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9 Attorneys for Defendant Google Inc.

11 UNITED STATES DISTRICT COURT  
 12 CENTRAL DISTRICT OF CALIFORNIA

13 PERFECT 10, INC., a California  
 corporation,  
 14  
 Plaintiff,  
 15  
 vs.  
 16 GOOGLE INC., a corporation; and  
 17 DOES 1 through 100, inclusive,  
 18 Defendants.

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

**GOOGLE INC.'S EVIDENTIARY  
 OBJECTIONS TO THE  
 DECLARATION OF JEFFREY  
 MAUSNER IN OPPOSITION TO  
 GOOGLE'S THREE MOTIONS  
 FOR SUMMARY JUDGMENT RE  
 DMCA SAFE HARBOR FOR ITS  
 WEB AND IMAGE SEARCH,  
 BLOGGER SERVICE, AND  
 CACHING FEATURE (DOCKET  
 NOS. 428, 427, AND 426)**

19 AND COUNTERCLAIM

20 PERFECT 10, INC., a California  
 corporation,  
 21  
 Plaintiff,  
 22  
 vs.  
 23 AMAZON.COM, INC., a corporation;  
 24 A9.COM, INC., a corporation; and  
 25 DOES 1 through 100, inclusive,  
 26 Defendants.

Hon. A. Howard Matz  
 Date: None Set (taken under  
 submission)  
 Time: None Set  
 Place: Courtroom 14  
 Discovery Cut-off: None Set  
 Pre-trial Conference: None Set  
 Trial Date: None Set

1 **I. PORTIONS OF THE EVIDENCE OFFERED BY PERFECT 10 IN THE**  
2 **DECLARATION OF JEFFREY MAUSNER ARE INADMISSIBLE**  
3 **AND SHOULD BE DISREGARDED.**

4 Portions of the Declaration of Jeffrey Mausner, submitted in opposition to  
5 Google Inc's Motions for Summary Judgment Re: DMCA Safe Harbor for its Web  
6 and Image Search, Blogger Service, and Caching Feature (Docket Nos. 426-28), are  
7 inadmissible and should be disregarded for purposes of the Motion.

8 Evidence submitted to the Court on motion practice must meet all  
9 requirements for admissibility of evidence if offered at the time of trial. *Beyene v.*  
10 *Coleman Sec. Services, Inc.*, 854 F.2d 1179, 1181-1182 (9th Cir. 1988); *Travelers*  
11 *Cas. & Sur. Co. of America v. Telstar Const. Co., Inc.*, 252 F. Supp. 2d 917, 923 (D.  
12 Ariz. 2003). *See also* Fed. R. Evid. 101 (Rules of Evidence apply to all proceedings  
13 in the courts of the United States); Fed. R. Evid. 1101 (listing exceptions to Rule  
14 101). Such evidence must be relevant to the claims and defenses of the case. Fed.  
15 R. Evid. 401; 403; *McCormick v. City of Lawrence, Kan.*, 2007 WL 38400, at \*3 (D.  
16 Kan. Jan. 5, 2007). Testimonial evidence must be based on the personal knowledge  
17 of the witness offering the evidence. Fed. R. Evid. 602. Documentary evidence  
18 must be properly authenticated. Fed. R. Evid. 901. Hearsay evidence is  
19 inadmissible unless it has been defined as non-hearsay or the proponent establishes  
20 eligibility for one or more exceptions under the Rules. Fed. R. Evid. 801-804.  
21 Testimony requiring scientific, technical, or other specialized knowledge may be  
22 given only by an expert witness with the requisite knowledge, skill, experience,  
23 training, or education. Fed. R. Evid. 701, 702. The Mausner Declaration fails to  
24 meet one or more of these criteria, as specified below.

25 As further set forth below, the Mausner Declaration is riddled with Mr.  
26 Mausner's opinions regarding Google and the DMCA. A declaration brought under  
27 Federal Rule of Civil Procedure 56(e) is not a proper vehicle for a party to stand on  
28 its "soapbox" and share its opinions regarding copyright infringement and Google's

1 DMCA practices and procedures. In addition to being improper opinion testimony  
 2 of a lay witness, Mr. Mausner’s personal opinions have no bearing on the legal  
 3 standards at issue for safe harbor.

	<b><u>Proffered Evidence</u></b>	<b><u>Google’s Objection</u></b>
4 5 6 7 8 9 10 11 12 13	1. <b>Mausner Decl., at ¶¶ 2-13</b>	<u>Fed. R. Evid. 401, 402, 403, 602, 701</u> The statements are argumentative, irrelevant (because Mr. Mausner’s personal opinions have no bearing on the legal standards at issue for safe harbor), speculative, do not appear to be based upon the witness's personal knowledge, lack foundation, and are improper opinion testimony.
14 15 16	2. <b>Mausner Decl., at ¶ 15</b>	<u>Fed. R. Evid. 401, 402, 403, 602</u> The statement is argumentative and irrelevant.
17 18 19 20 21 22 23 24 25 26 27 28	3. <b>Mausner Decl., at ¶ 16</b> ("Google incorrectly stated: [T]here is nothing that Google can do to remove the offending content without the cooperation of the site administrator. ... Only an administrator can, by including code that blocks our robots or placing a request with us, prevent his/her page from being listed. Without administrator cooperation we cannot exclude material available	<u>Fed. R. Evid. 401, 402, 403, 602, 701</u> The statement is argumentative, irrelevant (Mr. Mausner’s personal opinions regarding the accuracy of statements have no bearing on the legal standards at issue for safe harbor), speculative, does not appear to be based upon the witness's personal knowledge, lacks foundation, and is improper opinion testimony.


1	on the Internet from our index.")	
2	4. <b>Mausner Decl., at ¶ 17</b> ("This letter	<u>Fed. R. Evid. 401, 402, 403, 602, 701</u>
3	makes clear that Google takes the	The statement is argumentative,
4	position that it does not have to	irrelevant (because Mr. Mausner's
5	remove or disable access to usenet	personal opinion regarding the meaning
6	sites, no matter what notice Perfect	of a letter have no bearing on the legal
7	10 gives.")	standards at issue for safe harbor),
8		speculative, mischaracterizes the
9		document, does not appear to be based
10		upon the witness's personal knowledge,
11		lacks foundation, and is improper
12		opinion testimony.
13	5. <b>Mausner Decl., at ¶ 18</b> ("Attached	<u>Fed. R. Evid. 401, 402, 403, 602, 801-</u>
14	as Exhibit C are true and correct	<u>04</u>
15	copies of articles and some of the	The statement is argumentative,
16	related comments, regarding	irrelevant, constitutes inadmissible
17	Google's lack of compliance with	hearsay, speculative, mischaracterizes
18	DMCA procedures.")	the documents, does not appear to be
19		based upon the witness's personal
20		knowledge, and lacks foundation.
21	6. <b>Mausner Decl., at ¶ 28</b> ("Attached	<u>Fed. R. Evid. 401, 402, 403, 602</u>
22	hereto as Exhibit L are true and	The statement is argumentative,
23	correct copies of emails between	irrelevant (because whether Google
24	Valerie Kincaid, an attorney for	forwards notices to Chilling Effects has
25	Perfect 10, and Tom Nolan, an	no bearing on the legal standards at
26	attorney for Google, in which Google	issue for safe harbor), speculative,
27	takes the position that it can and will	mischaracterizes the document, does
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	continue to publicize Perfect 10's DMCA notices on Chillingeffects.org.")	not appear to be based upon the witness's personal knowledge, and lacks foundation.
7.	<b>Mausner Decl. Exh. C</b>	<u>Fed. R. Evid. 401, 402, 403, 602, 801-04</u> The evidence is irrelevant, lacks foundation, and constitutes inadmissible hearsay.
8.	<b>Mausner Decl. Exh. D, E, G</b>	<u>Fed. R. Evid. 401, 402, 403</u> The evidence is irrelevant.

DATED: September 8, 2009

QUINN EMANUEL URQUHART OLIVER & HEDGES, LLP

By   
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