

1 JEFFREY N. MAUSNER (State Bar No. 122385)
 2 Warner Center Towers, Suite 910
 3 21800 Oxnard Street
 4 Woodland Hills, California 91367-3640
 5 Telephone: (310) 617-8100, (818) 992-7500
 6 Facsimile: (818) 716-2773
 7 Attorneys for Plaintiff Perfect 10, Inc.

8 UNITED STATES DISTRICT COURT
 9 CENTRAL DISTRICT OF CALIFORNIA

10 PERFECT 10, INC., a California
 11 corporation,

12 Plaintiff,

13 v.

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

16 Defendants.
 17

Case No. CV 04-9484 AHM (SHx)
 [Consolidated with Case No. CV 05-4753 AHM
 (SHx)]

DISCOVERY MOTION

DECLARATION OF VALERIE
 KINCAID IN SUPPORT OF PERFECT
 10'S PORTIONS OF THE JOINT
 STIPULATION RE GOOGLE INC.'S
 MOTION TO DETERMINE THE
 SUFFICIENCY OF PERFECT 10 INC.'S
 RESPONSES TO GOOGLE'S
 REQUESTS FOR ADMISSION, SETS 1
 AND 2

18
 19 AND CONSOLIDATED CASE

Date:
 Time:
 Place: Courtroom of Judge Hillman

Discovery Cut-Off Date: None set
 Pretrial Conference Date: None set
 Trial Date: None set

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DECLARATION OF VALERIE KINCAID

I, Valerie Kincaid, declare as follows:

1. I am a member of the State Bar of California and admitted to practice before this Court. I am an attorney for the Law Offices of Jeffrey Mausner, which is counsel for Plaintiff Perfect 10, Inc. (“Perfect 10”) in this action. All of the matters stated herein are of my own personal knowledge, except where otherwise stated, and if called as a witness, I could and would testify competently thereto. I make this declaration in support of Perfect 10’s portions of the Joint Stipulation re Google Inc.’s Motion to Determine the Sufficiency of Perfect 10 Inc.’s Responses to Google’s Requests for Admission, Sets 1 and 2.

2. Google served the first set of requests for admissions on April 3, 2008, and Perfect 10 served its responses on May 5, 2008. Google sent its meet and confer letter regarding the first request on May 23, 2008, and did no follow-up at all until August 8, 2008. August 8 is the day that Google finally, after seven months of delay, served amended responses to its own responses to Perfect 10’s requests for admissions. Counsel met and conferred telephonically on October 13, 2008, and at the meet and confer, Google’s counsel only asked me to specify the requests Perfect 10 would amend. I stated that Perfect 10 would amend various responses but could not identify each one at that time. On Thursday October 16, 2008, I said, in writing, that I would set forth Perfect 10’s position shortly, and then, four days later, on Monday October 20, 2008, Google filed this motion. In an e-mail to Rachel Herrick, dated October 16, 2008, I set forth Perfect 10’s position regarding the second set of requests for admissions and then stated that “[w]ith regard to the first set of requests for admissions, we will provide Perfect 10’s position shortly.” Perfect 10 would have amended certain responses in the first set of requests for admission, but Google filed its motion before Perfect 10 had a chance to do so.

1 3. Since the October 6, 2008 hearing, Google has sent Perfect 10 numerous
2 correspondence about discovery matters and has demanded to meet and confer
3 about issues it never raised prior to October 6, 2008 or had long forgotten. Since
4 the October 6, 2008 hearing, Google sent counsel for Perfect 10 at least 40 letters
5 and e-mails regarding discovery issues.

6 4. In addition, since the October 6, 2008 hearing, Perfect 10's counsel has
7 been inundated with work. *Inter alia*, Perfect 10 (1) filed a summary judgment
8 motion against Alexa.com; (2) filed the supplemental briefing, revised statement of
9 genuine issues, declarations, and exhibits regarding the A9.com summary
10 judgment motion, as ordered by the Court; (3) filed supplemental briefing in the
11 Amazon action regarding the protective order sought by Amazon; (4) personally
12 met with Andrew Bridges for a full day regarding the Court's discovery plan, as
13 ordered by the Court; (5) served responses to Alexa's first set of interrogatories;
14 (6) served responses to Alexa's first set of document requests and produced
15 documents pursuant to it; (7) attended the hearing on the A9.com summary
16 judgment motion. That's just in these cases; there are other matters, including
17 personal matters, that Perfect 10's counsel has to attend to. Perfect 10's counsel
18 informed Google's counsel that they were extremely busy and could not
19 immediately respond to its every growing list of discovery immediately. That just
20 brought on an even greater onslaught of e-mails and letters demanding discovery,
21 most of which has nothing to do with the important issues in the case.

22 5. At the beginning of January 2008, Perfect 10 initiated the meet and
23 confer process regarding Google's responses to requests for admissions. Seven
24 months later, Google finally served amended responses. On May 8, 2008 (four
25 months after Perfect 10 initiated the meet and confer process), Google's counsel,
26 Rachel Herrick, asked me to not follow-up regarding how much time Google was
27 taking to amend its responses to Perfect 10's requests for admissions, and Perfect
28 10 never followed-up again.

1 On May 8, 2008, Rachel Herrick wrote:

2 “As I explained last week, we have been devoting all of our energies over
3 the past several weeks to Google’s document production effort related to the
4 court’s recent discovery order. This must take precedence given the court
5 order. I told you that I would follow up with you thereafter, and I will....
6 [W]e had to set aside most other projects during the past several weeks to
7 focus on the document production. We are working on the amended
8 responses and we will serve them as soon as they are complete. This is a
9 large project and it takes time. We would appreciate it if you would refrain
10 from sending repeated follow up emails asking when these amended
11 responses are coming. It is unnecessary....”)

12 (Attached hereto as Exhibit C is a copy of this e-mail to me from Rachel Herrick,
13 dated May 8, 2008.)

14 Three months later, on August 8, 2008, Google served deficient amended
15 responses, with numerous qualifications, and concurrently demanded that Perfect
16 10 meet and confer regarding Perfect 10’s responses to requests for admissions.

17 6. Attached hereto as Exhibit A is a copy of the Order entered on September
18 25, 2008.

19 7. Attached hereto as Exhibit B is a copy of the transcript of hearing
20 conducted on October 6, 2008.

21 8. Attached hereto as Exhibit D is a copy of certain pages from Defendant
22 Google Inc.’s Amended Responses And Objections To Plaintiff Perfect 10, Inc.’s
23 Fourth Set Of Requests For Admission.

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

26 Executed on October 27, 2008, at Los Angeles, California.

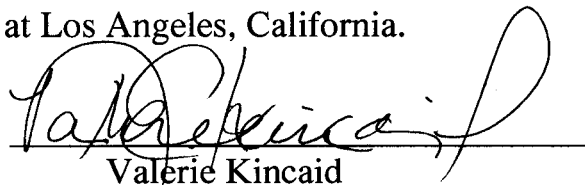
27 
28 Valerie Kincaid

EXHIBIT A

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV 04-9484 AHM (SHx) Date September 25, 2008
CV 05-4753 AHM (SHx)
CV 07-5156 AHM (SHx)

Title PERFECT 10, INC. v. GOOGLE, INC., *et al.*
PERFECT 10, INC. v. AMAZON.COM, INC., *et al.*
PERFECT 10, INC. v. MICROSOFT CORPORATION

Present: The A. HOWARD MATZ, U.S. DISTRICT JUDGE
Honorable

Stephen Montes

Not Reported

Deputy Clerk

Court Reporter / Recorder

Tape No.

Attorneys NOT Present for Plaintiffs:

Attorneys NOT Present for Defendants:

Proceedings: IN CHAMBERS (No Proceedings Held)

The Court has considered the parties' responses to the Court's minute order dated August 20, 2008 concerning discovery disputes and the appointment of a discovery master. The Court has also considered the parties' contentions and concerns regarding a variety of issues arising from the August 18, 2008 scheduling conference and the August 27, 2008 telephonic conference, including the setting of trial dates for the *Google* and *Amazon* cases. The Court does not intend to appoint either a technical advisor or a discovery master at this time.

The parties in all these cases somehow have succumbed to the all-too-frequent tendency of litigants and lawyers to get sidetracked. That is particularly regrettable in lawsuits, such as these, that are complicated, technology-driven and potentially far-reaching.¹ For the Court to manage these cases in a standard fashion, such as to treat the pending discovery motions as if they were commonplace disputes, would not advance the goal of enabling the parties either to ready these cases for Rule 56 determinations or for

¹ There are other considerations that compound the difficulties. Plaintiff's counsel, for example, often complains about the supposedly unfair burdens that the Goliath-like defendants subject him to. And perhaps he is right that in certain respects their strategy may be to overwhelm him. Yet Perfect 10 may have invited those problems with its sweeping claims and its own conduct in the course of discovery.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 04-9484 AHM (SHx) CV 05-4753 AHM (SHx) CV 07-5156 AHM (SHx)	Date	September 25, 2008
Title	PERFECT 10, INC. v. GOOGLE, INC., <i>et al.</i> PERFECT 10, INC. v. AMAZON.COM, INC., <i>et al.</i> PERFECT 10, INC. v. MICROSOFT CORPORATION		

meaningful settlement talks.²

Given the foregoing problems, as well as the enormous, ever-expanding number of the copyrighted images that Perfect 10 claims were infringed, it is necessary and appropriate for the Court to manage these cases differently. Therefore, in the exercise of its inherent and statutory authority to administer the rules of discovery in a manner that will “secure the just, speedy, and inexpensive determination of every action and proceeding,” Fed. R. Civ. P. 1, the Court intends to require the parties to negotiate in good faith a method or approach that will enable them to assess the strengths and weaknesses of their respective overall “cases” and contentions based on a sample of the key pertinent facts. In other words, the parties will take an approach comparable to that of a recognized, impartial expert who uses surveys and statistical analyses to project the extent (if any) of customer satisfaction with a product or, in the trademark context, the extent of confusion among consumers as to the source or origin of goods. From the information that the parties obtain, exchange and organize, they should be able to extrapolate reliable conclusions as to where they think they can go, or want to go, from there.

Accordingly, the Court has determined that a further conference with counsel in all three cases is necessary. Accordingly, the Court ORDERS the parties in all these cases to appear for a status conference on October 6, 2008 at 1:30 p.m.. The broad purpose of the conference is to explore ways for the parties to achieve the foregoing objectives -- i.e., summary judgment and settlement readiness -- without “going the distance” via full-fledged, uncircumscribed discovery.

At the conference, the Court will invite counsel to address the following preliminary or tentative findings and proposals, which will probably be incorporated into a special Case Management Order that will issue at the same time as the scheduling

²It is highly improbable that there will be a trial in any of these cases. That is so obvious that it need not be belabored.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 04-9484 AHM (SHx) CV 05-4753 AHM (SHx) CV 07-5156 AHM (SHx)	Date	September 25, 2008
Title	PERFECT 10, INC. v. GOOGLE, INC., <i>et al.</i> PERFECT 10, INC. v. AMAZON.COM, INC., <i>et al.</i> PERFECT 10, INC. v. MICROSOFT CORPORATION		

orders for the *Google* and *Amazon* cases. The following paragraphs are numbered to facilitate discussion.

1. Perfect 10 will have to identify each "Perfect 10 Copyrighted Work" it claims was infringed by not later than _____. Thereafter, Perfect 10 will be precluded from seeking damages for the infringement of any work not so identified. It would, however, be entitled to injunctive relief for works identified later.

2. In this discovery phase, the focus should be on developing information that enables the parties to assess their positions as to the secondary copyright liability claims that the Ninth Circuit addressed in *Perfect 10, Inc. v. Amazon.com, Inc.*, 508 F.3d 1146, 1169-76 (9th Cir. 2007). Among the key major factors that should be the focus of their efforts are the following:

A. Contributory Liability (see 508 F.3d at 1171-72).

- (1) What specific infringing material did defendant learn was on or accessible through its "system"?
 - (a) When?
 - (b) How?
 - (i) If by way of a DMCA notice, what did the notice contain?
 - (ii) Was the notice in compliance with section 512?
- (2) At the time defendant learned of the infringing image, what simple, reasonable and feasible measures, if any, did defendant have to avoid providing Internet users access to infringing images? (See 508 F.3d at 1172.) *E.g.*, what changes to its operations could defendant have made to avoid assisting infringing websites? (See 508 F.3d at 1174-75.)

B. Vicarious Liability (see 508 F.3d at 1173-74).

- (1) At the time defendant learned of the infringing image, did defendant have a legal right to stop or limit the directly infringing conduct?
 - (a) Did it have the right to terminate websites?
 - (b) Did it have the right to block websites' ability to host and serve

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 04-9484 AHM (SHx) CV 05-4753 AHM (SHx) CV 07-5156 AHM (SHx)	Date	September 25, 2008
Title	PERFECT 10, INC. v. GOOGLE, INC., <i>et al.</i> PERFECT 10, INC. v. AMAZON.COM, INC., <i>et al.</i> PERFECT 10, INC. v. MICROSOFT CORPORATION		

infringing images?

- (2) Did defendant actually decline to exercise that right?
- (3) Does defendant have such a legal right currently?
- (4) At the time defendant learned of the infringing image, did defendant have the practical ability to stop or limit infringement?
 - (a) The ability to determine whether there is infringement, in the absence of targeted DMCA notices?
 - (b) The ability to block access to infringing images?
- (5) In what manner did defendant derive a direct financial benefit from the directly infringing conduct? (This inquiry seeks a description; it does *not* require a calculation of claimed damages.)

3. In light of the large number of copyright registrations and works that Perfect 10 has placed at issue in all three cases, the Court finds that it would be both fair and feasible for Perfect 10 to create a spreadsheet along the lines contemplated by Google's Interrogatories Nos. 3 and 11, A9.com's Interrogatories Nos. 1 and 6, and Microsoft's Interrogatory No. 1 -- *but only for a selected and relatively small sample of copyrighted works*. Such a limited spreadsheet would reduce or possibly eliminate any requirement that the parties search through all the hard drives and disorganized physical documents that Perfect 10 has provided in discovery thus far. It also would do much to avoid or reduce further discovery disputes, promote the efficient and timely administration of these lawsuits and provide a framework for settlement.

(a) Based on the joint stipulations in the parties' pending motions to compel responses to those interrogatories, the Court compiled a chart, attached hereto, that displays the categories of information sought in those interrogatories, as well as the information that Perfect 10 contends it has already produced or will produce. The Court realizes that not all those interrogatories seek identical pieces of information. (*E.g.*, Microsoft did not request a list of infringing URLs.) However, they all basically seek a way to enable the parties to gather and access vital identifying information about the copyrighted work in question.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 04-9484 AHM (SHx) CV 05-4753 AHM (SHx) CV 07-5156 AHM (SHx)	Date	September 25, 2008
Title	PERFECT 10, INC. v. GOOGLE, INC., <i>et al.</i> PERFECT 10, INC. v. AMAZON.COM, INC., <i>et al.</i> PERFECT 10, INC. v. MICROSOFT CORPORATION		

(b) The precise information required for the spreadsheet remains to be determined. The Court doubts that all of the disputed categories reflected in the attachment need be included, but at a minimum, it would be necessary to identify the work, the registration number, chain of title information, the URL(s) of infringing websites, and the DMCA notices. At trial Perfect 10 itself would have to introduce such information anyway, because the fact-finder would need it to determine whether the parties proved their claims (or defenses, as the case may be). If at trial Perfect 10 sought to prove these facts through charts and summaries, it would have had to provide the underlying evidence for the charts and summaries sometime before trial. *See Fed. R. Evid. 1006.* The Court finds that it is “reasonable” to require it to do so at this stage, in discovery.

4. After the entries have been made in the spreadsheet, the Court will either limit discovery to the Perfect 10 Copyrighted Works specified in the spreadsheet or require that discovery be primarily focused on those works. In any event, the Court will order the parties to use the spreadsheet entries to extrapolate facts, based on statistically sound methods, as to the remaining works that Perfect 10 has claimed were infringed. To implement this approach, two issues must be decided.

(a) First, what categories of information should be placed on the spreadsheet? There are at least two ways to determine this. The first way is for the parties to agree on what information is so vital that it should be reflected on the spreadsheet. The second way is for the Court to make that determination.

(b) Second, which *works* will be selected for the sample that is the basis for the spreadsheet? Again, the first way to determine this is for the parties to agree. The second is to allow Perfect 10 to select the works that will be entered on the spreadsheet, from the potentially thousands it has pointed to thus far, provided that Dr. Zada file a sworn declaration describing the methodology, including any assumptions, Perfect 10 used to select such works.

5. What will deter Perfect 10 from skewing the designation of works in an effort to

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV 04-9484 AHM (SHx) Date September 25, 2008
CV 05-4753 AHM (SHx)
CV 07-5156 AHM (SHx)

Title PERFECT 10, INC. v. GOOGLE, INC., *et al.*
PERFECT 10, INC. v. AMAZON.COM, INC., *et al.*
PERFECT 10, INC. v. MICROSOFT CORPORATION

enlarge or exaggerate the number of infringements and/or damages? Simply this: Defendants will be given the opportunity to establish that the spreadsheet entries Perfect 10 chose are not fairly representative of the entire range of works in question. If they succeed, the Court likely would order Perfect 10 to develop a spreadsheet for literally every work it identified as having been infringed, and would preclude it from pursuing damages for any work not properly incorporated into such spreadsheet. In other words, the Court would return the case to conventional forms of "combat."

At the conference, the Court will also invite counsel to answer the following questions:

(a) For one copyrighted work, how much time would it take to enter all the allegedly infringing URLs onto a spreadsheet? How much time would it take to enter *all* the information tallied in the attached chart?

(b) Assume that the sample discussed above consists of 100 copyrighted works and that discovery of the facts relevant to the claims and defenses for those works has been completed. Looking at those facts in the light most favorable to Perfect 10, assume that at most Perfect 10 may succeed in proving liability for 50 works. Would such a statistical outcome help the parties resolve their dispute? What if the number were 33 out of 100?

_____ : _____
Initials of Preparer _____

Information Sought by Defendants in Motions to Compel

Category	Google ¹	A9.com ²	Microsoft ³	Already in Perfect 10's production?
Unique identifier of the work	✓	✓	✓	
Copyright Registration #	✓	✓	✓	Y
Page number of document(s) containing the work	✓	✓	✓ (just "exemplar")	
URLs of allegedly infringing webpage	✓	✓		Y
Date of DMCA notice sent	✓		✓	Y
Damages claimed	✓	✓	✓	
Date of and particular conduct constituting the infringing act		✓		Y
Search term and other instructions or events used to cause the infringing display		✓		
Indicate thumbnail or full-size image		✓		
Copyright registrations of compilations or derivative works incorporating the work			✓	
Documents showing chain of title			✓	Y
Date of first publication of the work			✓	Y
Persons depicted			✓	

¹Google's Interrogatory No. 11. See Joint Stipulation Re. Google Inc.'s Motion to Compel Further Responses to Google's Interrogatories Nos. 3 and 11, p. 52.

²A9.com's Interrogatories No. 1 and 6. See Joint Stipulation Re: Defendant A9.com's Motion to Compel Perfect 10's Responses to A9.com's First Set of Interrogatories Nos. 1, 2, 4, 5, 6, pp. 7, 41-42.

³Microsoft's Interrogatory No. 1. See Joint Stipulation Re Microsoft's Motion to Compel A Response to Interrogatory No. 1 and To Determine the Sufficiency of Responses to Requests for Admission, pp. 7-8.

EXHIBIT B

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION
HONORABLE A. HOWARD MATZ, U.S. DISTRICT JUDGE

- - - **CERTIFIED COPY**

PERFECT 10, INC., A CALIFORNIA)
CORPORATION,)
PLAINTIFF,)
vs.) No. CV04-09484-AHM(SHx)
GOOGLE, INC., ET AL.,)
DEFENDANTS.)

PERFECT 10, INC., A CALIFORNIA)
CORPORATION,)
PLAINTIFF,)
vs.) No. CV05-4753-AHM(SHx)
AMAZON.COM, INC., ET AL.,)
DEFENDANTS.)

PERFECT 10, INC., A CALIFORNIA)
CORPORATION,)
PLAINTIFF,)
vs.) No. CV07-5156-AHM(SHx)
MICROSOFT CORPORATION,)
DEFENDANT.)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

LOS ANGELES, CALIFORNIA

MONDAY, OCTOBER 6, 2008

CINDY L. NIRENBERG, CSR 5059
U.S. Official Court Reporter
312 North Spring Street, #438
Los Angeles, California 90012
www.cindynirenberg.com

1 need, that we have propounded, we have been at meet and confer
2 sessions with Perfect 10 about that we need to have resolved in
3 order to pin that down.

4 THE COURT: Okay. But what I am trying to
5 accomplish, Mr. Zeller, is to get you the discovery that is
6 essential and no more, not different kinds of discovery. Now
7 not to preclude you from it, not to say that at no time would
8 you have the chance to compel and to get a judge to agree that
9 Perfect 10 should be compelled to provide other discovery, but
10 at the current time and under this very perhaps innovative --
11 I've come up with the idea myself. I'm not sure that it has
12 ever been done elsewhere, but maybe it has.

13 At this stage, that's all you're going to be confined
14 to. You are not going to be able to seek other stuff, and
15 Perfect 10 is not going to be compelled to give it, and
16 whatever they think they need from you for the first stage is
17 all -- once I'm satisfied that they have a right to it for the
18 first stage, that's all they can get.

19 What's so bad about that?

20 MR. ZELLER: Well, what I would say -- if I may make
21 a comment, Your Honor, about what it is that Perfect 10 says in
22 its submission, because I do think that there is potentially
23 ways of carving this out.

24 I mean, without obviously waiving -- what our
25 position is is that, you know, we think we ought to just go

1 motion against Amazon and Alexa that you are going to be
2 filing, is there something about that motion that is sui
3 generis that would not be a good example of comparable motions
4 you might file later on against Google or Microsoft or even A9?

5 MR. MAUSNER: Some is and some is, you know, peculiar
6 to Alexa.

7 THE COURT: Like what?

8 What I'm driving at, in case it isn't clear -- and
9 this is true for the benefit of everybody. I'll hear from some
10 of the defense attorneys in just a second -- is, okay, you want
11 me to hold off everything, hold off further discovery, hold off
12 any determination about a sample, see how far you get and how
13 far I get on your impending, as you put it, summary judgment
14 motion or partial summary judgment motion against Amazon and
15 Alexa, and I want to know, before I embark on that and whether
16 I go along with your request, how much of a predictor for
17 future work, future summary adjudication motions, other cases,
18 that motion is going to be, what kind of a predictor will it
19 be.

20 MR. MAUSNER: Okay. For that example of pay sites,
21 that's the same issue that is in all three cases.

22 There are some issues regarding Alexa that are unique
23 to Alexa.

24 THE COURT: Like what?

25 MR. MAUSNER: Alexa did not have a designated

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE

I hereby certify that pursuant to Section 753,
Title 28, United States Code, the foregoing is a true and
correct transcript of the stenographically reported
proceedings held in the above-entitled matter and that the
transcript page format is in conformance with the
regulations of the Judicial Conference of the United States.

Date: OCTOBER 8, 2008

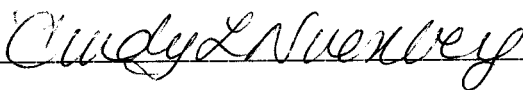

Cindy L. Nirenberg, CSR No. 5059

EXHIBIT C

From: Rachel M Herrick (rachelherrick@quinnemanuel.com)
To: Valerie Kincaid
Date: Thursday, May 8, 2008 5:57:01 PM
Cc: Jeff Mausner
Subject: RE: Perfect 10/Google: Google's Responses to Requests for Admissions

Hi Valerie,

As I explained last week, we have been devoting all of our energies over the past several weeks to Google's document production effort related to the court's recent discovery order. This must take precedence given the court order. I told you that I would follow up with you thereafter, and I will.

Regarding the 4th set of requests for admission, we are preparing a letter responding to yours, which should speed up the telephonic meet and confer. You will be receiving it later this week or early next week.

Regarding the 1st -3d sets of requests for admission, as mentioned above, we had to set aside most other projects during the past several weeks to focus on the document production. We are working on the amended responses and will serve them as soon as they are complete. This is a large project and it takes time. We would appreciate it if you would refrain from sending repeated follow up emails asking when these amended responses are coming. It is unnecessary. By way of comparison, Perfect 10 has given us assurances for several months now that they will be producing additional documents and information in response to Google's meet and confer efforts. We have accepted those representations at face value, and have refrained from sending repeated follow up emails asking when these documents are coming, because we trust that Perfect 10 will make good on its word and serve these documents as soon as practicable. We would appreciate this same courtesy from you.

Thanks,

Rachel M. Herrick
Quinn Emanuel Urquhart Oliver & Hedges, LLP
555 Twin Dolphin Drive, Suite 560
Redwood Shores, CA 94065
Direct: (650) 801-5005
Main Phone: (650) 801-5000
Main Fax: (650) 801-5100
E-mail: rachelherrick@quinnemanuel.com
Web: www.quinnemanuel.com

From: Valerie Kincaid [<mailto:valeriekincaid@yahoo.com>]
Sent: Thursday, May 08, 2008 5:31 AM
To: Rachel M Herrick
Cc: Jeff Mausner
Subject: Fw: Perfect 10/Google: Google's Responses to Requests for Admissions

Rachel,

I never received a response to my e-mail below. Under the Local Rules, the meet and confer should have taken place over a month ago. Please provide your availability immediately.

Also, you said that you would provide amended/supplemental responses to the first - third sets of requests for admissions in April, but we have not received them. When will we receive those responses?

Thanks, Valerie

Valerie

Valerie Kincaid
valeriekincaid@yahoo.com

----- Forwarded Message -----

From: Valerie Kincaid <valeriekincaid@yahoo.com>
To: Rachel M Herrick <rachelherrick@quinnemanuel.com>
Cc: Jeff Mausner <jeffmausner@bmrlaw.com>
Sent: Tuesday, April 29, 2008 10:54:22 PM
Subject: Re: Perfect 10/Google: Google's Responses to Requests for Admissions

Rachel,

When are you available to meet and confer regarding the fourth set of requests for admissions? You said you would do so after you got out the document production.

Thanks, Valerie

Valerie Kincaid
valeriekincaid@yahoo.com

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

From: Rachel M Herrick <rachelherrick@quinnemanuel.com>
To: Valerie Kincaid <valeriekincaid@yahoo.com>
Cc: Jeff Mausner <jeffmausner@bmrlaw.com>
Sent: Tuesday, April 29, 2008 7:32:59 PM
Subject: RE: Perfect 10/Google: Google's Responses to Requests for Admissions

Hi Valerie,

The document production is going out this week. Jeff is aware of this and can fill you in on the details.

Thanks,

Rachel M. Herrick
Quinn Emanuel Urquhart Oliver & Hedges, LLP
555 Twin Dolphin Drive, Suite 560
Redwood Shores, CA 94065
Direct: (650) 801-5005
Main Phone: (650) 801-5000
Main Fax: (650) 801-5100
E-mail: rachelherrick@quinnemanuel.com
Web: www.quinnemanuel.com

From: Valerie Kincaid [mailto:valeriekincaid@yahoo.com]
Sent: Tuesday, April 29, 2008 3:13 PM
To: Rachel M Herrick
Cc: Jeff Mausner
Subject: Fw: Perfect 10/Google: Google's Responses to Requests for Admissions

Hi Rachel

I would appreciate a response to my e-mail below, which I sent one week ago.

Thanks, Valerie

Valerie Kincaid
valeriekincaid@yahoo.com

----- Forwarded Message -----

From: Valerie Kincaid <valeriekincaid@yahoo.com>
To: Rachel M Herrick <rachelherrick@quinnemanuel.com>
Cc: Jeff Mausner <jeffmausner@bmlaw.com>
Sent: Tuesday, April 22, 2008 11:09:14 AM
Subject: Re: Perfect 10/Google: Google's Responses to Requests for Admissions

Rachel,

There is nothing "vague" about any of the definitions. Please get back to me shortly regarding the fourth set of requests for admissions; you were sent the meet and confer letter a month ago.

When are you serving the document production?

Thanks, Valerie

Valerie Kincaid
valeriekincaid@yahoo.com

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

From: Rachel M Herrick <rachelherrick@quinnemanuel.com>
To: Valerie Kincaid <valeriekincaid@yahoo.com>
Cc: Thomas Nolan <thomasnolan@quinnemanuel.com>
Sent: Tuesday, April 22, 2008 12:28:38 AM
Subject: RE: Perfect 10/Google: Google's Responses to Requests for Admissions

Hi Valerie,

We are sorry to hear that Perfect 10 is unwilling to clarify the vague definitions Google identified during our last meet and confer call.

I will get back to you regarding the 4th set of RFAs after we serve Google's upcoming document production.

Thanks,

Rachel

From: Valerie Kincaid [mailto:valeriekincaid@yahoo.com]
Sent: Thursday, April 17, 2008 10:41 PM
To: Rachel M Herrick
Cc: Jeff Mausner
Subject: Perfect 10/Google: Google's Responses to Requests for Admissions

Rachel,

During our telephonic meet and confer last week, you asked Perfect 10 to revise certain defined terms. (Those defined terms are: DISPLAYED ON GOOGLE SERVERS; ESSENTIALLY IDENTICAL TO; LINKED; BASE URL; and COPIED FROM.) We considered your request, and Perfect 10 is not revising any of the definitions.

We are still waiting to receive Google's supplemental/amended responses to the requests you identified in your meet and confer letter, dated February 29, 2008, and the supplemental/amended responses to the requests you identified during the telephonic meet and confer which took place last week. (Nos. 55, 81, 131, 132, 133.) You have stated that Google will serve supplemental/amended responses by the end of this month, at the latest. We look forward to receiving those responses.

Furthermore, we need to meet and confer regarding Google's responses to the fourth set of requests for admissions. There is no reason to delay a telephonic meet and confer. Please let me know when you are available to do so. I am available late tomorrow afternoon.

Thanks, Valerie

Valerie Kincaid
valeriekincaid@yahoo.com

Be a better friend, newshound, and know-it-all with Yahoo! Mobile. [Try it now.](#)

Be a better friend, newshound, and know-it-all with Yahoo! Mobile. [Try it now.](#)

Be a better friend, newshound, and know-it-all with Yahoo! Mobile. [Try it now.](#)

Be a better friend, newshound, and know-it-all with Yahoo! Mobile. [Try it now.](#)

Be a better friend, newshound, and know-it-all with Yahoo! Mobile. [Try it now.](#)

EXHIBIT D

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**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

Defendants.

Case No. CV 04-9484 AHM (SHx)
[Consolidated with Case No. CV 05-4753 AHM (SHx)]

DEFENDANT GOOGLE INC.'S
AMENDED RESPONSES AND
OBJECTIONS TO PLAINTIFF
PERFECT 10, INC.'S FOURTH SET
OF REQUESTS FOR ADMISSION

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.

PROPOUNDING PARTY: PLAINTIFF PERFECT 10, INC.

RESPONDING PARTY: DEFENDANT GOOGLE INC.

SET NO.: FOUR

1 created by Perfect 10. To the extent the request seeks to confirm information
2 apparent from the face of a document, Google also objects to the request in that the
3 document speaks for itself (once properly authenticated). Google further objects to
4 the request as compound and unintelligible, especially with respect to the purported
5 citation to FER G25 following the request. Subject to and without waiving the
6 specific and General Objections above, Google admits that the search results in
7 Google Image Search include links that are associated with the third party web
8 pages posting those images. Google otherwise denies the request.

9
10 **REQUEST FOR ADMISSION NO. 654:**

11 Admit that in FER G25, the link [www.celebritybattles.com/
12 celeb/Monika+Zsibrita](http://www.celebritybattles.com/celeb/Monika+Zsibrita), provides access to the web page [www.celebritybattles.com/
13 celeb/Monika+Zsibrita](http://www.celebritybattles.com/celeb/Monika+Zsibrita). Levine depo. p. 130.

14
15 **RESPONSE TO REQUEST FOR ADMISSION NO. 654:**

16 Google objects to the request as it seeks information not reasonably
17 related to the claims, defenses, or subject matter of the action, making the request
18 overbroad, unduly burdensome and oppressive. Google further objects to the
19 request as it calls for information outside of Google's possession, custody, or
20 control. Google further objects to the request as it seeks information equally
21 accessible to Perfect 10. Google further objects to the request as vague and
22 ambiguous, especially as to time and with respect to the terms and phrases "link"
23 and "provides access." Google further objects that the request relies upon
24 unauthenticated images and documents created by Perfect 10. To the extent the
25 request seeks to confirm information apparent from the face of a document, Google
26 also objects to the request in that the document speaks for itself (once properly
27 authenticated). Google further objects to the request as compound and
28 unintelligible, especially with respect to the purported citation to Levine deposition

1 following the request. Subject to and without waiving the specific and General
2 Objections above, Google admits that the search results in Google Image Search
3 include links that are associated with the third party web pages posting those
4 images. Google otherwise, having made a reasonable inquiry, responds that it lacks
5 the information to truthfully admit or deny the request.

6
7 **REQUEST FOR ADMISSION NO. 655:**

8 Admit that as of July 9, 2006, Google had not disabled access to the
9 web page www.celebritybattles.com/celeb/Monika+Zsibrita.

10
11 **RESPONSE TO REQUEST FOR ADMISSION NO. 655:**

12 Google objects to the request as it seeks information not reasonably
13 related to the claims, defenses, or subject matter of the action, making the request
14 overbroad, unduly burdensome and oppressive. Google further objects to the
15 request as it calls for information outside of Google's possession, custody, or
16 control. Google further objects to the request as it seeks information equally
17 accessible to Perfect 10. Google further objects to the request as vague and
18 ambiguous, especially with respect to the terms "disabled" and "access." Google
19 further objects that the request relies upon unauthenticated images and documents
20 created by Perfect 10. Subject to and without waiving the specific and General
21 Objections above, Google denies the request.

22
23 **REQUEST FOR ADMISSION NO. 656:**

24 Admit that some Google users who look at adult images are not using
25 Google to do research. Levine depo. p. 31.

1 **RESPONSE TO REQUEST FOR ADMISSION NO. 656:**

2 Google objects to the request as it seeks information not reasonably
3 related to the claims, defenses, or subject matter of the action, making the request
4 overbroad, unduly burdensome and oppressive. Google further objects to the
5 request as it seeks information equally accessible to Perfect 10. Google further
6 objects to the request as vague and ambiguous, especially as to time and with
7 respect to the terms “look,” “adult images,” “using” and “research.” To the extent
8 the request seeks to confirm information apparent from the face of a document,
9 Google also objects to the request in that the document speaks for itself (once
10 properly authenticated). Google further objects to the request as compound and
11 unintelligible, especially with respect to the purported citation to Levine deposition
12 following the request. Subject to and without waiving the specific and General
13 Objections above, Google, having made a reasonable inquiry, responds that it lacks
14 the information to truthfully admit or deny the request.

15
16 **REQUEST FOR ADMISSION NO. 657:**

17 Admit that most Google users who are seeking adult images are not
18 doing so to do research.

19
20 **RESPONSE TO REQUEST FOR ADMISSION NO. 657:**

21 Google objects to the request as it seeks information not reasonably
22 related to the claims, defenses, or subject matter of the action, making the request
23 overbroad, unduly burdensome and oppressive. Google further objects to the
24 request as it calls for information outside of Google’s possession, custody, or
25 control. Google further objects to the request as it seeks information equally
26 accessible to Perfect 10. Google further objects to the request as vague and
27 ambiguous, especially with respect to the terms and phrases “seeking,” “adult
28 images” and “research.” To the extent the request seeks to confirm information

1 apparent from the face of a document, Google also objects to the request in that the
2 document speaks for itself (once properly authenticated). Subject to and without
3 waiving the specific and General Objections above, Google, having made a
4 reasonable inquiry, responds that it lacks the information to truthfully admit or deny
5 the request.

6
7 **REQUEST FOR ADMISSION NO. 658:**

8 Admit that some Google users who are using GOOGLE to find adult
9 images are not doing research.

10
11 **RESPONSE TO REQUEST FOR ADMISSION NO. 658:**

12 Google objects to the request as it seeks information not reasonably
13 related to the claims, defenses, or subject matter of the action, making the request
14 overbroad, unduly burdensome and oppressive. Google further objects to the
15 request as it calls for information outside of Google's possession, custody, or
16 control. Google objects to the request as it seeks information not reasonably related
17 to the claims, defenses, or subject matter of the action, making the request
18 overbroad, unduly burdensome and oppressive. Google further objects to the
19 request as it seeks information equally accessible to Perfect 10. Google further
20 objects to the request as vague and ambiguous, especially with respect to the terms
21 and phrases "find," "adult images" and "research." Subject to and without waiving
22 the specific and General Objections above, Google, having made a reasonable
23 inquiry, responds that it lacks the information to truthfully admit or deny the
24 request.

25
26 **REQUEST FOR ADMISSION NO. 659:**

27 Admit that most Google users who click on Perfect 10 reduced-size
28 images available in GOOGLE Image Search results are not doing research.

1 **RESPONSE TO REQUEST FOR ADMISSION NO. 659:**

2 Google objects to the request as it seeks information not reasonably
3 related to the claims, defenses, or subject matter of the action, making the request
4 overbroad, unduly burdensome and oppressive. Google further objects to the
5 request as it calls for information outside of Google’s possession, custody, or
6 control. Google further objects to the request as it seeks information equally
7 accessible to Perfect 10. Google further objects to the request as vague and
8 ambiguous, especially with respect to the terms and phrases “Perfect 10 reduced-
9 size images,” “available” and “research.” Subject to and without waiving the
10 specific and General Objections above, Google, having made a reasonable inquiry,
11 responds that it lacks the information to truthfully admit or deny the request.
12

13 **REQUEST FOR ADMISSION NO. 660:**

14 Admit that John Levine had no idea what percentage of GOOGLE
15 users who use GOOGLE to find adult images are doing research. Levine depo. p.
16 38.
17

18 **RESPONSE TO REQUEST FOR ADMISSION NO. 660:**

19 Google objects to the request as it seeks information not reasonably
20 related to the claims, defenses, or subject matter of the action, making the request
21 overbroad, unduly burdensome and oppressive. Google further objects to the
22 request as calling for an admission or denial regarding deposition testimony given in
23 this case. Such requests are harassing, argumentative, beyond the scope of Fed. R.
24 Civ. P. 36(a)(1), unreasonably cumulative and duplicative of the depositions
25 themselves, and do not narrow or eliminate issues for trial, because deposition
26 testimony speaks for itself. Google further objects to the request as it calls for
27 information outside of Google’s possession, custody, or control as to what the
28 deponent knew or remembered. Google further objects to the request as it seeks

1 information equally accessible to Perfect 10. Google further objects to the request
2 as vague and ambiguous, especially with respect to the terms and phrases “find,”
3 “adult images” and “research.” To the extent the request seeks to confirm
4 information apparent from the face of a document, Google also objects to the
5 request in that the document speaks for itself (once properly authenticated).

6
7 **REQUEST FOR ADMISSION NO. 661:**

8 Admit that John Levine had no idea whether newsgroups that offer
9 thousands of full-length movies owned the rights to those movies. Levine depo. p.
10 70.

11
12 **RESPONSE TO REQUEST FOR ADMISSION NO. 661:**

13 Google objects to the request as it seeks information not reasonably
14 related to the claims, defenses, or subject matter of the action, making the request
15 overbroad, unduly burdensome and oppressive. Google further objects to the
16 request as calling for an admission or denial regarding deposition testimony given in
17 this case. Such requests are harassing, argumentative, beyond the scope of Fed. R.
18 Civ. P. 36(a)(1), unreasonably cumulative and duplicative of the depositions
19 themselves, and do not narrow or eliminate issues for trial, because deposition
20 testimony speaks for itself. Google further objects to the request as it calls for
21 information outside of Google’s possession, custody, or control as to what the
22 deponent knew or remembered. Google further objects to the request as it seeks
23 information equally accessible to Perfect 10. Google further objects to the request
24 in that it calls for a legal conclusion as to what constitutes ownership of the rights to
25 “those movies.” Google further objects to the request as vague and ambiguous,
26 especially with respect to the terms and phrases “newsgroups,” “offer,” “full-length
27 movies” and “rights.” To the extent the request seeks to confirm information

28

1 apparent from the face of a document, Google also objects to the request in that the
2 document speaks for itself (once properly authenticated).

3
4 **REQUEST FOR ADMISSION NO. 662:**

5 Admit that John Levine had heard people allege that usenet newsgroups
6 were full of piracy. Levine depo. p. 71.

7
8 **RESPONSE TO REQUEST FOR ADMISSION NO. 662:**

9 Google objects to the request as it seeks information not reasonably
10 related to the claims, defenses, or subject matter of the action, making the request
11 overbroad, unduly burdensome and oppressive. Google further objects to the
12 request as calling for an admission or denial regarding deposition testimony given in
13 this case. Such requests are harassing, argumentative, beyond the scope of Fed. R.
14 Civ. P. 36(a)(1), unreasonably cumulative and duplicative of the depositions
15 themselves, and do not narrow or eliminate issues for trial, because deposition
16 testimony speaks for itself. Google further objects to the request as it calls for
17 information outside of Google's possession, custody, or control as to what the
18 deponent knew or remembered. Google further objects to the request as it seeks
19 information equally accessible to Perfect 10. Google further objects to the request
20 in that it calls for a legal conclusion as to what is "piracy." Google further objects to
21 the request as vague and ambiguous, especially with respect to the terms and phrases
22 "allege," "usenet newsgroups" and "piracy." To the extent the request seeks to
23 confirm information apparent from the face of a document, Google also objects to
24 the request in that the document speaks for itself (once properly authenticated).

25
26
27
28

1 **REQUEST FOR ADMISSION NO. 663:**

2 Admit that John Levine had no idea what percentage of websites that
3 offer naked images of thousands of celebrities owned the rights to their content.
4 Levine depo. p. 79.

5
6 **RESPONSE TO REQUEST FOR ADMISSION NO. 663:**

7 Google objects to the request as it seeks information not reasonably
8 related to the claims, defenses, or subject matter of the action, making the request
9 overbroad, unduly burdensome and oppressive. Google further objects to the
10 request as calling for an admission or denial regarding deposition testimony given in
11 this case. Such requests are harassing, argumentative, beyond the scope of Fed. R.
12 Civ. P. 36(a)(1), unreasonably cumulative and duplicative of the depositions
13 themselves, and do not narrow or eliminate issues for trial, because deposition
14 testimony speaks for itself. Google further objects to the request as it calls for
15 information outside of Google's possession, custody, or control as to what the
16 deponent knew or remembered. Google further objects to the request as it seeks
17 information equally accessible to Perfect 10. Google further objects to the request
18 in that it calls for a legal conclusion as to what constitutes ownership of content.
19 Google further objects to the request as vague and ambiguous, especially with
20 respect to the terms and phrases "websites that offer naked images of thousands of
21 celebrities" and "owned the rights to their content." To the extent the request seeks
22 to confirm information apparent from the face of a document, Google also objects to
23 the request in that the document speaks for itself (once properly authenticated).

24
25 **REQUEST FOR ADMISSION NO. 664:**

26 Admit that John Levine stated that it was unlikely that Reese
27 Witherspoon, Jennifer Aniston, Heather Graham, and Sarah Michelle Geller had
28 given the website skanycelebs.com the right to use their images. Levine depo. p. 82.

1 **RESPONSE TO REQUEST FOR ADMISSION NO. 664:**

2 Google objects to the request as it seeks information not reasonably
3 related to the claims, defenses, or subject matter of the action, making the request
4 overbroad, unduly burdensome and oppressive. Google further objects to the
5 request as calling for an admission or denial regarding deposition testimony given in
6 this case. Such requests are harassing, argumentative, beyond the scope of Fed. R.
7 Civ. P. 36(a)(1), unreasonably cumulative and duplicative of the depositions
8 themselves, and do not narrow or eliminate issues for trial, because deposition
9 testimony speaks for itself. Google further objects to the request as it seeks
10 information equally accessible to Perfect 10. Google further objects to the request
11 in that it calls for a legal conclusion as to when a website has been given the right to
12 use an image. Google further objects to the request as vague and ambiguous,
13 especially with respect to the terms and phrases “unlikely,” “given,” “website
14 skankycelebs.com” and “right to use their images.” To the extent the request seeks
15 to confirm information apparent from the face of a document, Google also objects to
16 the request in that the document speaks for itself (once properly authenticated).

17
18 **REQUEST FOR ADMISSION NO. 665:**

19 Admit that John Levine stated that it was unlikely that the website
20 celebrityworld.tv owned the rights to all of its celebrity pictures. Levine depo. p.
21 84.

22
23 **RESPONSE TO REQUEST FOR ADMISSION NO. 665:**

24 Google objects to the request as it seeks information not reasonably
25 related to the claims, defenses, or subject matter of the action, making the request
26 overbroad, unduly burdensome and oppressive. Google further objects to the
27 request as calling for an admission or denial regarding deposition testimony given in
28 this case. Such requests are harassing, argumentative, beyond the scope of Fed. R.

1 Civ. P. 36(a)(1), unreasonably cumulative and duplicative of the depositions
2 themselves, and do not narrow or eliminate issues for trial, because deposition
3 testimony speaks for itself. Google further objects to the request as it seeks
4 information equally accessible to Perfect 10. Google further objects to the request
5 in that it calls for a legal conclusion as to what constitutes ownership of rights.
6 Google further objects to the request as vague and ambiguous, especially with
7 respect to the terms and phrases “unlikely,” “website celebrityworld.tv,” “owned”
8 and “rights to all of its celebrity pictures.” To the extent the request seeks to
9 confirm information apparent from the face of a document, Google also objects to
10 the request in that the document speaks for itself (once properly authenticated).

11
12 **REQUEST FOR ADMISSION NO. 666:**

13 Admit that John Levine stated that GOOGLE could look for language
14 on websites suggesting that the website did not own the rights to its content. Levine
15 depo. p. 91.

16
17 **RESPONSE TO REQUEST FOR ADMISSION NO. 666:**

18 Google objects to the request as it seeks information not reasonably
19 related to the claims, defenses, or subject matter of the action, making the request
20 overbroad, unduly burdensome and oppressive. Google further objects to the
21 request as calling for an admission or denial regarding deposition testimony given in
22 this case. Such requests are harassing, argumentative, beyond the scope of Fed. R.
23 Civ. P. 36(a)(1), unreasonably cumulative and duplicative of the depositions
24 themselves, and do not narrow or eliminate issues for trial, because deposition
25 testimony speaks for itself. Google further objects to the request as it seeks
26 information equally accessible to Perfect 10. Google further objects to the request
27 in that it calls for a legal conclusion as to what language indicates a website does not
28 “own the rights to its content.” Google further objects to the request as vague and

1 ambiguous, especially with respect to the terms and phrases “could,” “language,”
2 “suggesting” and “own the rights to its content.” To the extent the request seeks to
3 confirm information apparent from the face of a document, Google also objects to
4 the request in that the document speaks for itself (once properly authenticated).
5

6 **REQUEST FOR ADMISSION NO. 667:**

7 Admit that John Levine stated that GOOGLE could program its crawler
8 not to crawl websites that contained specific text such as text indicating that they did
9 not own their content. Levine depo. p. 95-96.
10

11 **RESPONSE TO REQUEST FOR ADMISSION NO. 667:**

12 Google objects to the request as it seeks information not reasonably
13 related to the claims, defenses, or subject matter of the action, making the request
14 overbroad, unduly burdensome and oppressive. Google further objects to the
15 request as calling for an admission or denial regarding deposition testimony given in
16 this case. Such requests are harassing, argumentative, beyond the scope of Fed. R.
17 Civ. P. 36(a)(1), unreasonably cumulative and duplicative of the depositions
18 themselves, and do not narrow or eliminate issues for trial, because deposition
19 testimony speaks for itself. Google further objects to the request as it seeks
20 information equally accessible to Perfect 10. Google further objects to the request
21 in that it calls for a legal conclusion as to what language indicates a website does not
22 “own the rights to its content.” Google further objects to the request as vague and
23 ambiguous, especially with respect to the terms and phrases “could,” “program,”
24 “specific text” and “indicating that they did not own their content.” To the extent
25 the request seeks to confirm information apparent from the face of a document,
26 Google also objects to the request in that the document speaks for itself (once
27 properly authenticated).
28

1 **REQUEST FOR ADMISSION NO. 668:**

2 Admit that John Levine stated that he was not privy to all of
3 GOOGLE's internal technology. Levine depo. p. 97.
4

5 **RESPONSE TO REQUEST FOR ADMISSION NO. 668:**

6 Google objects to the request as it seeks information not reasonably
7 related to the claims, defenses, or subject matter of the action, making the request
8 overbroad, unduly burdensome and oppressive. Google further objects to the
9 request as calling for an admission or denial regarding deposition testimony given in
10 this case. Such requests are harassing, argumentative, beyond the scope of Fed. R.
11 Civ. P. 36(a)(1), unreasonably cumulative and duplicative of the depositions
12 themselves, and do not narrow or eliminate issues for trial, because deposition
13 testimony speaks for itself. Google further objects to the request as it seeks
14 information equally accessible to Perfect 10. Google further objects to the request
15 as vague and ambiguous, especially with respect to the terms and phrases "privy"
16 and "internal technology." To the extent the request seeks to confirm information
17 apparent from the face of a document, Google also objects to the request in that the
18 document speaks for itself (once properly authenticated).
19

20 **REQUEST FOR ADMISSION NO. 669:**

21 Admit that John Levine stated that he was not privy to proprietary
22 information about GOOGLE's internal processes and capabilities. Levine depo. p.
23 98, 136.
24

25 **RESPONSE TO REQUEST FOR ADMISSION NO. 669:**

26 Google objects to the request as it seeks information not reasonably
27 related to the claims, defenses, or subject matter of the action, making the request
28 overbroad, unduly burdensome and oppressive. Google further objects to the

1 request as calling for an admission or denial regarding deposition testimony given in
2 this case. Such requests are harassing, argumentative, beyond the scope of Fed. R.
3 Civ. P. 36(a)(1), unreasonably cumulative and duplicative of the depositions
4 themselves, and do not narrow or eliminate issues for trial, because deposition
5 testimony speaks for itself. Google further objects to the request as it seeks
6 information equally accessible to Perfect 10. Google further objects to the request
7 as vague and ambiguous, especially with respect to the terms and phrases “privy to
8 proprietary information” and “internal processes and capabilities.” To the extent the
9 request seeks to confirm information apparent from the face of a document, Google
10 also objects to the request in that the document speaks for itself (once properly
11 authenticated).

12
13 **REQUEST FOR ADMISSION NO. 670:**

14 Admit that John Levine stated that GOOGLE was in charge of what
15 images GOOGLE displayed in its Image Search results. Levine depo. p. 102.

16
17 **RESPONSE TO REQUEST FOR ADMISSION NO. 670:**

18 Google objects to the request as it seeks information not reasonably
19 related to the claims, defenses, or subject matter of the action, making the request
20 overbroad, unduly burdensome and oppressive. Google further objects to the
21 request as calling for an admission or denial regarding deposition testimony given in
22 this case. Such requests are harassing, argumentative, beyond the scope of Fed. R.
23 Civ. P. 36(a)(1), unreasonably cumulative and duplicative of the depositions
24 themselves, and do not narrow or eliminate issues for trial, because deposition
25 testimony speaks for itself. Google further objects to the request as it seeks
26 information equally accessible to Perfect 10. Google further objects to the request
27 as vague and ambiguous, especially with respect to the terms and phrases “in
28 charge” and “images GOOGLE displayed.” To the extent the request seeks to

1 confirm information apparent from the face of a document, Google also objects to
2 the request in that the document speaks for itself (once properly authenticated).

3
4 **REQUEST FOR ADMISSION NO. 671:**

5 Admit that John Levine did not see any public benefit in GOOGLE
6 recommending the terms kidfuck, childsex, or childfuck to potential GOOGLE
7 advertisers. Levine depo. p. 119.

8
9 **RESPONSE TO REQUEST FOR ADMISSION NO. 671:**

10 Google objects to the request as it seeks information not reasonably
11 related to the claims, defenses, or subject matter of the action, making the request
12 overbroad, unduly burdensome and oppressive. Google further objects to the
13 request as calling for an admission or denial regarding deposition testimony given in
14 this case. Such requests are harassing, argumentative, beyond the scope of Fed. R.
15 Civ. P. 36(a)(1), unreasonably cumulative and duplicative of the depositions
16 themselves, and do not narrow or eliminate issues for trial, because deposition
17 testimony speaks for itself. Google further objects to the request as it calls for
18 information outside of Google's possession, custody, or control as to what the
19 deponent knew or remembered. Google further objects to the request as it seeks
20 information equally accessible to Perfect 10. Google further objects to the request
21 in that it calls for a legal conclusion to the extent "public benefit" is defined with
22 reference to copyright law or other legal doctrines. Google further objects to the
23 request as vague and ambiguous, especially with respect to the terms and phrases
24 "see," "public benefit" and "recommending." To the extent the request seeks to
25 confirm information apparent from the face of a document, Google also objects to
26 the request in that the document speaks for itself (once properly authenticated).

27
28

1 **REQUEST FOR ADMISSION NO. 672:**

2 Admit that John Levine stated that GOOGLE could block its program
3 from suggesting the words, kidfuck, childsex, or childfuck to potential advertisers.
4 Levine depo. p. 121.

5
6 **RESPONSE TO REQUEST FOR ADMISSION NO. 672:**

7 Google objects to the request as it seeks information not reasonably
8 related to the claims, defenses, or subject matter of the action, making the request
9 overbroad, unduly burdensome and oppressive. Google further objects to the
10 request as calling for an admission or denial regarding deposition testimony given in
11 this case. Such requests are harassing, argumentative, beyond the scope of Fed. R.
12 Civ. P. 36(a)(1), unreasonably cumulative and duplicative of the depositions
13 themselves, and do not narrow or eliminate issues for trial, because deposition
14 testimony speaks for itself. Google further objects to the request as it seeks
15 information equally accessible to Perfect 10. Google further objects to the request
16 as vague and ambiguous, especially with respect to the terms and phrases “could
17 block” and “suggesting.” To the extent the request seeks to confirm information
18 apparent from the face of a document, Google also objects to the request in that the
19 document speaks for itself (once properly authenticated).

20
21 **REQUEST FOR ADMISSION NO. 673:**

22 Admit that by inputting the string celebritybattles.com/
23 celeb/Monika+Zsibrita into GOOGLE’s search box, GOOGLE can find all Google
24 Web Search results that contain that string. Levine P169,171.

25
26 **RESPONSE TO REQUEST FOR ADMISSION NO. 673:**

27 Google objects to the request as it seeks information not reasonably
28 related to the claims, defenses, or subject matter of the action, making the request

1 **RESPONSE TO REQUEST FOR ADMISSION NO. 683:**

2 Google objects to the request as it seeks information not reasonably
3 related to the claims, defenses, or subject matter of the action, making the request
4 overbroad, unduly burdensome and oppressive. Google further objects to the
5 request as it seeks information equally accessible to Perfect 10. Google further
6 objects to the request as vague and ambiguous, especially with respect to the terms
7 “complete control” and “links.” Google further objects that the request relies upon
8 unauthenticated images and documents created by Perfect 10. To the extent the
9 request seeks to confirm information apparent from the face of a document, Google
10 also objects to the request in that the document speaks for itself (once properly
11 authenticated). Google further objects to the request as compound and
12 unintelligible, especially with respect to the purported citation to the Levine
13 deposition following the request. Subject to and without waiving the specific and
14 General Objections above, Google admits that the Google Image Search service
15 links to third-party web pages on which the indexed images are posted. Google
16 otherwise denies the request.

17
18 DATED: August 8, 2008

Respectfully submitted,

19 QUINN EMANUEL URQUHART OLIVER &
20 HEDGES, LLP

21 *BRL*
22 By *Rachel M. Herrick*
23 Rachel M. Herrick
24 Attorneys for Google Inc.
25
26
27
28

1 QUINN EMANUEL URQUHART OLIVER & HEDGES, LLP
Michael T. Zeller (Bar No. 196417)
2 michaelzeller@quinnemanuel.com
865 South Figueroa Street, 10th Floor
3 Los Angeles, California 90017-2543
Telephone: (213) 443-3000; Facsimile: (213) 443-3100
4 Charles K. Verhoeven (Bar No. 170151)
charlesverhoeven@quinnemanuel.com
5 50 California Street, 22nd Floor
San Francisco, California 94111
6 Rachel M. Herrick (Bar No. 191060)
rachelherrick@quinnemanuel.com
7 555 Twin Dolphin Drive, Suite 560
Redwood Shores, California 94065-213
8
9 Attorneys for Defendant GOOGLE INC.

10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA

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

15 vs.

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

CASE NO. CV 04-9484 AHM (SHx)
[Consolidated with Case No. CV 05-
4753 AHM (SHx)]

PROOF OF SERVICE

18
19 AND COUNTERCLAIM

20 PERFECT 10, INC., a California
21 corporation,
22 Plaintiff,

23 vs.

24 AMAZON.COM, INC., a corporation;
A9.COM, INC., a corporation; and
DOES 1 through 100, inclusive,
25 Defendants.

1 **PROOF OF SERVICE**

2 I am employed in the County of San Francisco, State of California. I am over
3 the age of eighteen years and not a party to the within action; my business address is
4 50 California Street 22nd Floor San Francisco, CA 94111.

5 On August 8, 2008, I served true copies of the following document(s)
6 described as **Google Inc.'s Amended Responses and Objections to Plaintiff's**
7 **Corrected First Set of Requests for Admission; Google Inc.'s Amended**
8 **Response to Plaintiff's Second Set of Requests for Admission; Google Inc.'s**
9 **Amended Response to Plaintiff's Third Set of Requests for Admission; and**
10 **Google Inc.'s Amended Responses to Plaintiff's Fourth Set of Requests for**
11 **Admission** on the parties in this action as follows:

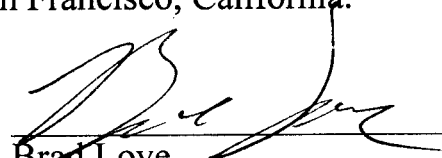
12 Jeff Mausner
13 Mausner IP Law
14 21800 Oxnard Street, Suite 910
15 Woodland Hills, CA 91367-3640
16 Tel: 310-617-8100
17 Fax: 818-716-2773
18 jeffmausner@bmrlaw.com
19 **ATTORNEY FOR**
20 **PLAINTIFF/COUNTER-**
21 **DEFENDANT PERFECT 10, INC.**

22 **BY MAIL:** I enclosed the foregoing into sealed envelope(s) addressed as shown
23 above, and I deposited such envelope(s) in the mail at San Francisco, California.
24 The envelope was mailed with postage thereon fully prepaid.

25 **BY ELECTRONIC MAIL TRANSMISSION:** By electronic mail transmission
26 from bradlove@quinnemanuel.com on August 8, 2008, by transmitting a PDF
27 format copy of such document(s) to each such person at the e-mail address listed
28 below their address(es). The document(s) was/were transmitted by electronic
transmission and such transmission was reported as complete and without error

I declare under penalty of perjury under the laws of the State of California
that the foregoing is true and correct.

Executed on August 8, 2008, at San Francisco, California.


Brad Love