bordo, Sara - Paramount; Crowell, Megan - Paramount; Tipton, Kristina - Paramount; Warman, Bryan - Paramount; Worsnup, Mickey - Paramount; Wahtera, Megan - Paramount; Hu, Carolyn - Paramount; Simard, Stephanie - Paramount; Springer, Geoffrey - Paramount; Teifeld, Tamar - Paramount; Tipton, Kristina - Paramount  
Cc: Date: Wed, 07 Feb 2007 19:07:41 +0000

-----Original Message-----

From: Perry, Alfred - Paramount  
To: Powell, Amy - Paramount; Arkin, Michael - Paramount  
CC: Martin, Scott - Paramount; Pacacha, Margie - Paramount; 'marki@bayTSP.com' <marki@bayTSP.com>  
Sent: Tue Feb 06 14:56:28 2007  
Subject: FW: Variety stories:Privileged and Confidential

It's official. Please continue to "place" authorized clips on YouTube, but make sure that prior to doing so BayTSP has received the user name/other identifiers necessary to detect and therefore not send notices for the authorized content. Please reach out to those with whom you work and make sure that they have the same understanding on how to proceed.

Thank you.

---

From: Martin, Scott - Paramount  
Sent: Tuesday, February 06, 2007 2:47 PM  
To: Perry, Alfred - Paramount; Morrill, Mark; Hallie, Michelena  
Cc: Prentice, Rebecca - Paramount; Cahan, Adam; Fricklas, Michael  
Subject: RE: Variety stories:Privileged and Confidential

Redacted  
for  
Privilege



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| Scott Martin | Executive Vice-President, Intellectual Property |  
| Paramount Pictures Corporation |  
| 5555 Melrose Avenue | Lubitsch 324 | Hollywood, CA 90038 |  
| ( phone 323.956-5570 | & fax 323.862-0964 |

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From: Perry, Alfred - Paramount  
Sent: Tuesday, February 06, 2007 2:38 PM  
To: Morrill, Mark; Hallie, Michelena; Martin, Scott - Paramount  
Cc: Prentice, Rebecca - Paramount; Cahan, Adam; Fricklas, Michael  
Subject: RE: Variety stories:Privileged and Confidential

Ok, we have the direction from Scott and Rebecca, which I think was discussed with Amy. Thanks, to all.

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From: Morrill, Mark  
Sent: Tuesday, February 06, 2007 2:36 PM  
To: Hallie, Michelaena; Perry, Alfred - Paramount; Martin, Scott - Paramount  
Cc: Prentice, Rebecca - Paramount; Cahan, Adam; Fricklas, Michael  
Subject: RE: Variety stories:Privileged and Confidential

Redacted  
for  
Privilege

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From: Hallie, Michelaena  
Sent: Tuesday, February 06, 2007 4:37 PM  
To: Perry, Alfred - Paramount; Morrill, Mark; Martin, Scott - Paramount  
Cc: Prentice, Rebecca - Paramount  
Subject: RE: Variety stories:Privileged and Confidential

Redacted  
for  
Privilege

As of now, we are posting clips and providing ip addresses to Bay so they know not to take them down.

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From: Perry, Alfred - Paramount  
Sent: Tuesday, February 06, 2007 4:08 PM  
To: Morrill, Mark; Martin, Scott - Paramount; Hallie, Michelaena  
Cc: Prentice, Rebecca - Paramount  
Subject: FW: Variety stories:Privileged and Confidential

Redacted  
for  
Privilege

Thanks.

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From: Powell, Amy - Paramount  
Sent: Tuesday, February 06, 2007 12:56 PM  
To: Anderson, Jon - PPI  
Cc: Heath Tydesley/PP/MP/Paramount\_Pictures@Paramount\_Pictures; Perry, Alfred - Paramount  
Subject: RE: Variety stories

Hi Jon,

Great to see you too. I am cc'ing Al Perry who can give you more information re: the YouTube position.

Thanks.

Amy Powell  
Senior Vice President  
Interactive Marketing  
Paramount Pictures  
5555 Melrose Avenue  
Hollywood, CA 90038

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From: Jon Anderson/PP/MP/Paramount\_Pictures@PARAMOUNT\_PICTURES



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Sent: Monday, February 05, 2007 6:48 AM  
To: Powell, Amy - Paramount  
Cc: Heath Tyldesley/PPI/MP/Paramount\_Pictures@Paramount\_Pictures  
Subject: Fw: Variety stories

Hi Amy,

Good to see you last week.

Below is an article (scan down) on Youtube and Viacom's position.

Can you clarify Paramount's position on dealing with Youtube at a local level - are we able to work with them if we are using our own approved material - or is this a blanket ruling that we should not be dealing with Youtube at all.

Kind regards

Jon

----- Forwarded by Jon Anderson/PPI/MP/Paramount\_Pictures on 05/02/2007 14:45 -----

From: Jaakko Niemela

05/02/2007 08:49

To:

cc:

Subject: Variety stories

'Pursuit' shows Will power overseas

'Happyness' tops 'Museum,' 'Diamond'

By DAVE MCNARY <<http://www.variety.com/index.asp?layout=bio&peopleID=1508>>

Showing the worldwide drawing power of Will Smith, "The Pursuit of Happyness" topped a healthy weekend at the international box office with \$16 million at 3,100 playdates in two dozen markets.

"The Pursuit of Happyness" beat "Night at the Museum" and "Blood Diamond" by more than \$2 million in a three-way battle for the top slot. The race would have been far closer had many Brit chains not banished "Museum" due to Fox's decision to shorten the DVD release window, but "Pursuit" would have likely still won.

The frame also saw "Casino Royale" continue to mint money overseas, thanks mostly to a boffo Chinese launch, while "Dreamgirls" posted a decent Brit launch but stumbled in its German debut.

"Pursuit" prevailed thanks to a combo of solid openings plus respectable holdover perfs as Sony took advantage of Smith's ongoing star power plus his Oscar nom. Best figures came from pic's second-place Spanish launch with \$2.4 million at 286; its Japanese soph sesh of \$2.3 million at 271, down 21%; its French launch of \$2.2 million at 322, losing narrowly to the "Blood Diamond" debut; and its German second weekend with \$1.7 million at 521, off 19%.

"Pursuit" also opened respectably in Mexico with \$1.3 million at 300.

Despite the Brit ban, "Night at the Museum" showed plenty of pop elsewhere with \$13.5 million at 4,500 in 50 markets, led by a socko first-place Italian launch of \$4.7 million at 536 and a solid Spanish soph sesh of \$3.6 million at 481, down 34%.

But Brit biz nearly vanished for "Museum," plunging 87% to \$274,000 at 190 in its sixth weekend as the number of locations -- including many top destinations -- dropped from 458 in the previous frame. "Museum" still managed to hit the \$40 million mark in U.K. grosses, the leading overseas market for a pic that's cumed \$212 million internationally and \$438 million worldwide.

It was the first time in six seshes that "Night at the Museum" didn't top the foreign charts.

Overall biz exceeded the same frame a year ago, when "Munich" led with \$13.3 million.

Warner's "Blood Diamond" continued to turn up solid rather than spectacular overseas returns with \$13.2 million from 3,200 prints in 51 markets, led by its first-place French opening of \$2.5 million at 459.

"Blood Diamond," which opens next weekend in Mexico and Spain, has cumed \$45.5 million offshore and should go well past the \$54 million domestic total.

Sony's sturdy "Casino Royale" generated plenty of B.O. heat in its first six days in China with \$6.9 million at 468, including \$4 million for the weekend as the first James Bond pic ever to play in that market. Weekend launch was the third best for a non-Chinese pic, trailing only those of "The Da Vinci Code" and "Harry Potter and the Goblet of Fire." "Casino" has cumed \$416.8 million overseas and \$582 million worldwide -- No. 34 of all time.

BVI kicked in an impressive launch in Germanic markets for local family comedy "Wild Bunch 4" with \$5.5 million at

700, including \$4.7 million at 600 in Germany, where it easily topped the "Saw III" opening with \$3 million at 439. "Rocky Balboa" continued to punch in decent numbers with \$5.4 million at 2,300 in 21 territories, led by its third Brit frame with \$1.7 million and its French soph sesh of \$1.5 million. The sixth "Rocky" pic has grossed \$47 million overseas and \$116 million worldwide.

With its eight Oscar noms, Paramount's "Dreamgirls" doubled its foreign gross with \$4.7 million at 1,188 in 11 markets, led by a Brit launch of \$2.5 million at 271.

"Babel," with seven Oscar noms, remained an international contributor with \$3.6 million at 1,126 to lift foreign cume to nearly \$59 million.

Fox's Brit launch of "Notes on a Scandal," with Oscar noms for Cate Blanchett and Judi Dench, nearly matched "Dreamgirls" with \$2.3 million at 300 in its first foreign outing. And its "The Last King of Scotland" pulled in \$1.4 million at 378 in 15 markets to push foreign gross to \$8.3 million.

Warner's "The Departed" continued to shake down more foreign coin with \$1.8 million at 1,200 in 31 markets for a foreign cume of \$142.4 million and a worldwide total of \$271 million.

Fox saw "Apocalypto" grab \$3.1 million at 600, led by a South Korean launch of \$1 million at 157, while Warner's "Happy Feet" kicked up \$2.8 million at 2,700 for a foreign total of \$165.2 million. BVI's "Deja Vu" materialized with \$2.5 million at 1,857 to cross the \$100 million foreign mark -- the 11th Jerry Bruckheimer film to hit the milestone for BVI.

## Scorsese wins at DGA Awards

'Departed' director takes Feature Film prize

Martin Scorsese has scored the top feature award from the Directors Guild of America for his work on Warner Bros.' gangster thriller "The Departed."

It was the first victory in seven DGA nominations for Scorsese, who topped Alejandro Gonzalez Inarritu for "Babel," Bill Condon for "Dreamgirls," Jonathan Dayton and Valerie Faris for "Little Miss Sunshine" and Stephen Frears for "The Queen."

"I just wanted to make a good film and people would go see it and enjoy the film and God willing I'd get another picture and that's it," Scorsese told the audience of about 1,000 at the Century Plaza Hotel. "I did not think I'd be standing here tonight, I'll tel you that."

The award, presented by Steven Spielberg on Saturday night in ceremonies at the Century Plaza Hotel, places Scorsese as a front-runner for the Best Director Oscar. The DGA winner, based on voting by 13,400 Guild members, has matched the Oscar winner in 52 of its 58 awards, including last year when Ang Lee won both for "Brokeback Mountain."

In his acceptance speech, Scorsese paid tribute to genre film directors such as Don Seigel, Samuel Fuller, Anthony Mann and Robert Aldrich. And he noted that the grosses were especially strong in such organized crime centers as Las Vegas and Boca Raton, Fla.

Scorsese now faces Frears and Inarritu for the Oscar along with Clint Eastwood for "Letters From Iwo Jima" and Paul Greengrass for "United 93." It's his sixth Oscar directing nomination along with "Raging Bull," "The Last Temptation of Christ," "Good Fellas" "Gangs of New York" and "The Aviator."

"The Departed" has taken in the highest gross among the nominated films with \$127 million domestically and nearly \$270 million worldwide. Scorsese won the Golden Globe for Best director three weeks ago; since then, "Little Miss Sunshine" won both the top feature film awards from the PGA and SAG.

Scorsese's previous DGA nominations were for "The Aviator," "Gangs of New York," "The Age of Innocence," "Goodfellas," "Raging Bull" and "Taxi Driver." He won the DGA's Lifetime Achievement Award in 2003.

Richard Shepard won the DGA trophy for comedy series for ABC's pilot of "Ugly Betty" and Jon Cassar won the drama series award for Fox's "24." Rob Marshall took the musical variety award for NBC's "Tony Bennett: An American Classic" and Walter Hill won for TV movies for AMC's "Broken Trail."

Marshall won the DGA feature award four years ago for "Chicago" while Hill won the drama award two years ago for the "Deadwood pilot."

Lithuanian filmmaker Arunas Matelis won for feature documentary award for "Before Flying Back to the Earth," centered on children hospitalized with leukemia, topping Oscar nominees, "Deliver Us From Evil" and "Iraq in Fragments."

## YouTube to remove Viacom clips

Conglom wants over 100K videos taken down

By BEN FRITZ <<http://www.variety.com/index.asp?layout=bi&peopleID=1372>>

The simmering tension between Hollywood and the new Google/YouTube combination exploded on Friday as Viacom demanded that the viral video giant take down every single clip of its copyrighted content after talks about a

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revenue sharing and distribution deal between the two companies broke down.

YouTube said it will comply with the request, though it will likely be a long process as Viacom identified more than 100,000 clips from MTV, Comedy Central, BET, Paramount, and its other properties.

After more than a year of tolerating huge amounts of its content being illegally uploaded onto the site, Viacom is now issuing the massive legal takedown notice in an attempt to pressure Google and YouTube to bend its way in negotiations. Thus far, companies have been unable to reach terms on a formula to give Viacom a portion of the advertising money generated by its clips.

Conglom also expressed frustration that YouTube has not yet fully implemented a long-promised content identification system that would allow it to identify and automatically delete copyrighted clips, or let media partners share in the revenue from ads around the content they own, regardless of who posted it.

Viacom apparently concluded that private talks wouldn't go its way and took the dispute public, issuing a hostile public statement saying that Google and YouTube are "unwilling to come to a fair market agreement that would make Viacom content available to YouTube users."

While no other congloms are currently joining Viacom, all are in some stage of active negotiations with YouTube and many are also believed to be frustrated by their inability to reach a deal.

All are hoping to get a big payout from YouTube's new owner, Google, which bought the website for \$1.65 billion last fall. Search giant ended 2006 with nearly \$4 billion cash and has a market cap of close to \$150 billion.

In the meantime, however, all are passively allowing YouTube to keep up many clips of their content. By not issuing takedown notices, as Viacom did, they're demonstrating they think the video site has some promotional value, or that they don't want to alienate its users.

Viacom previously had the same strategy. Even in October, when it asked the Netco to take down only about 10,000 of the longest clips of its shows, it allowed tens of thousands of shorter ones to stay online.

News Corp., which has its own Web properties like MySpace and isn't as dependent on YouTube to distribute its content online, also hasn't been getting along well with the video site recently. Last week it demanded that YouTube not only take down episodes of "24" and "The Simpsons," but identify the users who uploaded them.

If other traditional media companies aren't able to find common ground to forge an agreement with Google and YouTube, then there will likely be more public disputes and takedown requests.

In a worse case scenario, there could potentially be copyright infringement lawsuits, like those Universal Music already filed against video websites Grouper and Bolt.com.

"With the News Corp. issue and now this, you're seeing the first sparks of something that could ignite in the future," IDC research manager Rachel Happe said.

Several big media congloms have also been talking about launching a YouTube competitor with all of their content pooled together. But insiders say that while the talks aren't dead, it's unlikely there will be an agreement anytime soon.

CBS is the only network to have pacted with YouTube, along with record labels Universal, Warner, and Sony BMG. However, all four agreements, reached in the fall, included YouTube rolling out the content identification system as a key provision.

Though it was promised by the end of last year, YouTube is still working on deploying it.

"Content identification architecture is not one single component, but rather a collection of tools for our partners, some of which are already in use," YouTube co-founder Chad Hurley told Daily Variety in a statement. "We will continue to evolve these tools and roll out additional components over time."

Big media execs have been increasingly friendly toward websites that are earning money off their content, recognizing that ignoring or attacking them could alienate young consumers.

In fact, Viacom itself even pacted with Google Video last summer for a test of an ad-supported video syndication service.

But it was clear that the seas between Hollywood and Silicon Valley may be getting choppy again in the two companies' public statements issued on Friday.

"Filtering tools promised repeatedly by YouTube and Google have not been put in place, and they continue to host and stream vast amounts of unauthorized video," Sumner Redstone-led conglomerate said. "YouTube and Google retain all of the revenue generated from this practice, without extending fair compensation to the people who have expended all of the effort and cost to create it."

By the afternoon, YouTube shot back that "It's unfortunate that Viacom will no longer be able to benefit from YouTube's passionate audience which has helped to promote many of Viacom's shows."

Conglomerate noted that it has a broad array of Web properties that feature its content. However, none match the availability and ease-of-use of YouTube.

MTV-owned iFilm, for instance, legally posts full episodes of shows like "The Colbert Report" and "Laguna Beach," but doesn't have nearly as many clips. In addition, YouTube users often cut up episodes to show only the exact

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moments that are most popular.

# Schapiro Exhibit 8

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Subject: Re: Full eps on YouTube  
From: "Exarhos, Tina" <EX:/O=VIACOM/OU=MTVUSA/CN=RECIPIENTS/CN=EXAROST  
>  
To: Burrell, Damon  
Cc: Date: Fri, 06 Oct 2006 23:09:51 +0000

Just that?

-----Original Message-----

From: Burrell, Damon  
To: Exarhos, Tina  
Sent: Fri Oct 06 19:09:33 2006  
Subject: Full eps on YouTube

According to Todd's email he DID submit a full episode to YouTube.

-----  
Sent from my BlackBerry Wireless Handheld

-----Original Message-----

From: Apmann, Todd  
To: Exarhos, Tina; Armenia, Joe; Burrell, Damon  
Sent: Thu Oct 05 10:49:14 2006  
Subject: RE: TV WEEK INFORMATION: ASAP

A few highlights--let me know if you want more on the viral marketing side (including a couple quick points for Q1 '07 shows). I'm sure Joe and Damon will have more to add and we can chat further...

#### 2-A-DAYS

- Premiere Episode on MSN
- Premiere Episode on UGC sites: [www.ifilm.com](http://www.ifilm.com), [www.youtube.com](http://www.youtube.com), [www.dailym.com](http://www.dailym.com) <<http://www.dailym.com>> [www.dailymotion.com](http://www.dailymotion.com), [www.vsocial.com](http://www.vsocial.com), [www.imeem.com](http://www.imeem.com)
- Partnership with high school football focused site: [www.maxpreps.com](http://www.maxpreps.com)

#### DUELS

- Premiere Episode on MSN
- Clip from of Beth & Tina right before punch being leaked to UGC sites as well as RW, RR and Challenges fan communities
- Beth Reel may live as podcast in iTunes

#### LAGUNA BEACH

- Virtual Laguna Beach
- Work with Record Labels to provide tune-in info on artist websites who's music appears in the show, including Dashboard Confessional communities for last night's Chris Carrabba guest music supervised episode

#### ROB & BIG

- Premiere episode on iTunes + weekly episode availability for purchase
- Street Skater Video Game Where you Can Play as Rob
- Potential Xfire.com game competition between Rob, Big and fans
- Tapping skater culture online with autographed skate deck giveaways, media buys and more.

#### 24/7

- Helio Mobile Integration
- Premiere episode on Yahoo + iTunes, then weekly sales on iTunes.
- Work with Record Labels to provide tune-in info on artist websites who's music appears in the show

- 
- Possible playlists for music in each show on URGE, iTunes and other music download sites.
  - Cast podcasts about each show & LA life in general

## ADVENTURES IN HOLLYHOOD (3-6 MAFIA)

- Will work heavily with Columbia Records to leverage their assets and promote to 3-6 fan base.
- Also tap hip hop communities, websites as well as lifestyle and music communities

## HUMAN GIANT

- Love the idea from the 360 brainstorm about having all show content live online in various places prior to premiere. Not sure if we wanna talk about that or save it for closer to show premiere.

## YO MOMMA

- Wilmer-ism clips and Weekly show clips on various UGC, lifestyle and comedy sites
- Online street teams tapping various communities and passing around show assets.

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From: Exarhos, Tina  
Sent: Wednesday, October 04, 2006 8:52 PM  
To: Burrell, Damon; Armenia, Joe; Apmann, Todd  
Subject: FW: TV WEEK INFORMATION: ASAP

Let's talk about this in the am.

---

From: DeBenedittis, Paul A. - Programming  
Sent: Wed 10/4/2006 7:57 PM  
To: Burrell, Damon; Exarhos, Tina; Urbont, Ariana; Levy, Joanne; DeGooyer, Paul; Scogin, Michael; Zola, Daniel; Helms, Colin  
Subject: TV WEEK INFORMATION: ASAP

Ariana & I are helping pull together some info for Brian's TV WEEK Interview tomorrow. There will be much emphasis on our success with content across multiple platforms... so a great chance for us to shine here.

Can you provide some quick points on the latest portal deals...including viral efforts. Please provide the marketing elements we received as well as some stats.

## SERIES TO INCLUDE:

- \* 2-A-DAYS
- \* DUELS
- \* LAGUNA BEACH
- \* ROB & BIG
- \* 24/7
- \* ADVENTURES IN HOLLYHOOD (3-6 MAFIA)
- \* HUMAN GIANT
- \* YO MOMMA

I recognize that many of the new series are too far into the future to have specifics.

Happy to broaden this out a little further so feel free to include anything that you think is a great example... should be within the past 3-8 mths.

**Schapiro Exhibit 9**



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Subject: YouTube.com  
From: Lam, Cuong <EX:/O=VIACOM/OU=MTVUSA/CN=RECIPIENTS/CN=USER  
ACCOUNTS/CN=USER/CN=LAMC>  
To: Preston, Lisa  
Cc: Date: Fri, 10 Mar 2006 22:11:32 +0000

Lisa:

Spoke with Jeff and we are both going to submit clips to YouTube.com - him through his personal account so it seems like a users of the site and me through "mtv2." We'll cover the site this way until we have further contact with YouTube.com.

Thanks,  
Cuong.

**Schapiro Exhibit 11**

From: Liza Patriana Sent: 9/19/2007 8:55 PM  
To: [-] employees  
Cc: [-]  
Bcc: [-]  
Subject: Marketing Meeting Notes: September 19, 2007

Hello everyone,

Here are the notes from today's marketing meeting. Please let me know if you have any questions.

Thanks!

Liza

## Marketing Meeting Minutes

September 19, 2007

### New Projects (Taylor, Kahner):

- \* Honda Battle of the Bands (9/24 – 10/29)
- \* Event happens in GA every January. Never been a DVD in the past but there has been such a high demand in the past. This DVD has footage from January 2006 event.
- \* Client's goal to sell 30,000 DVDs.
- \* Working in conjunction with Flowers Communications (w/ Ron Childs).
- \* Campaign components: Online publicity, Promotions, and Grassroots

### Coming Up (Kahner):

- \* Ignited/Bleach (10/1 – 10/31)
  - > Video game. Also on Adult Swim. Anime.
  - > Video game release date: October 9th
  - > 4 weeks of grassroots. Also a Dedicated Email slated to be sent on October 9th (game release day)
- \* NBC/Talent Scout (TBD) - more info to come later

Partner Update (Christy, My-lan, Michelle):

Funny Or Die <http://www.funnyordie.com/> (Christy)

- \* Traffic: 775k (NetRatings), 1.8 million (Quantcast), 500k (Compete)
- \* Video upload site. Will Ferrell is co-owner. Infamous for Landlord Pearl video.
- \* Celebrities and comedies upload their videos to site. Now site wants more access to musicians and this is where we come in.
- \* Will write skits, film, edit, and produce everything. We just need to bring the artist to them
- \* Coming Up: MTV, Fall Out Boy

--> will be the first one from us. Premise = fake press release where they will only ask questions about Ashlee Simpson. Will also have MTV tie-in. Rap Superstars interview FOB asking them what it's like growing up in the 'hood.

- \* Early pitch to Bon Jovi. Premise = Jon Bon Jovi walks around reciting lyrics to his songs.
- \* They will allow us to do any promotion as long as there is a celebrity tie-in. Ex. Will not do Jig-A-Loo promo sans celebrity factor
- \* Please come to Christy if you have artists/clients in mind for this partnership

XXL Magazine <http://www.xxlmag.com/> (Ben)

- \* Traffic: 102k (NetRatings), 326k (Quantcast), 190k (Compete)
- \* New contest partner . Will be working our Vegoose promotion. Rotating contest on their front page. Contest went live this morning
- \* Hip-hop audience. Male leaning demographic.
- \* Better than Source or Vibe magazines
- \* They have a new marketing director who is great.

Snorg Tee's <http://www.snorgtees.com/> (Michelle)

- \* Traffic: 200k (NetRatings), 240k (Quantcast), 175k (Compete)
- \* T-shirt company. Somewhat similar to Threadless. Their shirts are the ones with weird slogans/phrases from movies, television, and popular culture.
- \* Early discussions . They have never done promotions or anything new before so they are a bit nervous. They haven't really known what to do with site since it has blown up.
- \* Company started by 4 guys right out of college 4 years ago. Site is very basic. Lots of potential for us to do promo.
- \* They have a newsletter (no stats on this yet) but it is pretty bland. Lots of room for us to work with this newsletter, too.
- \* Demographic = college student
- \* Pitched The Honorary Title. More pitches to come. Please speak to Michelle if you have any ideas

Publicity Update (My-lan):

MTV Leak: Celebrity Rap Superstar

- \* Perez Hilton threw a temper tantrum and MTV wanted the world to know about it
- \* "Leaked" video clip uploaded to IFILM and YouTube

--> covert operation. Noone can know that Fanscape or MTV is involved in this.

--> My-lan emailed gossip blogs with fake email address (gossipgirl40).