

1 QUINN EMANUEL URQUHART OLIVER & HEDGES, LLP

2 Michael T. Zeller (Bar No. 196417)
3 michaelzeller@quinnemanuel.com
4 865 South Figueroa Street, 10th Floor
5 Los Angeles, California 90017-2543
6 Telephone: (213) 443-3000
7 Facsimile: (213) 443-3100
8 Charles K. Verhoeven (Bar No. 170151)
9 charlesverhoeven@quinnemanuel.com
10 50 California Street, 22nd Floor
11 San Francisco, California 94111
12 Rachel Herrick Kassabian (Bar No. 191060)
13 rachelkassabian@quinnemanuel.com
14 555 Twin Dolphin Drive, Suite 560
15 Redwood Shores, California 94065

16 Attorneys for Defendant Google Inc.

17 UNITED STATES DISTRICT COURT
18 CENTRAL DISTRICT OF CALIFORNIA

19 PERFECT 10, INC., a California
20 corporation,

21 Plaintiff,

22 vs.

23 GOOGLE INC., a corporation; and
24 DOES 1 through 100, inclusive,

25 Defendants.

26 AND COUNTERCLAIM

27 PERFECT 10, INC., a California
28 corporation,

Plaintiff,

vs.

AMAZON.COM, INC., a corporation;
A9.COM, 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)]

GOOGLE INC.'S EVIDENTIARY
OBJECTIONS TO THE
DECLARATION OF DR. NORMAN
ZADA 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

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

[PUBLIC REDACTED]

1 Google respectfully submits the following objections to the Declaration of
2 Norman Zada, submitted in opposition to Google's Three Motions for Summary
3 Judgment RE: DMCA Safe Harbor for its Web and Image Search, Blogger Service,
4 and Caching Feature. The Zada Declaration is improper under Federal Rule of Civil
5 Procedure 56(e), for its inclusion of legal argument, improper opinions, conjecture,
6 speculation and irrelevant matters. Because large portions of the Zada Declaration
7 are inadmissible, it should be disregarded for purposes of ruling on Google's DMCA
8 Motions.¹

9 **A. Rather Than Declaring to Factual Matters, the Zada Declaration**
10 **Includes Improper Legal Arguments, Speculation, and Personal Opinions.**

11 The Zada Declaration is largely inadmissible and should be disregarded as
12 such. Rule 56(e) requires that "[a] supporting or opposing affidavit must be made on
13 personal knowledge, set out facts that would be admissible in evidence, and show that
14 the affiant is competent to testify on the matters stated." A party may not defeat
15 summary judgment by relying on conclusory allegations and speculation. Instead,
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17 ¹ Evidence submitted to the Court on motion practice must meet all requirements
18 for admissibility of evidence if offered at the time of trial. *Beyene v. Coleman Sec.*
19 *Services, Inc.*, 854 F.2d 1179, 1181-1182 (9th Cir. 1988); *Travelers Cas. & Sur. Co.*
20 *of Am. v. Telstar Const. Co., Inc.*, 252 F. Supp. 2d 917, 923 (D. Ariz. 2003). *See also*
21 *Fed. R. Evid. 101* (Rules of Evidence apply to all proceedings in the courts of the
22 United States); *Fed. R. Evid. 1101* (listing exceptions to Rule 101). Such evidence
23 must be relevant to the claims and defenses of the case. *Fed. R. Evid. 401; 403;*
24 *McCormick v. City of Lawrence, Kan.*, 2007 WL 38400, at *3 (D. Kan. Jan. 5, 2007).
25 Testimonial evidence must be based on the personal knowledge of the witness
26 offering the evidence. *Fed. R. Evid. 602*. Documentary evidence must be properly
27 authenticated. *Fed. R. Evid. 901*. Hearsay evidence is inadmissible unless it has
28 been defined as non-hearsay or the proponent establishes eligibility for one or more
exceptions under the *Rules*. *Fed. R. Evid. 801-804*. Testimony requiring scientific,
technical, or other specialized knowledge may be given only by an expert witness
with the requisite knowledge, skill, experience, training, or education, and opinion
testimony is not permitted of a lay person. *Fed. R. Evid. 701, 702*.

1 declarations must be based on facts known to the declarant and set forth concrete
2 particulars in order to satisfy Rule 56(e). *E.g., Fujitsu Ltd. v. Fed. Express Corp.*,
3 247 F.3d 423, 428 (2d Cir.), *cert. denied*, 534 U.S. 891 (2001); *Bickerstaff v. Vassar*
4 *College*, 196 F.3d 435, 451-52 (2d Cir. 1999), *cert. denied*, 530 U.S. 1242 (2000).
5 Similarly, a declaration may not set forth legal argument. *Silver v. Exec. Car Leasing*
6 *Long Term Disability Plan*, 466 F.3d 727, 732 (9th Cir. 2006).

7 Little of the Zada declaration could be classified as fact. Instead, the Zada
8 Declaration largely is comprised of speculation and improper opinion testimony as to
9 how Google works, conjecture as to what Google may or may not have done in
10 response to Perfect 10's purported DMCA notices, Zada's own personal interpretation
11 of Google's discovery productions, and advice on how Zada would design his own
12 DMCA compliance program were he in Google's shoes. Much of the Zada
13 Declaration is argumentative and speculative, and at nearly 70 pages in length, it
14 effectively constitutes additional briefing from Perfect 10, rather than a proper Rule
15 56 declaration. The improper portions of the Zada Declaration should be stricken as
16 such.

17 **Zada's Out-of-Context Excerpting of P10's DMCA Notices Violates the**
18 **Best Evidence Rule and is Otherwise Irrelevant.**

19 The Zada Declaration selectively excerpts certain screenshots allegedly
20 contained somewhere within one or more of P10's DMCA Notices to Google, and
21 arguing that if those screenshots are DMCA-compliant, the entirety of the notices in
22 question must be DMCA-compliant as well. This is improper. Each of Perfect 10's
23 DMCA Notices must be evaluated as a whole, in the context in which it was
24 received—typically discs or hard drives containing thousands of pages of
25 screenshots—not by cherry-picking a handful of screenshots in isolation, as if they
26 had been delivered in that fashion. If P10 wishes the Court to consider the contents
27 of its DMCA notices, it must submit true and correct copies of them and direct the
28 Court to where in those notices the specified information may be found. Anything

1 less than the complete notices is irrelevant, and moreover, such evidence lacks
2 foundation, is unduly prejudicial, and of course, violates the best evidence rule.
3 *Dugan v. R.J. Corman R.R. Co.*, 344 F.3d 662, 669 (7th Cir. 2003) (relying on
4 snippets of evidence rather than introducing evidence as a whole violates best
5 evidence rule and rule of completeness, Fed. R. Evid. 106, as it allows party to take
6 evidence out of its proper context).

7 **C. The Portions of the Zada Declaration Regarding "The Sample" Are**
8 **Irrelevant and Improperly Submitted.**

9 Zada's Declaration discusses a purported "Sample" of images, rather than
10 addressing all of the copyright infringement claims P10 has alleged, as Google's
11 DMCA Motions do. *See, e.g.*, Zada Decl. ¶¶ 1-2, Exh. 9 (describing ██████████ as ██████████
12 ██████████). Because Google's
13 DMCA Motions address the *entirety* of P10's copyright claims (grouped by the type
14 of DMCA notice in which it was asserted), the extensive discussions and exhibits in
15 the Zada Declaration regarding this small subset of images is irrelevant and cannot
16 defeat summary judgment, particularly as to the omitted purported claims. *See*
17 *Dugan*, 344 F.3d at 669 (labeling similar tactics a "bad practice": "Imagine the trial of
18 a breach of contract case in which the contract is not placed in evidence, but only a
19 few snippets . . .").

20 **D. Much of the Alleged Infringements Identified in the Zada Declaration**
21 **Have No Bearing on Google's Entitlement to Safe Harbor.**

22 The Zada Declaration also includes lengthy asides about massive alleged
23 infringements of Perfect 10's copyrights not contained in any valid DMCA notice to
24 Google. *See, e.g.*, Zada Decl. ¶ 34. These statistics are irrelevant. Perfect 10's
25 fixation on quantity misses the point of the instant Motions, and of DMCA safe
26 harbor itself: no matter how many infringements of Perfect 10's copyrights Perfect
27 10 alleges to have occurred on the Internet, none of this has any bearing on Google's
28 qualification for safe harbor unless (1) the infringements are hosted by or linked to by

1 Google, and (2) Google receives a DMCA-compliant notice regarding them. The
 2 data Zada cites to lacks foundation, is not properly documented, is taken out of
 3 context, and the potential prejudice to Google far outweighs any probity this evidence
 4 might have. Fed. R. Evid. 403; *see also Lucero v. Donovan*, 354 F.2d 16, 22 n. 7 (9th
 5 Cir. 1965). Moreover, these statements appear to be based upon the incorrect
 6 assumption that pointing to large numbers of purported infringements somehow
 7 absolves Perfect 10 from its responsibilities under the DMCA. Zada's references to
 8 various data regarding the number of alleged infringements also is at odds with
 9 Perfect 10's repeated claims that it is incapable of identifying specific infringements
 10 of each P10 image. *E.g.*, Zada Decl. ¶¶ 8, 70.²

11 **E. Individual Objections**

12 Even if this Court does not disregard the entirety of the Zada Declaration,
 13 various portions are objectionable and inadmissible as specified below.

	<u>Proffered Evidence</u>	<u>Objection</u>
15 16 17 18 19	1. Zada Decl., at ¶ 1 [REDACTED] [REDACTED] [REDACTED] [REDACTED]	Fed. R. Evid. 401, 402, 403, 602 The statements are irrelevant, because Google does not crawl or link to content on Usenet sites or other password-protected websites.

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² The Zada Declaration also includes various references to alleged infringements of the works of others not associated in any way with this litigation, on a variety of websites that were not the subject of a valid DMCA notice to Google. Zada Decl. ¶¶ 15, 34-36. This is improper for at least two reasons. First, P10 does not have an ownership interest in the various songs and films it references, and lacks even standing to assert claims on the copyright owners' behalves. *Silvers v. Sony Pictures Entm't, Inc.*, 402 F.3d 881, 886 (9th Cir. 2005) ("*only owners* of an exclusive right in the copyright could bring suit.") (emphasis in original). Second, these alleged infringements have no apparent connection with Google.

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[REDACTED]

Haahr Dec. ¶¶ 14-15. They also are speculative and lack foundation.

2. **Zada Decl., at ¶1** [REDACTED]

Fed. R. Evid. 401, 402, 403
The statements regarding "The Sample" are irrelevant. *See* Section C, *supra*. The statements also lack foundation (because the proffered evidence does not support that P10 owns valid copyrights in all of the images being asserted in this action).

3. **Zada Decl., at ¶ 2** [REDACTED]

Fed. R. Evid. 401, 402, 403, 602, 701
The statements regarding "The Sample" are irrelevant. *See* Section

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[REDACTED]

C, *supra*. The statements are also irrelevant because Zada's personal opinions regarding expeditiousness have no bearing on the legal standards at issue and lack foundation.

4. Zada Decl., at ¶ 2 [REDACTED]

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[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

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Fed. R. Evid. 401, 402, 403, 602

The statements are argumentative, irrelevant, speculative and lack foundation.

5. Zada Decl., at ¶ 2 [REDACTED]

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Fed. R. Evid. 401, 402, 403, 602, 1002

The statements regarding "The Sample" are irrelevant. *See* Section C, *supra*. The statements regarding the cherry-picked excerpts of P10's DMCA Notices also are irrelevant, lack foundation, and violative of the best evidence rule. *See* Section B, *supra*.

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	<p>[REDACTED]</p>	
6.	<p>Zada Decl., at ¶ 3 [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702, Fed. R. Civ. P. 26</u></p> <p>The statements are irrelevant, speculative, lack foundation, do not appear to be based on the witness's personal knowledge, and constitute improper opinion testimony of a lay person. Zada has not been designated as an expert witness in this case, nor has he presented a sufficient foundation to support any claimed expertise in the referenced subjects. Nor does he tie his purported expertise or opinions to Google's search engine or services. <i>See Daubert v. Merrell Dow Pharms, Inc.</i>, 509 U.S. 579, 591 (1993) ("[fit] goes primarily to relevance," in that an expert's testimony must "aid the jury in resolving a factual dispute.").</p>
7.	<p>Zada Decl., at ¶ 5 [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 702, Fed. R. Civ. P. 26, 37(c)(1)</u></p> <p>The statements regarding "The</p>

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[REDACTED]

Sample" are irrelevant. *See* Section C, *supra*. Further, they are vague and lack foundation, and, having failed to produce complete and unredacted financial records, P10 may not assert its alleged financial information here.

8. **Zada Decl., at ¶ 5** [REDACTED]

Fed. R. Evid. 401, 402, 403, 602, 701, 702, Fed. R. Civ. P. 26, 37(c)(1)
The statements are argumentative, irrelevant, *see* Section D, *supra*, lack foundation, do not appear to be based on the witness's personal knowledge, and constitute improper opinion testimony of a lay person regarding (among other things) the alleged cause of P10's alleged losses and improper legal opinion. Zada has not been designated as an expert witness in this case, nor has he presented a sufficient foundation to support any claimed expertise in the referenced subject. Further, having failed to produce complete and unredacted financial records, P10

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		may not assert its alleged financial information here.
9.	Zada Decl., at ¶ 5 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]	<u>Fed. R. Evid. 401, 402, 403, 602, 702, Fed. R. Civ. P. 26.</u> The statements are argumentative, irrelevant, constitute improper legal opinion, speculative, and lack in foundation. <i>See Section D, supra.</i> The statements also do not appear to be based on the witness's personal knowledge, constitute improper legal opinion, and constitute improper opinion testimony of a lay person regarding (among other things) P10's alleged losses and losses allegedly suffered by nonparties in this litigation. Zada has not been designated as an expert witness in this case, nor has he presented a sufficient foundation to support any claimed expertise in the referenced subjects.
10.	Zada Decl. ¶ 6	<u>Fed. R. Evid. 401, 402, 403, 602</u> The statements are irrelevant, speculative, and lack foundation. <i>See Section D, supra.</i>
11.	Zada Decl., at ¶ 8 [REDACTED]	<u>Fed. R. Evid. 401, 402, 403, 602</u>

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The statements are argumentative, irrelevant, constitute improper legal opinion, speculative, lack foundation, and do not appear to be based on the witness's personal knowledge. *See* Section D, *supra*,





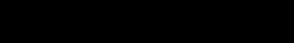


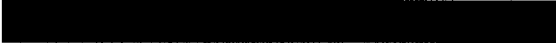
















12. **Zada Decl., at ¶ 8** [REDACTED]

Fed. R. Evid. 401, 402
The statements are irrelevant and lack foundation.

13. **Zada Decl., at ¶ 8** [REDACTED]

Fed. R. Evid. 401, 402, 403, 602,

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	   	<u>701</u> The statement is argumentative, irrelevant, and mischaracterizes the documents referenced.
14.	Zada Decl., at ¶ 8            	<u>Fed. R. Evid. 401, 402, 403, 602, 701</u> The statements are argumentative, irrelevant, speculative, lack foundation, mischaracterize the documents referenced, do not appear to be based on the witness's personal knowledge, and constitute improper opinion testimony and legal opinion.
15.	Zada Decl., at ¶ 8    	<u>Fed. R. Evid. 401, 402</u> The statement and referenced portion of Exhibit 1 (regarding AOL's alleged DMCA requirements) are irrelevant to Google's qualification for safe harbor.
16.	Zada Decl., at ¶ 8    	<u>Fed. R. Evid. 401, 402, 602, 1002</u> These statements are irrelevant, because P10 never sent Google a valid DMCA notice directed to

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Google Groups (gghpt.com). These statements also lack foundation and constitute improper legal opinion. Additionally, page 5 of Exhibit 2 ([REDACTED] [REDACTED]) and Zada's description of it are irrelevant, lack foundation, and violate the best evidence rule. *See* Section B, *supra*.

17. Zada Decl., at ¶ 8 [REDACTED]

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Fed. R. Evid. 401, 402, 403, 602, 1002

The statements are irrelevant, speculative, lack foundation, mischaracterize the documents referenced, and do not appear to be based on the witness's personal knowledge. Additionally, Google's instructions for Blogger speak for themselves.

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18. **Zada Decl., at ¶ 8** [REDACTED]
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Fed. R. Evid. 401, 402, 403, 602, 1002
The statements are argumentative, irrelevant, speculative, lack foundation, mischaracterize the documents referenced, constitute improper legal opinion, and do not appear to be based on the witness's personal knowledge. Additionally, Google's instructions for Blogger speak for themselves.

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19.	Zada Decl., at ¶ 8 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]	<u>Fed. R. Evid. 401, 402, 403, 602, 1002</u> The statements are irrelevant, because AOL's DMCA requirements have no bearing here.
20.	Zada Decl., at ¶ 9 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]	<u>Fed. R. Evid. 401, 402, 403, 602, 1002</u> Page 5 of Exhibit 2 ([REDACTED] [REDACTED]) and Zada's description of it are irrelevant, lack foundation, constitute improper legal opinion, and violate of the best evidence rule. <i>See</i> Section B, <i>supra</i> . Pages 7 and 8 of Exhibit 2 ([REDACTED] [REDACTED]) and Zada's description of it are irrelevant, mischaracterize the documents, and lack foundation.

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21. Zada Decl., at ¶ 10 [REDACTED]
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[REDACTED]

Fed. R. Evid. 401, 402, 403, 602
The statements are argumentative, irrelevant, speculative, lack foundation, constitute improper legal opinion, contradict other testimony by this same witness (see Zada Dec. ¶¶ 12-13, 58) and do not

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appear to be based on the witness's personal knowledge.

22. **Zada Decl., at ¶ 11** [REDACTED]

Fed. R. Evid. 401, 402, 403
The statements are irrelevant, speculative, lack foundation, and mischaracterize the documents referenced (including because Google does have a DMCA policy for AdWords).

23. **Zada Decl., at ¶ 12** [REDACTED]

Fed. R. Evid. 401, 402, 403, 602, 1002
The statements are argumentative, irrelevant and speculative, constitute improper legal opinion, lack foundation, mischaracterize the documents referenced, and do not appear to be based on the witness's personal knowledge. The

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[REDACTED]

statements regarding "The Sample" are irrelevant. *See Section C, supra.* The statements regarding the cherry-picked excerpts of P10's DMCA Notices also are irrelevant, lack foundation, and violate the best evidence rule. *See Section B, supra.*

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24. [REDACTED]

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Fed. R. Evid. 401, 402, 403, 602, 701, 702
The statements are argumentative, irrelevant, mischaracterize the documents referenced, speculative, lack foundation, do not appear to be based on the witness's personal knowledge, and constitute improper opinion testimony of a lay witness.

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25.	Zada Decl., at ¶ 12 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]	<u>Fed. R. Evid. 401, 402, 403, 602</u> The statements are irrelevant, speculative, lack foundation, mischaracterize the documents referenced, constitute improper legal opinion and do not appear to be based on the witness's personal knowledge.
26.	Zada Decl., at ¶ 12 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]	<u>Fed. R. Evid. 401, 402, 403, 602, 701</u> The statements are irrelevant, speculative, lack foundation, mischaracterize the documents referenced (including Google's DMCA instructions), constitute improper legal opinion, do not appear to be based on the witness's personal knowledge, constitute improper opinion testimony of a lay person.
27.	Zada Decl. ¶ 13	<u>Fed. R. Evid. 401, 402, 403, 1002</u> The statements are argumentative, irrelevant ([REDACTED] [REDACTED])

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speculative, constitute improper
legal opinion, lack foundation,
mischaracterize the documents
referenced and constitute improper
opinion testimony of a lay witness.
[REDACTED]
[REDACTED]
[REDACTED]. See Sections
B and D, *supra*.

28. Zada Decl., at ¶ 14 [REDACTED]
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Fed. R. Evid. 401, 402, 403, 602,
801-04, 1002
The statements are argumentative,
irrelevant, speculative, *see* Section
D, *supra*, lack foundation,
constitutes inadmissible hearsay,
and are violative of the best
evidence rule.

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	<p>[REDACTED]</p>	
29.	<p>Zada Decl., at ¶ 14 [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 801-04, 1002</u></p> <p>The statements are argumentative, irrelevant (because Rapidshare is not a party to this litigation)speculative, <i>see</i> Section D, <i>supra</i>, lack foundation, constitutes inadmissible hearsay, and do not appear to be based on the witness's personal knowledge. These statements also violate the best evidence rule because the article attached as Exhibit 7 is the best evidence of the contents of the article.</p>
30.	<p>Zada Decl., at ¶ 14 [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602</u></p> <p>The statements are argumentative, irrelevant, speculative, <i>see</i> Section D, <i>supra</i>, constitute improper legal opinion, lack foundation,</p>

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	<p>[REDACTED]</p>	<p>mischaracterize the documents, and do not appear to be based on the witness's personal knowledge.</p>
31.	<p>Zada Decl., at ¶ 14 [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p><u>Fed. R. Evid. 401,402, 403, 602, 1002</u></p> <p>The statements are argumentative, irrelevant (Rapidshare is not a party to this litigation, and purported damage to third parties has no bearing on the legal standards at issue for safe harbor, speculative, lack foundation, mischaracterize the documents, and do not appear to be based on the witness's personal knowledge. These statements also violate the best evidence rule because the article attached as Exhibit 7 is the best evidence of the contents of that article.</p>
32.	<p>Zada Decl., at ¶ 14 [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 1002</u></p> <p>The statements are irrelevant (the various celebrities listed are not Perfect 10 models or parties to this litigation), speculative, mischaracterize the documents, lack foundation, and do not appear to be</p>

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	<p>[REDACTED]</p>	<p>based on the witness's personal knowledge. These statements also violate the best evidence rule because Exhibit 7 is the best evidence of the contents of the document.</p>
33.	<p>Zada Decl., at ¶ 14 [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 801-04, 1002</u></p> <p>The statements are irrelevant (Rapidshare is not a party to this litigation), speculative, lack foundation, constitutes inadmissible hearsay, and do not appear to be based on the witness's personal knowledge. These statements also violate the best evidence rule because Exhibit 7 is the best evidence of the contents of the document.</p>
34.	<p>Zada Decl., at ¶ 14 [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 801-04, 1002</u></p> <p>The statements are argumentative, irrelevant (Pirate Bay and its employees are not a party to this litigation), speculative, lack foundation, constitutes inadmissible hearsay, and do not appear to be</p>

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	<p>[REDACTED]</p>	<p>based on the witness's personal knowledge, <i>see</i> Section D, <i>supra</i>. These statements also violate the best evidence rule because Exhibit 7 is the best evidence of the contents of the document.</p>
35.	<p>Zada Decl., at ¶ 14 [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701</u></p> <p>The statements are argumentative, irrelevant (none of the web sites listed are parties to this litigation), speculative, constitute improper legal opinion, lack foundation, do not appear to be based on the witness's personal knowledge, and constitute improper opinion testimony of a lay witness.</p>

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[REDACTED]

36. **Zada Decl., at ¶ 14** [REDACTED]
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[REDACTED]

Fed. R. Evid. 401, 402, 403, 602
The statements are argumentative, irrelevant, *see* Section D, *supra*, speculative, mischaracterize the documents, lack foundation, and do not appear to be based on the witness's personal knowledge.

37. **Zada Decl., at ¶ 15** [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
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Fed. R. Evid. 401, 402, 403, 602
The statements are irrelevant, speculative, constitute improper legal opinion, mischaracterize the documents, and lack foundation.

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38.	Zada Decl. ¶ 16	<u>Fed. R. Evid. 401, 402, 403, 602</u> The statements are argumentative, irrelevant, speculative, mischaracterize the documents, and lack foundation.
39.	Zada Decl., at ¶ 17   	<u>Fed. R. Evid. 401, 402, 403, 602</u> The statements are argumentative, irrelevant (Zada's personal assessment of Google's actions has no bearing on the legal standards at issue), speculative, and lack foundation, and do not appear to be based on the witness's personal knowledge.
40.	Zada Decl., at ¶ 18      	<u>Fed. R. Evid. 401, 402, 403, 602</u> The statements are argumentative, irrelevant (Zada's personal assessment of Google's actions has no bearing on the legal standards at issue), speculative, lack foundation, and do not appear to be based on the witness's personal knowledge.
41.	Zada Decl., at ¶ 19  	<u>Fed. R. Evid. 401, 402, 403, 602, 701, 1002</u>

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[REDACTED]

The statements are argumentative, irrelevant (Google's document production in this litigation, including redactions, and Google's practice of forwarding notices to ChillingEffects, and Zada's analysis of them, have no bearing on the legal standards at issue for safe harbor), speculative, lack foundation, mischaracterize the documents ([REDACTED] [REDACTED] [REDACTED] [REDACTED]), do not appear to be based on the witness's personal knowledge, constitute improper legal opinion, and constitute improper opinion testimony. These statements also violate the best evidence rule as the DMCA logs and other processing documents maintained and produced by Google are the best evidence of what they contain.

42. Zada Decl., at ¶ 19 [REDACTED]
[REDACTED]

Fed. R. Evid. 401, 402, 403, 602, 701, 1002

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[REDACTED]

The statements are argumentative, irrelevant (Zada's personal characterization of Google's document production and DMCA logs, and opinions as to what they reveal, has no bearing on the legal standards at issue for safe harbor), speculative (because Zada even admits that he is speculating), mischaracterize the documents, lack foundation, do not appear to be based on the witness's personal knowledge, constitute improper legal opinion, and constitute improper opinion testimony. These statements also violate the best evidence rule because the documents discussed by Zada are the best evidence of their contents.

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	<p>[REDACTED]</p>	
43.	<p>Zada Decl., at ¶ 19 [REDACTED]</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 1002</u></p> <p>The statements are argumentative, irrelevant (Zada's personal characterization of Google's document production and DMCA logs has no bearing on the legal standards at issue for safe harbor), speculative, lack foundation, mischaracterize the documents (because Google provided OCR with its document productions), do not appear to be based on the witness's personal knowledge, and constitute improper opinion testimony. These statements also violate the best evidence rule because the documents discussed by Zada are the best evidence of their contents.</p>

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[REDACTED]

44. **Zada Decl., at ¶ 19** [REDACTED]
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Fed. R. Evid. 401, 402, 403, 602, 701, 1002
The statements are argumentative, irrelevant, *see* Section D, *supra*, speculative, lack foundation, mischaracterize the documents, do not appear to be based on the witness's personal knowledge, constitute improper legal opinion, and constitute improper opinion testimony. These statements also violate the best evidence rule because Google's DMCA logs are

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[REDACTED]

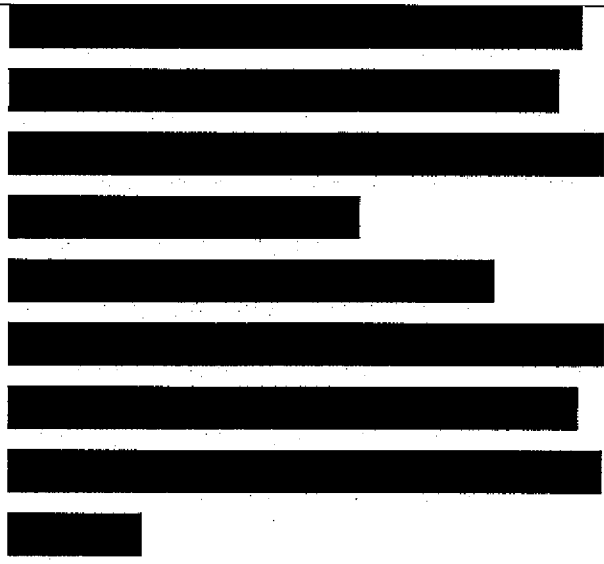
the best evidence of their contents.

45. **Zada Decl., at ¶ 20** [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Fed. R. Evid. 401, 402, 403, 602
The statements are argumentative,
irrelevant (because Zada's personal
assessment of Google's actions has

1 2 3 4 5	[REDACTED]	no bearing on the legal standards at issue), speculative, mischaracterize the documents, lack foundation, and do not appear to be based on the witness's personal knowledge.
6 7 8 9 10 11 12 13	46. Zada Decl. ¶ 21	<u>Fed. R. Evid. 401, 402, 403, 602, 701, 1002</u> The statements regarding the cherry-picked excerpts of P10's DMCA Notices also are irrelevant, lacking in foundation, and violative of the best evidence rule. <i>See</i> Section B, <i>supra</i> .
14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	47. Zada Decl., at ¶ 22 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]	<u>Fed. R. Evid. 401, 402, 403, 602, 801-04, 1002</u> The statements regarding the cherry-picked excerpts of P10's DMCA Notices also are irrelevant, lacking in foundation, and violative of the best evidence rule. <i>See</i> Section B, <i>supra</i> .

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48.	Zada Decl. ¶ 23	<u>Fed. R. Evid. 401, 402, 403, 602, 701, 1002</u> The statements are argumentative, irrelevant (Zada's subjective assessment of his actions are not relevant to Google's qualification for safe harbor), speculative, lack foundation, constitutes inadmissible hearsay, do not appear to be based on the witness's personal knowledge, constitute improper legal opinion, and constitute improper opinion testimony. The statements also violate the best evidence rule, in that the purported exhibits themselves are the best evidence of their contents.
49.	Zada Decl. ¶ 24	<u>Fed. R. Evid. 401, 402, 403, 602,</u>

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		<p><u>701</u></p> <p>The statements are argumentative, irrelevant (Dr. Zada's personal views on how best to present DMCA notices have no bearing on the legal standards at issue for safe harbor), speculative, lack foundation, do not appear to be based on the witness's personal knowledge, constitute improper legal opinion, and constitute improper opinion testimony. The statements regarding the cherry-picked excerpts of P10's DMCA Notices also are irrelevant, lacking in foundation, and violative of the best evidence rule. <i>See</i> Section B, <i>supra</i>.</p>
50.	<p>Zada Decl., at ¶ 25 [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 1002</u></p> <p>The statements are argumentative, irrelevant (because attempts by Google to try to process P10's notices are not probative of whether the notices complied with the DMCA), speculative, lack foundation, mischaracterize the</p>

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	[REDACTED]	documents, and do not appear to be based on the witness's personal knowledge. These statements also violate the best evidence rule because the referenced communications are the best evidence of the contents of those communications.
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51.	Zada Decl., at ¶ 26 [REDACTED]	<u>Fed. R. Evid. 401, 402, 403, 602, 701</u> The statements are argumentative, irrelevant (because Zada's speculation as to what Google did has no bearing on the legal standards at issue for safe harbor), speculative, lack foundation, mischaracterize the documents, do not appear to be based on the witness's personal knowledge, and constitute improper opinion testimony.
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52.	Zada Decl., at ¶ 26 [REDACTED]	<u>Fed. R. Evid. 401, 402, 403, 602</u> The statements are argumentative, irrelevant, speculative, lack foundation, mischaracterize the documents, and do not appear to be based on the witness's personal
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	<p>[REDACTED]</p>	<p>knowledge.</p>
53.	<p>Zada Decl., at ¶ 26 [REDACTED]</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701</u> The statements are irrelevant (Zada's personal opinion on how he would have handled DMCA review process has no bearing on the legal standards at issue), speculative, lack foundation, do not appear to be based on the witness's personal knowledge, and constitute improper opinion testimony.</p>
54.	<p>Zada Decl., at ¶ 26 [REDACTED]</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 1002</u> The statements are irrelevant, because Google's pending motions are not directed to examples of images P10 references, but to the entirety of P10's copyright claims. <i>See also</i> Section D, <i>supra</i>. The statements regarding "The Sample" are irrelevant. <i>See</i> Section C, <i>supra</i>. The statements regarding the cherry-picked excerpts of P10's DMCA Notices also are irrelevant,</p>

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[REDACTED]

lacking in foundation, and violative of the best evidence rule. See Section B, *supra*.

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	<p>[REDACTED]</p>	
55.	<p>Zada Decl., at ¶ 26 [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701</u></p> <p>The statements are irrelevant, speculative, lack foundation (because Zada fails to establish that he understands the requirements of a proper DMCA notice), and constitute improper opinion testimony.</p>
56.	<p>Zada Decl., at ¶ 26 [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 1002</u></p> <p>The statements are argumentative, irrelevant, <i>see</i> Section D, <i>supra</i>, speculative, mischaracterize the documents, and lack foundation. These statements also violate the best evidence rule because Exhibit 14 is the best evidence of its</p>

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[REDACTED]
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contents.

57. **Zada Decl., at ¶ 26** [REDACTED]
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Fed. R. Evid. 401, 402, 403, 602, 701, 1002
The statements are argumentative, irrelevant (because Zada's speculation [REDACTED] [REDACTED] has no bearing on the legal standards at issue for safe harbor), speculative, lack foundation, mischaracterize the documents, do not appear to be based on the witness's personal knowledge, and constitute improper opinion testimony. These statements also violate the best evidence rule because the click data referenced by Zada is the best evidence of that data.

58. **Zada Decl. ¶ 27** [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Fed. R. Evid. 401, 402, 403, 602, 701
The statements are argumentative, constitute improper legal opinion,

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[REDACTED]

and irrelevant (Zada's personal opinion as to the speed with which Google reacted has no bearing on the legal standards at issue for safe harbor). The statements regarding "The Sample" are irrelevant. See Section C, *supra*. The statements regarding the cherry-picked excerpts of P10's DMCA Notices also are irrelevant, lacking in foundation, and violative of the best evidence rule. See Section B, *supra*.

59. **Zada Decl., at ¶ 28** [REDACTED]

Fed. R. Evid. 401, 402, 403, 602
The statements are argumentative, irrelevant, *see* Section D, *supra*, speculative, lack foundation, mischaracterize the documents, constitute improper legal opinion, and do not appear to be based on the witness's personal knowledge.

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[REDACTED]

60. [REDACTED]

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Fed. R. Evid. 401, 402, 403, 602, 701, 1002
The statements are argumentative, irrelevant, speculative, lack foundation, mischaracterize the document, do not appear to be based on the witness's personal

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		knowledge, constitute improper legal opinion, and constitute improper opinion testimony.
61.	[REDACTED]	<u>Fed. R. Evid. 401, 402, 403, 602, 701, Fed. R. Civ. P. 37(c)(1)</u> The statements are argumentative, irrelevant (because Google does not crawl or link to content on Usenet sites or other password-protected websites, Haahr Dec. ¶¶ 14-15, <i>see also</i> Section D, <i>supra</i> "), speculative, lack foundation, do not appear to be based on the witness's personal knowledge, constitute improper legal opinion, and constitute improper opinion testimony of a lay witness. Further, having failed to produce complete and unredacted financial records, P10 may not assert its alleged financial information here.
62.	Zada Decl., at ¶ 33 [REDACTED]	<u>Fed. R. Evid. 401, 402, 403, 602, 701</u> The statements are argumentative, irrelevant (Google does not crawl or link to content on Usenet sites or other password-protected websites.

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[REDACTED]

Haahr Dec. ¶¶ 14-15, *see also* Section D, *supra*), speculative, lack foundation, do not appear to be based on the witness's personal knowledge, constitute improper legal opinion, and constitute improper opinion testimony.

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63.	Zada Decl., at ¶ 33 	<u>Fed. R. Evid. 401, 402, 403, 602, 701</u> The statements are irrelevant (because Zada's opinion as to whether P10 could continue sending spreadsheet type notices has no bearing on the legal standards at issue for safe harbor), speculative, lack foundation, do not appear to be based on the witness's personal knowledge, and constitute improper opinion testimony.
64.	Zada Decl., at ¶ 34 	<u>Fed. R. Evid. 401, 402, 403, 602, 701,702</u> The statements are argumentative, irrelevant (<i>see</i> Section D, <i>supra</i>), unduly prejudicial (P10 seeks to avoid its defective DMCA notices by referencing content it does not own on sites Google does not crawl or link to), speculative, lack foundation, do not appear to be based on the witness's personal knowledge, constitute improper legal opinion, and constitute

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[REDACTED]

improper opinion testimony of a lay person.

65. Zada Decl., at ¶ 34 [REDACTED]

[REDACTED]

Fed. R. Evid. 401, 402, 403, 602
The statements are argumentative, irrelevant (*see* Section D, *supra*), speculative, lack foundation, constitute improper legal opinion, and do not appear to be based on the witness's personal knowledge.

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[REDACTED]

66. **Zada Decl. ¶ 35**

Fed. R. Evid. 401, 402, 403, 602, 702
The statements are argumentative, irrelevant (Google does not crawl or link to content on Usenet sites or other password-protected websites, Haahr Dec. ¶¶ 14-15, and Zada's personal opinions regarding how Google should process DMCA

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notices have no bearing on the legal standards at issue for safe harbor), speculative, lack foundation, constitute improper legal opinion, do not appear to be based on the witness's personal knowledge and constitute improper opinion testimony.

67. **Zada Decl., at ¶ 36** [redacted]
[redacted]
[redacted]
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Fed. R. Evid. 401, 402, 403, 602, 701, 702
The statements are argumentative, irrelevant (*see* Section D, *supra*), unduly prejudicial (because P10 seeks to sidestep its defective DMCA notices by pointing to content it does not own and that is not crawled or linked to by Google), speculative, lack foundation, do not appear to be based on the witness's personal knowledge, constitute improper legal opinion, and constitute improper opinion testimony of a lay witness. Zada has not been designated as an expert witness in this case, nor has be presented sufficient foundation to support any claimed expertise in the

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[REDACTED]

referenced subjects.


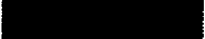
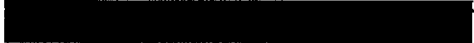
























68. **Zada Decl. ¶ 37**

Fed. R. Evid. 401, 402, 403, 602, 701
The statements are argumentative, irrelevant, speculative, lack foundation, do not appear to be based on the witness's personal knowledge, constitute improper legal opinion, and constitute improper opinion testimony.

69. **Zada Decl., at ¶ 38** [REDACTED]

Fed. R. Evid. 401, 402, 403, 602
The statements are argumentative, irrelevant, speculative, constitute improper legal opinion, and lack

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		foundation.
70.	<p>Zada Decl., at ¶ 39 </p>                         	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701</u></p> <p>The statements are irrelevant (because Google's refreshing of cached links has no bearing on the legal standards at issue for safe harbor if Google did not receive DMCA-compliant notices of infringement), speculative, lack foundation, mischaracterize the documents referenced, do not appear to be based on the witness's personal knowledge, constitute improper legal opinion, and constitute improper opinion testimony.</p>

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	[REDACTED]	
71.	Zada Decl., at ¶ 40 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]	<u>Fed. R. Evid. 401, 402, 403, 602, 701</u> The statements regarding the cherry-picked excerpts of P10's DMCA Notices are irrelevant, lacking in foundation, constitute improper legal opinion, and violative of the best evidence rule. <i>See Section B, supra</i>
72.	Zada Decl., at ¶ 41 [REDACTED]	<u>Fed. R. Evid. 401, 402, 403, 602, 702</u> The statements are argumentative, irrelevant (Zada's personal opinion as to how Google should have acted has no bearing on the legal standards at issue), speculative, lack foundation, mischaracterize the documents, do not appear to be based on the witness's personal knowledge and constitute improper opinion testimony.

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[REDACTED]

73. **Zada Decl., at ¶ 41** [REDACTED]
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[REDACTED]
[REDACTED]
[REDACTED]
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[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Fed. R. Evid. 401, 402, 403, 602, 702
The statements are argumentative, irrelevant (Zada's personal opinion as to how Google should have acted has no bearing on the legal standards at issue for safe harbor), speculative, lack foundation, do not appear to be based on the witness's personal knowledge, constitute improper legal opinion, and constitute improper opinion testimony.

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	<p>[REDACTED]</p> <p>[REDACTED]</p>	
74.	<p>Zada Decl., at ¶ 42 [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 1002</u></p> <p>The statements regarding "The Sample" are irrelevant. <i>See</i> Section C, <i>supra</i>. The statements regarding the cherry-picked excerpts of P10's DMCA Notices also are irrelevant, lacking in foundation, and violative of the best evidence rule. <i>See</i> Section B, <i>supra</i></p>
75.	<p>Zada Decl., at ¶ 43 [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602</u></p> <p>The statements regarding "The Sample" are irrelevant. <i>See</i> Section C, <i>supra</i>. The statements regarding the cherry-picked excerpts of P10's DMCA Notices also are irrelevant, lacking in foundation, and violative of the best evidence rule. <i>See</i> Section B, <i>supra</i></p>
76.	<p>Zada Decl., at ¶ 44 [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 1002</u></p> <p>The statements regarding "The Sample" are irrelevant. <i>See</i> Section C, <i>supra</i>. The statements regarding the cherry-picked excerpts of P10's</p>

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	[REDACTED]	DMCA Notices also are irrelevant, lacking in foundation, and violative of the best evidence rule. <i>See</i> Section B, <i>supra</i>
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77.	Zada Decl., at ¶ 45 [REDACTED]	<u>Fed. R. Evid. 401, 402, 403, 602, 1002</u> The statements regarding "The Sample" are irrelevant. <i>See</i> Section C, <i>supra</i> . The statements regarding the cherry-picked excerpts of P10's DMCA Notices also are irrelevant, lacking in foundation, constitute improper legal opinion, and violative of the best evidence rule. <i>See</i> Section B, <i>supra</i>
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78.	Zada Decl., at ¶ 46 [REDACTED]	<u>Fed. R. Evid. 401, 402, 403, 602, 1002</u> The statements regarding "The Sample" are irrelevant. <i>See</i> Section C, <i>supra</i> . The statements regarding the cherry-picked excerpts of P10's
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	<p>[REDACTED]</p>	<p>DMCA Notices also are irrelevant, lacking in foundation, and violative of the best evidence rule. <i>See</i> Section B, <i>supra</i></p>
79.	<p>Zada Decl., at ¶ 47 [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701, 1002</u></p> <p>The statements regarding "The Sample" are irrelevant. <i>See</i> Section C, <i>supra</i>. The statements regarding the cherry-picked excerpts of P10's DMCA Notices also are irrelevant, lacking in foundation, and violative of the best evidence rule. <i>See</i> Section B, <i>supra</i></p>
80.	<p>Zada Decl., at ¶ 48 [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 1002</u></p> <p>The statements regarding "The Sample" are irrelevant. <i>See</i> Section C, <i>supra</i>. The statements regarding the cherry-picked excerpts of P10's DMCA Notices also are irrelevant, lacking in foundation, and violative of the best evidence rule. <i>See</i> Section B, <i>supra</i></p>

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[REDACTED]


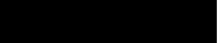


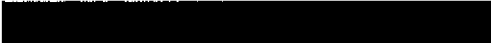

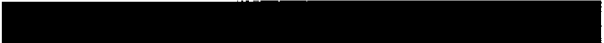



















81. **Zada Decl., at ¶ 49** [REDACTED]
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[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Fed. R. Evid. 401, 402, 403, 602, 1002
The statements regarding "The Sample" are irrelevant. *See* Section C, *supra*. The statements regarding the cherry-picked excerpts of P10's DMCA Notices also are irrelevant, lacking in foundation, constitute improper legal opinion, and violative of the best evidence rule. *See* Section B, *supra*

82. **Zada Decl., at ¶ 49** [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Fed. R. Evid. 401, 402, 403, 602
The statements are irrelevant (*see* Section D, *supra*), speculative, lack foundation, and do not appear to be based on the witness's personal knowledge.

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83.	Zada Decl., at ¶ 50            	<u>Fed. R. Evid. 401, 402, 403, 602</u> The statements are argumentative, irrelevant, <i>see</i> Section D, <i>supra</i> , speculative, lack foundation, and do not appear to be based on the witness's personal knowledge.
84.	Zada Decl., at ¶ 50             	<u>Fed. R. Evid. 401, 402, 403, 602</u> The statements are irrelevant (that an image was displayed at URLs other than those identified by P10 in its notices to Google has no bearing on the legal standards at issue for safe harbor), speculative, lack foundation, constitute improper legal opinion, and do not appear to be based on the witness's personal knowledge.

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	[REDACTED]	
85.	Zada Decl., at ¶ 51 [REDACTED]	<u>Fed. R. Evid. 401, 402, 403, 602, 701</u> The statements are argumentative, irrelevant, speculative, lack foundation, mischaracterize the documents, do not appear to be based on the witness's personal knowledge, and constitute improper opinion testimony.
86.	Zada Decl., at ¶ 51 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]	<u>Fed. R. Evid. 401, 402, 403, 602, 702, 1002</u> The statements regarding "The Sample" are irrelevant. <i>See</i> Section C, <i>supra</i> . The statements regarding

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[REDACTED]

the cherry-picked excerpts of P10's DMCA Notices also are irrelevant, lacking in foundation, constitute improper legal opinion, and are violative of the best evidence rule. See Section B, *supra*

87. Zada Decl., at ¶ 52 [REDACTED]

Fed. R. Evid. 401, 402, 403, 602
The statements are argumentative, constitute improper legal opinion, irrelevant (Google does not crawl or link to content on Usenet sites or other password-protected websites, Haahr Dec. ¶¶ 14-15, and P10 did not provide Google of notice of infringement via Google Groups),

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[REDACTED]

unduly prejudicial . The statements regarding "The Sample" are irrelevant. *See* Section C, *supra*.

88. Zada Decl., at ¶ 53 [REDACTED]
[REDACTED]




Fed. R. Evid. 401, 402, 403, 602
The statements are irrelevant

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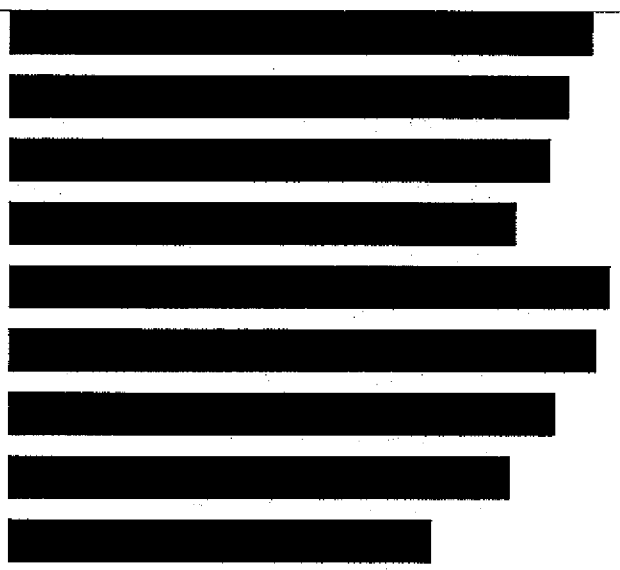
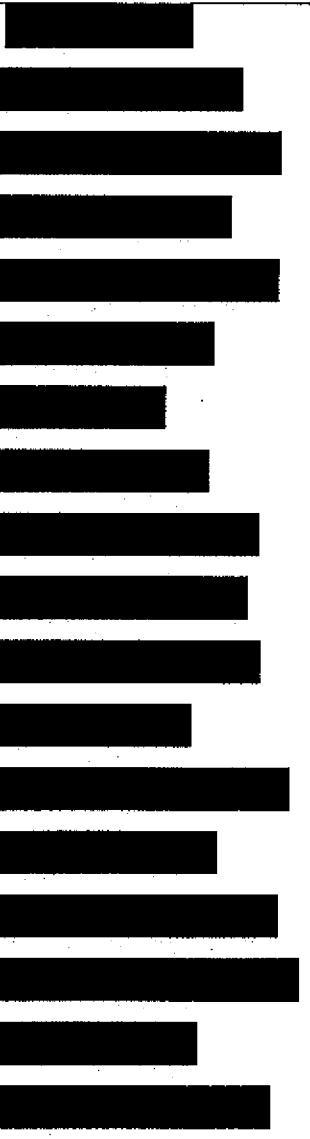
[REDACTED]

(Zada's personal characterization of his actions has no bearing on the legal standards at issue), speculative, lack foundation, mischaracterize the documents, constitute improper legal opinion, and do not appear to be based on the witness's personal knowledge.

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89.	<p>Zada Decl., at ¶ 53 </p> 	<p><u>Fed. R. Evid. 401, 402, 403, 602</u></p> <p>The statements are argumentative, irrelevant (Microsoft's alleged DMCA requirements are not relevant to Google's qualification for safe harbor), speculative, lack foundation, constitute improper legal opinion, do not appear to be based on the witness's personal knowledge, and constitute improper opinion testimony.</p>

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90.	Zada Decl., at ¶ 53 	<u>Fed. R. Evid. 401, 402, 403, 602</u> The statements are argumentative, irrelevant, <i>see</i> Section D, <i>supra</i> , speculative, lack foundation, constitute improper legal opinion, and do not appear to be based on the witness's personal knowledge.

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	[REDACTED]	
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91.	Zada Decl. ¶ 54	<u>Fed. R. Evid. 401, 402, 403, 602, 702</u> The statements are argumentative, irrelevant (Dr. Zada's beliefs as to what Google does or does not need to remove an image from Image Search have no bearing on the legal standards at issue), speculative, lack foundation, mischaracterize the documents, do not appear to be based on the witness's personal knowledge constitute improper legal opinion, and constitute improper opinion testimony.
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92.	Zada Decl., at ¶ 55 [REDACTED]	<u>Fed. R. Evid. 401, 402, 403, 602</u> The statements are argumentative, irrelevant, speculative, lack foundation, constitute improper legal opinion, and do not appear to be based on the witness's personal knowledge.
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[REDACTED]

[REDACTED]

93. **Zada Decl. ¶ 57**

Fed. R. Evid. 401, 402, 403, 602,

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		<u>701, 1002</u> The statements are irrelevant, speculative, lack foundation, mischaracterize the documents, do not appear to be based on the witness's personal knowledge, constitute improper legal opinion, and are improper opinion testimony.
94.	Zada Decl., at ¶ 58 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]	<u>Fed. R. Evid. 401, 402, 403, 602, 701</u> The statements are argumentative, irrelevant, speculative, lack foundation, do not appear to be based on the witness's personal knowledge, constitute improper legal opinion, and constitute improper opinion testimony.
95.	Zada Decl., at ¶ 58 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]	<u>Fed. R. Evid. 401, 402, 403, 602</u> The statements are irrelevant (<i>see</i> Section D, <i>supra</i>), argumentative, constitute improper legal opinion, speculative, do not appear to be based on the witness's personal knowledge, and lack foundation. For instance, Zada's claim [REDACTED] [REDACTED] [REDACTED]

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[REDACTED]

[REDACTED]
[REDACTED] is unsupported by any evidence or facts whatsoever, nor has any such evidence been produced in discovery or identified in any P10 DMCA notice.

96. **Zada Decl., at ¶ 58** [REDACTED]
[REDACTED]
[REDACTED]
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Fed. R. Evid. 401, 402, 403, 602, 1002
The statements regarding "The Sample" are irrelevant. *See* Section C, *supra*. The statements regarding the cherry-picked excerpts of P10's DMCA Notices also are irrelevant, lacking in foundation, constitute improper legal opinion, and violative of the best evidence rule. *See* Section B, *supra*

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[REDACTED]

97. **Zada Decl., at ¶ 60** [REDACTED]
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[REDACTED]
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[REDACTED]
[REDACTED]

Fed. R. Evid. 401, 402, 403, 602, 702
The statements are argumentative, irrelevant (because Zada's interpretation of what documents reveal has no bearing on the legal standards at issue for safe harbor), speculative, lack foundation, mischaracterize the documents, do not appear to be based on the witness's personal knowledge, constitute improper legal opinion, and constitute improper opinion testimony.

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	<p>[REDACTED]</p>	
98.	<p>Zada Decl., at ¶ 60 [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 702</u></p> <p>The statements are argumentative, irrelevant (because what Zada believes has no bearing on the legal standards at issue for safe harbor), speculative, lack foundation, mischaracterize the documents, do not appear to be based on the witness's personal knowledge and constitute improper opinion testimony.</p>
99.	<p>Zada Decl., at ¶ 61 [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 702</u></p> <p>The statements are argumentative, irrelevant, speculative, mischaracterize the documents referenced, lack foundation, and</p>

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[REDACTED]

constitute improper opinion testimony.

100. Zada Decl., at ¶ 61 [REDACTED]

[REDACTED]

Fed. R. Evid. 401, 402, 403, 602, 1002

The statements regarding "The Sample" are irrelevant. See Section C, *supra*. The statements regarding the cherry-picked excerpts of P10's DMCA Notices also are irrelevant, constitute improper legal opinion, lacking in foundation, and violative of the best evidence rule. See Section B, *supra*

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[REDACTED]

101. **Zada Decl., at ¶ 62** [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
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[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Fed. R. Evid. 401, 402, 403, 602
The statements are argumentative, irrelevant (Yahoo's alleged DMCA requirements are not relevant to Google's qualification for safe harbor), speculative, constitute improper legal opinion, mischaracterize the documents, and lack foundation.

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[REDACTED]

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[REDACTED]

102. Zada Decl., at ¶ 64 [REDACTED]

[REDACTED]

Fed. R. Evid. 401, 402, 403, 602, 702
The statements are argumentative, irrelevant (because this has no bearing on the legal standards at issue for safe harbor), speculative, lack foundation, do not appear to be based on the witness's personal knowledge, and constitute improper opinion testimony.

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[REDACTED]

103. Zada Decl., at ¶ 64 [REDACTED]
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Fed. R. Evid. 401, 402, 403, 602, 701
The statements are irrelevant, mischaracterize the documents, speculative, lack foundation, constitute improper legal opinion, and are improper opinion testimony.

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[REDACTED]

104. **Zada Decl., at ¶ 65** [REDACTED]
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[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Fed. R. Evid. 401, 402, 403, 602
The statements are irrelevant, *see* Section D, *supra*, speculative, lack foundation, and do not appear to be based on the witness's personal knowledge.

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[REDACTED]

105. Zada Decl., at ¶ 66 [REDACTED]

[REDACTED]

Fed. R. Evid. 401, 402, 403, 602
The statements are argumentative, irrelevant, *see* Section D, *supra*, speculative, lack foundation, and do not appear to be based on the witness's personal knowledge.

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106. Zada Decl., at ¶ 68 [REDACTED]

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[REDACTED]

Fed. R. Evid. 401, 402, 403, 602, 702

The statements are argumentative, irrelevant (because policies respecting child pornography and/or pharmaceutical advertisements have no bearing on the legal standards at issue for safe harbor), speculative, lack foundation, do not appear to be based on the witness's personal knowledge, and constitute improper opinion testimony.

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	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	
	<p>107. Zada Decl., at ¶ 69 [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 702</u></p> <p>The statements are argumentative, irrelevant, speculative, lack foundation, and constitute improper opinion testimony.</p>
	<p>108. Zada Decl., at ¶ 70 [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 801-04</u></p> <p>The statements are irrelevant, speculative, lack foundation, is inadmissible hearsay, and do not appear to be based on the witness's personal knowledge.</p>
	<p>109. Zada Decl., at ¶ 70 [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p><u>Fed. R. Evid. 401, 402, 403, 602, 701</u></p> <p>The statements are argumentative, irrelevant (because Zada's personal opinions have no bearing on the legal standards at issue for safe harbor), speculative,</p>

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[REDACTED]

mischaracterize the documents referenced, lack foundation, constitute improper legal opinion, and constitute improper opinion testimony.

110. Zada Decl., at ¶ 70 [REDACTED]

Fed. R. Evid. 401, 402, 403, 602
The statements regarding "The Sample" are irrelevant. *See* Section C, *supra*. The statements regarding the cherry-picked excerpts of P10's DMCA Notices also are irrelevant, lacking in foundation, and violative of the best evidence rule. *See* Section B, *supra*

111. Zada Decl., at ¶ 71 [REDACTED]

Fed. R. Evid. 401, 402, 403, 602
The statements are argumentative, irrelevant (because P10 has not alleged infringement via *most* of these products and did not provide Google with DMCA-compliant notice of infringement as to all of them), speculative, constitute improper legal opinion, and lack foundation.

112. Zada Decl., at ¶ 71 [REDACTED]

Fed. R. Evid. 401, 402, 403, 602,

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[REDACTED]

702
The statements are argumentative, irrelevant (Zada's personal opinion as to how Google should process notices has no bearing on the legal standards at issue for safe harbor), speculative, lack foundation, do not appear to be based on the witness's personal knowledge and constitute improper opinion testimony.

113. Zada Decl., at ¶ 73 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Fed. R. Evid. 401, 402, 403, 602
The statements are argumentative, irrelevant (because the format in which documents were produced for the purpose of litigation has no bearing on the legal standards at issue for safe harbor), speculative,

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		and lack foundation.
114.	Zada Decl., at ¶ 73 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]	<u>Fed. R. Evid. 401, 402, 403, 602, 701</u> The statements are argumentative, irrelevant (because Zada's personal analysis and opinions of Google's document production have no bearing on the legal standards at issue for safe harbor), mischaracterize the documents, speculative, lack foundation, and constitute improper opinion testimony.
115.	Zada Decl., at ¶ 73 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]	<u>Fed. R. Evid. 401, 402, 403, 602, 701, 1002</u> The statements are argumentative, irrelevant (Zada's personal interpretation of Exhibit 55 has no bearing on the legal standards at issue for safe harbor), speculative, mischaracterize the documents, lack foundation, and constitute improper opinion testimony. This statement also violates the best evidence rule because Exhibit 55 is the best

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		evidence of the contents of that document.
116.	Zada Decl., at ¶ 73 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]	<u>Fed. R. Evid. 401, 402, 403, 602, 701</u> The statements are irrelevant (because Zada's personal opinion and analysis of documents produced by Google has no bearing on the legal standards at issue for safe harbor), mischaracterize the documents, speculative, lack foundation, and constitute improper opinion testimony.
117.	Zada Decl ¶ 74	<u>Fed. R. Evid. 401, 402, 403, 602</u> The statements are argumentative, irrelevant, speculative, and lack foundation.
118.	Zada Decl., at ¶ 75 [REDACTED] [REDACTED] [REDACTED]	<u>Fed. R. Evid. 401, 402, 403, 602, 701</u> The statements are argumentative, irrelevant (because Zada's personal opinions regarding Google's statements have no bearing on the legal standards at issue for safe harbor), speculative, lack foundation, and constitute improper opinion testimony.

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119.	Zada Decl., at ¶ 75 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]	<u>Fed. R. Evid. 401, 402, 403, 602</u> The statements are argumentative, irrelevant, speculative, and lack foundation.
120.	Zada Decl., at ¶ 75 [REDACTED] [REDACTED] [REDACTED]	<u>Fed. R. Evid. 401, 402, 403, 602, 701</u> The statements are argumentative, irrelevant (Zada's personal opinion and analysis of testimony has no bearing on the legal standards at issue for safe harbor), mischaracterize the document, are speculative, lack foundation, and are improper opinion testimony.
121.	Zada Decl., at ¶ 75 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]	<u>Fed. R. Evid. 401, 402, 403, 602</u> The statements are argumentative, irrelevant, speculative, and lack foundation.
122.	Zada Decl. Exh. 1, page 11	<u>Fed. R. Evid. 401, 402, 403</u> The evidence is irrelevant, because

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		other companies' DMCA processes have no bearing on Google's qualification for DMCA safe harbor.
123.	Zada Decl. Exh. 2	<u>Fed. R. Evid. 401, 402, 403</u> The evidence is irrelevant, because "Whois" ownership of Blogger websites has no bearing on Google's qualification for safe harbor, nor do the alleged features of Adobe software depicted in the screenshots in Exhibit 2.
124.	Zada Decl. Exh. 4	<u>Fed. R. Evid. 401, 402, 403</u> The evidence is irrelevant to the DMCA safe harbor issues before the court.
125.	Zada Decl. Exhs. 5-6	<u>Fed. R. Evid. 401, 402, 403, 602, 1002</u> The evidence regarding "The Sample" is irrelevant. <i>See</i> Section C, <i>supra</i> . The evidence regarding the cherry-picked excerpts of P10's DMCA Notices also are irrelevant, lacking in foundation, and violative of the best evidence rule. <i>See</i> Section B, <i>supra</i>
126.	Zada Decl. Exh. 7	<u>Fed. R. Evid. 401, 402, 403, 602</u> The evidence is irrelevant,

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		speculative, and lacks foundation. <i>See</i> Section D, <i>supra</i> .
127.	Zada Decl. Exh. 8	<u>Fed. R. Evid. 401, 402, 403, 602</u> Evidence regarding the cherry-picked excerpts of P10's DMCA Notices also are irrelevant, lacking in foundation, and violative of the best evidence rule. <i>See</i> Section B, <i>supra</i> .
128.	Zada Decl. Exh. 9	<u>Fed. R. Evid. 401, 402, 403, 602, 901, 1002</u> Evidence regarding the cherry-picked excerpts of P10's DMCA Notices also are irrelevant, lacking in foundation, and violative of the best evidence rule. <i>See</i> Section B, <i>supra</i> . This exhibit also mischaracterizes the documents referenced, lacks foundation, constitutes improper opinion testimony, and is not properly authenticated.
129.	Zada Decl. Exh. 10	<u>Fed. R. Evid. 401, 402, 403, 602</u> The evidence is unduly prejudicial (P10 seeks to take the entirety of its defective notices out of context by pointing only to selected content),

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		irrelevant, and lacks foundation.
130.	Zada Decl. Exh. 12	<u>Fed. R. Evid. 401, 402, 403, 602</u> The evidence is irrelevant, speculative, and lacks foundation.
131.	Zada Decl. Exh. 13-17	<u>Fed. R. Evid. 401, 402, 403, 602, 1002</u> The evidence is argumentative, unduly prejudicial), and lacks foundation. The evidence regarding "The Sample" is irrelevant. <i>See</i> Section C, <i>supra</i> . The evidence regarding the cherry-picked excerpts of P10's DMCA Notices also is irrelevant, lacking in foundation, and violative of the best evidence rule. <i>See</i> Section B, <i>supra</i>
132.	Zada Decl. Exh. 18-19	<u>Fed. R. Evid. 401, 402, 403, 602, 801-04</u> The evidence is argumentative, irrelevant, speculative, lacks foundation, and constitutes inadmissible hearsay.
133.	Zada Decl. Exh. 20-21	<u>Fed. R. Evid. 401, 402, 403, 602, 1002</u> The evidence is argumentative and, unduly prejudicial. The statements regarding the cherry-picked excerpts

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		of P10's DMCA Notices also are irrelevant, lacking in foundation, and violative of the best evidence rule. <i>See</i> Section B, <i>supra</i>
134.	Zada Decl. Exh. 22-24	<u>Fed. R. Evid. 401, 402, 403, 602, 1002</u> The evidence is argumentative and irrelevant. <i>See</i> Section D, <i>supra</i> . The statements regarding "The Sample" are irrelevant. <i>See</i> Section C, <i>supra</i> . The statements regarding the cherry-picked excerpts of P10's DMCA Notices also are irrelevant, lacking in foundation, and violative of the best evidence rule. <i>See</i> Section B, <i>supra</i>
135.	Zada Decl. Exhs. 25-45	<u>Fed. R. Evid. 401, 402, 403, 602, 1002</u> The statements regarding "The Sample" are irrelevant. <i>See</i> Section C, <i>supra</i> . The statements regarding the cherry-picked excerpts of P10's DMCA Notices also are irrelevant, lacking in foundation, and violative of the best evidence rule. <i>See</i> Section B, <i>supra</i>
136.	Zada Decl. Exhs. 46-47	<u>Fed. R. Evid. 401, 402, 403, 602</u>

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		The evidence is irrelevant, and lacks foundation.
137.	Zada Decl. Exh. 48	<u>Fed. R. Evid. 401, 402, 403, 602, 801-04</u> The evidence is argumentative, irrelevant, lacks foundation, and constitutes inadmissible hearsay.
138.	Zada Decl. Exhs. 49-51	<u>Fed. R. Evid. 401, 402, 403, 602, 1002</u> The exhibits regarding the cherry-picked excerpts of P10's DMCA Notices also are irrelevant, lacking in foundation, and violative of the best evidence rule. <i>See</i> Section B, <i>supra</i> .
139.	Zada Decl. Exh. 52	<u>Fed. R. Evid. 401, 402, 403, 602</u> The evidence is irrelevant, and lacks foundation.
140.	Zada Decl. Exhs. 53-57	<u>Fed. R. Evid. 401, 402, 403, 602, 1002</u> The statements regarding "The Sample" are irrelevant. <i>See</i> Section C, <i>supra</i> . The statements regarding the cherry-picked excerpts of P10's DMCA Notices also are irrelevant, lacking in foundation, and violative of the best evidence rule. <i>See</i>

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	Section B, <i>supra</i>
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DATED: September 8, 2009

QUINN EMANUEL URQUHART OLIVER &
HEDGES. LLP

By *Rachel Herrick Kassabian*
Rachel Herrick Kassabian
Attorneys for Defendant Google Inc.