

1 QUINN EMANUEL URQUHART OLIVER & HEDGES, LLP  
Michael T. Zeller (Bar No. 196417)  
2 [michaelzeller@quinnemanuel.com](mailto:michaelzeller@quinnemanuel.com)  
865 South Figueroa Street, 10<sup>th</sup> Floor  
3 Los Angeles, California 90017-2543  
Telephone: (213) 443-3000  
4 Facsimile: (213) 443-3100  
Charles K. Verhoeven (Bar No. 170151)  
5 [charlesverhoeven@quinnemanuel.com](mailto:charlesverhoeven@quinnemanuel.com)  
50 California Street, 22<sup>nd</sup> Floor  
6 San Francisco, California 94111  
Rachel Herrick Kassabian (Bar No. 191060)  
7 [rachelkassabian@quinnemanuel.com](mailto:rachelkassabian@quinnemanuel.com)  
555 Twin Dolphin Drive, Suite 560  
8 Redwood Shores, California 94065

9 Attorneys for Defendant GOOGLE INC.

10 UNITED STATES DISTRICT COURT  
11 CENTRAL DISTRICT OF CALIFORNIA

12 PERFECT 10, INC., a California  
corporation,

13 Plaintiff,

14 vs.

15 GOOGLE INC., a corporation; and  
16 DOES 1 through 100, inclusive,

17 Defendants.

18 AND COUNTERCLAIM

19 PERFECT 10, INC., a California  
corporation,

20 Plaintiff,

21 vs.

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

25 Defendants.

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

**DEFENDANT GOOGLE'S  
CONSOLIDATED SEPARATE  
STATEMENT OF UNDISPUTED  
FACTS IN SUPPORT OF  
GOOGLE'S MOTION FOR  
SUMMARY JUDGMENT RE: SAFE  
HARBOR UNDER 17 U.S.C.  
§ 512(b) FOR ITS CACHING  
FEATURE**

[Rebuttal Declarations of Rachel  
Herrick Kassabian, Bill Brougher and  
Shantal Rands Poovala filed  
concurrently herewith]

Hon. A. Howard Matz


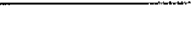
Date: None (taken under submission)  
Time: None Set  
Crtrm.: 14

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

**PUBLIC REDACTED**

1 For the Court's convenience, Defendant Google Inc. ("Google") hereby  
 2 submits this Consolidated Separate Statement of Undisputed Facts in Support of  
 3 Google's Motion for Summary Judgment re: Google's Entitlement to Safe Harbor  
 4 under 17 U.S.C. § 512(b) for its Caching Feature, incorporating verbatim Google's  
 5 Statement of Uncontroverted Facts and Plaintiff Perfect 10, Inc.'s ("P10") Statement  
 6 of Genuine Issues in Opposition to Google's Motion for Summary Judgment re: Safe  
 7 Harbor under 17 U.S.C. § 512(b) for its Caching Feature, as well as Google's Reply  
 8 to P10's Statement of Genuine Issues.

9  
 10 **DEFENDANT GOOGLE'S CONSOLIDATED SEPARATE STATEMENT OF**  
 11 **UNDISPUTED FACTS IN SUPPORT OF GOOGLE'S MOTION FOR**  
 12 **SUMMARY JUDGMENT RE: GOOGLE'S ENTITLEMENT TO SAFE**  
 13 **HARBOR UNDER 17 U.S.C. § 512(b) FOR ITS CACHING FEATURE**

Uncontroverted Facts and Supporting Evidence	P10's Response and Evidence
14 1. Google maintains an 15 Internet search engine accessible 16 on the World Wide Web at 17 <a href="http://www.google.com">www.google.com</a> . Declaration of 18 Bill Brougher in Support of 19 Google's Motion for Summary 20 Judgment Re: Google's 21 Entitlement to Safe Harbor Under 22 17 U.S.C. § 512 ("Brougher 23 Dec.") ¶ 2.	
24 2. Google does not interfere 25 with any known "standard 26 technical measures." Declaration 27 of Paul Haahr in Support of 28 Google's Motion for Summary Judgment Re: Google's Entitlement to Safe Harbor Under 17 U.S.C. § 512 ("Haahr Dec.") ¶ 18.	

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

3. Google uses an automated software program to obtain copies of publicly available web pages by sending requests to the server for the originating website and receiving the requested content in response. Brougner Dec. ¶ 4.

[REDACTED]

4. Google's proprietary software analyzes a copy of each web page it receives from the originating web servers and compiles an index of the text available on accessible websites. Brougner Decl. ¶ 4.

[REDACTED]

5. Google provides Web Search users with the option of selecting a link to a "cached" copy of the web pages that appear in search results. Brougner Dec. ¶ 6.

[REDACTED]

**GOOGLE'S REPLY**

P10 does not dispute the identified fact, and has not cited any contrary evidence. It remains uncontroverted. P10's improper legal argument should be stricken. See Scheduling Order at 6:5-6 ("No legal argument should be set forth in this document.").

6. When a user clicks on the "cached" link. The user sends a request to Google's computers, which respond automatically by transmitting the archival copy of the text of a web page that is

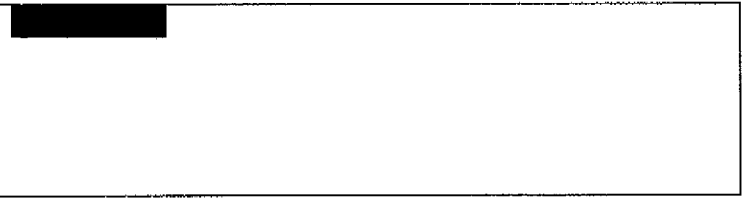
[REDACTED]

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

stored in the Web Search cache made available to users. Brougher Dec. ¶ 8.



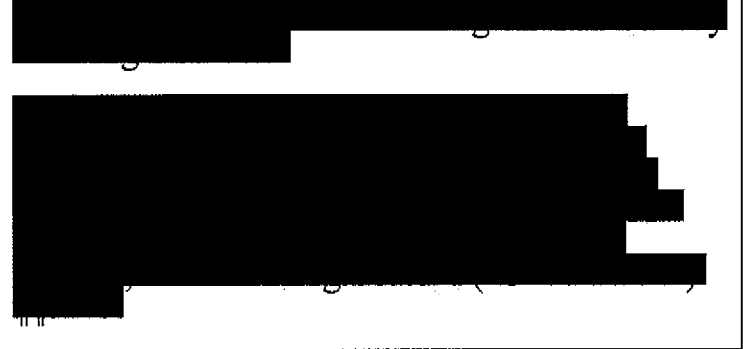
7. There are no images stored in Google's cache made available to users. Brougher Dec. ¶ 7.



**GOOGLE'S REPLY**

P10 has not cited any contrary evidence disputing this fact. It remains uncontroverted.

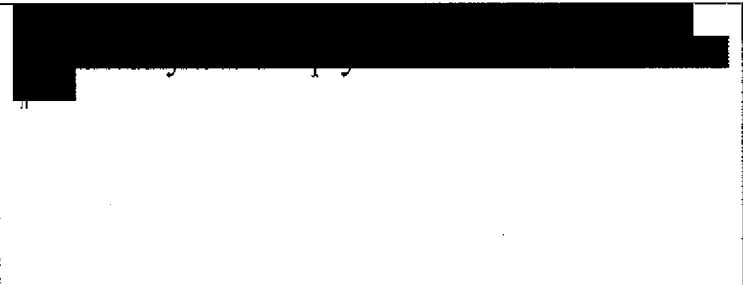
8. Any images displayed on a cached page are delivered from their original source, if they still exist at that source. Brougher Dec. ¶ 7.



**GOOGLE'S REPLY**

P10 does not dispute the identified fact, and has not cited any contrary evidence. It remains uncontroverted. P10's improper legal argument should be stricken. See Scheduling Order at 6:5-6.

9. Google maintains a copy of the text of a web page in the cache available to users only until its web robot next visits that particular web page. Brougher Dec. ¶ 6.



**GOOGLE'S REPLY**

Most of P10's response is improper legal argument and should be stricken. See Scheduling Order at 6:5-6 ("No legal argument should be set forth in this

1 document."). P10's cited evidence (including the opinions of Norman Zada as to  
2 how Google's cache operates) is irrelevant to the identified fact.

3 10. In the vast majority of  
4 cases, Google's cache made  
5 available to users will be refreshed  
6 approximately every few weeks.  
7 Brougner Dec. ¶ 6.

8 **GOOGLE'S REPLY**

9 P10's cited evidence (regarding a few stray outliers) does not actually dispute  
10 the identified fact. Most of P10's response is improper legal argument and should be  
11 stricken. *See* Scheduling Order at 6:5-6 ("No legal argument should be set forth in  
12 this document."). P10's cited evidence (including the opinions of Norman Zada as  
13 to how Google's cache operates) is irrelevant to the identified fact.

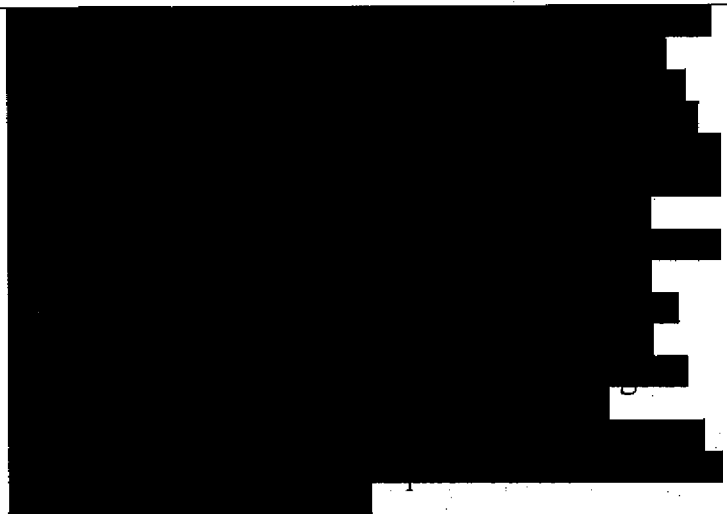
14 11. Google's cache available to  
15 users provides Internet users with  
16 several important benefits,  
17 including allowing users to view  
18 the text of pages when the users  
19 cannot access them directly,  
20 allowing users to determine how a  
21 particular web page has changed  
22 over time, and allowing users to  
23 more readily determine why a  
24 particular page was responsive to  
25 their query, but highlighting the  
26 terms of the query. Brougner Dec.  
27 in 10-12.

28 **GOOGLE'S REPLY**

Most of P10's response is improper legal argument and should be stricken.  
*See* Scheduling Order at 6:5-6 ("No legal argument should be set forth in this  
document."). P10's cited evidence (including the opinions of Norman Zada as to the  
value of Google's cache feature) does not support P10's claim and is irrelevant to  
the identified fact.

12. The material in Google's  
cache is made available online by

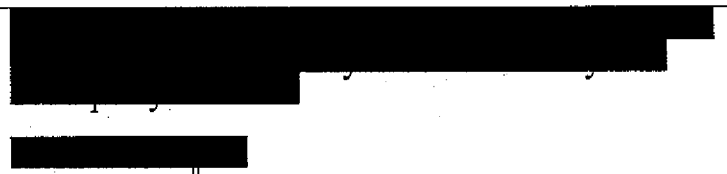
1 a person other than Google—  
2 namely, the originating third-party  
3 websites crawled by Google's web  
4 crawler. Brougher Dec. ¶ 4.  
5  
6  
7  
8  
9



10 **GOOGLE'S REPLY**

11 P10's cited evidence does not actually dispute the identified fact. Most of  
12 P10's response is improper legal argument and should be stricken. *See* Scheduling  
13 Order at 6:5-6 ("No legal argument should be set forth in this document.") P10's  
14 cited evidence (including the opinions of Norman Zada as to how Google's cache  
15 operates) is irrelevant to and does not actually address the identified fact.

16 13. The material in Google's  
17 cache is transmitted from third  
18 party websites to Google at  
19 Google's request. Brougher Dec.  
20 ¶ 4.



21 **GOOGLE'S REPLY**

22 P10's cited evidence does not actually dispute the identified fact. Most of  
23 P10's response is improper legal argument and should be stricken. *See* Scheduling  
24 Order at 6:5-6 ("No legal argument should be set forth in this document.") P10's  
25 cited evidence (including the opinions of Norman Zada as to how Google's cache  
26 operates) is irrelevant to and does not actually address the identified fact, nor does it  
27 support P10's claim.

28 14. Google's storage of the web  
page text in its cache is carried out  
through an automated technical



1 process. Brougher Dec. ¶ 6.

2  
3 **GOOGLE'S REPLY**

4 P10 has not cited any contrary evidence disputing this fact. It remains  
5 uncontroverted.

6 15. Google provides users with  
7 the option of selecting a link to the  
8 "cached" copy of the web page  
9 through an automatic technical  
10 process, as opposed to a direct link  
11 to the website itself, for the  
12 purpose of making the material  
13 available to users who wish to  
14 access it after it is initially  
15 transmitted by third-party  
16 websites. Brougher Dec. ¶ 6.

13 **GOOGLE'S REPLY**

14 P10 has not cited any contrary evidence disputing this fact. The fact remains  
15 uncontroverted.

16 16. Google's web robot obtains  
17 copies of the web pages from  
18 originating websites without  
19 modification of their content.  
20 Brougher Dec. ¶ 6.

21 **GOOGLE'S REPLY**

22 P10's cited evidence does not actually dispute the identified fact. Most of  
23 P10's response is improper legal argument and should be stricken. *See* Scheduling  
24 Order at 6:5-6 ("No legal argument should be set forth in this document.") P10's  
25 cited evidence (including the opinions of Norman Zada as to how Google's cache  
26 operates) is irrelevant to and does not actually address the identified fact, nor does it  
27 support P10's claim.

28 17. If webmasters of the  
originating websites specify rules

1 concerning refreshing, reloading,  
2 or other updating of the material,  
3 Google complies with those rules.  
4 Brougner Dec. ¶ 13.

**GOOGLE'S REPLY**

5 P10 has not cited any contrary evidence disputing this fact. It remains  
6 uncontroverted.

7 18. Google does not interfere  
8 with any technology used by a  
9 website to collect information  
10 directly from users visiting that  
11 website. Haahr Dec. ¶ 19.

**GOOGLE'S REPLY**

12 P10 has not cited any contrary evidence disputing this fact. It remains  
13 uncontroverted.

14 19. Google's cache made  
15 available to users does not alter  
16 the mechanisms for access to  
17 copyrighted material established  
18 by webmasters, such as payment  
19 or password protection. Haahr  
20 Dec. ¶ 20.

**GOOGLE'S REPLY**

21 P10's cites no evidence to support its claimed dispute of the identified fact.  
22 P10's response is improper legal argument and should be stricken. *See* Scheduling  
23 Order at 6:5-6 ("No legal argument should be set forth in this document.").

24 20. If a valid notice of  
25 infringement under § 512(c)(3) is  
26 received, it is Google's policy to  
27 respond expeditiously to remove  
28 or disable access to the infringing  
material. Declaration of Shantal  
Rands Poovala in Support of  
Google's Motion for Summary  
Judgment Re: Google's  
Entitlement to Safe Harbor Under  
17 U.S.C. § 512 ("Poovala Dec.")  
¶ 5.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

[Redacted]

[Redacted]

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

[REDACTED]

[REDACTED]

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

[REDACTED]

**GOOGLE'S REPLY**

P10's cited evidence does not actually dispute the identified fact. Most of P10's response is improper legal argument and should be stricken. *See* Scheduling Order at 6:5-6. P10's cited evidence (including the opinions of Norman Zada, Dean Hoffman, C.J. Newton, Les Schwartz and Margaret Jane Eden, and what Google allegedly has done in response to specific P10 notices) is irrelevant to the identified

1 fact because it is directed to how Google has *implemented* its DMCA policy – not  
2 whether Google *has* such a policy. Additionally, Google’s DMCA tracking  
3 spreadsheets speak for themselves. Poovala Dec. Ex. II. The fact that Google  
4 received a few poor-quality faxes (including several from P10) is irrelevant to its  
5 DMCA policy. P10’s claim that [REDACTED]  
6 [REDACTED] is unsupported by  
7 both P10’s and Google’s evidence. Poovala Dec. ¶¶ 57-64, Exhs. S-V; Zada Dec. at  
8 20:16-26 & 23:27-28. P10’s claim that [REDACTED]  
9 [REDACTED] is unsupported by the evidence it cites, and  
10 incorrect. *See* Rebuttal Kassabian Dec. Ex. B; Rebuttal Poovala Dec. ¶ 8. P10’s  
11 claim that [REDACTED] is  
12 unsupported by the evidence it cites and irrelevant to Google’s policy of responding  
13 expeditiously to DMCA notices, nor does the DMCA impose specific time periods  
14 for recordkeeping.

15 **Google's DMCA Policy and Procedure for Web Search and Cache**

16 21. Google has developed and  
17 maintains a DMCA policy and  
18 procedure for processing  
19 complaints received under the  
20 DMCA regarding Web Search.  
21 Poovala Dec. ¶ 5, Ex. B.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

[Redacted]

[Redacted]

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

[Redacted]

[Redacted]

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

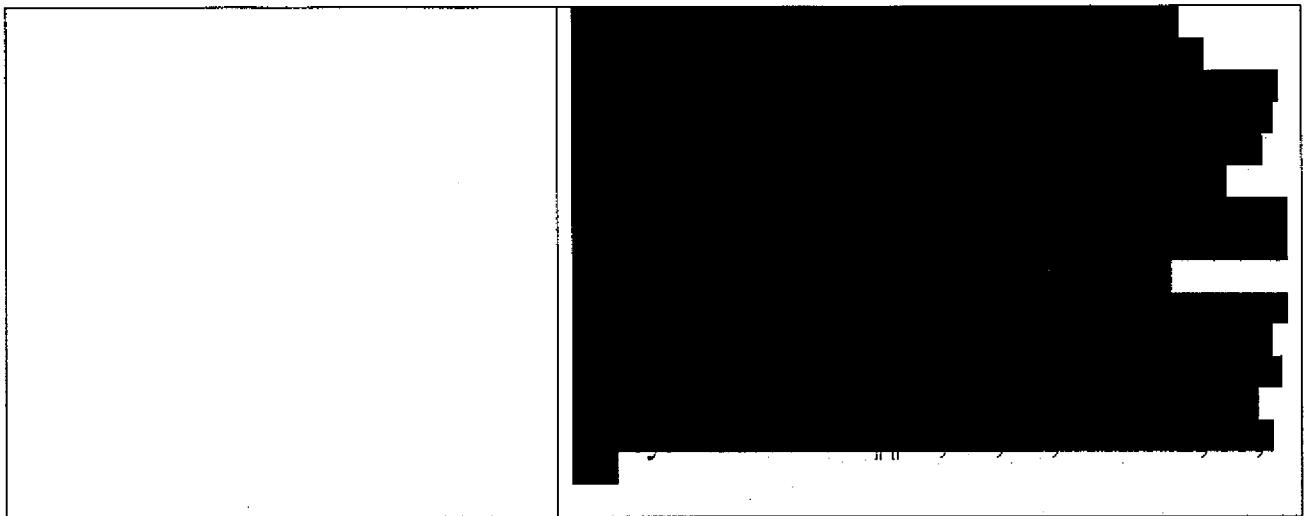
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



**GOOGLE'S REPLY**

P10's cited evidence does not actually dispute the identified fact. Most of P10's response is improper legal argument and should be stricken. See Scheduling Order at 6:5-6 ("No legal argument should be set forth in this document."). P10's cited evidence (including the opinions of Norman Zada, Dean Hoffman, C.J. Newton, Les Schwartz and Margaret Jane Eden, and what Google allegedly has done in response to specific P10 notices) is irrelevant to the identified fact because it is directed to how Google has *implemented* its DMCA policy – not whether Google *has* such a policy. Additionally, Google's DMCA tracking spreadsheets speak for themselves. Poovala Dec. Ex. II; Rebuttal Declaration of Rachel Herrick Kassabian at ¶ 2. The fact that Google received a few poor-quality faxes (including several from P10) is irrelevant to its qualification for DMCA safe harbor. Perfect 10's statements regarding chillingeffects.org also are irrelevant.

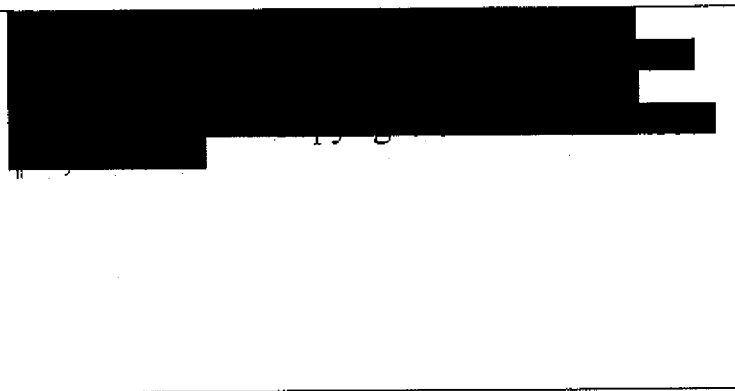
22. When Google suppresses a web page from appearing in Web Search results, it automatically prevents all cached links to that page from appearing in search results as well. Poovala Dec. ¶ 10.

23. Google has a designated agent for receiving notifications of

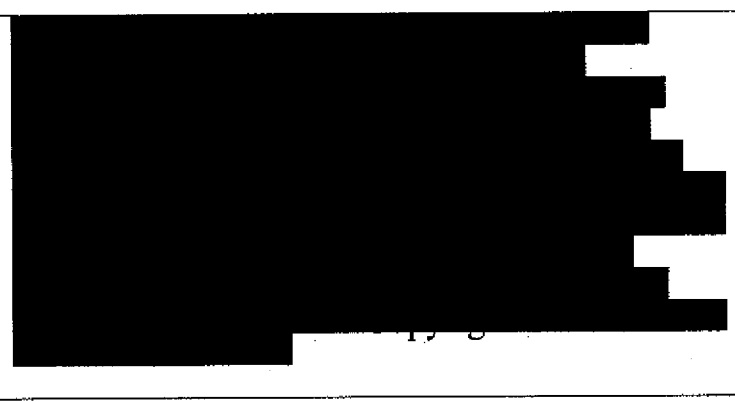


1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

claimed infringement. Declaration of Rachel Herrick Kassabian in Support of Google's Motion for Summary Judgment Re: Google's Entitlement to Safe Harbor Under 17 U.S.C. § 512 ("Kassabian Dec."), Ex. G (P10's Responses to Requests for Admission); Poovala Dec. ¶ 3, Ex. A.



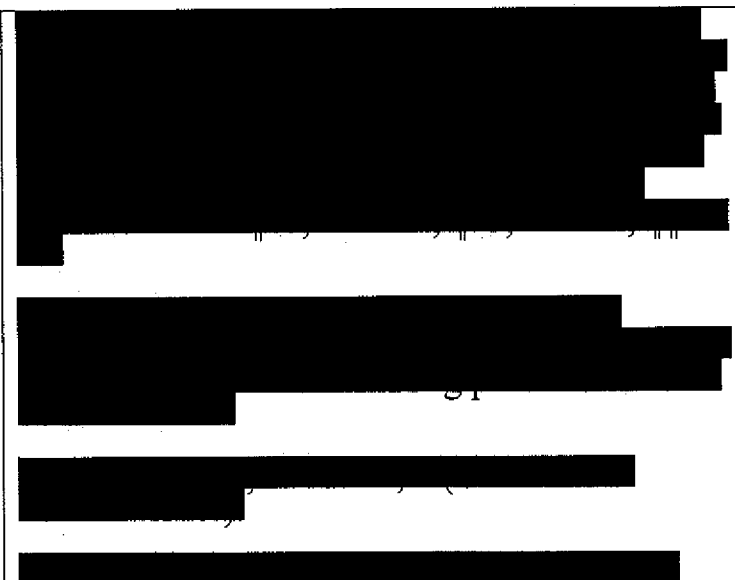
24. Google publishes the information required for DMCA complaints related to Web Search at <http://www.google.com/dmca.htm> l. Poovala Dec. ¶ 5, Ex. B.



**GOOGLE'S REPLY**

P10's cited evidence does not actually dispute the identified fact. That Google has an additional fax number on file with the Copyright Office is irrelevant to whether Google publishes the information required to submit a DMCA notice on Google's website.

25. It is Google's policy to respond expeditiously to notices of copyright infringement direct to Web Search. Poovala Dec. ¶ 5.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

[REDACTED]

**GOOGLE'S REPLY**

P10's cited evidence does not actually dispute the identified fact. Most of P10's response is improper legal argument and should be stricken. *See* Scheduling Order at 6:5-6. P10's cited evidence (including the opinions of Norman Zada, Dean Hoffman, C.J. Newton, Les Schwartz and Margaret Jane Eden, and what Google allegedly has done in response to specific P10 notices) is irrelevant to the identified fact because it is directed to how Google has *implemented* its DMCA policy – not whether Google *has* such a policy. Additionally, Google's DMCA tracking spreadsheets speak for themselves. Poovala Dec. Ex. II. The fact that Google received a few poor-quality faxes (including several from P10) is irrelevant to its DMCA policy. P10's claim that "[REDACTED]" is unsupported by both P10's and Google's evidence. Poovala Dec. ¶¶ 57-64, Exhs. S-V; Zada Dec. at

01980.51320/3092197.1

1 20:16-26 & 23:27-28. P10's claim that [REDACTED]  
2 [REDACTED] is unsupported by the evidence it cites, and  
3 incorrect. *See* Rebuttal Kassabian Dec. Ex. B; Rebuttal Poovala Dec. ¶ 8. P10's  
4 claim that [REDACTED] is  
5 unsupported by the evidence it cites and irrelevant to Google's policy of responding  
6 expeditiously to DMCA notices, nor does the DMCA impose specific time periods  
7 for recordkeeping.

8 26. For a Web Search DMCA  
9 complaint, Google directs  
10 complainants to identify the  
11 copyrighted work infringed by  
12 providing a brief description of it  
13 and the complete URL or other  
14 location where the work can be  
15 found. Poovala Dec. ¶ 7.

### 16 GOOGLE'S REPLY

17 P10's cited evidence does not actually dispute the identified fact, but rather is  
18 argument regarding what information P10 provided in response to Google's  
19 instructions, and thus is irrelevant. *See* Scheduling Order at 6:5-6. Both P10 and  
20 Google point to the same "documentary support" – Google's published DMCA  
21 policy for Web Search – which speaks for itself.

22 27. For a Web Search DMCA  
23 complaint, Google directs  
24 complainants to provide the  
25 complete URL at which the  
26 allegedly infringing material is  
27 located and the Web Search query  
28 that directly links to that web  
page. Poovala Dec. ¶ 8, Ex. B.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

[REDACTED]

**GOOGLE'S REPLY**

P10's cited evidence does not actually dispute the identified fact, but rather is argument regarding P10's interpretation of Google's Web Search DMCA instructions, and thus is irrelevant. *See* Scheduling Order at 6:5-6.

28. Unless provided with the necessary information from the copyright owner, Google has no way of knowing which uses the owner regards to be infringing, as opposed to those uses that are licensed, a fair use, or otherwise acceptable to the owner. Poovala Dec. ¶ 15.

[REDACTED]

**GOOGLE'S REPLY**

P10's cited evidence does not actually dispute the identified fact—that Google needs the required information from copyright owners. P10's improper and circular legal argument should be stricken. *See* Scheduling Order at 6:5-6.

29. For Web Search DMCA complaints, incomplete URLs containing improper ellipses, misspellings, or extra spaces, hinder Google's ability to locate the material in question. Poovala Dec. ¶ 9; Haahr Dec. ¶ 4.

[REDACTED]

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

[Redacted]

[Redacted]

**GOOGLE'S REPLY**

P10 has cited no contrary evidence disputing this fact. P10's improper legal argument should be stricken. *See* Scheduling Order at 6:5-6. P10's cited evidence (including the opinions of Norman Zada and Sean Chumura regarding how Google should process DMCA notices) is irrelevant to the identified fact, and does not support it in any event.

30. For Web Search DMCA complaints, URLs which are not live on the web, not indexed by Google, are excluded from search results, cannot be blocked because they already do not appear in Web Search results. Poovala Dec. ¶ 9; Haahr Dec. ¶ 4.

[Redacted]

**GOOGLE'S REPLY**

P10 has cited no contrary evidence disputing this fact. P10's improper legal argument should be stricken. *See* Scheduling Order at 6:5-6. P10's cited evidence (including the opinions of Norman Zada regarding Google's DMCA processing and other Google programs not at issue in this lawsuit) is irrelevant to the identified fact, and in any event does not support it. P10's opinion that Google should block sites that are not even indexed or linked to by Google is nonsensical and irrelevant.

31. Google has a team of employees charged with processing DMCA removal requests. Poovala Dec. ¶ 11.

[Redacted]

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

[REDACTED]

**GOOGLE'S REPLY**

P10 has cited no contrary evidence disputing this fact. P10's improper legal argument should be stricken. *See* Scheduling Order at 6:5-6.

32. If a DMCA notice for Web Search does not contain the required information, Google notifies the complainant and requests additional information. Poovala Dec. ¶ 13.

[REDACTED]

**GOOGLE'S REPLY**

P10's cited evidence does not actually dispute the identified fact, nor does P10 dispute receiving the Google communications requesting additional information and DMCA-compliant notices. Poovala Dec., Exhs. S-EE. P10's cited evidence (including the opinions of Norman Zada with respect to the sufficiency of Google's communications) is irrelevant to the identified fact. P10's improper legal argument should be stricken. *See* Scheduling Order at 6:5-6.

33. Google verifies claims of infringement by comparing the copyright work claimed to be infringed to the allegedly infringing URL identified in the DMCA notice. Poovala Dec. ¶ 14.

[REDACTED]

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

[REDACTED]

**GOOGLE'S REPLY**

P10's cited evidence (including the deposition testimony of Mr. MacGillivray and the Declaration of Mr. Botelho) does not actually dispute—or even support—the identified fact. P10's cited evidence (including the opinions and speculations of Norman Zada regarding how Google processed P10's notices, Google's DMCA instructions, what Google really needs to process a DMCA notice, and the adequacy of the Group C Notices) is irrelevant to the identified fact. P10's improper legal

1 argument should be stricken. *See* Scheduling Order at 6:5-6. Further, Google's  
2 DMCA instructions speak for themselves.

3 34. Google blocks infringing  
4 web page URLs from appearing in  
5 Google search results, including  
6 the cache feature of Web Search.  
7 Haahr Dec. ¶¶ 6, 7, 9; Poovala  
8 Dec. ¶¶ 10, 14, 24.



10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20 **GOOGLE'S REPLY**

21 P10's cited evidence (including the opinions of Norman Zada, Dean  
22 Hoffman, C.J. Newton, Les Schwartz and Margaret Jane Eden, and P10's claims as  
23 to what Google allegedly has done in response to specific P10 notices) does not  
24 actually dispute the identified fact. P10's cited evidence also is irrelevant to the  
25 identified fact and is contradicted by P10's witnesses' own testimony. P10's  
26 improper legal argument should be stricken. *See* Scheduling Order at 6:5-6.  
27 Google's DMCA tracking spreadsheets and its engineering files confirming the  
28 removal of infringing URLs speak for themselves, as do P10's notices. Poovala



1 Dec. Ex. II; Haahr Dec. Ex. 1. P10's statements regarding chillingeffects.org also  
2 are irrelevant.

3 35. If Google received a  
4 counter-notification as a result of a  
5 DMCA removal and the original  
6 complainant responds within ten  
7 days and informs Google it has  
8 filed a lawsuit, the URL will  
9 remain blocked from search  
10 results. Poovala Dec. ¶ 18.

[REDACTED]

11 36. Google's Web Search  
12 service has no subscribers or  
13 account holders. Haahr Dec. ¶ 17.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]

7 **GOOGLE'S REPLY**

8 P10's cited evidence does not actually dispute the identified fact. P10's  
9 improper legal argument should be stricken. *See* Scheduling Order at 6:5-6. P10's  
10 cited evidence (including the opinions of Norman Zada) is irrelevant to the  
11 identified fact because it discusses Google's repeat infringer policies for other  
12 Google services -- not whether Web Search and Image Search have account holders  
13 or subscribers.

14 37. Webmasters do not "sign  
15 up" to have their websites listed in  
16 Google's organic search results.  
Haahr Dec. ¶ 17.

[REDACTED]

17 **GOOGLE'S REPLY**

18 P10 has not cited any contrary evidence disputing this fact. It remains  
19 uncontroverted.

20 38. Websites are included in  
21 Google's organic search results if  
22 they were crawled by the  
23 Googlebot and if they are relevant  
24 to users' queries. Haahr Dec. ¶ 17.

[REDACTED]

25 **GOOGLE'S REPLY**

26 P10 has cited no contrary evidence disputing this fact. P10's improper  
27 legal argument should be stricken. *See* Scheduling Order at 6:5-6. P10's cited  
28 evidence (including the opinions of Norman Zada as to whether Google's search

1 results list "relevant" sites) is irrelevant because the specific results for a search for  
2 "Jamike Hansen" have no bearing on the identified fact.

3 39. Google has repeat infringer  
4 policies for its products and  
5 services with account holders,  
6 such as AdSense and Blogger.  
7 Poovala Dec. ¶ 36.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**GOOGLE'S REPLY**

1 P10's cited evidence does not actually dispute the identified fact. P10's  
2 improper legal argument should be stricken. *See* Scheduling Order at 6:5-6. P10's  
3 cited evidence (including the opinions of Norman Zada and Sheena Chou regarding  
4 Google's DMCA processing efforts) is irrelevant to the identified fact because it is  
5 directed to allegations regarding how Google has implemented its repeat infringer  
6 policies – not whether Google has such policies for services with account holders  
7 and subscribers. Additionally, Google's published repeat infringer policies and  
8 DMCA tracking spreadsheets for Blogger and AdSense speak for themselves.  
9 Poovala Dec. Exhs. F, G, J, K, II; Rebuttal Pooval Dec. Ex. C.

10 40. Google does not actively  
11 prevent copyright owners from  
12 collecting information needed to  
13 issue notifications of copyright  
14 infringement under the DMCA.  
15 Poovala Dec. ¶ 39.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1 [REDACTED]

2 **GOOGLE'S REPLY**

3 P10 has cited no contrary evidence disputing this fact. P10's improper  
4 legal argument should be stricken. See Scheduling Order at 6:5-6. P10's cited  
5 evidence (including the opinions of Norman Zada, Dean Hoffman, C.J. Newton, Les  
6 Schwartz and Margaret Jane Eden) does not actually support the identified fact, and  
7 is irrelevant to it. Google's published DMCA instructions speak for themselves.  
8

9 **Group A: The 2001 Notices<sup>1</sup>**

10 41. During discovery in this  
11 action, P10 produced 17  
12 claimed DMCA notices dated  
13 in 2001, all of which were  
14 dated more than three years  
15 prior to P10's filing of this  
16 action. Kassabian Dec. ¶ 13,  
17 Exhs. 1 — L17.

[REDACTED]

21  
22 <sup>1</sup> The Group A Notices include e-mail communications from PI 0 to Google  
23 dated May 11,2001, May 15,2001 (bearing control numbers PG DMCA00100011,  
24 PG DMCA0012-0015 and PG DMCA0016-0018), May 18,2001 (bearing control  
25 numbers PG DMCA0019-002T, PG DMCA0022-24, and PG DMCA002525 0028),  
26 May 21, 2001 (bearing control numbers PG DMCA0E9-0032, PG DMCA0033-  
27 0036, and PG DMCA0037-0040-), and May 22, 2001 (bearing control numbers PG  
28 DMCAO0T11-0045, PG DMCA0046-0050, and PG DMCA0051-0055), May 24,  
2001, June 26,2001 and June 29, 2001, and July 6,2001. Kassabian Dec. Exhs. L1-  
L17.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

[REDACTED]

**GOOGLE'S REPLY**

P10 does not dispute the identified fact, so it remains uncontroverted. P10's improper legal argument should be stricken. *See* Scheduling Order at 6:5-6.

42. P10 has indicated that its suit is not based on the DMCA notices purportedly sent to Google in 2001. Kassabian Dec. ¶ 3, Ex. B.

[REDACTED]

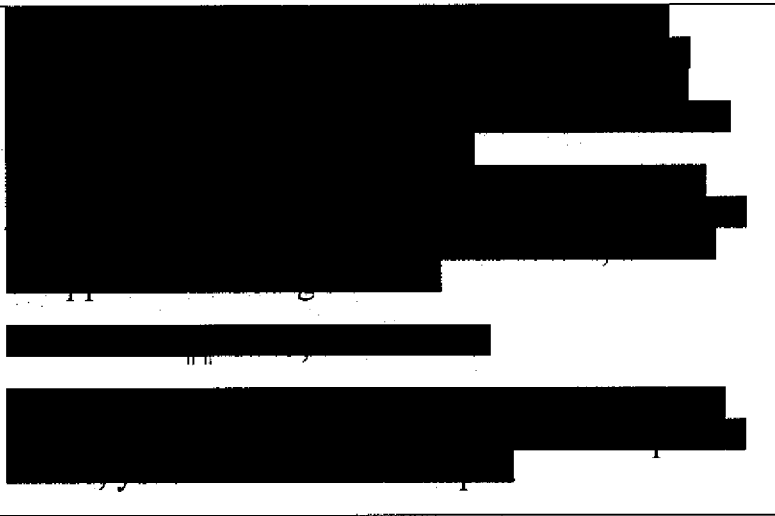
**GOOGLE'S REPLY**

P10's cited evidence (the Mausner Declaration) does not actually dispute Google's cited evidence – it just attempts to re-characterize it. P10 does not dispute that it refused to provide discovery regarding the Group A Notices. P10's improper

01980.51320/3092197.1

1 legal argument should be stricken. *See* Scheduling Order at 6:5-6. The remainder  
2 of P10's claims are irrelevant to the identified fact and are unsupported by the  
3 evidence it cites.

4 43. None of the Group A  
5 Notices properly identified the  
6 copyrighted work allegedly  
7 infringed. Kassabian Dec. ¶¶ 2,  
8 13, Exhs. A & L1- L17.

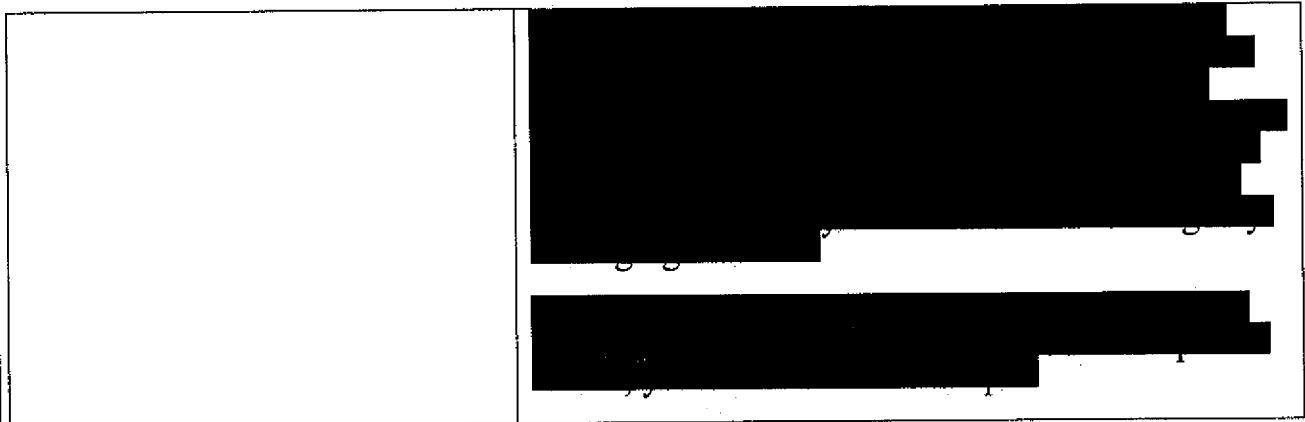


13  
14 **GOOGLE'S REPLY**

15 P10's cited evidence does not actually dispute the identified fact with respect  
16 to all but one of the alleged infringements in the Group A Notices, and even as to  
17 that infringement, mischaracterizes the underlying notice, which speaks for itself.  
18 P10's improper legal argument should be stricken. *See* Scheduling Order at 6:5-6.

19 44. None of the Group A  
20 Notices properly identified the  
21 location of the allegedly  
22 infringing material. Kassabian  
23 Dec. ¶¶ 2, 13, Exhs. A & L1-  
24 L17.





**GOOGLE'S REPLY**

P10's cited evidence does not actually dispute the identified fact with respect to all but one of the alleged infringements in the Group A Notices, and even as to that infringement, mischaracterizes the underlying notice, which speaks for itself. P10's improper legal argument should be stricken. *See* Scheduling Order at 6:5-6.

**Group B: The Spreadsheet Notices<sup>2</sup>**

45. None of the Group B Notices properly identified the copyrighted work allegedly infringed. Poovala Dec. ¶¶ 41-47, Exhs. L1-L48; Kassabian Dec. ¶ 2, Ex. A.



<sup>2</sup> The Group B Notices include P10's notices dated May 31, 2004, June 1, 2004, June 4, 2004, June 16, 2004, June 28, 2004, July 6, 2004, July 11, 2004, July 19, 2004, October 11, 2004, November 2, 2004, November 8, 2004, November 15, 2004, November 16, 2004, November 18, 2004, November 26, 2004, December 1, 2004, December 9, 2004, December 21, 2004, December 27, 2004, December 29, 2004, December 31, 2004, January 3, 2005, January 16, 2005, January 21, 2005, January 25, 2005, February 3, 2005, February 7, 2005, February 11, 2005, February 17, 2005, February 23, 2005, March 6, 2005, March 27, 2005, April 3, 2005, April 3, 2005, April 11, 2005, May 1, 2005, May 7, 2005, June 12, 2005, June 19, 2005, July 16, 2005, July 26, 2005, August 30, 2005, September 27, 2005, December 7, 2005, December 22, 2005, December 23, 2005, February 13, 2006, and April 24, 2007. Poovala Dec. Exhs. L1-L48.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22

[REDACTED]

**GOOGLE'S REPLY**

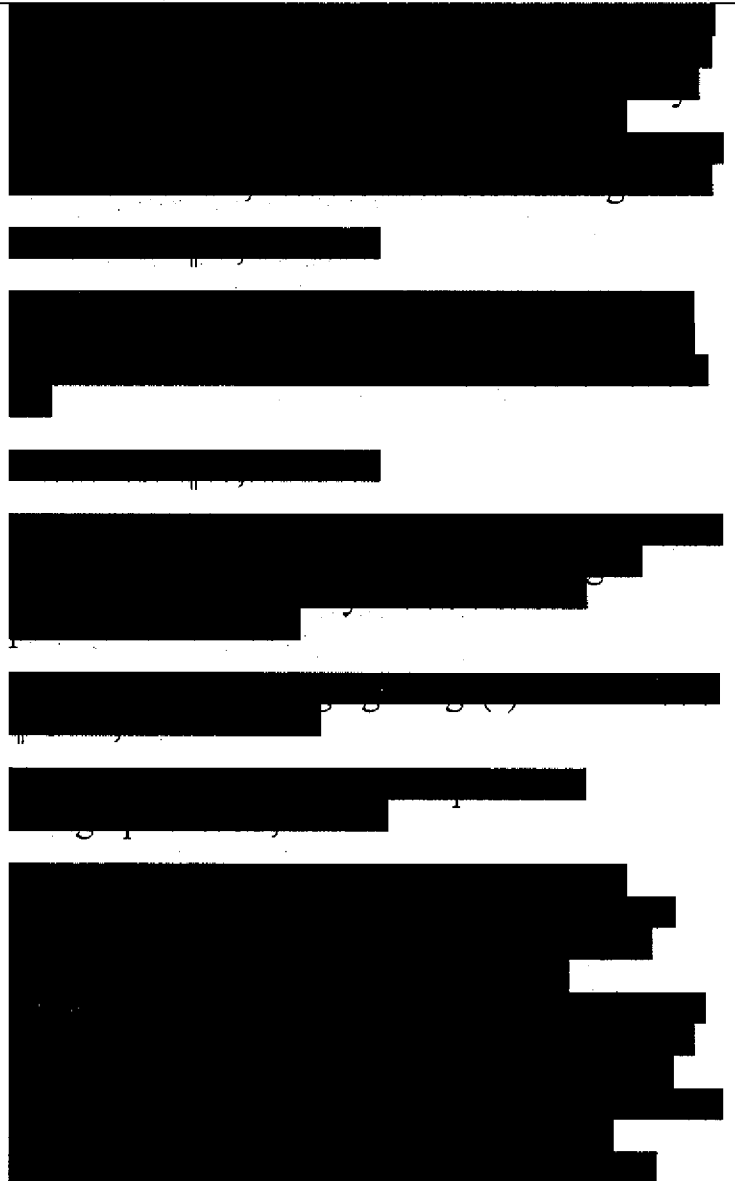
P10's cited evidence does not actually dispute the identified fact. P10's improper legal argument should be stricken. *See* Scheduling Order at 6:5-6. P10's cited evidence (including the opinions of Norman Zada, Sean Chumura, David O'Connor, and Bennett McPhatter, regarding Google's DMCA instructions and whether P10 followed them, and Yahoo!'s purported processing efforts) is irrelevant

01980.51320/3092197.1



1 P10's cited evidence does not actually dispute the identified fact with respect  
2 to all but one of the alleged infringements in the Group B Notices, and even as to  
3 that infringement, mischaracterizes the underlying notice, which speaks for itself.  
4 P10's cited evidence (including the opinions of Norman Zada, Sean Chumura,  
5 David O'Connor, and Bennett McPhatter regarding (1) Google's alleged ability to  
6 process P10's notices and (2) Google's DMCA instructions) is irrelevant to the  
7 identified fact because it is directed to Google's processing of P10's notices, not  
8 whether those notices included the referenced information. P10's improper legal  
9 argument should be stricken. See Scheduling Order at 6:5-6.

10 47. P10's notices dated May 31,  
11 June 1, June 4, June 16, June 28,  
12 July 6, July 11, and July 19, 2004  
13 do not identify a specific  
14 copyrighted work claimed to be  
15 infringed for one or more of the  
16 allegedly infringing URLs  
17 included in that communication.  
18 Poovala Dec. ¶¶ 41,44, Exhs. L1-  
19 L8.



1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]

4 **GOOGLE'S REPLY**

5 P10's cited evidence does not actually dispute the identified fact. P10's  
6 improper legal argument should be stricken. *See* Scheduling Order at 6:5-6. P10's  
7 cited evidence (including the opinions of Norman Zada regarding (1) what Google  
8 did or should have done in response to specific P10 notices and (2) Google's DMCA  
9 instructions) is irrelevant to the identified fact because it is directed to Google's  
10 alleged processing efforts, not the adequacy or content of P10's notices. P10 does  
11 not dispute that some portion of its Group B Notices did not provide the identified  
12 information. Google's published DMCA instructions and P10's notices speak for  
13 themselves.

14 48. P10's notices dated  
15 May 31, June 1, June 4, and  
16 June 16, 2004 do not identify the  
17 Google search query used to  
18 locate the allegedly infringing  
19 material for one or more of the  
20 allegedly infringing URLs  
21 included in that communication.  
22 Poovala Dec ¶ 41, Exhs. LI-L4.

[REDACTED]

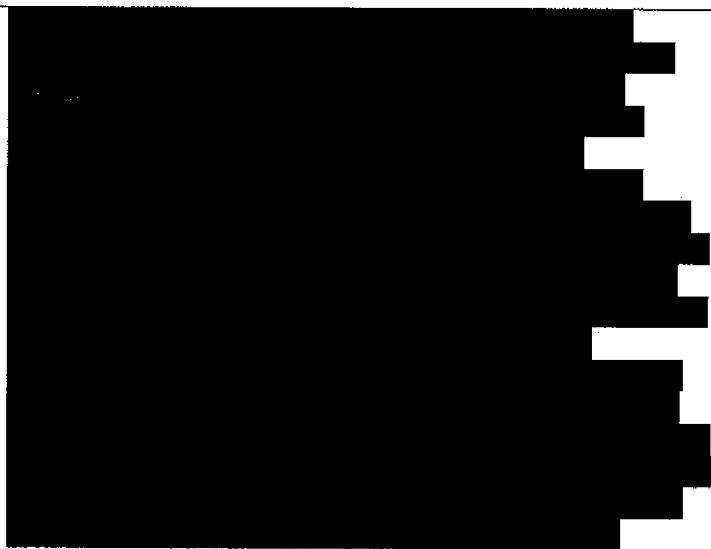
23 **GOOGLE'S REPLY**

24 P10 does not dispute the identified fact. It remains uncontroverted. P10's  
25 improper legal argument should be stricken. *See* Scheduling Order at 6:5-6.

26 49. P10's notices dated June 16,  
27 June 28, July 6, July 11, July 19,  
28 October 11, November 2,  
November 8, November 15,  
November 16, November 18,  
November 26, December 1,  
December 9, December 21,  
December 27, December 29, and  
December 31, 2004, January 3,  
January 16, January 21,  
January 25, February 3.

[REDACTED]

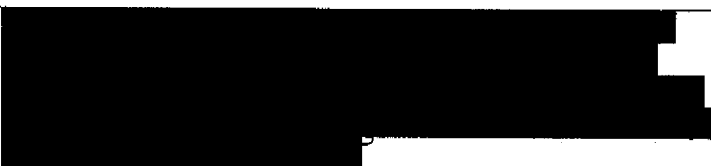
1 February 7, February 11,  
2 February 17, February 23,  
3 March 6, March 27, April 3,  
4 April 3, April 11, May 1, May 7,  
5 June 12, June 19, July 16, July 26,  
6 and August 30, 2005 list multiple  
7 pages in Perfect 10 Magazine as  
8 the copyrighted work claimed to  
9 be infringed at one or more of the  
10 allegedly infringing URLs  
11 included in that communication.  
12 Poovala Dec. ¶¶ 41, 44, Exhs. L4-  
13 L42.



11  
12 **GOOGLE'S REPLY**

13 P10's cited evidence does not actually dispute the identified fact. P10's  
14 improper legal argument should be stricken. *See* Scheduling Order at 6:5-6. P10's  
15 cited evidence (including the opinions of Norman Zada regarding (1) what Google  
16 did or should have done in response to specific P10 notices and (2) P10's  
17 explanation of why it prepared its Group B Notices as it did) is irrelevant to the  
18 identified fact because it does not dispute the referenced content of P10's notices.  
19 P10 does not dispute that some portion of its Group B Notices did not provide the  
20 identified information. Google's published DMCA instructions and P10's notices  
21 speak for themselves.

22 50. P10's notices dated June 28,  
23 July 6, July 11, July 19,  
24 October 11, November 2,  
25 November 8, November 15,  
26 November 16, November 18,  
27 November 26, December 1,  
28 December 9, December 21,  
December 27, December 29, and  
December 31, 2004, January 3,  
January 16, January 21,  
January 25, February 3,  
February 7, February 11,  
February 17, February 23.



1 March 6, April 11, May 1, May 7,  
2 June 12, July 16, December 7,  
3 December 22, and  
4 December 23, 2005 list  
5 "amyweber.net" as the  
6 copyrighted work claimed to be  
7 infringed at one or more of the  
8 allegedly infringing URLs  
9 included in that communication.  
10 Poovala Dec. ¶¶ 41, 44, Exhs. L5-  
11 L31, L35-L38, L40, L44-L46.

7 **GOOGLE'S REPLY**

8 P10 does not dispute the identified fact, and in fact admits it. P10's improper  
9 legal argument should be stricken. See Scheduling Order at 6:5-6.

10 51. P10's notices dated  
11 January 21, February 3,  
12 February 7, February 11,  
13 February 17, February 23,  
14 March 6, March 27, April 11,  
15 May 7, June 12, June 19, July 26,  
16 August 30, September 27,  
17 December 7, and December 22,  
18 and December 23, 2005,  
19 February 13, 2006, and April 24,  
20 2007 list "perfect10.com" as the  
21 copyrighted work claimed to be  
22 infringed at one or more of the  
23 allegedly infringing URLs  
24 included in that communication.  
25 Poovala Dec. ¶¶ 41, 44,  
26 Exhs. L24, L26-L32, L35, L37-  
27 L39, L41-L48.

[REDACTED]

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**GOOGLE'S REPLY**

P10 does not dispute the identified fact, and in fact admits it. P10's improper legal argument should be stricken. See Scheduling Order at 6:5-6.

52. P10's notice dated January 16, 2005 lists "Perfect 10 DVD" as the copyrighted work claimed to be infringed at one or more of the allegedly infringing URLs included in that communication. Poovala Dec. ¶¶ 41, 44, Ex. L23.

[REDACTED]

**GOOGLE'S REPLY**

P10 does not dispute the identified fact. P10's improper legal argument should be stricken. See Scheduling Order at 6:5-6.

53. P10's notices dated April 11 and December 7, 2005 list "Perfect 10 Model Boxing DVD" as the copyrighted work claimed to be infringed at one or more of the allegedly infringing URLs included in that communication. Poovala Dec. ¶¶ 41, 44, Ex. L35, L44.

[REDACTED]

54. At many of the web page URLs identified in P10's Group B Notices, multiple images were displayed, but P10 did not identify which images infringed its copyrights. Poovala Dec. ¶¶ 41, 45, Ex. L.

[REDACTED]

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

[REDACTED]

**GOOGLE'S REPLY**

P10's cited evidence does not actually dispute the identified fact. P10's improper legal argument should be stricken. *See* Scheduling Order at 6:5-6. P10's cited evidence (including the opinions of Norman Zada regarding how Google processed P10's notices and P10's explanation of why it prepared the notices the way it did) is irrelevant to the identified fact because it does not dispute the contents of the notices themselves.

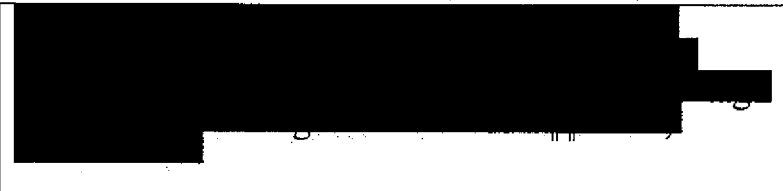
55. P10 does not claim that the entirety of "perfect10.com" was infringed at any of the URLs in P10's Group B Notices. Kassabian Dec. ¶ 10, Ex. I (P10's Responses to

[REDACTED]

01980.51320/3092197.1



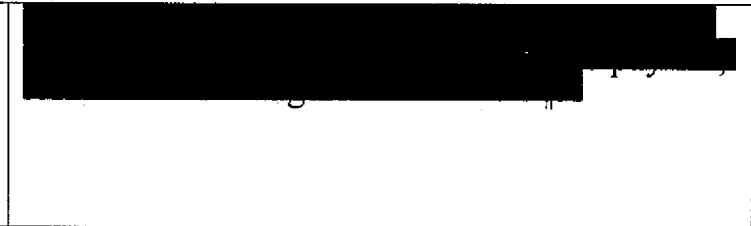
1 Requests for Admission).  
2  
3



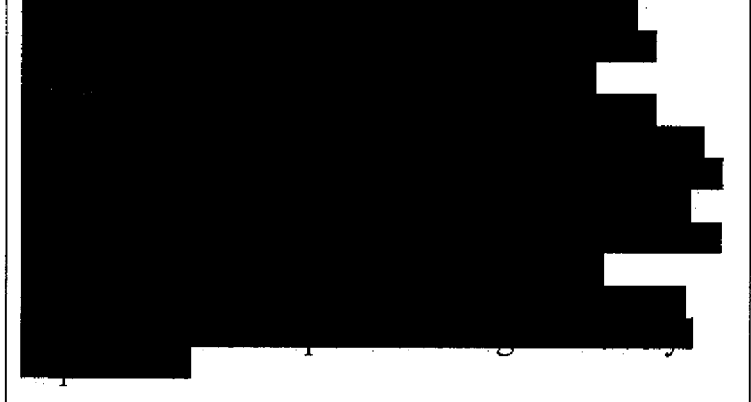
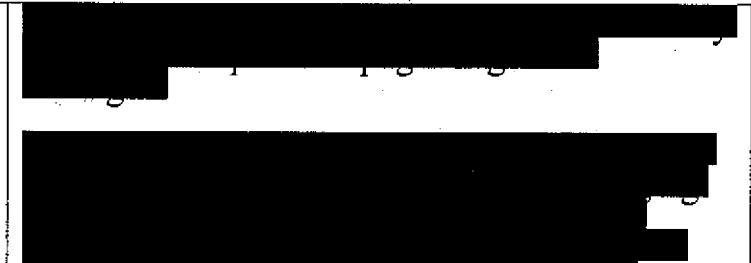
4 **GOOGLE'S REPLY**

5 P10's cited evidence does not dispute Google's cited evidence, nor could it,  
6 since P10 cannot contradict its own prior sworn admissions to avoid summary  
7 judgment. *See* Fed. R. Civ. P. 36(b) ("A matter admitted under this rule is  
8 conclusively established unless the court, on motion, permits the admission to be  
9 withdrawn or amended."); *School Dist. No. 1J, Multnomah County, Or. v. ACandS,*  
10 *Inc.*, 5 F.3d 1255, 1264 (9th Cir. 1993) (upholding lower court grant of summary  
11 judgment despite affidavit that contradicted prior interrogatory response). P10's  
12 improper legal argument should be stricken. *See* Scheduling Order at 6:5-6.

13 56. There are thousands of  
14 images viewable on  
15 perfect10.com. Kassabian Dec.  
16 ¶ 9, Ex. H (Zada Declaration).



17  
18 57. P10 does not claim that  
19 every image in the multiple-page  
20 sections of Perfect 10 Magazine  
21 cited in its Group B Notices was  
22 infringed at any of the URLs cited  
23 therein. Kassabian Dec. ¶ 10,  
24 Ex. I (P10's Responses to  
25 Requests for Admission).



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

[REDACTED]

**GOOGLE'S REPLY**

P10's cited evidence does not dispute Google's cited evidence, nor could it, since P10 cannot contradict its own prior sworn admissions to avoid summary judgment. *See* Fed. R. Civ. P. 36(b); *School Dist. No. 1J, Multnomah County, Or. v. ACandS, Inc.*, 5 F.3d 1255, 1264 (9th Cir. 1993). P10's claims are not supported by the cited evidence, nor are they relevant to the identified fact. P10's improper legal argument should be stricken. *See* Scheduling Order at 6:5-6.

58. Each of P10's Group B Notices contain one or more incomplete URLs. Poovala Dec. ¶¶ 41, 45, Ex. L.

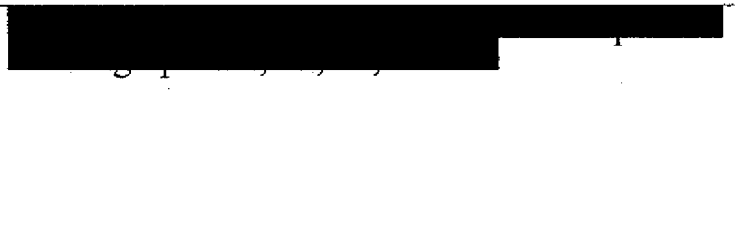
[REDACTED]

**GOOGLE'S REPLY**

P10's cited evidence does not actually dispute the identified fact. P10's improper legal argument should be stricken. *See* Scheduling Order at 6:5-6. P10's cited evidence (including the opinions of Norman Zada and Sean Chumura regarding P10's attempt to justify why it prepared its Group B Notices the way it

1 did) is irrelevant to the contents of the notices themselves. P10's claims are  
2 contradicted by its own DMCA notices, which speak for themselves.

3 59. Each of P10's Group B  
4 Notices cited one or more URLs  
5 that displayed multiple images,  
6 with no specification as to which  
7 image was at issue. Poovala Dec.  
8 ¶¶ 41, 45, 46, Exhs. L and M.



7 **GOOGLE'S REPLY**

8 P10's cited evidence does not actually dispute this fact.

9 60. P10's notices dated June 28,  
10 July 6 and July 11, 2004 contained  
11 identical lists of allegedly  
12 infringing URLs, but P10 did not  
13 disclose this fact to Google when  
14 submitting them. Poovala Dec.  
15 ¶¶ 41, 45, Exhs. L5, L6, L7.



14 **GOOGLE'S REPLY**

15 P10's cited evidence does not actually dispute the identified fact. P10's claim  
16 that its July 11, 2004 notice contained 19 pages *in addition to* the identical list of  
17 infringing URLs, does not contradict the identified fact. P10's improper legal  
18 argument should be stricken. See Scheduling Order at 6:5-6.

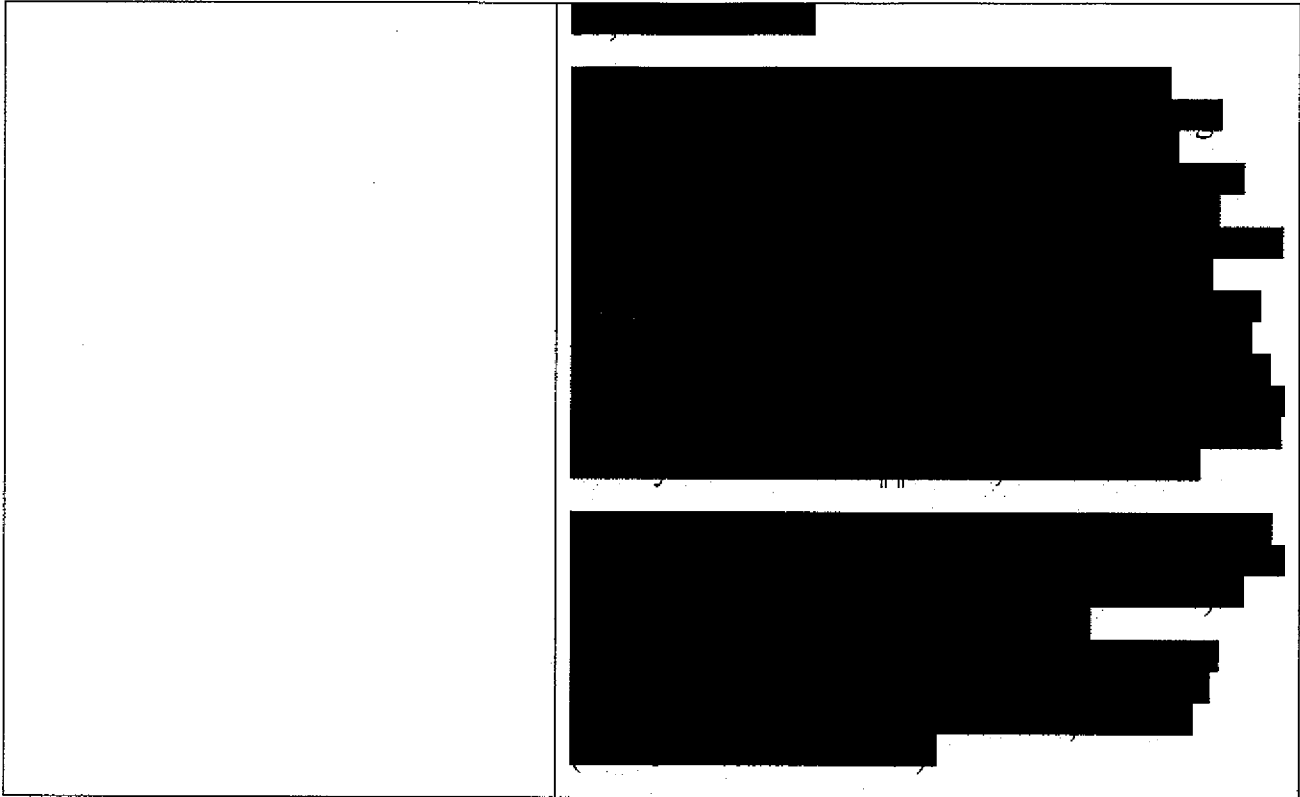
19 **Group C: The DVD and Hard Drive Notices<sup>3</sup>**

20 61. Google's search products do  
21 not crawl, index, or link to Usenet  
22 news servers. Haahr Dec. ¶ 14-15.



24  
25 <sup>3</sup> The Group C Notices include P10's notices dated December 9,2005,  
26 March 20,2007, June 28,2007, July 2, 2007, July 12,2007, July 31,2007, October 16,  
27 2007, December 13,2007, January 24, 2008, March 17,2008, July 9, 2008,  
28 November 26, 2008, November 27, 2008, April 24, 2009, May 7, 2009, May 30,  
2009, June 4,2009, and June 13,2009. Poovala Dec. Exhs. NI-N18.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



**GOOGLE'S REPLY**

P10's cited evidence does not actually dispute the identified fact. P10's improper legal argument should be stricken. *See* Scheduling Order at 6:5-6. P10's cited evidence (including the opinions of Norman Zada regarding what Google crawls and indexes) is irrelevant to the identified fact because it is directed to whether Google crawls other sites or home pages of sites, not whether Google crawls, indexes, or links to *Usenet news servers*. P10's examples of Google crawling what it has defined as "usenet sites" are not relevant because the examples are web pages on web servers, not *Usenet content* on *Usenet news servers*.

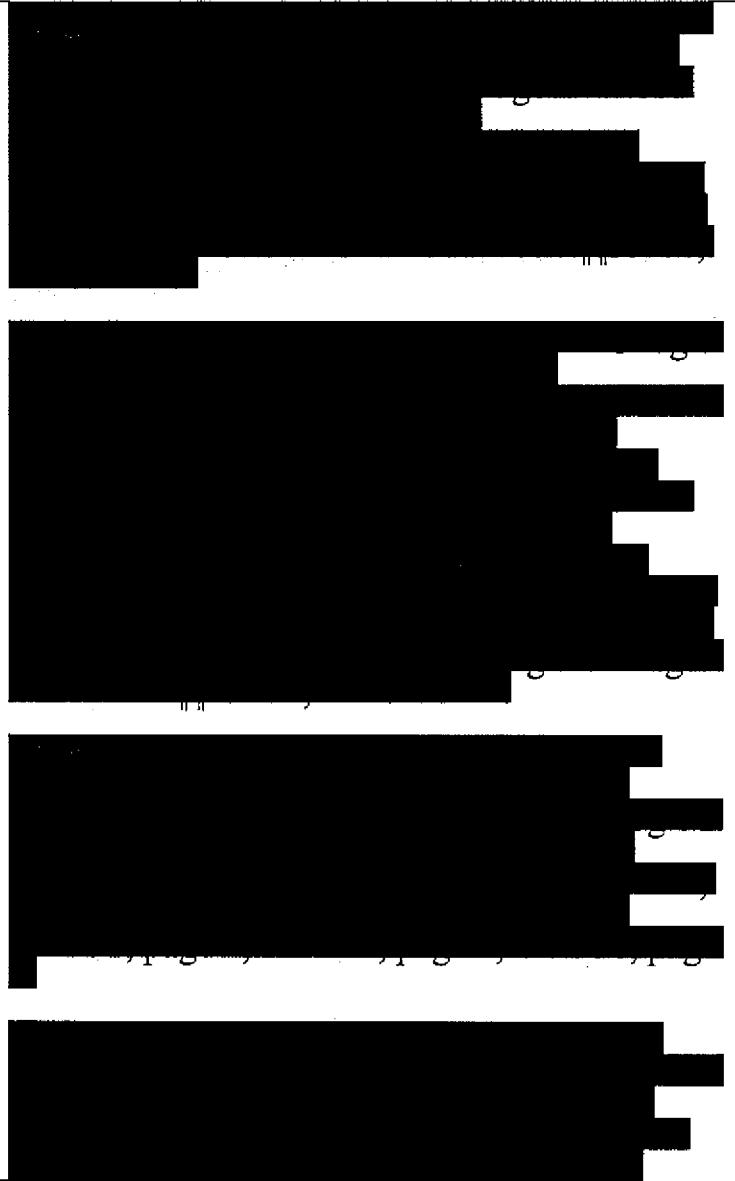
62. Google's search products do not crawl, index, or link to password-protected content. Haahr Dec. ¶ 14-15.



**GOOGLE'S REPLY**

1  
2 P10's cited evidence does not actually dispute the identified fact. P10's  
3 improper legal argument should be stricken. See Scheduling Order at 6:5-6. P10's  
4 cited evidence (including the opinions of Norman Zada regarding what Google  
5 crawls and indexes) is irrelevant to the identified fact because it is directed to  
6 whether Google crawls and indexes home pages, which is not password-protected  
7 content. P10's examples of crawling password-protected sites are not relevant  
8 because they are limited to the homepages of such sites, and not the password-  
9 protected content.

10 63. None of the Group C  
11 Notices properly identified the  
12 copyrighted work allegedly  
13 infringed. Poovala Dec. ¶¶ 48-55,  
14 Exhs. N1-N18; Kassabian Dec.  
15 ¶ 2, Ex. A.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

[REDACTED]

**GOOGLE'S REPLY**

P10's cited evidence does not actually dispute the identified fact. P10's improper legal argument should be stricken. *See* Scheduling Order at 6:5-6. P10's cited evidence (including the opinions of Norman Zada regarding Google's DMCA instructions and how P10 believes that Google could have processed the Group C notices) does not support P10's claims, and is irrelevant to the contents of Group C Notices, which speak for themselves.

64. None of the Group C Notices properly identified the location of the allegedly infringing material. Poovala Dec. ¶¶ 48-55, Exhs. N1-N18; Kassabian Dec. ¶ 2, Ex. A.

[REDACTED]

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

[REDACTED]

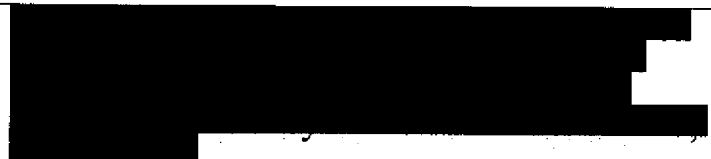
**GOOGLE'S REPLY**

P10's cited evidence does not actually dispute the identified fact. P10's improper legal argument should be stricken. See Scheduling Order at 6:5-6. P10's cited evidence (including the opinions of Norman Zada regarding Google's DMCA instructions and how P10 believes that Google could have processed the Group C notices) does not support P10's claims, and is irrelevant to the contents of Group C Notices, which speak for themselves.

65. P10's notices dated December 9, 2005, March 20, June 28, October 16, and

[REDACTED]

1 December 13, 2007, March 17,  
2 and March 26, 2008, and May 7,  
3 2009 complain of alleged  
4 infringement on the Usenet.  
5 Poovala Dec. ¶¶ 48-49, Exhs. N1-  
6 N3, N7-N8, N10, N12, N15.



6 **GOOGLE'S REPLY**

7 P10 does not dispute the identified fact. P10's improper legal argument  
8 should be stricken. See Scheduling Order at 6:5-6.

9 66. The DVDs and hard drive  
10 received with P10's notices dated  
11 December 9, 2005, March 20,  
12 June 28, October 16, and  
13 December 13, 2007, January 24,  
14 March 17, and July 9, 2008, and  
15 April 24 and May 7, 2009 include  
16 raw image files that do not display  
17 web page URLs. Poovala Dec.  
18 ¶¶ 48, 53, 54, Exhs. N3, N7-N11,  
19 N14, N15.



15 **GOOGLE'S REPLY**

16 P10's cited evidence does not actually dispute the identified fact. P10's  
17 improper legal argument should be stricken. See Scheduling Order at 6:5-6. P10's  
18 cited evidence does not support its claim, as none of the examples of raw image files  
19 P10 provides at Exhibit 23 of the Zada Declaration display any URLs.

20 67. The folder "z perfect 10  
21 web site" on the hard drive that  
22 accompanied PI O's June 28, 2007  
23 notice contains 367 subfolders and  
24 over 15,000 pages of allegedly  
25 copyright P10 images. Poovala  
26 Dec. ¶ 48, Ex. N3; Declaration of  
27 Sibrina Khan in Support of  
28 Google's Motions for Summary  
Judgment Re: Entitlement to Safe  
Harbor Under 17 U.S.C. § 512  
("Khan Dec.") ¶ 20.



28 68. Other than the reference to





1 the entire folder name "z perfect  
2 10 web site" on the hard drive that  
3 accompanied P10's notice dated  
4 June 28, 2007, P10's notices dated  
5 between June 28, 2007 and May 7,  
6 2009 do not identify the copyright  
7 works claimed to be infringed.  
8 Poovala Dec. ¶¶ 48, 50, Exhs. N3  
9 —N15.

[REDACTED]

[REDACTED]

[REDACTED]

16  
17 **GOOGLE'S REPLY**

18 P10's cited evidence does not actually dispute the identified fact. P10's  
19 improper legal argument should be stricken. *See* Scheduling Order at 6:5-6. P10's  
20 cited evidence (including the opinions of Norman Zada regarding Google's DMCA  
21 instructions and how it could have processed the Group C notices) does not support  
22 its claim, and is irrelevant to the contents of the Group C Notices, which speak for  
23 themselves.

24 69. P10's notice dated  
25 December 9, 2005 does not  
26 identify any copyrighted works  
27 claimed to be infringed. Poovala  
28 Dec. ¶ 48, Ex. N1.

[REDACTED]

[REDACTED]

[REDACTED]

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

[REDACTED]

**GOOGLE'S REPLY**

P10's cited evidence does not actually dispute the identified fact, and in fact admits it. P10's improper legal argument should be stricken. See Scheduling Order at 6:5-6. P10's Group C Notices speak for themselves.

70. P10's notice dated December 9, 2005 does not identify any web page URLs that allegedly infringe P10's copyrighted works. Poovala Dec. ¶ 48, Ex. N1.

[REDACTED]

**GOOGLE'S REPLY**

P10's cited evidence does not actually dispute the identified fact, and in fact admits it. P10's improper legal argument should be stricken. See Scheduling Order at 6:5-6. P10's cited evidence (including the opinions of Norman Zada regarding

1 what Google needed to process P10's notices) is irrelevant to the contents of the  
2 Group C Notices themselves, which speak for themselves.

3 71. P10's notice dated  
4 March 20, 2007 was addressed to  
5 Google's Board of Directors.  
6 Poovala Dec. ¶ 48, Ex. N2.

7 **GOOGLE'S REPLY**

8 P10 does not dispute the identified fact. P10's improper legal argument  
9 should be stricken. See Scheduling Order at 6:5-6.

10 72. None of the members of  
11 Google's Board of Directors has  
12 ever served as Google's designated  
13 agent for the receipt of notices of  
14 claimed copyright infringement  
15 under the DMCA. Poovala Dec.  
16 ¶ 3.

17 **GOOGLE'S REPLY**

18 P10 does not dispute the identified fact.

19 73. Each of P10's notices dated  
20 December 9, 2005, March 20,  
21 2007, June 28, 2007, July 2, 2007,  
22 July 12, 2007, July 31, 2007,  
23 October 16, 2007,  
24 December 13, 2007, January 24,  
25 2008, March 17, 2008, July 9,  
26 2008, April 24, 2009, and May 7,  
27 2009 contains multiple layers of  
28 electronic folders comprising  
thousands of pages of allegedly  
infringing material. Poovala Dec.  
¶¶ 48, 52, Exhs. N1-N11, N14-  
N15; Khan Dec. ¶ 4-5, 10-19.

**GOOGLE'S REPLY**

P10 does not dispute the identified fact. P10's improper legal argument  
should be stricken. See Scheduling Order at 6:5-6.

74. The "z other infringing  
websites folder" on the hard drive  
received with P10's notice date  
June 28, 2007 has three subfolders  
consisting of 46,187 pages of

1 allegedly infringing material.  
2 Poovala Dec. ¶ 48, Ex. N3; Khan  
3 Dec. ¶ 19.

4 **GOOGLE'S REPLY**

5 P10 does not dispute the identified fact.

6  
7 75. The "ALL LARGE ARE  
8 P10" subfolder in the "z other  
9 infringing websites" folder on the  
10 hard drive received with P10's  
11 notice dated June 28, 2007  
12 comprises at least 24,870 pages of  
13 allegedly infringing material.  
14 Poovala Dec. ¶ 48, Ex. N3; Khan  
15 Dec. ¶ 19.

16 **GOOGLE'S REPLY**

17 P10 does not dispute the identified fact.

18 76. DVD2 submitted with P10's  
19 notice dated December 13, 2007  
20 contains 28,672 pages of allegedly  
21 infringing material within layers  
22 of folders and subfolders. Poovala  
23 Dec. ¶ 48, Ex. N8; Khan Dec.  
24 ¶ 16.

25 **GOOGLE'S REPLY**

26 P10 does not dispute the identified fact.

27 77. Each of P10's notices dated  
28 December 9, 2005, March 20, 2007,  
June 28, 2007, July 2, 2007,  
July 12, 2007, July 31, 2007,  
October 16, 2007,  
December 13, 2007, January 24,  
2008, March 17, 2008, July 9,  
2008, November 26, 2008,  
April 24, 2009, and May 7, 2009  
contains one or more incomplete  
URLs. Poovala Dec. ¶¶ 48, 55,

1 Exhs. N1-N12, N14-N15.

[REDACTED]

7 **GOOGLE'S REPLY**

8 P10's cited evidence does not dispute the identified fact. P10's improper legal  
9 argument should be stricken. See Scheduling Order at 6:5-6. P10's cited evidence  
10 (including the opinions of Norman Zada and Sean Chumura regarding the  
11 information it thinks Google needs to process a DMCA notice) is irrelevant to  
12 contents of the Group C Notices, which speak for themselves.

13 78. Each of P10's notices dated  
14 March 20, 2007, June 28, 2007,  
15 July 2, 2007, July 12, 2007,  
16 July 31, 2007, October 16, 2007,  
17 December 13, 2007, January 24,  
18 2008, March 17, 2008, July 9,  
19 2008, November 27, 2008,  
20 April 24, 2009, May 7, 2009,  
21 May 30, 2009, June 4, 2009, and  
22 June 13, 2009 includes one or more  
23 screen shots displaying multiple  
24 Images. Poovala Dec. ¶¶ 48, 55,  
25 Exhs. N2-N11, N13-N18.

[REDACTED]

26 **GOOGLE'S REPLY**

27 P10 does not dispute the identified fact. P10's improper legal argument  
28 should be stricken. See Scheduling Order at 6:5-6.

79. P10's notices dated  
between March 20, 2007 and  
June 13, 2009 included screen  
shots depicting alleged framing or  
inline linking showing apparent  
independent navigation of the  
framed web page such that even  
when the complete URL for that  
page is displayed in the screen  
shot, the URL does not lead to the  
allegedly inline-linked web page.

[REDACTED]

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Poovala Dec. ¶¶ 48, 55, Exhs. N2-N18, R.

[REDACTED]

**GOOGLE'S REPLY**

P10 does not dispute the identified fact. P10's improper legal argument should be stricken. See Scheduling Order at 6:5-6.

**Google's Processing of P10's Notices**

80. Over the past four-plus years, Google has reviewed numerous URLs-[REDACTED]-in response to P10's DMCA notices, and has blocked many of those URLs-[REDACTED]-from appearing in search results, including the caching feature. Poovala Dec. ¶ 91, Exhs. FF, GG, HH, II; Haahr Dec. ¶¶ 6, 9, Exhs. 1 and 2.

[REDACTED]

**GOOGLE'S REPLY**

P10 does not dispute the identified fact and in fact admits it. P10's improper legal argument should be stricken. See Scheduling Order at 6:5-6.

81. Google carefully reviewed P10's notices to ensure that its repeat infringer policies were enforced. Poovala Decl. ¶ 92.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**GOOGLE'S REPLY**

P10's cited evidence (including the Botelho Declaration and Zada's various opinions) does not actually dispute the identified fact. P10's improper legal argument should be stricken. See Scheduling Order at 6:5-6. Google's DMCA tracking spreadsheets documenting Google's enforcement of its repeat infringer policies, as well as P10's DMCA notices, speak for themselves.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Google's Processing of the Group B Notices**

82. Google sent P10 correspondence identifying deficiencies in P10's DMCA notices. Poovala Dec. ¶¶ 56-73, Exhs. S-EE.

[REDACTED]

**GOOGLE'S REPLY**

P10's cited evidence (including Zada's various opinions) does not actually dispute the identified fact, and in fact admits it. P10's improper legal argument should be stricken. See Scheduling Order at 6:5-6. Google's communications and instructions to P10 speak for themselves.

83. In response, P10 disputed that its notices were defective, and did not re-submit corrected notices. Poovala Dec. ¶ 74.

[REDACTED]



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

[REDACTED]

**GOOGLE'S REPLY**

P10's cited evidence (including Zada's various opinions) does not actually dispute the identified fact. P10's improper legal argument should be stricken. See Scheduling Order at 6:5-6. P10's responsive communications disputing Google's instructions speak for themselves.

84. The majority (i.e. more than half) of P10's notices dated between May 31, 2004 and June 13, 2009 did not include electronic soft copy lists of allegedly infringing URLs. Poovala Dec. ¶ 84, Exhs. L and N.

[REDACTED]

**GOOGLE'S REPLY**

P10's cited evidence (including Zada's various opinions) does not actually dispute the identified fact. P10's improper legal argument should be stricken. See

1 Scheduling Order at 6:5-6. P10's claim is contradicted by the referenced P10  
2 DMCA Notices, which speak for themselves.

3 85. In response to P10's notices,  
4 Google blocked access to any  
5 discernable web page URL  
6 identified by P10

[REDACTED]

7 [REDACTED]  
8 [REDACTED]

9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]

14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]

18 **GOOGLE'S REPLY**

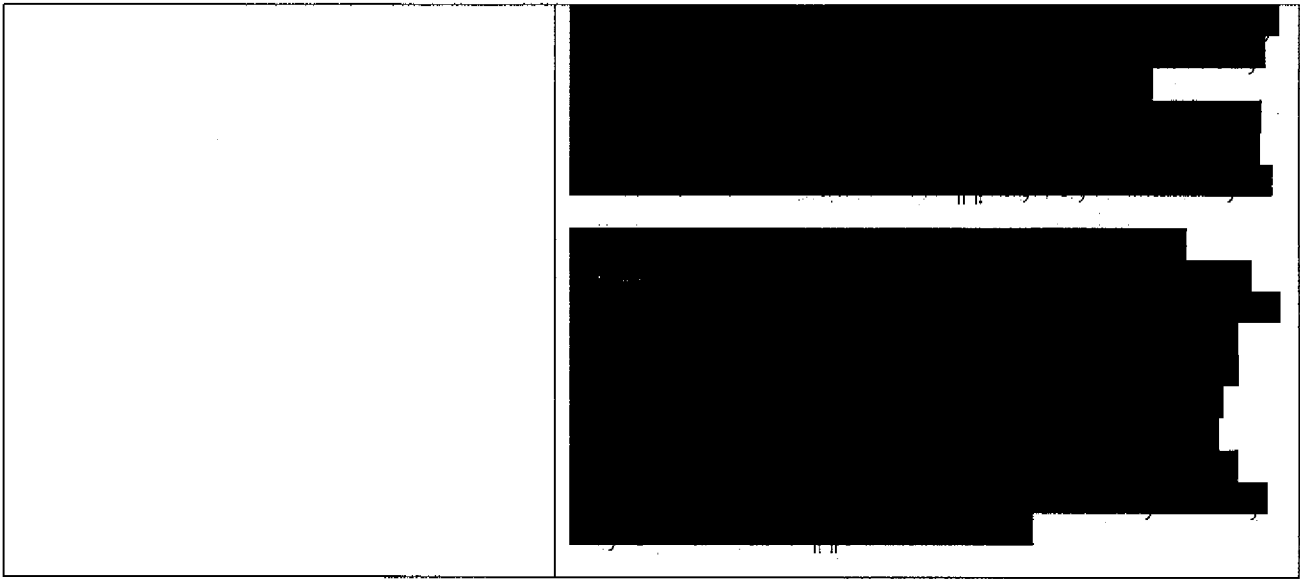
19 P10's cited evidence (including Zada's various opinions, and the Botelho  
20 Declaration) does not actually dispute the identified fact. P10's improper legal  
21 argument should be stricken. *See* Scheduling Order at 6:5-6. Google's DMCA  
22 tracking spreadsheets and engineering files documenting the suppression of  
23 infringing URLs speak for themselves.

24 86. Google tracked the  
25 processing of P10's notices.  
26 Poovala Dec. ¶ 78-80, 88,  
27 Exhs. FF, GG, HH, II.

[REDACTED]

28 [REDACTED]

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



**GOOGLE'S REPLY**

P10's cited evidence (including Zada's various opinions) does not actually dispute the identified fact. P10's improper legal argument should be stricken. *See* Scheduling Order at 6:5-6. Google's DMCA tracking spreadsheets and engineering files documenting the suppression of infringing URLs speak for themselves. P10's cited evidence (including the opinions of Norman Zada regarding Google's DMCA logs) is irrelevant to the fact that Google tracked its processing efforts.

87. Google completed processing of the majority of the Group B Notices within one to two weeks of receipt; some were completed in as little as two days. Poovala Dec. ¶ 82.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

[Redacted]

**GOOGLE'S REPLY**

P10's cited evidence (including Zada's various opinions) does not actually dispute (or even address) the identified fact. P10's improper legal argument should be stricken. *See* Scheduling Order at 6:5-6.

88. Where P10 refused to send complete URLs and electronic soft copies of lists of URLs, or otherwise refused to cooperate, Google's processing efforts were delayed. Poovala Dec. ¶ 82.

[Redacted]

**GOOGLE'S REPLY**

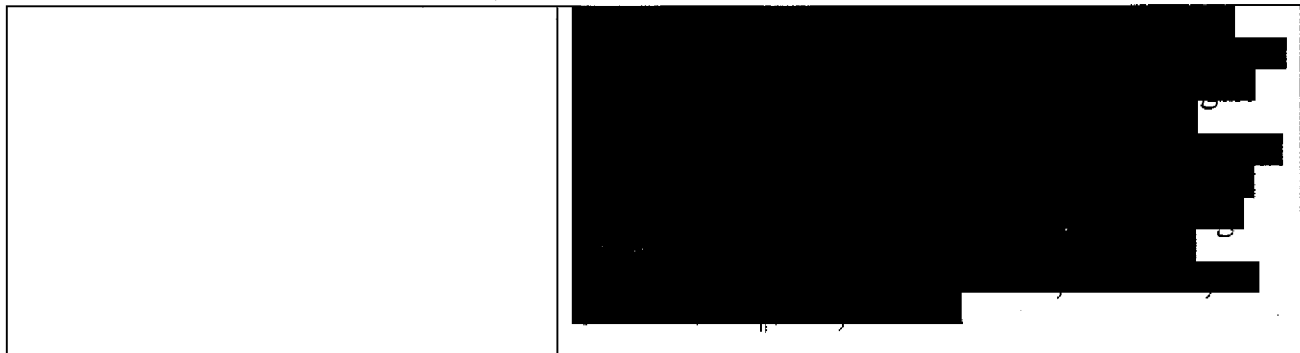
P10's cited evidence (including Zada's various opinions) does not actually dispute (or even address) the identified fact. P10's improper legal argument should be stricken. *See* Scheduling Order at 6:5-6.

**Google's Processing of the Group C Notices**

89. Google tracked the processing of P10's Group C Notices on spreadsheets. Poovala Dec. ¶ 88, Exhs. HH and II.

[Redacted]

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



**GOOGLE'S REPLY**

P10's cited evidence (including Zada's various opinions) does not actually dispute the identified fact. P10's improper legal argument should be stricken. *See* Scheduling Order at 6:5-6. Google's DMCA tracking spreadsheets and engineering files documenting the suppression of infringing URLs speak for themselves. P10's cited evidence (including the opinions of Norman Zada regarding Google's DMCA logs) is irrelevant to the fact that Google tracked its processing efforts.

90. Upon receipt of the Group C Notices, Google expeditiously reviewed the notices to determine if they could be further processed, and notified P10 of the defects therein. Poovala Dec. ¶ 90.

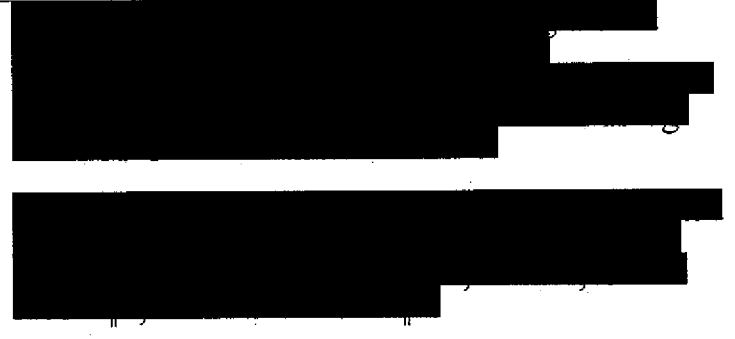


**GOOGLE'S REPLY**

P10's cited evidence (including Zada's various opinions) does not actually dispute the identified fact. P10's improper legal argument should be stricken. *See* Scheduling Order at 6:5-6. Google's communications to P10 regarding the

1 deficiencies in P10's notices (which P10 does not dispute receiving) speak for  
2 themselves.

3 91. The team reviewed  
4 thousands of pages of screenshots  
5 contained in the Group C Notices,  
6 page by page, and manually typed  
7 in the discernable URLs. Poovala  
8 Dec. ¶ 87, Exhs. HH and II.



9 **GOOGLE'S REPLY**

10 P10 does not dispute the identified fact. P10's improper legal argument  
11 should be stricken. See Scheduling Order at 6:5-6.

12 92. [Redacted]  
13 [Redacted]  
14 [Redacted]  
15 [Redacted]  
16 [Redacted]



17 **GOOGLE'S REPLY**

18 P10 does not dispute the identified fact. P10's improper legal argument  
19 should be stricken. See Scheduling Order at 6:5-6.

20 93. P10 never re-submitted  
21 revised versions of any of the  
22 Group C Notices. Poovala Dec.  
23 ¶ 90.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

[Redacted]

**GOOGLE'S REPLY**

P10's cited evidence does not actually dispute the identified fact, but instead admits that P10 submitted partially repetitive and duplicative notices without informing Google of same. P10's improper legal argument should be stricken. *See* Scheduling Order at 6:5-6. P10's cited evidence is irrelevant to the fact that it never responded to Google's deficiency letters by resubmitting a corrected DMCA Group C Notice. P10's notices speak for themselves.

94. Google received several counter-notifications in response to removals of URLs identified in P10's notices, and sent them to P10. P10 never responded to any of them. Poovala Dec. ¶ 96; Ex. MM.

[Redacted]

**GOOGLE'S REPLY**

P10 does not dispute the identified fact. P10's improper legal argument should be stricken. *See* Scheduling Order at 6:5-6.

95. On January 10, 2006, P10 sent Google an email admitting that one of its notices included URLs of website that were authorized to display its images. Poovala Dec. ¶ 97; Ex. NN.

[Redacted]

**GOOGLE'S REPLY**

1 P10's cited evidence does not actually dispute the identified fact. P10's  
2 improper legal argument should be stricken. See Scheduling Order at 6:5-6. The  
3 referenced email speaks for itself.

4 **PERFECT 10'S ADDITIONAL MATERIAL FACTS.**

5 Perfect 10 incorporates herein its  
6 Additional Material Facts set forth  
7 in Perfect 10's Statement Of  
8 Genuine Issues In Opposition To  
9 Google's Motion For Summary  
Judgment Re: Safe Harbor Under  
17 U.S.C. § 512(d) For Web And  
Image Search, filed concurrently

Perfect 10 incorporates the same Supporting  
Evidence.

10 **GOOGLE'S RESPONSE**

11 Google addresses P10's alleged Additional Material Facts in Google's  
12 Consolidated Separate Statement of Undisputed Facts in Support of Google's 512(d)  
13 Motion.

14  
15 DATED: September 8, 2009

QUINN EMANUEL URQUHART OLIVER &  
HEDGES. LLP

16  
17 By

*Rachel Herrick Kassabian*  
Michael Zeller  
Rachel Herrick Kassabian  
Attorneys for Defendant GOOGLE INC.