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**Via ECF**

Catherine O'Hagan Wolfe, Clerk of Court  
United States Court of Appeals for the Second Circuit  
Thurgood Marshall U.S. Courthouse  
40 Foley Square  
New York, NY 10007

Re: *The Football Ass'n Premier League et al. v. YouTube, Inc. et al.*, No. 10-3342

Dear Ms. Wolfe:

*UMG Recordings, Inc. v. Shelter Capital Partners LLC*, 09-55902 (9<sup>th</sup> Cir. Dec. 20, 2011) (“*Veoh*”) in fact confirms the error in granting YouTube a safe harbor on summary judgment on the very different record here.

The class plaintiffs relied on not general awareness of the possibility of infringement but an extensive showing of highly specific knowledge, disregard of bright red flags, and willful blindness, as well as extraordinary internal emails referring to plaintiffs by name (and the wealth to be obtained from using their works); studies of the popularity of plaintiffs' works on YouTube; and YouTube's tracking of works known to be unlicensed, enabling it to pinpoint advertising to plaintiffs' works despite extensive knowledge of infringement, including from thousands of takedown notices sent by plaintiffs. *Compare* Class Br. 9-23 with *Veoh* slip op. 21067, 21081, 21084-88 (UMG had not sent any takedown notices, and there was no evidence of willful blindness).

*Veoh* did not confront anything like YouTube's inadequate removal of plaintiffs' copyrighted content known or believed infringing. *Compare* *Veoh* slip op. 21072, n.5 with Class Reply 8-15.

The record here also shows extensive third-party communications affording the knowledge held lacking in *Veoh*. *Compare* *Veoh* slip op. 21087-88 with Class Br. 14, 20-24 and Class Reply 9-11, 14-15. The Ninth Circuit did not suggest that defendants can disregard knowledge and awareness of infringing activities until they receive a takedown notice or decline to use existing tools to avoid repeat infringements of materials repeatedly subject to takedown notices – or that they are relieved from doing so by 17 U.S.C. §512(m).



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The Ninth Circuit's holding concerning benefit and control contradicts this Court's cases and the unambiguous statutory text and legislative history, and in any event the record here reflects an extensive ability to control at upload and thereafter, through the use of tools already used (although only to gain more eyeballs, not to assist in a joint effort to reduce infringement). *See* Class Br. 20-24, Reply 24-31.

Finally, YouTube violates the "storage" limitation of §512(c) because its syndication activities do not colorably fit within the safe harbor. Post-Hearing Br. 7-10.

Very truly yours,

A handwritten signature in black ink that reads "Charles S. Sims". The signature is written in a cursive, flowing style.

Charles S. Sims