

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

4 Facsimile: (213) 443-3100

Charles K. Verhoeven (Bar No. 170151)

5 charlesverhoeven@quinnemanuel.com

50 California Street, 22nd Floor

6 San Francisco, California 94111

Rachel Herrick Kassabian (Bar No. 191060)

7 rachelkassabian@quinnemanuel.com

555 Twin Dolphin Drive, Suite 560

8 Redwood Shores, California 94065-2129

9 Attorneys for Defendant GOOGLE INC.

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

18 Defendants.

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
25 DOES 1 through 100, inclusive,

26 Defendants.

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

DECLARATION OF SIBRINA KHAN
IN SUPPORT OF DEFENDANT
GOOGLE'S MOTION FOR
SUMMARY JUDGMENT RE:
GOOGLE'S ENTITLEMENT TO
SAFE HARBOR UNDER 17 U.S.C.
§ 512

Hon. A. Howard Matz

Date: August 17, 2009

Time: 10:00 a.m.

Ctrm: 14

Discovery Cut-off: None Set
Pretrial Conference Date: None Set
Trial Date: None Set

1 I, Sibrina Khan, declare as follows:

2 1. I am a paralegal at the firm of Quinn Emanuel Urquhart Oliver &
3 Hedges, LLP, counsel for Defendant Google Inc. ("Google") in this action. I make
4 this declaration of my personal and firsthand knowledge and, if called and sworn as
5 a witness, could and would competently testify thereto.

6 2. I have reviewed the DVDs and hard drive Perfect 10 enclosed with its
7 claimed DMCA notices sent to Google. With the assistance of my colleague Brian
8 Romanow, another paralegal whose work I oversaw, I reviewed and counted the
9 number of pages in the files on the DVDs and hard drive. The process we followed
10 is described below.

11 3. The December 9, 2005, and March 20, July 12, and July 31, 2007
12 communications each included only one DVD.

13 4. The July 2, 2007, October 16, 2007, December 13, 2007, January 24,
14 2008, March 17, 2008, April 24, 2009 and May 20, 2009 claimed notices each
15 included two DVDs. With the exception of the July 2, 2007 DVDs, the first DVD
16 ("DVD1") typically included two folders entitled "giganews," "rapidshare,"
17 "thundernews," and the like. The second DVD ("DVD2") included three to six top-
18 level folders. These folders are typically referenced by name in the spreadsheets
19 included with the notices. Each of the top-level folders have subfolders, many of
20 which have another layer of subfolders of their own. Both DVDs 1 and 2 submitted
21 with the July 2, 2007 notice are formatted this way.

22 5. The July 9, 2008 notice included three DVDs. The first and second
23 DVDs contain material organized in a manner similar to DVD1 described in
24 paragraph 4 above. The third DVD ("DVD3") contains material organized in a
25 manner similar to DVD2 described in paragraph 4 above.

26 6. In total, Perfect 10's DVDs contained over 70,000 distinct files.

27 7. The hard drive submitted with Perfect 10's June 28, 2007
28 communication is organized a bit differently. The first approximately 60 folders on

1 the hard drive are named after what appear to be websites. Each of those folders
2 contains files within it. In addition, the hard drive has a folder called "z other
3 infringing websites," which is organized in a similar manner to the DVDs submitted
4 with Perfect 10's other communications. This folder has 3 subfolders. The hard
5 drive has another folder called "z perfect 10 website," which is comprised of 367
6 subfolders.

7 8. For the DVDs submitted with the December 9, 2005, March 20, 2007,
8 July 2, 2007, July 12, 2007, July 31, 2007, October 16, 2007, December 13, 2007,
9 January 24, 2008 and March 17, 2008 notices, we opened the top-level folders on
10 each of the enclosed DVDs. Within those folders there are subfolders which usually
11 bear the name of what appears to be a website. Those subfolders typically contain
12 files. In some cases, they may contain another layer of subfolders. In most cases,
13 the files in the subfolders were .png, .pdf, and .jpg files. The files in the .png and
14 .jpg format were single page files and therefore, we were able to determine how
15 many pages they contained simply by observing how many files there were. As for
16 the .pdf files, when they are opened the Adobe Reader program provides a page
17 count. We thus reviewed the files on Perfect 10's DVDs to determine how many
18 pages were provided.

19 9. We followed the same process with respect to the June 28, 2007 hard
20 drive. However, due to the sheer volume of files and the amount of time it would
21 have taken to review them all, we only reviewed the "z other infringing websites"
22 and "z perfect 10 website" folders. Otherwise, we followed the same counting
23 procedure for the hard drive as is outlined above .

24 10. The material provided on the DVDs is extremely voluminous. For
25 example, the DVD provided with the December 9, 2005 notice contains 35 folders
26 comprising more than 25,000 pages of material.

27 11. The DVD provided with the March 20, 2007 communication has 6 top
28 level folders, entitled Folders 1, 2, 3, 4, 5, and 6. Folder 1 is described as "P10

1 Images Google Ads" and comprises 66 pages of material. Folder 3 is described as
2 "2500 P10 images," and has 6 subfolders comprising 2,752 pages of material.

3 12. The July 2, 2007 notice included two DVDs, "Disk 1" and "Disk 2."
4 Disk 1 has 3 top level folders, entitled "ALL ARE P10, "ALL LARGE ARE P10,"
5 and "ALL LARGE WITH P10 NOTICES." The "ALL ARE P10" FOLDER has 58
6 subfolders; the "ALL LARGE ARE P10" folder has 167 subfolders; and the "ALL
7 LARGE WITH P10 NOTICES" folder has 4 subfolders. Disk 2 has 3 top level
8 folders, entitled "DOWNLOADS - ALL ARE P10," "DOWNLOADS - ALL
9 LARGE ARE P10," and "MODEL - ALL LARGE ARE P10." The
10 "DOWNLOADS - ALL ARE P10" folder has 9 subfolders; the "DOWNLOADS -
11 ALL LARGE ARE P10" folder has 39 subfolders; and the "MODEL - ALL LARGE
12 ARE P10" folder has 30 subfolders.

13 13. In reviewing the files in the various folders and subfolders on the
14 DVDs, we discovered that oftentimes, even where there appeared to be only a small
15 number of electronic files in a particular subfolder, those files were still quite
16 voluminous. For example, the "ALL LARGE ARE P10" folder on DVD 1 provided
17 with the July 2, 2007 notice contains 167 subfolders comprising at least 9,046 pages
18 of material. The "MODELS - ALL LARGE ARE P10" folder on Disk 2 submitted
19 with that notice has a subfolder entitled "Ina Shevchenko" which contains three .pdf
20 files comprising a total of 1,534 pages. DVDs 1 and 2 submitted with the July 2,
21 2007 notice contain at least 26,243 pages of material within the several layers of
22 folders and subfolders.

23 14. Similarly, the DVD submitted with the July 31, 2007 notice has seven
24 top level folders: "ALL ARE P10," "ALL LARGE ARE P10," "ALL LARGE
25 WITH P10 NOTICES," "CHECKED ARE P10," "DISPLAY ALL ARE P10,"
26 "DISPLAY ALL LARGE ARE P10," and "MODEL SEARCH ALL LARGE ARE
27 P10. The "ALL ARE P10" folder has 38 subfolders; the "ALL LARGE ARE P10"
28 folder has 97 subfolders; the "ALL LARGE WITH P10 NOTICES" folder has 3

1 subfolders; the "CHECKED ARE P10" folder has 53 subfolders; the "DISPLAY
2 ALL ARE P10" folder has 5 subfolders; the "DISPLAY ALL LARGE ARE P10"
3 folder has 4 subfolders; and the "MODEL SEARCH ALL LARGE ARE P10" folder
4 has 3 subfolders. The "porno-sex.com.ar" subfolder in the "ALL LARGE WITH
5 P10 NOTICES" folder contains one .pdf file comprising 1,579 images alone.
6 Combined, these folders and subfolders comprise at least 16,627 pages of material.

7 15. Disk 2 provided with the October 16, 2007 notice has four top level
8 folders: "ALL ARE P10," "ALL LARGE ARE P10," "CHECKED ARE P10," and
9 "MODELS." The "ALL ARE P10" folder has 79 subfolders; the "ALL LARGE
10 ARE P10" folder has 88 subfolders; the "CHECKED ARE P10" folder has 35
11 subfolders; the "MODELS" folder has three subfolders, which have subfolders of
12 their own. The "devil666666" subfolder in the "ALL ARE P10" folder on this disk
13 contains two .pdf files comprising 1,488 pages. The "glamour.com" subfolder in
14 that same folder contains one .pdf file that alone comprises 2,162 pages. Similarly,
15 the "Marketa Belonoha" subfolder in the "MODELS - ALL ARE P10" folder on
16 that same disk contains one .pdf file comprising 1,381 pages. Thus, Disk 2
17 submitted with the October 16, 2007 notice includes at least 20,738 pages of
18 material. Combined with Disk 1, the two DVDs submitted with the October 16,
19 2007 notice contain at least 38,530 pages of material.

20 16. DVD 2 submitted with the December 13, 2007 notice has 4 top level
21 folders: "ALL ARE P10," "CHECKED ARE P10," "CHECKED OR LARGE ARE
22 P10," "MODELS - ALL ARE P10," and "MODELS - CHECKED OR LARGE ARE
23 P10." The "ALL ARE P10" folder has 80 subfolders; the "CHECKED ARE P10"
24 folder has 36 subfolders; the "CHECKED OR LARGE ARE P10" folder has 23
25 subfolders; the "MODELS - ALL ARE P10" folder has 18 subfolders; and the
26 "MODELS - CHECKED OR LARGE ARE P10" folder has 4 subfolders. The "ALL
27 ARE P10" folder comprises at least 8,772 pages of material. Combined with the
28

1 other folders, Perfect 10 submitted at least 28,672 pages of material on that DVD
2 alone.

3 17. DVD 2 provided with the March 17, 2008 notice contains 3 top level
4 folders: "ALL ARE P10," "CHECKED OR LARGE ARE P10," and "MODELS."
5 The "ALL ARE P10" folder has 41 subfolders; the "CHECKED OR LARGE ARE
6 P10" folder has 16 subfolders; the "MODELS - ALL ARE P10" subfolder has 19
7 subfolders; and the "MODELS - CHECKED ARE P10" subfolder has 3 subfolders.
8 The "ALL ARE P10" folder comprises at least 11,114 pages of material. Combined
9 with the other folders, Perfect 10 submitted at least 16,130 pages of material on that
10 DVD alone.

11 18. Each of the other DVDs we reviewed similarly contain multiple layers
12 of folders comprising thousands of pages of material.

13 19. The June 28, 2007 hard drive is even more voluminous than the DVDs.
14 The "z other infringing websites" folder has three subfolders: "ALL ARE P10,"
15 "ALL LARGE ARE P10," and "ALL LARGE WITH P10 NOTICES." The "ALL
16 ARE P10" subfolder has 58 subfolders; the "ALL LARGE ARE P10" subfolder has
17 107 subfolders; and the "ALL LARGE WITH P10 NOTICES" subfolder has 3
18 subfolders. The "amp2000.com.ar" subfolder to the "ALL LARGE ARE P10"
19 subfolder to the "z other infringing websites" folder contains four .pdf files
20 comprising 1,514 pages. The "fritchy.com" subfolder to the "ALL LARGE WITH
21 P10 NOTICES" subfolder to the "z other infringing websites" folder contains
22 twelve .pdf files comprising 11,303 pages. The "ALL LARGE ARE P10" subfolder
23 in the "z other infringing websites" folder comprises at least 24,870 pages of
24 material. In total, the "z other infringing websites" folder contains at least 46,187
25 pages of material.

26 20. The "z perfect 10 website" folder on the hard drive contains 367
27 subfolders organized alphabetically by what appear to be model names. The files in
28

1 these subfolders were overwhelmingly .jpg files. Altogether, there are over 15,000
2 pages of material in the "z perfect 10 website" folder.

3 I declare under penalty of perjury under the laws of the United States of
4 America that the foregoing is true and correct. Executed July 1, 2009 at Redwood
5 Shores, California.

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



Sibrina Khan