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Attorneys for Plaintiff
Perfect 10, Inc.

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

PERFECT 10, INC., a California corporation,

Plaintiff,

v.

GOOGLE, INC., a corporation; and
DOES 1 through 100, inclusive,

Defendants.

MASTER FILE NO. CV04-9484 AHM (SHX)

~~(PROPOSED)~~ ORDER RE PERFECT 10'S
MOTION TO COMPEL DEFENDANT
GOOGLE, INC. TO PRODUCE
DOCUMENTS AND TO ANSWER
INTERROGATORIES

(SET NO. ONE)

Date: February 21, 2006
Time: 10 A.M.
Place: Courtroom of Judge Hillman

AND CONSOLIDATED CASE

DOCKETED ON CM
MAY 22 2006
BY [Signature] 046

163

INTRODUCTORY STATEMENT

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Perfect 10, Inc. and Google Inc. submit this proposed order regarding Perfect 10's Motion to Compel Production of Documents and Responses to Interrogatories. Although the parties have attempted to agree on all provisions of this order, they have been unable to agree as to what the Court ordered with respect to Perfect 10's Document Requests Nos. 47 and 48. Accordingly, for these two requests, the parties have set forth below their respective understanding of what the Court ordered and respectfully request that the Court clarify its ruling as to these requests.

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PROPOSED ORDER

Plaintiff Perfect 10 Inc.'s Motion to Compel Defendant Google Inc., to produce Documents (Set No. One) and to Answer Interrogatories (Set No. One) propounded to Defendant Google, Inc., came on regularly for hearing at the above noted time and place, the Honorable Stephen J. Hillman presiding. Jeffrey N. Mausner, Esq., of Berman Mausner & Resser, appeared on behalf of Plaintiff Perfect 10, Inc. ("Perfect 10"). Jennifer A. Golinveaux, Esq., Andrew P. Bridges, Esq., and Susan E. Lee, Esq., of Winston & Strawn, appeared on behalf of Defendant Google, Inc.

Upon consideration of all papers and records on file and the parties' oral argument, the Court orders as follows:

ORDERS RE PERFECT 10'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS

Document Requests 1, 2, 3, 4, 5, 6, 7, 8, 12, 13, 30, 51, 55, 56, 57, 58, 59, 60, 61, 65, 66, 67, 68, 69, 70, 71, 74, 75.

Google has agreed to produce non-privileged responsive documents for the following document requests of Perfect 10, either as originally propounded, or as modified as set forth herein: 1, 2, 3, 4, 5, 6, 7, 8, 12, 13, 30, 51, 55 (subject to the limitation set forth in Google's written response), 56, 57, 58, 59 (limited to the United

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1 States), 60 (subject to the limitation set forth in Google's written response), 61, 65, 66,
2 67, 68 (relating to Google's Web Search and Image Search services, and Google's
3 advertising programs), 69 (relating to Google's Web Search and Image Search services,
4 and Google's advertising programs), 70 (relating to Google's Web Search and Image
5 Search services, and Google's advertising programs), 71, 74, 75. The Court ordered that
6 these documents are to be produced by Google by April 15, 2006.

7 **Document Requests Nos. 9, 10, 11, 15, 24, 25, 35, 39, 40, 41, 43, 44, 45, 46, 52**

8 The Court defers ruling on Perfect 10's Requests for Production of
9 Documents Nos. 9, 10, 11, 15, 24, 25, 35, 39, 40, 41, 43, 44, 45, 46, 52 at this time.

10 **Document Request No. 28**

11 Google is ordered to produce all documents in response to Perfect 10's
12 Request For Production of Documents No. 28 (as modified): "All notices of
13 termination sent by GOOGLE to any ENTITY as a result of complaints from
14 Perfect 10." The documents shall be produced by April 15, 2006.

15 **Document Request No.72 (as modified)**

16 Google has agreed to produce all documents in response to Perfect 10's
17 Request For Production of Documents No. 72 (as modified): "Documents sufficient
18 to describe how an image is 'extracted' as alleged in Paragraph 18 of the
19 Counterclaim". The Court ordered that these documents shall be produced by April
20 15, 2006.

21 **Document Request No.73 (as modified)**

22 Google is ordered to produce all documents in response to Perfect 10's
23 Request For Production of Documents No. 73 (as modified): "DOCUMENTS
24 sufficient to establish Google's allegations in Paragraph 58 of the Counterclaim."
25 These documents shall be produced by April 15, 2006.

26 **Document Request No. 77 (as modified)**

27 Google is ordered to produce all documents in response to Perfect 10's Request For
28 Production of Documents No. 77 (as modified): "All DOCUMENTS that evidence,

1 contradict, refer to, or relate to YOUR contention in Paragraph 50 of your cross-
2 complaint that Perfect 10 refused to take steps to assist GOOGLE in more
3 expeditious handling of Perfect 10's notices." These documents shall be produced
4 by April 15, 2006.

5 **Document Request No. 22 (as modified)**

6 Subject to the limitations set forth in its written responses, Google has agreed
7 to produce the following documents in response to Perfect 10's Request For
8 Production of Documents No. 22 (as modified): "All DOCUMENTS that refer to or
9 reflect the suppression of any of the URLs listed in Exhibit 4 from appearing in Google
10 Image and Web Search results." (Exhibit 4 is attached to the Revised Document
11 Requests.) The Court ordered that these documents shall be produced by April 15,
12 2006.

13 **Document Request No. 23 (as modified)**

14 Subject to the limitations set forth in its written responses, Google has
15 agreed to produce the following documents in response to Perfect 10's Request For
16 Production of Documents No. 23 (as modified): "DOCUMENTS sufficient to
17 IDENTIFY all URLs DISABLED by GOOGLE as a result of notices sent by Perfect
18 10." The Court ordered that these documents shall be produced by April 15, 2006.

19 **Document Request No. 14 (as modified)**

20 Google is ordered to produce all documents in response to Perfect 10's
21 Request for Production of Documents No. 14, modified as follows: "Google's
22 minutes of board of director and other executive committee meetings that refer to,
23 relate to or mention copyright infringement, misappropriation of rights, or
24 trademark infringement in connection with adult content, from the formation of
25 Google to the present." These documents shall be produced by April 15, 2006.

26 **Document Request No. 16 (as modified)**

27 Google has agreed to produce all documents in response to Perfect 10's
28 Request for Production of Documents No. 16, modified as follows: "Google's

1 minutes of Board of Director and/or other executive committee meetings that refer
2 to, relate to or mention Perfect 10.” The Court ordered that these documents shall be
3 produced by April 15, 2006.

4 **Document Request No. 17 (as modified)**

5 Google is ordered to produce all documents in response to Perfect 10’s
6 Request for Production of Documents No. 17, modified as follows: “All
7 DOCUMENTS that constitute or embody communications between or among employees
8 of GOOGLE that refer to or relate to GOOGLE’S potential liability for copyright
9 infringement, misappropriation of rights of publicity or trademark infringement in
10 connection with adult content, from the formation of Google to the present.” The
11 presumptive deadline for production is April 15, 2006.

12 **Document Requests Nos. 18, 19, 20, and 21**

13 The Court took Perfect 10’s Motion to Compel Document Requests Nos. 18,
14 19, 20, and 21 under submission.

15 **Document Requests Nos. 26 and 27 (as modified)**

16 Google is ordered to produce all documents in response to Perfect 10’s
17 Request for Production of Documents Nos. 26 and 27, which are now combined
18 and modified into one Request as follows: “All notices of termination issued by
19 Google as a result of alleged intellectual property violations.” The Court sets April 15,
20 2006 as a target date for production.

21 **Document Request No. 29 (as modified)**

22 Google is ordered to produce all documents in response to Perfect 10’s
23 Request for Production of Documents No. 29, modified as follows: All documents
24 that relate to, constitute or embody communications between Google and the owners
25 of the following websites, to the extent that ownership information is reflected in
26 Google’s records:

27 000celebs.com.ar, 1024x768wallpapers.com, 21stars.net, abc-celebs.com,
28 aclasscelebs.com, adoredcelebrities.com, adult.backwash.com, alibabaweb.com, all-nude-

1 celebrities-free.com, annasayfa.host.sk, antoninoc.net, averlo.com, babefocus.com,
big.clarence.com, Britney-spears-nudes.net, bukuroshe.parajsa.com, celeb guru.com,
2 celebrities.nice.ru, celebrityarchive.de, celebritybattles.com, celebritypictures.com,
celebritypicturesarchive.com, celebsdb.com, celebstation.org, chez.com, cubic2003.free-
3 sex.cz, desktopgirls.ru, e-celeb.by.ru, eracle.it, extremefakecelebs.com, family-incest-
sex.net, famouspeoplepics.com, fotochicas.com, fotomodellefamose.com, free-nude-and-
4 naked-celebs-fakes.com, gossip.babeleweb.net, greh.ru, gwool.com, home.tiscali.be,
home-2.worldonline.nl, icycelebs.com, incest-search.com, index.hr, indexedivx.com, i-
5 sd.com, Jennifer-anniston-naked.com, jerkengine.com, lairofluxlucre.com,
kobiety.website.pl, mapage.noos.fr, eros.externet.hu, megapolis.com.ar, miss.mgn.ru,
6 modellemania.net, monitor.hr, nejcpass.com, nude-celebrity.net, mg.danboss.com,
minovia.com, moono.com, ottoperuna.altervista.org, paparazzi-nude.com,
7 perfectpeople.net, photoglamour.it, pix.alronix.net, platinum-celebs.com,
playboy.fason.ru, pornosaur.com, postalesmix.com, promethyl.org, ragazzesexy.tv, rape-
8 videos.us, rate-celebs.com, realcelebs4u.com, robbscelebs.co.uk, russiancelebrities.org,
russiancelebrities.net, spacesurfer.com, stofffr.com, superbabes.nl, thecelebzone.com,
9 topesexy.net, trillianfakes.com, vamp.dk, wallpapery.net, wscan.org.

10 These documents shall be produced by April 15, 2006.

11 **Document Requests Nos. 31, 32, 33 and 34**

12 With respect to Perfect 10's Document Requests 31, 32, 33 and 34, the
13 parties are ordered to continue to meet and confer in order to identify current and
14 former employees of Google in connection with these requests.

15 **Document Request No. 37**

16 The Court orders Google to produce the following documents in response
17 to Perfect 10's Document Request No. 37: "Any indemnification agreements
18 between GOOGLE and Amazon." These documents shall be produced by April 15,
19 2006. The Court reserves ruling on the remainder of the documents requested by
20 Perfect 10 in Document Request No. 37.

21 **Document Request No. 38**

22 The Court orders Google to produce the following documents in response
23 to Perfect 10's Document Request No. 38: "All contracts between GOOGLE and
24 Amazon for provision of search services." These documents shall be produced by
25 April 15, 2006. The Court reserves ruling on the remainder of the documents
26 requested by Perfect 10 in Document Request No. 37.

27 **Document Request No. 42**

28 The Court defers ruling on Perfect 10's Document Request No. 42.

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1 Nevertheless, the Court requests that Google assist Perfect 10 in finding out, on a
2 real time basis, what is currently stored on Google's servers for three of the
3 following websites: czeckmate.hpg.ig.com.br, animald.com, celebs-online.com,
4 freehostempire.com, web1000.com, celebclub.com, celebsxposed.com, eroticcountry.com,
5 celebritypictures.com, movieman.com, erotichomepages.com, femcelebs.wo.to, boom.ru,
6 perso.respublica.fr, tomsk.ru, sex.erotism.com, spika-presents.com, ultimate-celebs.com,
7 and xoom.it.

8 **Document Request Nos. 47 and 48**

9 Having been unable to agree as to precisely what the Court ordered
10 regarding Document Request Nos. 47 and 48, the parties set forth below their
11 respective understandings of the Court's order. For the Court's convenience, the full
12 transcript of the February 21-22 discovery hearings is attached to the Proposed
13 Order re Google's Motion to Compel Production of Documents and Responses to
14 Interrogatories as Exhibit A.

15 **Perfect 10's version re Document Request Nos. 47 and 48:**

16 The Court orders Google to produce the following documents: Any internal
17 reports or documents currently in existence that discuss the amount or percentage of
18 searches on Google Image Search and/or Web Search on any of the following terms:
19 sex, tit, nude, porn, fuck, Lolita, bestiality, bestiality, model, hardcore, anal, intercourse,
20 blowjob, naked, Perfect 10, Playboy, Penthouse, supermodel, orgasm, rape, incest, and
21 Britney Spears, for any period of time from December 31, 2001 to the present. Any such
22 documents shall be produced by April 15, 2006. The Court defers ruling on the
23 remainder of Perfect 10's Document Requests Nos. 47 and 48.

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24 **Google's version re Document Request Nos. 47 and 48:**

25 The Court orders Google to produce the following documents: Internal
26 summary reports currently in existence sufficient to determine the amount or
27 percentage of searches on Google Image Search and Web Search on each of the
28 following terms: sex, tit, nude, porn, fuck, Lolita, bestiality, bestiality, model, hardcore,

ORDEP

1 anal, intercourse, blowjob, naked, Perfect 10, Playboy, Penthouse, supermodel, orgasm,
2 rape, incest, and Britney Spears, for each year ^{and/or} (or for shorter periods of time if ~~annual~~
3 ^{they} reports do not exist), from December 31, 2001 to the present. Any such documents shall
4 be produced by April 15, 2006. The Court defers ruling on the remainder of Perfect
5 10's Document Requests Nos. 47 and 48.

6 Perfect 10's explanation of why the Court should adopt Perfect 10's version:

7 These 2 Document Requests were dealt with at the hearing on February 22, 2006
8 (see February 22, 2006 Transcript, from page 15, line 23 to page 23, line 12, copies of
9 which are attached hereto as Exhibit A). After discussion, at page 21, lines 18-23, the
10 Court invited Mr. Mausner, counsel for Perfect 10, to rephrase the requests. The following
11 rephrasing of the requests was accepted by the Court verbatim, without further argument
12 by either side:

13 Mr. Mausner: "Any internal reports or documents currently in existence that
14 discuss the amount or percentage of searches on any of the following terms."

15 The Court: "Yes. For the dates listed, and I will grant the revised request, and I will
16 not rule on the request as stated at this time. In terms of compliance date, I suppose April
17 15th."

18 Mr. Bridges: "Thank you, Your Honor".
19 (February 22, Transcript, page 23, lines 3-11).

20 Google's proposed version tries to limit the order by rephrasing it to read "internal
21 summary reports" as opposed to what was ordered, "any internal reports or documents."
22 Google may have documents which are not "internal summary reports" which should be
23 produced, as specifically ordered by the Court.

24 Perfect 10 also believes that the Court did not intend the Requests, as rephrased, to
25 limit production by Google to documents or reports only prepared for a yearly period, but
26 intended for Google to produce documents responsive to the rephrased requests, even if
27 the same deal with shorter time periods. Hence, Perfect 10's version includes the
28 wording "for any period of time" from December 31, 2001 to the present. Perfect 10 is

1 concerned that if Google's version is adopted, Google would use it as a pretext to not
2 produce responsive documents, claiming that it only has to produce documents showing
3 the frequency of search terms for full year periods. In other words, if documents existed
4 showing that there were 20 million searches for the term "sex" on one day in 2005,
5 Google could claim that it does not have to produce that document because it does not
6 show how many searches there were for all of 2005 (i.e. "for each year"). Perfect 10
7 believes that the Court's order at the hearing was clear that Google is to produce any
8 existing reports or documents showing the frequency of the listed search terms from
9 December 31, 2001 to the present, whether that document covers a day, a week, or a
10 month during that time period, and that the Court's ruling was not limited to only
11 documents which show the frequency of search terms for an entire year. Perfect 10
12 believes that Google is trying to evade producing documents by phrasing the Order in its
13 way, and refusing to agree to the language Perfect 10 has suggested.

14 The discussion at the hearing concerning Document Requests 47 and 48 is found at
15 pages 18-23 of the February 22, 2006 Transcript, Exhibit A. It is clear that the Court, in
16 stating the documents should be produced "For the dates listed" logically meant any
17 documents covering any period of time from December 31, 2001 to the present, and not
18 only documents covering an entire year period. In fact, counsel for Perfect 10 specifically
19 stated that the documents might reflect search frequency by month, by year, or on a certain
20 day. (February 22, 2006 Transcript, page 18 lines 10-15.)

21 A similar issue concerning time frames came up at the hearing with respect to
22 Interrogatory No. 24. In that discussion (page 29, lines 11-17, February 22 transcript,
23 Exhibit A), the Court stated: "I think what I'm prepared to grant is harmonious with what I
24 did a few minutes ago, which would be to order responses—a response to interrogatory 24
25 to the extent that Google can answer the interrogatory based on currently existing
26 historical reports and *whether they can answer on a yearly basis or a monthly basis*
27 *whatever.*" (Emphasis added.)

28 The same is true for Document Requests 47 and 48, as the Court specifically noted

1 when it said that this was harmonious with what it did a few minutes ago. Hence, Google
2 should be required to produce any existing reports or documents that discuss the amount
3 or percentage of searches on Google Image Search and/or Web Search for any of the listed
4 terms, for any period of time (i.e., a day, week, month, or year, etc.) from December 31,
5 2001 to the present.

6 Google's explanation of why the Court should adopt Google's version:

7 Google's proposed order re document requests 47 and 48 differs from P10's
8 version in two important respects. First, Google's proposed order calls for "[i]nternal
9 *summary reports* currently in existence *sufficient to determine* the amount or
10 percentage of searches on, while P10's version calls for "[a]ny *internal reports or*
11 *documents* currently in existence that discuss the amount or percentage of searches
12 on" the specified terms. **Google's proposed language simply tracks P10's**
13 **requests**, which sought "documents sufficient to determine the percentage" of
14 searches on the specified terms. Moreover, as Google's counsel explained to P10's
15 counsel, the term "internal summary reports" in Google's version as opposed to "any
16 internal reports or documents" in P10's version, is necessary to make clear that the
17 Court deferred the request as a mega request to the extent that it would require
18 Google to mine data from underlying logs or to produce massive underlying logs,
19 which would arguably be called for by P10's proposed language "any internal
20 reports or documents."

21 The second difference is that P10's proposed order calls for documents "for
22 any period of time from December 31, 2001 to the present," while Google's version
23 accurately reflects the Court's order in calling for documents "for each year (or for shorter
24 periods of time if annual reports do not exist), from December 31, 2001 to the present."
25 At the hearing, the Court specifically ordered production of internal reports "for the dates
26 listed" in Plaintiff's document requests 47 and 48 (February 22, 2006 Transcript, page 23
27 line 7, attached hereto as Exhibit A), which called for documents "sufficient to determine
28 the percentage of all searches . . . for each year from December 31, 2001 to the present"

1 and from "2001 to the present," respectively. Moreover, while P10 argues that Google's
2 proposed language is unacceptable because "if documents existed showing that there were
3 20 million searches for the term "sex" on one day in 2005, Google could claim that it does
4 not have to produce that document because it does not show how many searches there
5 were for all of 2005," P10's point is not well taken, because Google's proposed language
6 *specifically calls for* documents "for each year (*or for shorter periods of time if annual*
7 *reports do not exist*) (emphasis added)." Google's proposed language accurately reflects
8 P10's requests and the Court's order, while P10's proposed language does not.

9 **Document Requests Nos. 49 and 50**

10 The Court orders Google to produce a sample contractual agreement for the Book
11 Search Program, with a presumptive deadline of April 15, 2006. The Court denies,
12 without prejudice, Perfect 10's Motion to Compel the remainder of Document Requests
13 Nos. 49 and 50.

14 **Document Request No. 53**

15 The Court orders Google to produce documents responsive to Perfect 10's
16 Document Request number 53 revised as follows: A representative sample of each type
17 of Adwords and Adsense form contracts or agreements used from 2001 to the present.
18 These documents shall be produced by April 15, 2006.

19 **Document Request No. 54**

20 The Court orders Google to produce documents responsive to Perfect 10's
21 Document Request number 54 as follows: "A representative sample of each type of
22 GOOGLE rules, regulations and guidelines relating to content on any Adwords or
23 Adsense websites, from 2001 to the present." These documents shall be produced
24 by April 15, 2006.

25 **Document Request No. 62**

26 Google is ordered to produce all internal documents and/or communications that
27 refer to Perfect 10. Based on that, the Court denies Perfect 10's Motion to Compel
28 with respect to its Document Request No. 62 on the basis that it is redundant.

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ORDERS RE PERFECT 10'S MOTION TO
COMPEL ANSWERS TO INTERROGATORIES

Revised Interrogatories Nos. 25, 26, 27, 28, 30, 31, 32, and 33.

Google has agreed to answer Revised Interrogatories 25, 26, 27, 28, 30, 31, 32, and 33 by April 15, 2006, and the Court so orders.

Revised Interrogatory No. 24

Revised Interrogatory No. 24 states: "Please identify the fifty most frequently used search terms in Google's Web Search in order of use, and the fifty most frequently used search terms in Google's Image Search in order of use, for each of the years 2002 and 2005 and for each such term, state the percentage of all Google Web searches and the percentage of all Google Image searches during each of those years that contained that term." The Court orders Google to provide information in response to Revised Interrogatory No. 24 to the extent that Google can answer based on currently existing historical reports, even if the currently existing reports are for different or partial time periods. Google can respond either in a narrative or by way of document production. Google shall provide such information by April 15, 2006. The Court reserves its ruling on the remainder of Perfect 10's Revised Interrogatory No. 24.

Revised Interrogatory No. 29

The Court defers its ruling on Interrogatory No. 29.

Revised Interrogatory No. 34

The Court orders Google to answer Revised Interrogatory No. 34 which states as follows: "Please IDENTIFY any ENTITIES that Google has terminated as a consequence of notices sent by Perfect 10, the nature of the termination, and the date of such termination." Google shall provide the answer to this interrogatory by April 15, 2006. Google may answer this interrogatory by producing notices of termination.

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1 **Revised Interrogatory No. 35**

2 The Court defers its ruling on Interrogatory No. 35.

3 Dated: May 16, 2006

Respectfully submitted,

4 JEFFREY N. MAUSNER
5 BERMAN, MAUSNER & RESSER

6 By: Jeffrey N. Mausner (D.T.)
7 Jeffrey N. Mausner
8 Attorneys for Plaintiff, PERFECT 10, INC.

9 Approved as to form only:

WINSTON & STRAWN LLP

10 Dated: May 16, 2006

11 By: Andrew P. Bridges
12 Jennifer Golinveaux
13 Attorneys for Defendant and
Counterclaimant GOOGLE INC.

14 **IT IS SO ORDERED**

15
16 Dated: 5/22/06

17 Stephen J. Hillman
18 STEPHEN J. HILLMAN
19 United States Magistrate Judge
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1 they can do.

2 THE COURT: This is sort of out -- out of the realm
3 of this motion, but I would like you to assist
4 Mr. Mausner in helping him find what he wants on a
5 realtime basis in terms of and determining what is
6 currently stored for, let's say, three of these websites,
7 what is currently stored on Google servers, which has
8 nothing do to really with this request because it is a
9 mega request, but in terms of just moving this forward, I
10 would appreciate that.

11 MR. BRIDGES: Okay.

12 THE COURT: All right. 43 is a mega request, as I
13 said. 45 is a mega request and 46 is a mega request,
14 unless there is a -- no. That's what they are, mega
15 requests, unless there's something else you want on a
16 realtime basis.

17 MR. MAUSNER: Well, this is the number of times
18 these search requests have been --

19 THE COURT: Right.

20 MR. MAUSNER: -- so there really isn't a real time
21 equivalent to that.

22 THE COURT: That's what I assumed.

23 All right. So those two are deferred, 45 and
24 46.

25 47 and 48. 47 is a mega request. 48 is a mega

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1 request.

2 MS. GOLINVEAUX: Your Honor, in addition to being
3 mega requests, we would strongly argue that 47 and 48 are
4 completely irrelevant to the case. The number of times
5 that any user has done a search on terms like "rape,"
6 "incest" or "Britney Spears" over a period of close to
7 five years is irrelevant to the claims that plaintiff is
8 asserting.

9 MR. BRIDGES: Moreover, Your Honor, if one takes at
10 face value Perfect 10's statements that this is relevant
11 because it may be taking people to sites that compete
12 with Perfect 10, and the like; Perfect 10's images do not
13 include any sexual activity. They do not include any
14 bestiality. They do not include any of the concepts that
15 are discussed here. It shows how vastly overbroad this
16 is. People looking for these things are looking for an
17 entirely different subgenre of product from Perfect 10.
18 And frankly, people looking for Britney Spears are not
19 looking for what they are looking for at Perfect 10. And
20 I just want to mention that to underscore the lack of
21 relevance.

22 THE COURT: Well, it gets back to the distinction
23 between pornography and adult content, but for the
24 record, what is the relevancy argument?

25 MR. MAUSNER: Okay. This relates to the percentage

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1 of Google's business that is just basically serving as a
2 large adult content website that has misappropriated all
3 of these pictures and we think that is going to be a very
4 large percentage of this business. Our position is for
5 image search, Google, in large extent, isn't even acting
6 as a search engine. It's just acting as a very large
7 adult content and pornographic website that has
8 misappropriated these pictures.

9 MS. GOLINVEAUX: Your Honor, request 47 is actually
10 directed to web search, not image search.

11 MR. MAUSNER: 48, I think is -- 47 is web search.
12 48 is image search.

13 THE COURT: All right.

14 MR. MAUSNER: And, Your Honor, this is not a mega
15 request because Google keeps these records and yesterday,
16 Ms. Golinveaux admitted that they keep the records and
17 this is something that's very confidential to them. They
18 don't want to disclose it. Google keeps lots of records
19 about everything, and there's no question that one of the
20 most important records that it keeps is how -- whatever
21 the most common search results. This -- it's not going
22 to be hard for them to find this. They don't have to
23 give it to us for every day. They keep it in some form,
24 and they should just give it to us --

25 THE COURT: Well, what was the ruling I made on the

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1 top 50 searches?

2 MR. BRIDGES: That, I believe, was deferred.

3 THE COURT: I think it was also; so this should be
4 likewise deferred.

5 MS. GOLINVEAUX: These requests would require a
6 different magnitude -- I mean, Google has estimated that
7 it could take months running 40 computers concurrently in
8 order to process the data sought in requests 43, 47, 48.
9 It's different than the top 10 searches, for example.

10 MR. MAUSNER: If Google has readily available
11 information about how many searches are done on the term
12 "sex," my guess is that's in the top 5. They have that
13 kept in some manner, you know, by month, by year, on a
14 certain day and that's what they should give us and that
15 is going to be very easy for them to find that
16 information and give it to us. This is not at all a mega
17 search.

18 THE COURT: Well, the declarations indicate -- that
19 support the concept that these are mega searches.

20 MR. MAUSNER: Well, it may be if they do it in some
21 format. If they give us the number from December 31,
22 2001 to the present, they may have to put some stuff
23 together, but we're willing to take it in a different
24 format. We're willing to take it in whatever format they
25 have it. They and -- they actually -- we just recently

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1 found out they do publish non-adult content search
2 results, the number of searches or the percentage of
3 searches on it. They have the stuff kept in a way that
4 it's going to be very easy for them to find. I don't
5 know what format they have it in. They won't tell us
6 what format they have it in, but we'll take it in
7 whatever format it's in, and that's all we'll ask for,
8 whatever they have it in, that they give it to us, but
9 there's no question that they know how many searches are
10 done during some time period for the term "sex" and what
11 percentage that is of all their searches, whether, you
12 know, that's number one or number two or number three --

13 THE COURT: Well, how do you know that they have it
14 in currently available form?

15 MR. MAUSNER: They keep records of everything. This
16 is the most obvious thing -- Your Honor, can ask them, do
17 they keep any records at all -- ask them, Your Honor, of
18 how many searches are done on the term "sex," and if they
19 do, they should give it to us in whatever form they keep
20 it. They don't have to do any work on it --

21 THE COURT: It's a fair question.

22 MR. MAUSNER: Whatsoever.

23 MS. GOLINVEAUX: Your Honor, the search query logs
24 that Google maintains are truly massive, and that's why
25 it would require months to process the data they

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1 requested, the request requested. We could tell you if
2 it was limited to sex and what it would involve. I could
3 give you a better estimate for that.

4 THE COURT: You're saying Google will not maintain
5 historical logs for some of these terms?

6 MS. GOLINVEAUX: Well, there are search query logs
7 that represent -- that gather the data for all queries
8 made on Google, and those are the logs that would need to
9 be mined to answer these requests. They are segregated
10 out.

11 MR. MAUSNER: But, Your Honor, I'm sure they have
12 some kind of reports as to what the most common search
13 terms are.

14 MS. GOLINVEAUX: But that's not what this request --

15 MR. MAUSNER: It is what this request is asking for.
16 They have -- you know, if you look at what Overture
17 keeps, which is another search engine, but it's much
18 smaller and the number of searches are going to be
19 probably, you know, 100 times less than what's on Google,
20 you can ask them how many searches are done on "sex," and
21 they have it readily available. For Google to claim that
22 they don't have that information, I will -- I will bet
23 anything that that's just flat out false. You know, they
24 are saying some kind of log is massive, but they have
25 this stuff, and Larry Page is saying in an interview with

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1 Time Magazine that it's single digits, all of this adult
2 content and pornography is only in the single-digit
3 percentages.

4 That's not going to be true, and they have this
5 stuff readily available in some format, and they should
6 give it to us in whatever format they have it. They
7 probably do reports all the time about, you know, here
8 are the most common search terms for this week --

9 MS. GOLINVEAUX: Your Honor, that is not what this
10 request is seeking. The burden to respond to these
11 requests is enormous and now what Mr. Mausner is
12 describing now are completely different kinds of reports,
13 whether there have been reports or studies or
14 communications.

15 MR. MAUSNER: Okay. So you look at the report and
16 you see if the term sex is included within the report.
17 If it is, then it falls directly within this.

18 THE COURT: Well, no, as with many of the requests,
19 they can be artfully rephrased and when they are artfully
20 rephrased, they might request something entirely
21 different; so if you want to try to rephrase it in a way
22 that they can respond to it without tremendous burden, do
23 so now.

24 MR. MAUSNER: "Any documents which indicate the
25 number of searches on or the percentage of searches that

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1 are done on the following terms."

2 THE COURT: Why is that different from the request
3 as stated?

4 MR. MAUSNER: Because this would be -- I think the
5 request as stated covers that, but this would be, if
6 there are any documents that exist that talk about how
7 often the term "sex" is searched.

8 THE COURT: So in other words, "Any reports,
9 internal document reports" -- no. "Any internal reports
10 currently in existence that discuss the amount of
11 searches using the terms listed."

12 MS. GOLINVEAUX: Your Honor, again searches, the
13 number of searches on "Britney Spears" or "rape" or
14 "incest" is completely irrelevant to this case.

15 THE COURT: Well, I'm not sure I agree with you on
16 that.

17 MS. GOLINVEAUX: And --

18 THE COURT: They have a theory of liability here
19 that they are allowed to pursue.

20 MS. GOLINVEAUX: Your Honor, 47 also does address
21 web search, not image search.

22 THE COURT: I know that.

23 MR. MAUSNER: You know, the same may be true for web
24 search as image search. You know, my guess is it's a lot
25 higher on image search, but, you know, we would like to

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1 see what it is on web search as well and the comparison
2 of them may be relevant.

3 Okay. So something like this: "Any internal
4 reports or documents currently in existence that discuss
5 the amount or percentage of searches on any of the
6 following terms."

7 THE COURT: Yes. For the dates listed. And I will
8 grant the revised request, and I will not rule on the
9 request as stated at this time. In terms of a compliance
10 date, I suppose April 15th.

11 MR. BRIDGES: Thank you, Your Honor.

12 THE COURT: All right. Let's move on to 49,
13 "Documents that constitute Google's contractual
14 agreements for the use of copyright material in
15 connection with Google's Print Program."

16 MR. MAUSNER: Your Honor, may I have just one
17 second, please?

18 THE COURT: Yeah.

19 Obviously, for requests like the one I just
20 ruled on, if Google needs to file a privilege log, they
21 will do so.

22 MR. BRIDGES: Right.

23 Your Honor, on this one, it might be useful if
24 I start actually.

25 THE COURT: Okay.

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1 statistics for 10 days in 2002 or they keep it by
2 10-day -- in other words 2002, I guess if they had it for
3 each 10-day period, it wouldn't be hard to add it up, but
4 if they only had it for 10 days in 2002, we would be
5 willing to take it for that 10-day period and, you know,
6 not require the whole year if they don't have it.

7 THE COURT: Well --

8 MR. MAUSNER: In other words, if they don't keep
9 them on a yearly basis, we would be willing to take it on
10 some other basis, if that's a problem.

11 THE COURT: I think what I'm prepared to grant is
12 harmonious with what I did a few minutes ago, which would
13 be to order responses -- a response to Interrogatory 24
14 to the extent that Google can answer the interrogatory
15 based on currently existing historical reports and
16 whether they can answer on a yearly basis or a monthly
17 basis whatever. If they have the reports, then they are
18 not burdensome and they could respond either in a
19 narrative way to Interrogatory 24 or they could respond
20 by way of document production, and that would still
21 reserve ruling on the mega request that 24 is as stated.
22 So unless Google wishes to be heard, that would be my
23 ruling, and it's co-extensive with the document
24 production ruling a few moments ago. I don't remember
25 the number.

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the county of Los Angeles, State of California.

I am over the age of 18 and am not a party to the within action; my business address is: 11601 Wilshire Blvd., Suite 600, Los Angeles, CA 90025-1742.

On May 16, 2006, I served the foregoing document(s) described as follows:

(PROPOSED) ORDER RE PERFECT 10'S MOTION TO COMPEL DEFENDANT GOOGLE, INC. TO PRODUCE DOCUMENTS AND TO ANSWER INTERROGATORIES

on the interested party(ies) in this action by placing a true copy thereof enclosed in a sealed envelope addressed to the address(es) as follows:

**Andrew P. Bridges
Jennifer A. Golinveaux
Winston & Strawn LLP
101 California Street, Suite 3900
San Francisco, CA. 94111-5894**

**Mark T. Jansen
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Townsend and Townsend and Crew LLP
Two Embarcadero Center, Eight Floor
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**Michael S. Brophy, Esq.
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333 South Grand Ave., 38th Floor
Los Angeles, CA 90071-1543**

MAIL: I placed such envelope with fully prepaid postage thereon in the United States mail at Los Angeles, California.

FEDERAL: I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made. I declare, under penalty of perjury, that the foregoing is true and correct.

Executed on **May 16, 2006**, at Los Angeles, California

BY: 
Victoria Rapoport

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