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9 PERFECT 10, INC.

10  
11 UNITED STATES DISTRICT COURT  
12 CENTRAL DISTRICT OF CALIFORNIA

13 PERFECT 10, INC., a California  
14 corporation,

15 Plaintiff,

16 vs.

17 GOOGLE, INC.; et al.,

18 Defendants.

19 AND CONSOLIDATED CASE

20 Master File No. CV04-9484  
21 AHM (SHx)

22 DISCOVERY MOTION

23 **DECLARATION OF DR. NORM ZADA IN  
24 SUPPORT OF PERFECT 10'S  
25 SUPPLEMENTAL MEMORANDUM IN  
26 SUPPORT OF ITS MOTION TO COMPEL  
27 DEFENDANT GOOGLE INC. TO PRODUCE  
28 DOCUMENTS**

Hearing Date: November 19, 2007  
Time: 10:00 A.M.  
Place: Courtroom of Judge Hillman

Discovery cut-off, pre-trial  
conference, and trial dates have not  
been set by Judge Matz

1 I, Norman Zada, declare as follows:

2 1. I make this declaration in support of Perfect 10's motion to compel  
3 Google to produce documents. Except where otherwise stated, I have direct and  
4 personal knowledge of the facts set forth herein and, if called as a witness, could and  
5 would competently testify thereto.

6 2. I have reviewed all the discovery produced by Google, and have been  
7 actively involved in the discovery matters in this case.

8 3. The Exhibits attached hereto, except where otherwise noted, are true and  
9 correct copies of what appeared on my computer, on the date indicated by the small  
10 calendar at the bottom of the document.

11 4. Google has a "Google Trends" program which is available to the public,  
12 which provides the relative frequency of searches, but does not publicly provide the  
13 actual number of searches. In other words, for example, Google will publicly provide  
14 the relative frequency of searches on the name of Perfect 10 model Aria Giovanni  
15 compared to actress Ashley Judd. Exhibit 10 is a printout I made from Google Trends,  
16 showing the relative number of search results on Aria Giovanni (graph in blue)  
17 compared to searches on Ashley Judd (graph in red), and John Roberts (graph in  
18 green).

19 5. I have a Ph.D. in Operations Research, a form of Applied Mathematics.  
20 Based on my knowledge of mathematics, I can state that Google must maintain readily  
21 retrievable information regarding the number of searches done on Perfect 10 model  
22 names in order to display graphs which compare the frequency of searches on Perfect  
23 10 model names to the frequency of other searches as shown in Exhibit 10. Another  
24 search engine, Overture.com, publicly provides this information regarding number of  
25 searches, including searches on the names of Perfect 10 models. Attached as Exhibit  
26 11 is a true and correct print-out of this information for Aria Giovanni from Overture.  
27 Exhibit 11 indicates that in January of 2007, there were 87,004 overture.com searches  
28 done specifically on the search term "Aria Giovanni."

1           6.     Despite being ordered to state the percentage of all Google Web and  
2 Image searches during the years 2002 and 2005 for the 50 most frequently used search  
3 terms, Google has not produced this information (or information on the number of  
4 searches) for Web and Image Search for 2005 and for Image Search for 2002. Google  
5 has not stated that it does not have this information. It has just not produced it even  
6 though it was ordered to do so. Order Re Perfect 10's Motion to Compel Defendant  
7 Google, Inc. to Produce Documents and Answer Interrogatories, page 12 lines 6-18,  
8 attached as Exhibit A to the Supplemental Memorandum.

9           7.     Most of Google's document production to Perfect 10 consisted of multiple  
10 copies of documents already in Perfect 10's possession, in particular, multiple copies  
11 of Perfect 10's DMCA notices to Google, along with Alexander Macgillivray's sur-  
12 reply declaration, which Perfect 10 already had as well. As far as I can determine, the  
13 only documents which Perfect 10 did not already possess were approximately 2600  
14 pages of third party DMCA notices to Google, beginning in approximately March of  
15 2002 (nothing before that); approximately 130 pages of communications with Google  
16 Advertising partners, many of which were in foreign languages; approximately 80  
17 pages of internal Google communications regarding advertising partner sites; and five  
18 to ten pages of communications regarding Perfect 10.

19           8.     To the best of my knowledge, **Google did not produce any documents**  
20 **whatsoever** regarding the following requests for production that were ordered by this  
21 court:

- 22           a. RFP 1: All DOCUMENTS that constitute or embody any notices or  
23           complaints that GOOGLE received in the years 2001 through 2003 from  
24           Perfect 10.
- 25           b. RFP 2: All DOCUMENTS that constitute or embody any notices or  
26           complaints that Perfect 10 sent to Yahoo or Overture in 2001 through 2003  
27           which were then forwarded by those entities to GOOGLE.

- 1 c. RFP 3: All DOCUMENTS that constitute, embody, or relate to GOOGLE's  
2 response to any notices or complaints that GOOGLE received in the years  
3 2001 through 2003 from Perfect 10 either directly or indirectly as described  
4 in Document Requests 1 and 2.
- 5 d. RFP 4: All DOCUMENTS that constitute or embody communications  
6 between or among employees of GOOGLE that refer to, relate to, or reflect  
7 GOOGLE's response to any notices or complaints that GOOGLE received in  
8 the years 2001 through 2003 from Perfect 10 either directly or indirectly as  
9 described in Document Requests 1 and 2.
- 10 e. RFP 12: All DOCUMENTS that constitute or embody GOOGLE's  
11 contractual arrangements for the use of digital images on Image Search,  
12 including but not limited to, distribution or license agreements with studios,  
13 stock houses, independent photographers, and digital artists.
- 14 f. RFP 14 as modified: GOOGLE's minutes of Board of Director and other  
15 Executive Committee meetings that refer to, relate to or mention copyright  
16 infringement, misappropriation of rights, or trademark infringement in  
17 connection with adult content, from the formation of Google to the present.
- 18 g. RFP 16: GOOGLE's minutes of Board of Director and/or other executive  
19 committee meetings that refer to, relate to or mention Perfect 10.
- 20 h. RFP 47 and 48 as modified: Internal summary reports currently in existence  
21 sufficient to determine the amount or percentage of search on Google Image  
22 Search and Web Search on each of the following terms: sex, tit, nude, porn,  
23 fuck, Lolita, bestiality, beastiality, model, hardcore, anal, intercourse,  
24 blowjob, naked, Perfect 10, Playboy, Penthouse, supermodel, orgasm, rape,  
25 incest, and Britney Spears, for each year (and/or for shorter periods of time if  
26 they exist), from December 31, 2001 to the present.
- 27 i. RFP 57: All DOCUMENTS that refer to GOOGLE'S document retention  
28 policy.

- 1 j. RFP 59 as modified: All complaints filed (in any jurisdiction in the U.S.)  
2 against GOOGLE relating to copyright infringement, trademark  
3 infringement, or infringement of right of publicity.
- 4 k. RFP 61: All DOCUMENTS relating to any indemnity claims made by  
5 GOOGLE to any third party with respect to the claims in the amended  
6 complaint.
- 7 l. RFP 65: DOCUMENTS sufficient to explain GOOGLE'S policy with  
8 respect to storing images or web pages on GOOGLE servers, including what  
9 materials are stored and how long they are retained.
- 10 m. RFP 67: All communications with any of the Perfect 10 models (or their  
11 representatives) listed in Exhibit 1.
- 12 n. RFP 72 as modified: Documents sufficient to describe how an image is  
13 "extracted" as alleged in Paragraph 18 of the Counterclaim.
- 14 o. Google's response to revised interrogatory 24 (top fifty search terms for  
15 image search and web search in 2002 and 2005 and their percentage of all  
16 searches), did not include the percentages for image search (or number of  
17 image searches) for either 2002 or 2005, or percentages for web search (or  
18 number of web searches) for 2005. The only percentages given were for web  
19 search in 2002.

20 9. Although Google has denied that it does not keep a log of DMCA notices  
21 (Google's Response to RFA 285, attached as Exhibit 16), it has not produced such a  
22 log to Perfect 10.

23 10. Google has not provided any information to Perfect 10 or met and  
24 conferred with Perfect 10 regarding the identity of its employees who were responsible  
25 for carrying out GOOGLE's repeat infringer policy from 2000 to the present (RFP 31),  
26 oversee GOOGLE's provision of connections as described in Paragraph 58 of the  
27 Counterclaim (RFP 32), or oversee GOOGLE's system or network as described in  
28 Paragraph 58 of the Counterclaim (RFP 33). See May 22, 2006 Order, page 6, lines

1 11-14. (Paragraph 58 of the Counterclaim states: Google provides connections for  
2 material through a system or network controlled or operated by or for Google. Google  
3 provides connections by which persons other than Google may initiate transmission of  
4 the material. Google carries out the provision of connections through an automatic  
5 technical process without selection of the material. Google does not select the  
6 recipients of the material except as an automatic response to the request of another  
7 person.)

8 11. A large proportion of the websites that infringe Perfect 10 copyrights use  
9 a service called Google Analytics which allows them to track a great deal of  
10 information regarding traffic to, and user actions on, their websites. Exhibit 12  
11 contains some pages from google.com which explain Google Analytics. Page 1 shows  
12 that the webmaster can use Google analytics software to determine “where your  
13 visitors come from [search engines, direct, or referring sites] and how they interact  
14 with your site.” It also says that “Google Analytics shows you which keywords  
15 perform and which ones you should cut.” Page 2 states, “Google Analytics provides  
16 an easy way to track clicks on links that lead to file downloads.” A portion of the  
17 Google Analytics agreement is attached as page 3 which indicates that Google has  
18 access to and may use the information collected by Google Analytics for each website  
19 which uses that software.

20 12. Exhibit 13 is a print-out from the website foobr.com, which states, “Track  
21 downloads with Google Analytics. Track anything with Google. ... There are so many  
22 other events which could be tracked and monitored to provide a much better overview  
23 of how users are using your site and what they are doing. For example you could track  
24 the number of times different files have been downloaded, ... which image in your  
25 Flash slideshow has been viewed the most times. The list goes on and on.”

26 13. Attached as Exhibit 14 is a string of e-mails that I was copied on.


27 14. Attached as Exhibit 15 are examples of Google ads around celebrity  
28 images. Each time a user clicks on one of those ads, Google receives revenue.

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15. Attached as Exhibit 17 is a true and correct copy of a letter sent to the Ninth Circuit Court of Appeals, which includes an article regarding use of video recognition technology on Google's YouTube website. (The remaining exhibits to that letter have not been included, to decrease the amount of papers submitted to this Court in connection with this motion.)

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

Executed on October 31, 2007, at Los Angeles, California.

  
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Norman Zada, Ph.D.