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7

8                    UNITED STATES DISTRICT COURT

9                   CENTRAL DISTRICT OF CALIFORNIA

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| 11 | PERFECT 10, INC., a California corporation, | Case No. CV 04-9484 AHM (SHx) Consolidated with Case No. CV05-4753 AHM (SHx) |
|---|---|---|
| 12 | | |
| 13 | Plaintiff, | **DECLARATION OF SEAN CHUMURA** |
| 14 | v. | **SUBMITTED IN OPPOSITION TO** |
| 15 | GOOGLE, INC., a corporation, and DOES 1 through 100, inclusive, | **GOOGLE'S THREE MOTIONS FOR SUMMARY JUDGMENT RE DMCA** |
| 16 | Defendant. | **SAFE HARBOR FOR ITS WEB AND IMAGE SEARCH, BLOGGER** |
| 17 | | **SERVICE, AND CACHING FEATURE** |
| 18 | AND CONSOLIDATED CASE, | **(DOCKET NOS. 428, 427, AND 426)** |
| 19 | | **BEFORE JUDGE A. HOWARD MATZ** |

20                                          Date:  October 5, 2009
                                            Time:  10:00 a.m.
21                                          Place: Courtroom 14, Courtroom of the
22                                          Honorable A. Howard Matz

23                                          Discovery Cut-Off Date:   None Set
24                                          Pretrial Conference Date:  None Set
                                            Trial Date:   None Set
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                              Declaration of Sean Chumura

I, Sean Chumura, declare as follows:

1.     I am a professional programmer with over 15 years of experience in Computer Security and Computer Forensics.  I was a student and protégé of Michael R. Anderson, a pioneer in the Science of Computer Forensics.  I have testified as an expert in court proceedings in the field of Computer Forensics.  I have an issued patent in which I am a co-inventor, in the field of computer security.  I have worked with the federal, state, and local governments, as well as foreign governments and private industry, in the field of computer security and computer forensics.  I have been certified by NTI, one of the most knowledgeable and respected firms for forensic computer science, for governmental and private sector computer forensics.  I was admitted into the prestigious Washington, D.C. Law Enforcement Association HTCC (High Tech Crime Consortium group) by confirmation from the FBI, and I am a member of numerous task forces and associations.  The following are some of the entities I have done work for over the past four years: Baseline Control, Biche, City of Beverly Hills, Computer Sciences Corporation, D.I.S.A. (Defense Information Systems Agency), D.H.S. (Department of Homeland Security), F.B.I. (Federal Bureau of Investigation), JFCOMM (Joint Forces Command), LGB Associates Inc., Lockheed Martin, NOW Solutions, Oasis Network LLC, Northrup Grummen, Perfect 10, Inc., Sun Microsystems, Transaction Solutions, VCSY (Vertical Computer Systems), Westinghouse, as well as other government agencies. For some of the projects that I have worked on, I have had a Top Secret security clearance.

2.     I have consulted for the FBI in the areas of cyberterrorism, forensic computer investigation, and white collar crime.  I have extensive experience writing computer programs, including programs to protect computers from viruses, denial of service attacks, and other malicious acts.  I have also written programs to investigate piracy, to detect financial fraud, and to allow computer

Declaration of Sean Chumura

networks to identify computers that are no longer functioning properly due to software issues and correct those problems in an automated fashion. I also cofounded the first private cyber warfare/terrorism defense center and helped develop the technology to identify attacks against infrastructure in near real-time.

3. I submit this declaration in support of Perfect 10. I have spent over a thousand hours using and analyzing how the Google search engine functions. I have also done many hours of research, study, and reading regarding search engine operation. I have examined Exhibit 1 which is attached to this declaration, which I obtained from Jeff Mausner. Page 1 of Exhibit 1 is the output of a computer program that I created under the direction of Dr. Norman Zada. The program allows Perfect 10 to select images from Google Image Search by checking a box that the program makes available next to each Google thumbnail. The program places the date the Google search was done in the upper right corner, and puts the three links offered by Google for each image in the block corresponding to that image. The first URL after the term "Image" is the URL associated with Google's "See full-size image" link; the second URL after the term "Site" is the link Google provides to the underlying third party website (often called a Web Page URL); and the bottom URL after the term "Thumbnail" is the link to the location at which the "thumbnail" resides on Google's server. The program also has a Web Search option which allows Perfect 10 to save selected Google Web Search results.

4. If Google received page 1 of Exhibit 1 in a notice, it would have more than enough information to readily locate and block all the URLs listed on page 1. Adobe Acrobat has a feature which allows for the extraction of URLs. So Google could cut and paste whatever URLs it wanted from page 1 of Exhibit 1 into a text file or excel spreadsheet.

5. I have examined pages 2 through 7 of Exhibit 1. If Google received any of those pages in a notice, it would have enough information to locate the

Declaration of Sean Chumura

images on that page, and remove the images and the webpage from both its Image Search and Web Search results. All Google needs to act is the Web Page URL, which is contained on each of those pages. Once Google has the URL of the Web Page containing an infringement, it can block it. The Web Page URL may be thought of as the specification of a particular page in a particular book. It tells Google where to go on the Internet to find the infringing material, equivalently, which book to open and which page to turn to. On pages 3-6, the Web Page URL is highlighted. On page 7, it appears in the browser bar. For page 2, Google has the search term, "Ingrid Ostvat", the base URL of the website where each image is located, darkshadow.3xforum.ro, and what is sometimes called the "Thumbnail Source URL." This is the URL that is displayed in the address bar of a web browser when a user clicks on the thumbnail. Page 8 of Exhibit 1 shows an example of one such "Thumbnail Source URL." The Thumbnail Source URL contains both the "See full-size image" URL as well as the Web Page URL embedded in it, along with information such as whether the user had their safe search on and what browser they were using. It may be readily extracted using Adobe's URL extraction feature, as shown on page 9 of Exhibit 1. On page 9, the first highlighted term is the "See full-size image" URL. The second highlighted term is the web page URL.

6.      Sometimes when a URL is too long, Google will replace it with a URL that has ellipses in it. However, the original full URL can almost always be found by doing a Google combination search on the base URL along with a character string from the rest of the URL. Effectively, one searches on the two portions of the URL that one has. The base URL is usually the URL of the home page of the website, like google.com.

7.      I have looked at what Google describes as a "post URL." I have not seen any post URLs on the blogger pages that contain full-size Perfect 10 images.

Declaration of Sean Chumura

There is only one URL on those pages and that is the URL I would use to identify their location.  Attached as Exhibit 2 is a full-size image that I obtained from Blogger.  As can be seen from the URL at the bottom of the page, namely, http://bp3.blogger.com/_A228DePAsJQ/RdSh3J1hgQI/AAAAAAAAAu0/p8Za-c5rue8/s1600-h/marisa_miller_21.jpg, the image is stored on blogger.com.  The only URL shown with this image is not a post URL.  However, anyone can find the image with this URL, by cutting and pasting the URL into their browser bar.
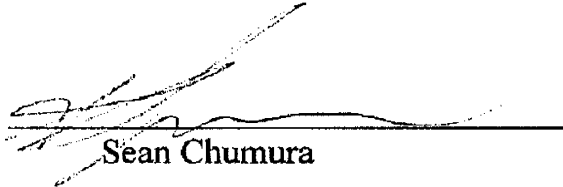
8.      I have studied Google's current instructions for submitting DMCA notices regarding Image Search, and its instructions for submitting DMCA notices regarding Web Search.   I do not believe that Google's Image Search instructions are necessary or helpful in the vast majority of situations.  In fact, they can be unnecessarily burdensome when an infringing web page contains many infringing images, as is illustrated by page 2 of Exhibit 1 to my declaration.  Each of the first fifteen thumbnails appearing on page 2 of Exhibit 1 is linked to, and appears on, the same infringing web page, darkshadow.3xforum.ro.  If Perfect 10 were to follow Google's Image search instructions, it would have to provide at least 15 Image URLs (one for each of the images shown on page 2), but possibly many more.   Suppose on the other hand that Perfect 10 were to identify a single URL for the infringing web page, darkshadow.3xforum.ro.  In order to stop directly linking to that infringing web page, Google would have to remove the first fifteen images shown on page 2 of Exhibit 1 from its Image Search results, *as well as any other image that Google was displaying in its search results from that web page*, *even if it were not a P10 Image.*  That is the only way that Google, given its current method of linking infringing thumbnails back to infringing web pages, could block all direct links to the identified infringing web page darkshadow.3xforum.ro.  So specifying a single web page URL does much more in this case than specifying possibly hundreds of Image URLs.  In fact, just specifying P10 Image URLs by

Declaration of Sean Chumura

1    themselves would not prevent Google from continuing to directly link to

2    darkshadow.3xforum.ro from a non-P10 thumbnail from that same web page. Of

3    course, once Google in-line links a user to that webpage, the user can view and/or

4    download any of the infringing images on that page, regardless of which Google

5    thumbnail he clicked on to get there. That is why it is necessary for Google to

6    remove all thumbnails that link to that webpage from its Image Search results,

7    rather than just a few thumbnails.

8          I declare under penalty of perjury under the laws of the United States of

9    America that the foregoing is true and correct to the best of my knowledge.

10         Executed on August 2, 2009, at Pittsburgh, Pennsylvania.

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13                              Sean Chumura

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# Exhibit 1

# GOOGLE Images

## 51 results for "Xenia Szabo"

**1**

Search string: **"Xenia Szabo"**Image http://img133.imagevenue.com/loc173/th_64278_21.jpgSite http://forum.phun.org/showthread.php?p=729907Image Info: 106x160 Size: 7Kb

Thumbnail http://tbn0.google.com/images?q=tbn:Vs0bIZd_jqxVPM:http://img133.imagevenue.com/loc173/th_64278_21.jpg

**2**

Search string: **"Xenia Szabo"**Image http://www.imagerise.com/images.php/t4766_XeniaSzabo22.jpgSite http://titsandhentai.wordpress.com/2008/04/16/xenia-szabo/ Image Info: 99x150 Size: 6Kb

Thumbnail http://tbn0.google.com/images?q=tbn:MYClndOeHiRYpM:http://www.imagerise.com/images.php/t4766_XeniaSzabo22.jpg

**3**

Search string: **"Xenia Szabo"**Image http://www.imagerise.com/images.php/t4755_XeniaSzabo01.jpgSite http://titsandhentai.wordpress.com/2008/04/16/xenia-szabo/ Image Info: 99x150 Size: 6Kb

Thumbnail http://tbn0.google.com/images?q=tbn:YSlCEWl5K6tg6M:http://www.imagerise.com/images.php/t4755_XeniaSzabo01.jpg

**4**

Search string: **"Xenia Szabo"**Image http://img11.imagevenue.com/loc229/th_16866_01.jpgSite http://www.sztar.com/showthread.php?p=1367574Image Info: 106x160 Size: 7Kb

Thumbnail http://tbn0.google.com/images?q=tbn:kSvskXqpK00tXM:http://img11.imagevenue.com/loc229/th_16866_01.jpg

**5**

Search string: **"Xenia Szabo"**Image http://blog7.fc2.com/a/aitaine/file/20060525.jpgSite http://aitaine.blog7.fc2.com/blog-date-200605.htmlImage Info: 300x451 Size: 49Kb

Thumbnail http://tbn0.google.com/images?q=tbn:zfMv2sApk-Kw4M:http://blog7.fc2.com/a/aitaine/file/20060525.jpg

Sign in

# Google™

"Ingrid Ostvat"

Search Images     Search the Web     Advanced Image Search
Preferences

SafeSearch is off

**Images**   Showing:   All image sizes     Any content     ▦ All colors ▼          Results **19** - **36** of about **130** (0.04 seconds)
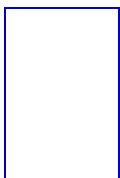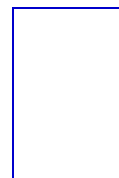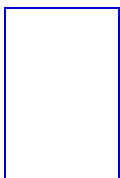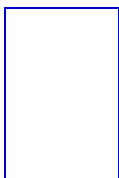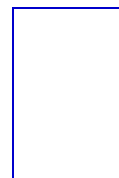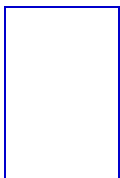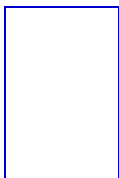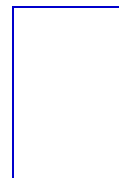
PERFECT10 com - The World s Most ...
99 x 150 - 7k - jpg
darkshadow.3xforum.ro
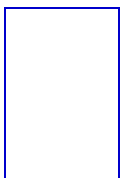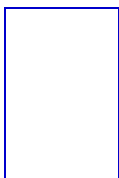
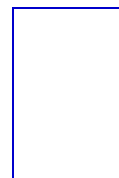PERFECT10 com - The World s Most ...
99 x 150 - 6k - jpg
darkshadow.3xforum.ro

PERFECT10 com - The World s Most ...
99 x 150 - 5k - jpg
darkshadow.3xforum.ro

PERFECT10 com - The World s Most ...
99 x 150 - 4k - jpg
darkshadow.3xforum.ro

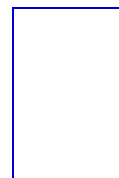PERFECT10 com - The World s Most ...
99 x 150 - 5k - jpg
darkshadow.3xforum.ro

PERFECT10 com - The World s Most ...
99 x 150 - 5k - jpg
darkshadow.3xforum.ro

PERFECT10 com - The World s Most ...
99 x 150 - 4k - jpg
darkshadow.3xforum.ro

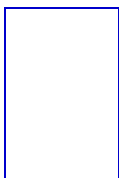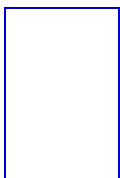PERFECT10 com - The World s Most ...
99 x 150 - 6k - jpg
darkshadow.3xforum.ro

PERFECT10 com - The World s Most ...
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darkshadow.3xforum.ro

PERFECT10 com - The World s Most ...
99 x 150 - 6k - jpg
darkshadow.3xforum.ro

Exh. 1, Pg. 2

# Zoya Konyieva

Monitor home | Belle indeks | Prosinac 2001 | Prije | Poslije

Belle de Jour - 6.12.2001

# Zoya Konyieva

Exh. 1, Pg. 4

marisa_miller_24.jpg (image)

Exh. 1, Pg. 6

http://images.google.com/imgres?imgurl=http://www.imagerise.com/images.php/t133_AlexandraBerejnova42copy.jpg&imgrefurl=http://darkshadow.3xforum.ro/post/1532/1/PERFECT10_com_-_The_World_s_Most_Beautiful_Natural_women_/&usg=__RtMcrOXj2G7_XIiP-9Fv6Flbwxw=&h=150&w=99&sz=7&hl=en&start=11&um=1&tbnid=d7MunlVjsDS9eM:&tbnh=96&tbnw=63&prev=/images%3Fq%3Dsite:www.imagerise.com%2B%2522Ingrid%2BOstvat%2522%2Bdarkshadow.3xforum.ro%26hl%3Den%26safe%3Doff%26client%3Dfirefox-a%26channel%3Ds%26rls%3Dorg.mozilla:en-US:official%26um%3D1

# Exhibit 2

marisa_miller_21.jpg (image)