

Andrew P. Bridges (SBN: 122761)
 abridges@winston.com
 Jennifer A. Golinveaux (SBN: 203056)
 jgolinveaux@winston.com
 Matthew A. Scherb (SBN: 237461)
 mscherb@winston.com
WINSTON & STRAWN LLP
 101 California Street, 39th Floor
 San Francisco, CA 94111-5894
 Telephone: 415-591-1000
 Facsimile: 415-591-1400

Attorneys for Defendant
 GOOGLE INC.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

PERFECT 10, INC., a California
 corporation

Plaintiff,

vs.

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

Defendant.

AND COUNTERCLAIM

PERFECT 10, INC., a California
 corporation

Plaintiff,

vs.

AMAZON.COM, INC., a corporation;
 A9.COM, INC., a corporation; and
 DOES 1 through 10, inclusive,

Defendants.

Case No. CV04-9484 AHM (SHx)
 [Consolidated with Case No. CV 05 4753
 AHM (SHx)]

**GOOGLE INC.'S SUPPLEMENTAL
 MEMORANDUM IN OPPOSITION
 TO PERFECT 10'S MOTION TO
 COMPEL DEFENDANT GOOGLE
 INC. TO PRODUCE DOCUMENTS**

Hearing Date: November 19, 2007
 Time: 10:00 A.M.
 Place: Courtroom 550

Magistrate Judge Hillman presiding

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

Pursuant to L. Civ. R. 37-2.3, Google submits this supplemental memorandum opposing Plaintiff Perfect 10, Inc.'s ("P10's") motion to compel production of documents. Following an October 23, 2007 call with the Court, Google's counsel held further conferences with P10 in an attempt to clarify the nature of the documents sought by P10 and to reach reasonable compromise regarding P10's overbroad and enormously burdensome document requests. P10 refused to tailor its overbroad requests, however, and insisted on documents responsive to the requests as drafted, many of which have no relevance to the claims or defenses asserted in this case. Google has expended substantial time attempting to determine whether responsive documents exist, and preparing detailed declarations regarding the burden involved in attempting to respond to P10's convoluted and extensive requests. P10, on the other hand, has continued to serve wave after wave of overbroad requests, which it has refused to tailor to documents relevant to this case. P10's requests appear designed merely to impose undue burden on Google rather than seek relevant documents.

Request 121

During further meet and confer, P10 clarified that RFP 121 seeks all documents "that refer, RELATE TO, or indicate the number of times that Google users click on a Google ad appearing on a web page containing an image," whether the web page is a Google page or a third-party page. Supp. Decl. of Jennifer A. Golinveaux ("Supp. Golinveaux Decl.") ¶ 2. P10's clarification simply illustrates the vast overbreadth and irrelevance of this request. The number of times Google users click on a Google ad on *any* web page with an image has no connection to P10's content or to the claims in this case. Despite Google's continued efforts to meet and confer with P10, P10 has refused to tailor its requests to seek relevant documents.

Request 122

RFP 122 seeks all "DOCUMENTS which refer, RELATE TO, or indicate the traffic that Google receives as a result of Image Search." Assuming this request seeks all documents relating to traffic to Image Search, such documents have no specific

bearing on the claims or defenses in this case. The request is vastly overbroad and the requested documents are irrelevant to P10's claims of infringement of its content, damages, or any other aspect of the lawsuit. P10 has failed to meet its burden to establish relevance.

Requests 124 and 184

RFP124 seeks all "DOCUMENTS which refer, RELATE TO, or indicate the traffic or revenue that Google receives as a result of linking to adult images or displaying adult images." RFP 184 seeks "DOCUMENTS sufficient to estimate the number of times that visitors to GOOGLE.com have downloaded images that would be blocked by GOOGLE's "Use strict filtering" filter if that filter had been selected, for each of the years 2006, 2005, 2004, and 2003." Again P10 has failed to serve requests tailored to alleged infringements of P10's content, but rather seeks documents regarding traffic or revenue related to "adult" content generally. *See* Joint Stip. at 18-19.

Moreover, in its very first set of document requests, P10 requested categories of documents nearly identical to RFP 124, which this Court has already considered and either ordered Google to produce narrowed categories of documents, denied, or took under submission. *See* RFPs 14-21; Order re P10's Mot. to Compel, at 3-5 (May 22, 2006) ("2006 Order"). Google has already expended significant resources collecting, reviewing, and producing documents in response to highly similar requests such as RFP 17¹, and should not be required to repeat its efforts now in response to slightly revised requests. RFP 184 seeks documents regarding Google's "SafeSearch" function, which as explained in Google's portion of the Joint Stipulation at 19, screens for sites that contain explicit sexual content and deletes them from a user's search results. This

¹ For example, the Court ordered Google to produce documents responsive to P10's RFP 17 narrowed as follows: "All DOCUMENTS that constitute or embody communications between or among employees of GOOGLE that refer to or relate to GOOGLE'S potential liability for copyright infringement, misappropriation of rights of publicity or trademark infringement in connection with adult content, from the formation of Google to the present." The Court took under submission P10's RFP 18 which sought "All studies, reports, memoranda, letters, or notes that refer to, relate to, or reflect the extent to which adult content available through GOOGLE's Web Search and Image Search serves as a draw for traffic to GOOGLE.com." 2006 Order at 5.

request does not relate to P10's content or infringing content, or whether Google users are searching for such content. Like earlier P10 requests regarding adult content generally that this Court either denied or took under submission, *see* Joint Stip. at 19; 2006 Order at 5, this request should be denied as irrelevant.

Request 139

RFP 139 seeks, for 2003-2006, "DOCUMENTS sufficient to determine the approximate number of times a user has clicked on an ad served by GOOGLE appearing on a web page containing one or more images that would be blocked by GOOGLE's 'Use strict filtering' filter if that filter were selected." During further meet and confer P10 clarified that it is seeking documents disclosing how many times someone clicks on an AdSense ad next to *any* adult image served on *any* third party web page. Supp. Golinveaux Decl. ¶ 3. Again P10 has made no effort to tailor its request to documents relevant to this case. Documents related generally to adult content are not relevant to the claims or defenses in this case. *See* Joint Stip. at 18-19.

Requests 147, 148, 166

RFPs 147 and 148 seek documents sufficient to estimate the number of images "copied" onto Google's servers that would and would not be blocked by the "Use strict filtering" filter. RFP 166 seeks all documents related to "the number of adult images . . . copied by GOOGLE onto GOOGLE servers." During further meet and confer sessions P10 clarified that these requests were not limited to copies made on Google servers related to Image and Web search, but to *any* Google server used for *any* purpose. The requests are entirely overbroad, and again seek documents related to "adult images" generally not tailored to or relevant to P10's claims.

Requests 150, 232 and 233

RFPs 232 and 233 seek "All DOCUMENTS RELATING" to hundreds of websites. Request 232 concerns approximately 100 websites that P10 terms generally "AdWords" or "Sponsored Link" websites and RFP 233 concerns approximately 300 websites listed in Exh. C to P10's fifth set of document requests, which P10 refers to as

its “AdSense” Exhibit. RFP 150 seeks documents that show the owner for each of the same hundred or so websites listed in RFP 232 and revenue Google has received from these owners. When pressed regarding the relevance of these websites, P10 claimed only that “most” had likely infringed P10's rights or "someone's" content, and that “some” of the websites had appeared in P10 notices. Supp. Golinveaux Decl. ¶ 4. Moreover, in response to P10's earlier RFP 29, Google has already gone to substantial effort to produce communications with owners of nearly one hundred websites, about which P10 had complained to Google. *Id.* ¶ 4 & Exh. A; 2006 Order at 5-6 . P10 has failed to present any theory of relevance that would justify the additional burden posed by RFPs 150, 232, 233.

Request 173

RFP 173 seeks “All DOCUMENTS, including board meeting minutes and internal communications, RELATING TO GOOGLE’s decision to provide information on the frequency of searches only for terms that do not involve adult material or sexually related materials.” Not only does this request seek documents irrelevant to the claims and defenses asserted in this case, the Court already granted a modified version of P10's earlier similar RFP 14, seeking “GOOGLE’s minutes of Board of Director and/or other Executive Committee meetings that refer to, relate to, or mention copyright infringement, misappropriation of rights of publicity, or trademark infringement.” The Court ordered production of documents that mention P10 or involve infringement in connection with adult content. 2006 Order at 4. P10 refused to tailor its new request to documents relevant to this case, and should not be allowed to continue to harass Google with slightly modified versions of irrelevant requests.

Request 175

RFP 175 seeks all “DOCUMENTS which refer to the amount of traffic which GOOGLE sends to AdSense affiliates by virtue of users doing GOOGLE searches.” During further meet and confer, P10 clarified that this request seeks “anything” that shows “how many clicks are made on search results that link to AdSense affiliates.”

Yet again P10 refused to tailor its request to documents relevant to the infringements alleged in this case. RFP 175 is vastly overbroad, asking about traffic to every AdSense affiliate, regardless of any connection to P10's alleged content.²

Requests 168, 185, 186, 187, 188, and 189

These requests also address the hundreds of URLs set forth in P10's Exh. C, referred to as its "AdSense Exhibit." RFPs 187 and 188 seek, for all the nearly 300 websites in Exh. C, "all DOCUMENTS relating or referring to advertising on those websites" (RFP 188) and "all DOCUMENTS relating or referring to GOOGLE's efforts to recruit advertisers for those websites (RFP 187). RFP 189 seeks, for each website in Exh. C, "documents sufficient to estimate the percentage of the traffic to those websites that came from GOOGLE for" a five-year period. RFP 168 seeks all communications with the Exh. C sites and RFPs 185 and 186 seek documents showing the number of clicks on links to those sites.

As noted regarding RFP 233 above, P10's counsel could not say whether all of the websites in Exh. C appeared in P10 notices and could only say that "most" had likely infringed P10's rights or "someone's" content, and that "some" of the websites had appeared in P10 notices. Moreover, as discussed regarding RFPs 150, 232, and 233, above, in response to earlier requests Google has already produced communications regarding nearly 100 websites identified by P10 and should not be required to continue to expend enormous efforts to collect, review and produce documents with no apparent relevance to this case.

Dated: November 5, 2007

Respectfully submitted,

WINSTON & STRAWN LLP

By: /s/

Andrew P. Bridges
Jennifer A. Golinveaux
Matthew A. Scherb

² While during meet and confer P10 said that it would consider narrowing the request to documents related to traffic sent to the websites listed in P10's Exhibit C, its so-called AdSense exhibit, the request is still vastly overbroad and irrelevant.