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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)]

DECLARATION OF BILL BROUGHER IN SUPPORT OF DEFENDANT GOOGLE'S MOTIONS 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

AND COUNTERCLAIM

PERFECT 10, INC., a California corporation,

Plaintiff,

vs.

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

Defendants.

PUBLIC REDACTED

1 I, Bill Brougher, declare as follows:

2 1. I currently am Director of Partner Technology Management at Google
3 Inc. ("Google"). For three and a half years I was a Product Manager for Google
4 Web Search. I have personal knowledge of the facts set forth herein and, if called as
5 a witness, could and would testify competently thereto.

6 2. Google operates the world's most popular Internet search engine
7 accessible, among other places, on the World Wide Web at www.google.com.

8 3. Google has indexed billions of web pages available on the Internet.
9 Google's search products allow users to quickly locate information from these web
10 pages on a particular subject via a simple search query. Google accomplishes this
11 task, in part, by compiling an index of the content available on accessible web sites
12 and querying this index rather than querying the billions of different web pages. It
13 would be impossible for Google to locate and index all of the web pages manually.

14 4. Google – like other search engines – uses an automated software
15 program (also known as a web crawler, or Googlebot) to obtain copies of publicly
16 available web pages. The Googlebot obtains copies of web pages by sending
17 requests to the server for the originating website and receiving the requested content
18 in response. Google's proprietary software analyzes a copy of each web page it
19 receives from the originating web servers and compiles an index of the text
20 available on accessible websites. For Image Search, Google's search engine
21 compiles an index of the text associated with each image crawled. Although Google
22 crawls and indexes billions of web pages, it does not crawl or index all web pages.
23 For example, web pages hosted on servers with a robot exclusion .txt file, a file that
24 instructs robots not to crawl or index those web pages, are not crawled or indexed by
25 Google.

26 5. Google's search engine allows users to search the compiled index
27 through an interface found at www.google.com. When a user enters a query in Web
28 Search, the search engine searches its index for pages related to the query. When a

1 user enters a query in Image Search, the search engine searches its index for images
2 with associated text relevant to the query, and returns results consisting of one or
3 more pages of "thumbnail images," which aid the user in identifying and locating
4 the image or images most relevant to the search.

5 6. For many of the web pages identified in response to user searches,
6 Google provides users with the option of selecting a link to the "cached" copy of the
7 web page through an automatic technical process, as opposed to a direct link to the
8 website itself, for the purpose of making the material available to users who wish to
9 access it after it is initially transmitted by the third-party websites. No such option
10 is available on Image Search. Google's proprietary software automatically stores
11 the text associated with the web pages it has indexed in the Web Search cache that is
12 made available to users through an automatic process. Google maintains a copy of
13 the text of a given web page in that cache only until the Googlebot next visits the
14 particular web page.

15 [REDACTED]
16 [REDACTED] In the
17 vast majority of cases, the cache will be refreshed approximately every few weeks.
18 The cached copy is a temporary "snapshot" of the text on a web page as it appeared
19 the last time the web page was crawled by the Googlebot. The text stored in the
20 cache includes any URLs embedded in the page, including any image URLs. The
21 Googlebot obtains copies of the text of web pages from originating websites without
22 modification to their content.

23 7. Google does not maintain cached copies of the images that may
24 appear on a cached page. Those images are hosted on the originating site and will
25 only appear if they are actually live on that site at the time the user calls up the
26 cache page. As noted above, the cache does include any URLs embedded in the text
27 of the cached page and thus if the image is no longer live on the original site, it will
28 not load on the cached page viewed by the Google user.

1 8. When a user clicks on the “cached” link, the user sends a request to
2 Google’s computers which respond automatically by transmitting the archival copy
3 of the text of a web page that is stored in the Web Search cache made available to
4 users. The text of the cached page made available to the user shows the original
5 web page HTML text as it existed when it was accessed, copied, and indexed by
6 Google, and may also highlight the user’s search terms.

7 9. Google adds a notice at the top of its cached page made available to the
8 user identifying the fact that the web page is from Google’s system cache, and not
9 the originating web page, noting “Google’s cache is the snapshot that we took of the
10 page as we crawled the World Wide Web. The page may have changed since that
11 time.” The notice also identifies the date that Google obtained the copy of the web
12 page text and provides two separate links to the original web page. Google also
13 highlights the user’s search terms.

14 10. Google’s cache provides Internet users with a number of benefits.
15 First, it allows users to view pages when the user cannot access directly. A web
16 page can become inaccessible because of transmission problems, censorship by
17 governments, or too many users seeking the same page at the same time. In each
18 case, users may still be able to access an archival copy of the page text via the
19 “cached” link in Google’s search results. This also benefits web publishers by
20 allowing people to view their content at a time when it would not otherwise be
21 available.

22 11. Second, this archival functionality is important to users, such as
23 researchers, who wish to determine how a particular web page changed over time.
24 By examining Google’s copy of the web page text, users can identify subtle but
25 potentially significant differences between the current version of a page, and the
26 page as it existed when the Googlebot last visited that page.

27 12. Third, the cached link may allow users to more readily determine why a
28 particular page was responsive to their query, by highlighting the terms in the

user's query. This can be of particular importance to users where a page has been modified, or where the reason that a page was returned in response to a user's query is not readily apparent.

13. If the webmasters hosting the content in question specify rules concerning refreshing, reloading, or other updating of the material, Google complies with those rules.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed June 29, 2009 at Mountain View, California.



Bill Brouger