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9 Attorneys for Defendant GOOGLE INC.

10 UNITED STATES DISTRICT COURT

11 CENTRAL DISTRICT OF CALIFORNIA

12 PERFECT 10, INC., a California  
13 corporation,

14 Plaintiff,

15 vs.

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

17 Defendants.

18 AND COUNTERCLAIM

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

21 Plaintiff,

22 vs.

23 AMAZON.COM, INC., a corporation;  
24 A9.COM, INC., a corporation; and  
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  
CORRECTED CONSOLIDATED  
SEPARATE STATEMENT OF  
UNDISPUTED FACTS IN  
SUPPORT OF GOOGLE'S  
MOTION FOR SUMMARY  
JUDGMENT RE: SAFE HARBOR  
UNDER 17 U.S.C. § 512(c) FOR ITS  
BLOGGER SERVICE**

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

Hon. A. Howard Matz

Date: None Set (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(c) for its Blogger Service, 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(c) for its Blogger Service, 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: SAFE HARBOR UNDER 17 U.S.C. 512(c)**  
**FOR BLOGGER SERVICE**

<b>GOOGLE'S UNCONTROVERTED FACTS AND SUPPORTING EVIDENCE</b>	<b>PERFECT 10'S RESPONSE AND EVIDENCE</b>
13 14 15 1. Google's Blogger service 16 allows users to create blogs 17 hosted on Google servers. 18 Declaration of Shantal Rands 19 Poovala in Support of 20 Google's Motion for Summary 21 Judgment Re: Google's 22 Entitlement to Safe Harbor 23 Under 17 U.S.C. § 512 24 ("Poovala Dec.") ¶ 26.	[REDACTED]
25 2. Google does not interfere 26 with any known "standard 27 technical measures." 28 Declaration of Paul Haahr in Support of Google's Motion for Summary Judgment Re: Google's Entitlement to Safe Harbor Under 17 U.S.C. § 512 ("Haahr Dec.") ¶ 18.	[REDACTED]

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3. Google has developed and maintains a DMCA policy and procedure for expeditiously processing complaints received under the DMCA regarding Blogger. Poovala Dec. ¶¶ 27, 31 & Ex. G.

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[REDACTED]

**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, Dean Hoffman, C.J. Newton, Les Schwartz and Margaret Jane Eden, and alleged facts regarding Google's response to specific P10 notices) is irrelevant to the identified fact because (1) it concerns services other than Blogger and/or (2) it concerns how Google allegedly has *implemented* its DMCA policy – not whether Google *has* such a policy. Additionally, Google's Blogger DMCA tracking spreadsheets speak for themselves. Poovala Dec. ¶¶ 37, 93 and Ex. J, II, and KK; Rebuttal Declaration of Rachel Herrick Kassabian ("Rebuttal Kassabian Dec.") ¶ 2. P10's claim that the [REDACTED] is demonstrably false. See Poovala Dec., Ex. KK. The fact that Google received a few poor-quality faxes (including several from P10) is irrelevant to its qualification for DMCA safe harbor for its Blogger service. P10's claims regarding Adobe's extraction feature are irrelevant. Rebuttal Poovala Dec. ¶¶ 12-14.

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1 4. Google has a designated  
2 agent for receiving notifications  
3 of claimed infringement.  
4 Declaration of Rachel Herrick  
5 Kassabian in Support of  
6 Google's Motion for Summary  
7 Judgment Re: Google's  
8 Entitlement to Safe Harbor  
9 Under 17 U.S.C. § 512  
10 ("Kassabian Dec.") Ex. G  
11 (Perfect 10's ("P10") Responses  
12 to Requests for Admission);  
13 Poovala Dec. Ex. A.

[REDACTED]

[REDACTED]

11 **GOOGLE'S REPLY**

12 P10 has cited no contrary evidence disputing this fact. P10's improper  
13 legal argument and reference to other irrelevant facts should be stricken. *See*  
14 *Scheduling Order at 6:5-6.*

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16 5. Google publishes the  
17 information required for DMCA  
18 complaints related to Blogger at  
19 [http://www.google.com/blogger](http://www.google.com/blogger_dmca.html)  
20 [\\_dmca.html](http://www.google.com/blogger_dmca.html). Poovala Dec. ¶ 27,  
21 Ex. G.

[REDACTED]

[REDACTED]

[REDACTED]

**GOOGLE'S REPLY**

1  
2 P10's cited evidence does not actually dispute the identified fact. P10's  
3 evidence (comprised of P10's opinions that Google's Blogger DMCA instructions  
4 do not apply to it) is irrelevant to whether Google publishes the information required  
5 to submit a Blogger DMCA notice on Google's website, as is the fact that Google  
6 has an additional fax number on file with the Copyright Office.

7 6. It is Google's policy to  
8 respond expeditiously to notices  
9 of copyright infringement  
10 directed to Blogger. Poovala  
11 Dec. ¶ 31.

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

**GOOGLE'S REPLY**

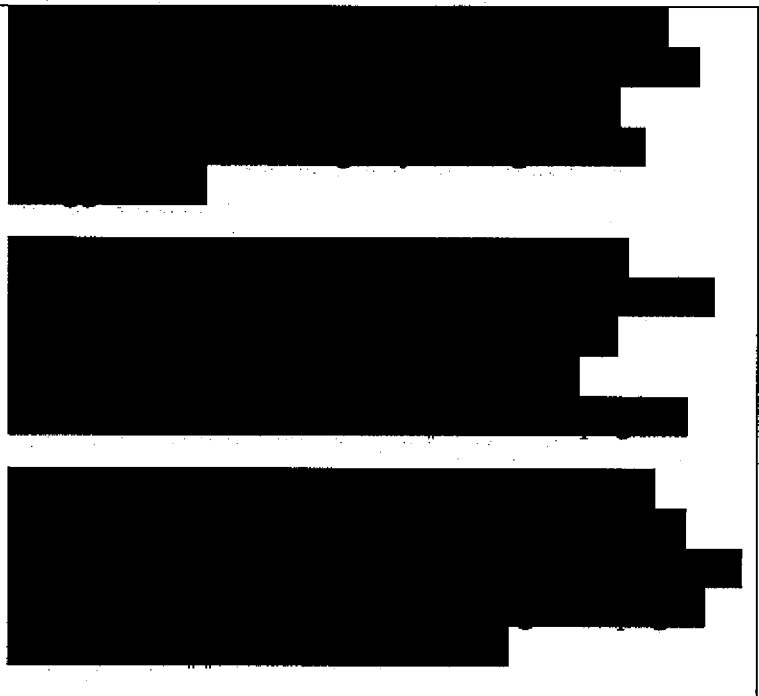
Most of P10's response is improper legal argument and should be stricken. See Scheduling Order at 6:5-6. P10's cited evidence (including the opinions of Norman Zada, Dean Hoffman, C.J. Newton, Les Schwartz and Margaret Jane Eden, and alleged facts regarding Google's response to specific P10 notices) is irrelevant to the identified fact because (1) it concerns services other than Blogger and/or (2) it concerns how Google allegedly has *implemented* its DMCA policy – not whether Google *has* such a policy. Additionally, Google's Blogger DMCA tracking spreadsheets speak for themselves. Poovala Dec. ¶¶ 37, 93 and Exs. J, II, and KK. P10's claim that the [REDACTED] [REDACTED] is demonstrably false. See Poovala Dec., Ex. KK. P10's claims regarding Adobe's extraction feature are irrelevant. Rebuttal Poovala Dec. ¶¶ 12-14.

7. Google directs complainants to identify in sufficient detail the copyrighted work allegedly infringed on a Blogger site. Poovala Dec. ¶

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**GOOGLE'S REPLY**

P10's cited evidence does not actually dispute the identified fact, but rather is argument regarding what information P10 allegedly provided in response to Google's instructions, and thus is irrelevant. *See* Scheduling Order at 6:5-6. Both P10 and Google point to the same evidence – Google's DMCA policy for Blogger – which speaks for itself.

8. Google directs complainants to identify the location of the allegedly infringing material on a Blogger site by providing either (1) the URL for the top-level domain of the blog along with the date of the blog entry at issue, or (2) the specific URL for the particular blog post, known as the permalink or "post URL." Poovala Dec. ¶ 30.





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**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 (comprised of P10's opinions that Google's Blogger DMCA instructions do not apply to it) is irrelevant to the identified fact. Google's Blogger DMCA instructions speak for themselves.

9. Google directs complainants to send DMCA notices to the attention of Google's Legal Support for Blogger DMCA Complaints. Poovala Dec. ¶ 31.

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**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 evidence (comprised of P10's opinions that Google's Blogger DMCA instructions do not apply to it) is irrelevant to the contents of those instructions on Google's website, as is the fact that Google has an additional fax number on file with the Copyright Office.

10. If a DMCA notice does not contain the required information, Google notifies the complainant and asks for more information. Poovala Dec. ¶ 32.

[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., Exs. S-EE. P10's cited evidence (including the opinions of Norman Zada with respect to the sufficiency of

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Google's communications) is irrelevant to the identified fact. P10's improper legal argument should be stricken. *See* Scheduling Order at 6:5-6.

11. Once a DMCA notice is verified Google removes the infringing image(s). Poovala Dec. ¶ 33.



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[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, alleged facts regarding Google's alleged response to specific P10 notices, and deposition testimony of Mr. MacGillivray) is irrelevant to the identified fact because it concerns services other than Blogger. P10's cited evidence is also contradicted by other P10 evidence. Google's Blogger DMCA processing spreadsheets and engineering files reflecting the removal of infringing material speak for themselves. *See* Poovala Dec., Exs. J, II, KK.

12. If Google receives a counter-notification in response to a DMCA notice, and if within fourteen days of learning of the counter-notification, the complainant fails to notify Google that it has filed a lawsuit, Google reinstates the allegedly infringing content on the Blogger site in question. Poovala Dec. ¶ 35.

[REDACTED]

1 13. Google has established  
2 and implemented repeat  
3 infringer policies for all  
4 products or services with  
5 subscribers or account holders,  
6 including Blogger. Poovala  
7 Dec. ¶¶ 36, 37.  
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3 **GOOGLE'S REPLY**

4 P10's cited evidence does not actually dispute the identified fact. Most of  
5 P10's response is improper legal argument and should be stricken. *See* Scheduling  
6 Order at 6:5-6. P10's cited evidence (including the opinions of Norman Zada, Dean  
7 Hoffman, C.J. Newton, Les Schwartz and Margaret Jane Eden, and alleged facts  
8 regarding other Google products and Google's alleged response to specific P10  
9 notices) is irrelevant to the identified fact because it concerns services other than  
10 Blogger. P10's cited evidence is also contradicted by other P10 evidence. Google's  
11 Blogger DMCA processing spreadsheets and engineering files reflecting the  
12 removal of infringing material speak for themselves. *See* Poovala Dec., Exs. J, II,  
13 KK.

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15 14. The terms and conditions  
16 and content policy for Blogger  
17 advise account holders that they  
18 are not permitted to display  
19 copyrighted material unless they  
20 have the legal right to do so, and  
21 that their accounts may be  
terminated for violating  
Google's policies. Poovala Dec.  
¶ 26, Ex. F.

[Redacted]

22 **GOOGLE'S REPLY**

23 P10 does not dispute this identified fact. Most of P10's response is improper  
24 legal argument and should be stricken. *See* Scheduling Order at 6:5-6.

25 15. Google tracks how many  
26 DMCA notices are processed  
27 regarding a particular Blogger  
28 account, records strikes for each  
verified DMCA notice, and  
terminates the account [Redacted]

[Redacted]

1 [REDACTED] Poovala Dec. ¶  
2 37, Ex. J.

[REDACTED]

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24 **GOOGLE'S REPLY**

25 P10's cited evidence does not actually dispute the identified fact. Most of  
26 P10's response is improper legal argument and should be stricken. *See* Scheduling  
27 Order at 6:5-6. P10's cited evidence (including the opinions of Norman Zada and  
28 Sheena Chou) is irrelevant to the identified fact. Additionally, P10's

1 mischaracterizations of Google's Blogger DMCA tracking spreadsheets are  
2 irrelevant and those spreadsheets speak for themselves. Poovala Dec. ¶¶ 37, 93 and  
3 Exs. J, II, and KK. P10's claim that the [REDACTED]  
4 [REDACTED] is demonstrably false. Poovala Dec., Ex. KK.

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6 16. Google does not actively  
7 prevent copyright owners from  
8 collecting information needed to  
9 issue notifications of copyright  
10 infringement under the DMCA.  
11 Poovala Dec. ¶ 39.

[REDACTED]

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14 **GOOGLE'S REPLY**

15 P10's cited evidence does not actually dispute the identified fact. P10's  
16 improper legal argument should be stricken. See Scheduling Order at 6:5-6. P10's  
17 cited evidence (including the opinions of Norman Zada, Dean Hoffman, C.J.  
18 Newton, Les Schwartz and Margaret Jane Eden) is irrelevant to the identified fact  
19 because (1) it concerns services other than Blogger and (2) it does not actually  
20 support P10's contention. Google's published DMCA instructions speak for  
21 themselves. Poovala Dec., Ex. G.

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23 17. Not one of P10's notices  
24 was sent to the attention of  
25 Google's Legal Support for  
26 Blogger DMCA Complaints.  
27 Poovala Dec. ¶ 93, Exs. L27,  
28 L29, L34, L35, L38, L39, L40,  
L41, L42, L43, L44, L45, L46,  
L47, N4, N17.

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**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. The fact that Google has additional contact information on file with the Copyright Office is irrelevant. Additionally, Google's published DMCA policy for Blogger speaks for itself. Poovala Dec., ¶ 27, Ex. G.

18. P10's notices dated February 7, February 17, April 3, April 11, June 12, June 19, July 16, July 26, August 30, September 27, December 7, December 22, and December 23, 2005, February 13, 2006, July 2, 2007 and June 4, 2009 included discernable Blogger URLs. Poovala Dec. ¶ 93, Exs. L27, L29, L34, L35, L38, L39, L40, L41, L42, L43, L44, L45, L46, L47, N4, N17.

[Redacted]

19. None of P10's notices identifying discernable Blogger URLs properly identified the copyright work allegedly infringed. Poovala Dec. ¶ 93, Exs. L27, L29, L34, L35, L38, L39, L40, L41, L42, L43, L44, L45, L46, L47, N4, N17; Kassabian Dec. ¶ 2, Ex. A.

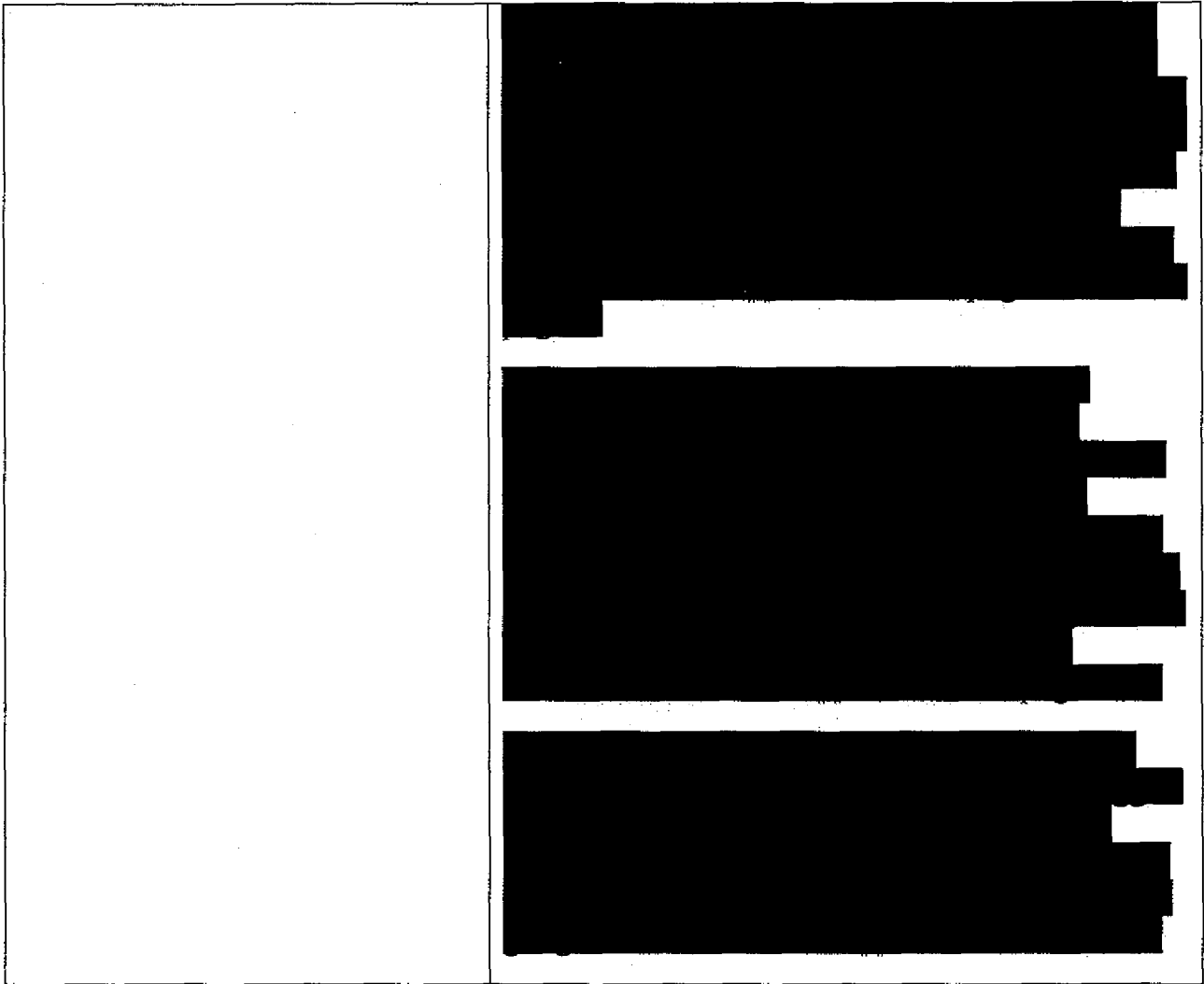
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**GOOGLE'S REPLY**

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. Additionally, P10's notices speak for themselves, as do Google's DMCA instructions for Blogger. P10's claims regarding Adobe's extraction feature are irrelevant. *Rebuttal Poovala Dec.* ¶¶ 12-14. P10's claim also is contradicted by its own admissions. *See Blogger Opp.* at 8:19-20 (most of the URLs that P10 provided in this way were not [redacted]).

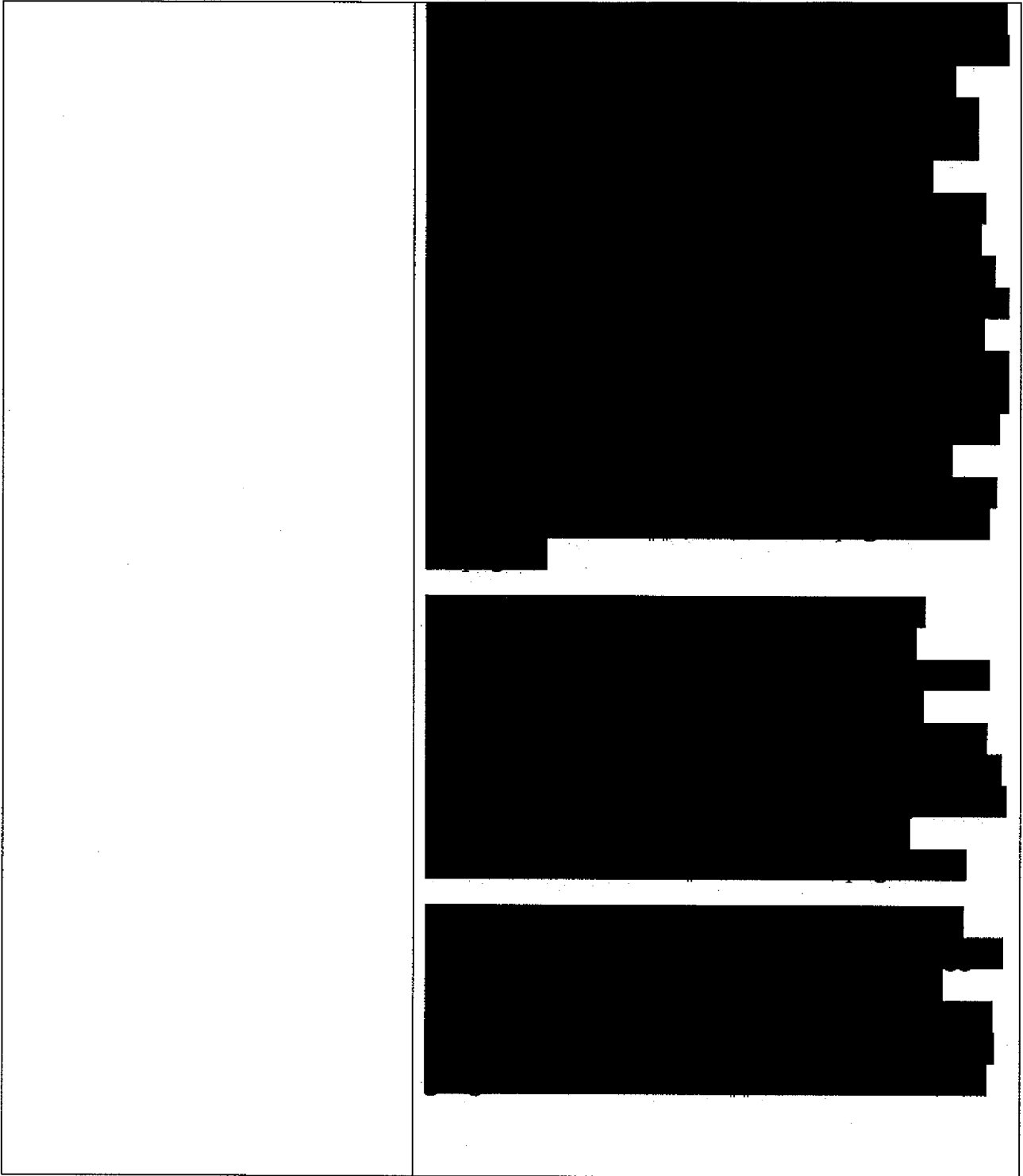
20. None of P10's notices identifying discernable Blogger



1 URLs properly identified the  
2 location of the allegedly  
3 infringing materials. Poovala  
4 Dec. ¶ 93, Exs. L27, L29, L34,  
5 L35, L38, L39, L40, L41, L42,  
6 L43, L44, L45, L46, L47,, N4,  
7 N17: Kassabian Dec. ¶ 2, Ex. A.

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**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. Additionally, P10's notices speak for themselves, as do Google's



1 GOOGLE'S REPLY

2 P10's cited evidence does not actually dispute the identified fact. Most of  
3 P10's response is improper legal argument and should be stricken. *See* Scheduling  
4 Order at 6:5-6. Additionally, P10's notices speak for themselves, as do Google's  
5 DMCA instructions for Blogger. P10's claims regarding Adobe's extraction feature  
6 are irrelevant. *Rebuttal Poovala Dec.* ¶¶ 12-14. P10's claim also is contradicted by  
7 its own admissions. *See Blogger Opp.* at 8:19-20 (most of the URLs that P10  
8 provided in this way were not [REDACTED]). P10's cited evidence (including the  
9 opinions of Norman Zada and Sheena Chou regarding Google's Blogger instructions  
10 and whether they are [REDACTED]) is irrelevant to the identified fact.

11 22. P10's notices dated  
12 February 7, February 17, April  
13 2, April 11, June 12, June 19,  
14 July 16, July 26, and August 30,  
15 2005, list multiple pages in  
16 Perfect 10 Magazine as the  
17 copyright work claimed to be  
18 infringed at one or more of the  
19 Blogger URLs included in that  
20 communication. *Poovala Dec.*  
21 ¶¶ 41, 44, Ex. L27, L29, L34,  
22 L35, L39, L40, L41, L42.  
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**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 why P10 prepared its notices as it did, and whether Zada believes with was sufficient) is irrelevant to the identified fact because it does not dispute the referenced content of P10's notices. Google's published DMCA instructions and P10's notices speak for themselves.

23. P10's notices dated February 17, April 11, June 12, June 19, July 26, August 30, September 27, December 7, December 22, and December 23, 2005, and February 13, 2006, list "Perfect 10.com" as the copyrighted work claimed to be infringed at one or more of the Blogger URLs included in that communication. Poovala Dec. ¶¶ 41, 44, Exs. L29, L35, L38, L39, L41, L42, L43, L44, L45, L46.

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[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. P10's cited evidence regarding AOL, and Zada's personal opinions and explanations, are irrelevant and do not contradict the identified fact.

24. P10 does not claim that the entirety of "perfect10.com" was infringed at any of the URLs in P10's notices. Kassabian Dec. ¶10, Ex. I (P10's Responses to Requests for

[REDACTED]

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1 Admission.)  
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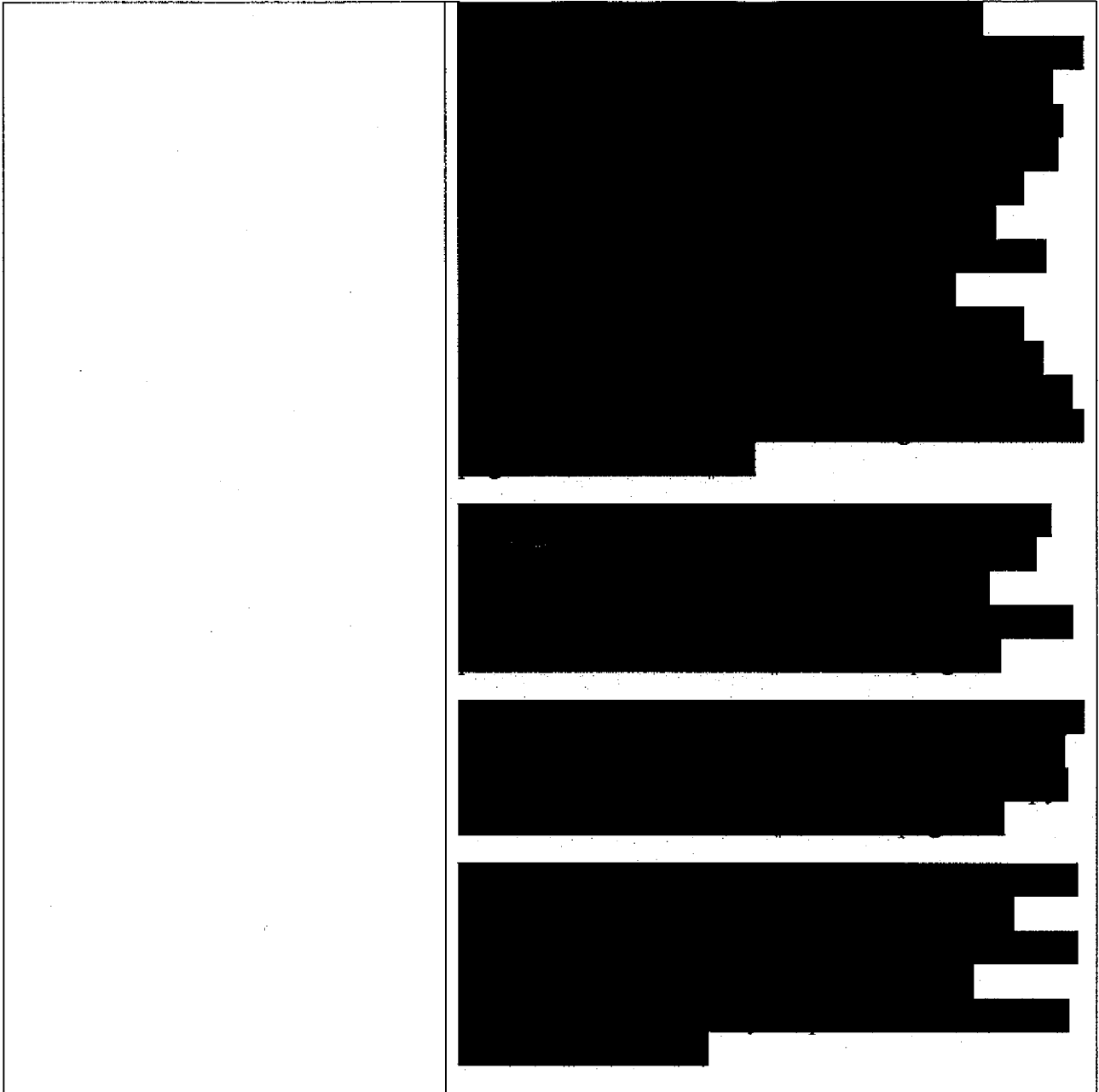
5 **GOOGLE'S REPLY**

6 P10's cited evidence does not dispute Google's cited evidence, nor could it,  
7 since P10 cannot contradict its own prior sworn admissions to avoid summary  
8 judgment. *See* Fed. R. Civ. P. 36(b). ("A matter admitted under this rule is  
9 conclusively established unless the court, on motion, permits the admission to be  
10 withdrawn or amended."); *School Dist. No. 1J, Multnomah County, Or. v. ACandS,*  
11 *Inc.*, 5 F.3d 1255, 1264 (9th Cir. 1993) (upholding lower court grant of summary  
12 judgment despite affidavit that contradicted prior interrogatory response). P10's  
13 improper legal argument should be stricken. *See* Scheduling Order at 6:5-6.  
14

15 25. There are thousands of  
16 images viewable on  
17 perfect10.com. Kassabian Dec.  
18 ¶ 9, Ex. 9, Ex. H (Zada  
19 Declaration).  
20

21 26. P10 does not claim that  
22 every image in the multiple-  
23 page sections of Perfect 10  
24 Magazine cited in notices was  
25 infringed at any of the URLs  
26 cited therein. Kassabian Dec.  
27 ¶ 10, Ex. I (P10's Responses to  
28 Requests for Admission)

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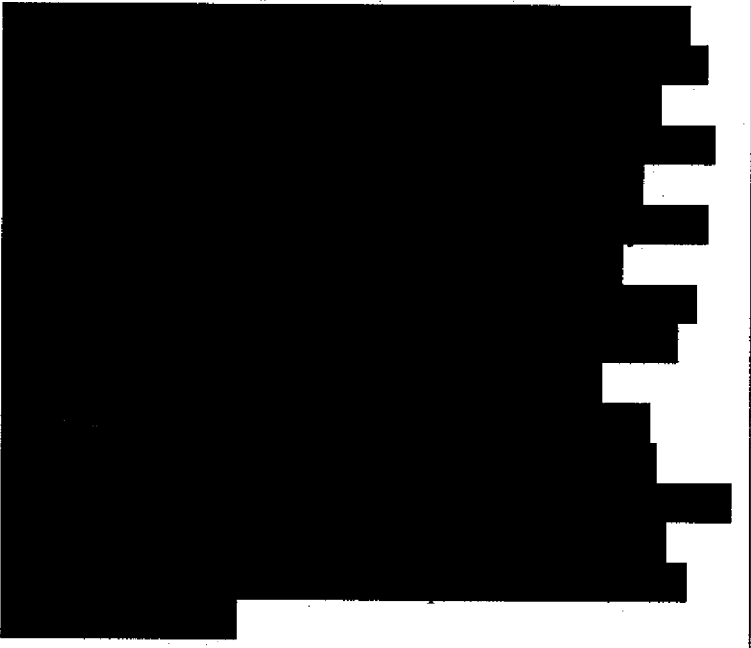

**GOOGLE'S REPLY**

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.

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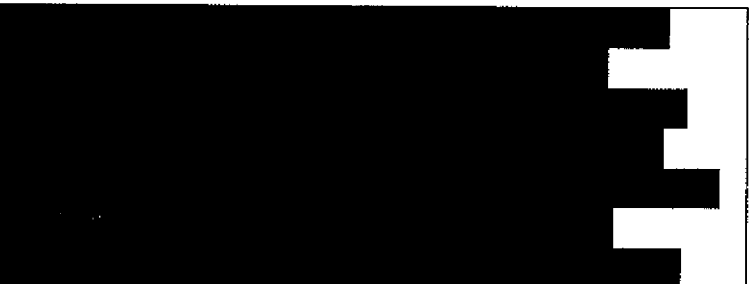
27. P10's notices identified various incomplete URLs associated with Blogger sites. Poovala Dec. ¶¶ 41, 45, 48, Exs. L27, L29, L34, L35, L38, L39, L40, L41, L42, L43, L44, L45, L46, L47, N4, N17.



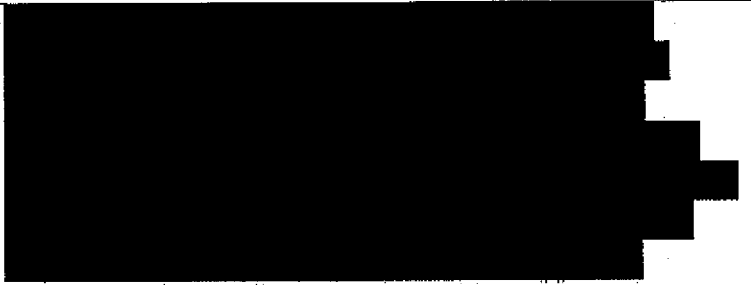
**GOOGLE'S REPLY**

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.

28. Many of the Blogger URLs cited in P10s notices displayed multiple images, with no specification as to which image was at issue. Poovala Dec. ¶¶41, 45, 46, 48, 93 Exs. L27, L29, L34, L35, L38, L39,



1 L40, L41, L42, L43, L44, L45,  
2 L46, L47, N43 N 17, JJ.



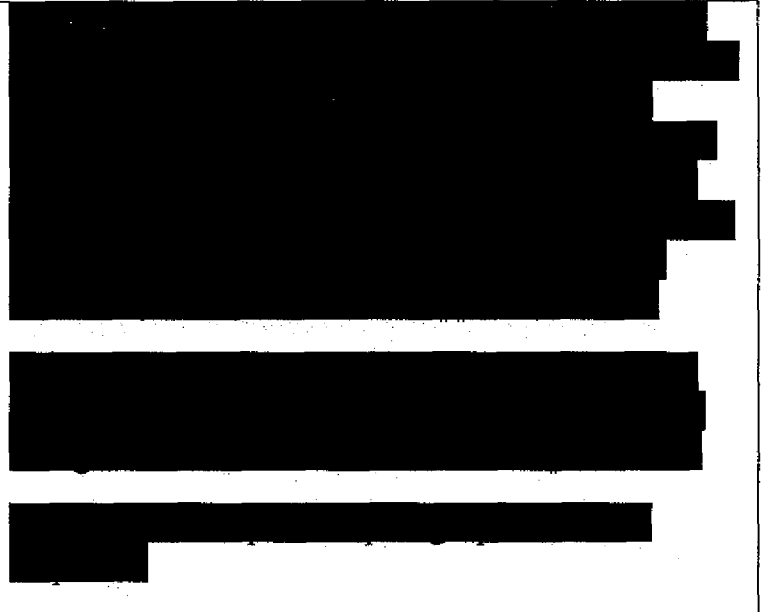
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**GOOGLE'S REPLY**

23 P10's cited evidence does not actually dispute the identified fact. Most of  
24 P10's response is improper legal argument and should be stricken. *See* Scheduling  
25 Order at 6:5-6. P10's cited evidence (including the opinions of Norman Zada  
26 regarding P10's alleged identification of the copyrighted work) is irrelevant to the  
27

1 identified fact because it has nothing to do with P10's failure to identify the alleged  
2 infringement. Additionally, P10's notices speak for themselves.

3  
4 29. The Group C Notices, to  
5 the extent they contained any  
6 alleged Blogger infringements,  
7 are defective in numerous  
8 respects. Separate Statement of  
9 Uncontroverted Facts and  
10 Conclusions of Law in Support  
11 of Defendant Google Inc's  
12 Motion for Summary Judgment  
13 Re: Entitlement to Safe Harbor  
14 under 17 U.S.C. Section 512(d)  
15 for Web and Image Search, ¶¶  
16 51-68 (incorporated herein by  
17 reference).



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19  
20 **GOOGLE'S REPLY**

21 P10's cited evidence does not actually dispute the identified fact. Norman  
22 Zada's personal opinions regarding the sufficiency of the Group C Notices is  
23 irrelevant; their contents speak for themselves. P10's improper legal argument  
24 should be stricken. See Scheduling Order at 6:5-6.

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26 30. Google sent P10  
27 correspondence identifying  
28 deficiencies in P10's DMCA  
notices. Poovala Dec. ¶¶56-73,  
Exs. S-EE.



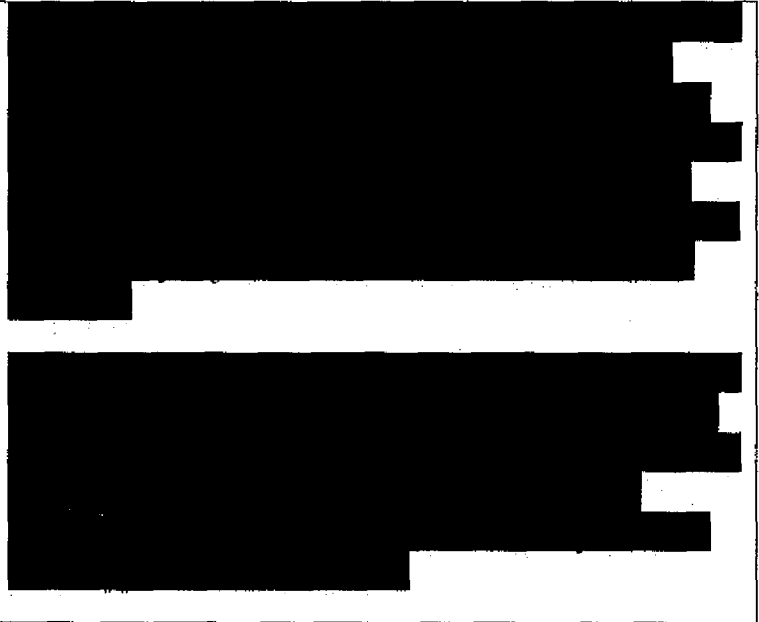
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[REDACTED]

1 **GOOGLE'S REPLY**

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

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7 31. In response, P10 disputed  
8 that its notices were defective,  
9 and did not re-submit corrected  
10 notices. Poovala Dec. ¶ 74.



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16 **GOOGLE'S REPLY**

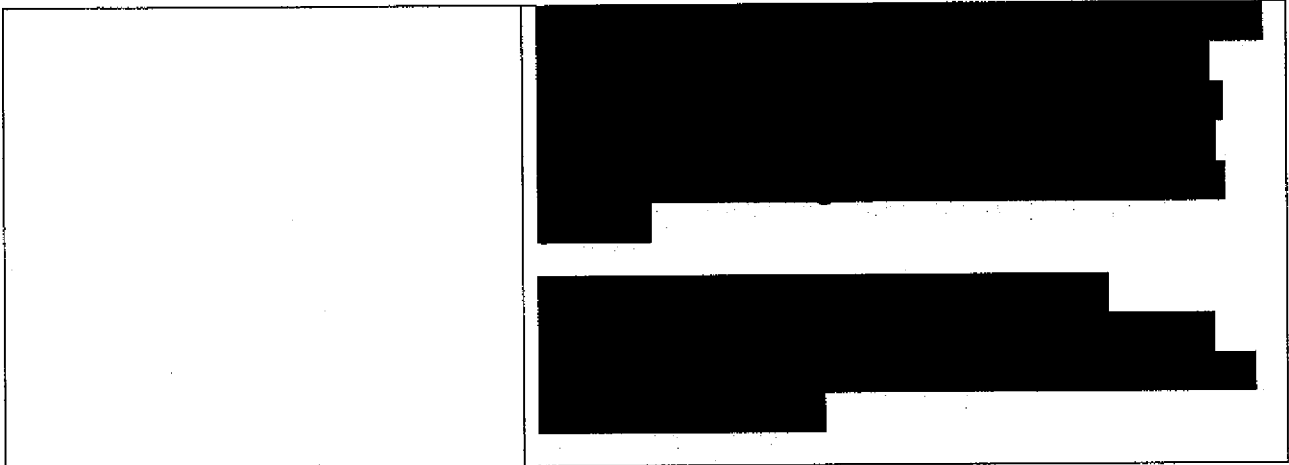
17 P10's cited evidence (including Zada's various opinions) does not actually  
18 dispute the identified fact. P10's improper legal argument should be stricken. See  
19 Scheduling Order at 6:5-6. P10's responsive communications disputing Google's  
20 instructions speak for themselves.

21  
22 32. As Google's team  
23 processed P10's notices for Web  
24 and Image Search, they  
25 scrutinized them for any  
26 references to Blogger websites,  
27 and forwarded all such URLs to  
28 the Blogger team for processing.  
Poovala Dec. ¶93, Ex. KK.





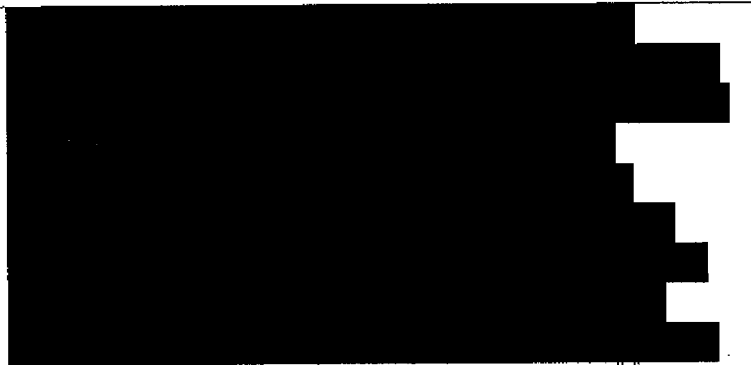
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**GOOGLE'S REPLY**

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) is irrelevant to the identified fact because Zada has no personal knowledge of Google's internal processing efforts. Additionally, Google's documentation tracking the processing of P10's notices speaks for itself. Poovala Dec., Ex. KK. P10's claims regarding Adobe's extraction feature are irrelevant. Rebuttal Poovala Dec. ¶¶ 12-14. Nothing in Ms. Poovala's deposition testimony contradicts the identified fact.

33. In response to P10's notices identifying Blogger URLs, Google removed the offending blog post and/or image wherever the identity of that post and/or image could be discerned, and noted a strike against the account holder who had posted the material. Poovala Dec. ¶ 93.



**GOOGLE'S REPLY**

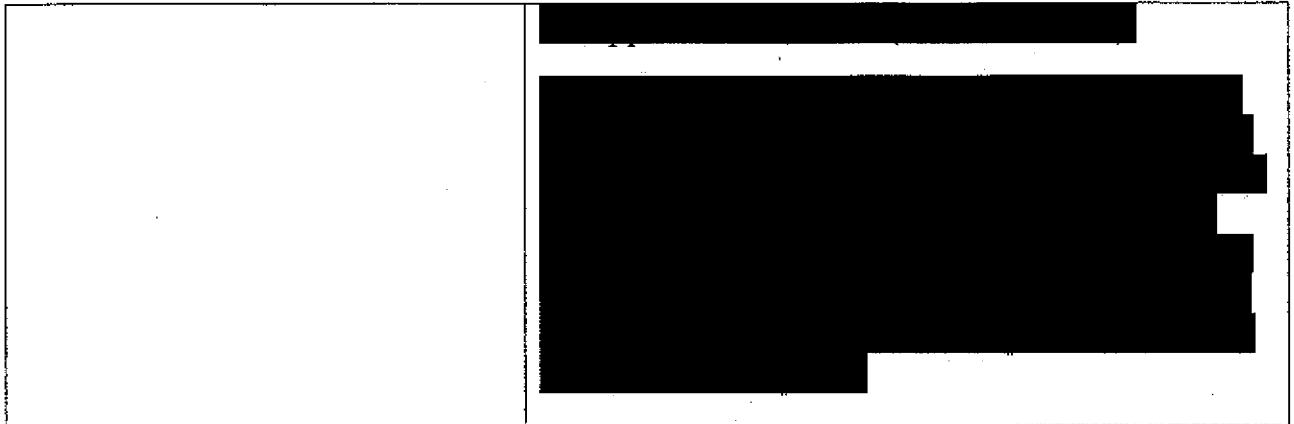
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2 P10's cited evidence does not actually dispute the identified fact. Most of  
3 P10's response is improper legal argument and should be stricken. *See*  
4 Scheduling Order at 6:5-6. P10's cited evidence (including the opinions of  
5 Norman Zada and Sheena Chou) is irrelevant to the identified fact.  
6 Additionally, Google's Blogger DMCA tracking spreadsheets and engineering  
7 files reflecting the removal of infringing material speak for themselves. Poovala  
8 Dec. ¶¶ 37, 93 and Exs. J, II, and KK.

9  
10 34. Google tracked how  
11 many DMCA notices were  
12 processed regarding a particular  
13 Blogger account, and terminated  
14 the account where appropriate.

15 [REDACTED] Poovala Dec. ¶  
16 93.

[REDACTED]

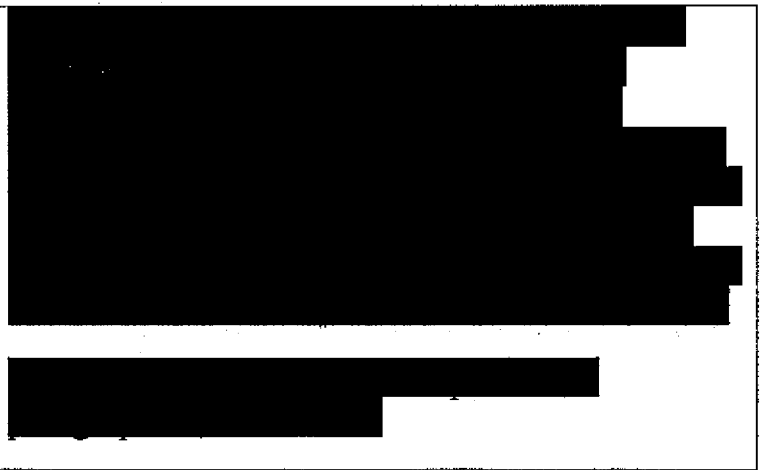
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**GOOGLE'S REPLY**

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 and Sheena Chou) is irrelevant.. Additionally, Google's Blogger DMCA tracking spreadsheets and engineering files reflecting the removal of infringing material speak for themselves. Poovala Dec. ¶¶ 37, 93 and Exs. J, II, and KK. P10's claim that [REDACTED] [REDACTED] is demonstrably false. *See* Poovala Dec., Ex. KK.

35. Google tracked the processing of P10's notices. Poovala Dec. ¶ 93, Exs. FF, GG, HH, II, and KK.



1 **GOOGLE'S REPLY**

2 P10's cited evidence (including Zada's various opinions) does not actually  
3 dispute the identified fact, and is irrelevant to the fact that Google tracked its  
4 processing efforts. P10's improper legal argument should be stricken. *See*  
5 Scheduling Order at 6:5-6. Google's DMCA tracking spreadsheets and engineering  
6 files documenting the removal of infringing material speak for themselves. *See*  
7 Poovala Dec., Exs. J, II, KK.

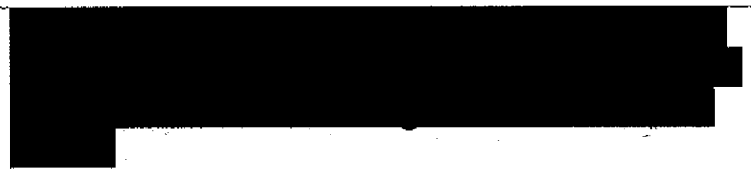
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9 36. Google does not  
10 encourage copyright  
11 infringement on its Blogger  
12 system. Poovala Dec. ¶ 26.



13 **GOOGLE'S REPLY**

14 P10's contention and cited evidence do not actually dispute the identified  
15 fact. Most of P10's response is improper legal argument and should be stricken.  
16 *See* Scheduling Order at 6:5-6. P10's cited evidence (including the opinions of  
17 Norman Zada) is irrelevant to the identified fact and does not support P10's  
18 contention.

19 37. Google does not charge  
20 Blogger account holders a fee to  
21 host their blogs. Poovala Dec. ¶  
22 26.



23 **GOOGLE'S REPLY**

24 P10 does not dispute this identified fact. Most of P10's response is  
25 improper legal argument and should be stricken. *See* Scheduling Order at 6:5-6.  
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PERFECT 10'S ADDITIONAL UNCONTROVERTED FACTS<sup>1</sup>

P10's Additional Material Facts	Google's Response and Supporting Evidence
38. [REDACTED]	<b>Undisputed, but irrelevant,</b> that Google provided such an example in its Blogger Web Form, which P10 has never used, nor has P10 ever complained of infringement of the text of printed material such as a book.
39. [REDACTED]	<b>Disputed but irrelevant.</b> P10 never submitted a DMCA-compliant notice complaining of such infringements.  The cited evidence does not support the stated proposition. P10 has not submitted the complete notice and has not identified where in that notice this alleged infringement may be found.  The alleged fact may not be asserted in response to Google's DMCA motions because P10 has failed to provide complete discovery regarding this issue. For example, P10 has refused to identify which images are covered by which copyright registrations, assignments, work for hire agreements, or DMCA notices, and where each of those images allegedly was infringed. Kassabian Dec. ¶ 14.

<sup>1</sup> This entire section of P10's Statement of Genuine Issues is objectionable and a violation of the court's Scheduling Order, Sec. III.C.1 (providing only that an opposing party "may submit additional material facts *that bear on or relate to the issues raised by the movant*"), because it is not limited to specific material facts that Perfect 10 claims are pertinent to the pending motion (but which may have been omitted from Google's Statement). Instead, P10 simply has pasted in nearly every single purported material "fact" P10 submitted in support of its own motion for summary judgment--which the Court stayed in favor of ruling on Google's DMCA motions. Accordingly this entire section (Paragraphs 38-64b of P10's Statement of Genuine Issues) should be stricken.

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[Redacted]

[Redacted]

40. [Redacted]

**Disputed but irrelevant.** P10 never submitted a DMCA-compliant notice complaining of such URLs.  
The cited evidence does not support the stated proposition. P10 has not submitted the complete notice and has not identified where in that notice this alleged infringement may be found.  
The alleged fact may not be asserted in response to Google's DMCA motions because P10 has failed to provide complete discovery regarding this issue. For example, P10 has refused to identify which images are covered by which copyright registrations, assignments, work for hire agreements, or DMCA notices, and where each of those images allegedly was infringed. Kassabian Dec. ¶ 14.

41. [Redacted]

**Disputed but irrelevant.** P10 never submitted a DMCA-compliant notice complaining of such URLs.  
The cited evidence does not support the stated proposition. P10 has not submitted the complete notices and has not identified where in those notices these alleged infringements may be found.  
The Chou and Zada Declarations provide no foundation for these assertions.  
The alleged fact may not be asserted in response to Google's DMCA motions because P10 has failed to provide complete discovery regarding this issue. For example, P10 has refused to identify which images are covered by which copyright registrations, assignments, work for hire agreements, or DMCA notices, and where each of those images allegedly was infringed. Kassabian Dec. ¶ 14; Poovala Dec. ¶ 40-55, Exs. L1-L48 and N1-N18. Nor were any alleged specifically directed to Blogger or did they

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include the information Google requires for DMCA notices directed to Blogger. *Id.*

42. [REDACTED]

**Undisputed.**

43. [REDACTED]

**Undisputed, but irrelevant.** P10 never submitted a DMCA-compliant notice complaining of such URLs.  
The cited evidence does not support the stated proposition.  
The alleged fact may not be asserted in response to Google's DMCA motions because P10 has failed to provide complete discovery regarding this issue. For example, P10 has refused to identify which images are covered by which copyright registrations, assignments, work for hire agreements, or DMCA notices, and where each of those images allegedly was infringed. Kassabian Dec. ¶ 14.

44. [REDACTED]

**Undisputed** that Google removed the content of the referenced URL.  
**Disputed in part, but irrelevant,** as to P10's characterizations. P10 never submitted a DMCA-compliant notice complaining of such URLs.  
The cited evidence does not support the stated proposition.  
The alleged fact may not be asserted in response to Google's DMCA motions because P10 has failed to provide complete discovery regarding this issue. For example, P10 has refused to identify which images are covered by which copyright registrations, assignments, work for hire agreements, or DMCA notices, and where each of those images allegedly was infringed. Kassabian Dec. ¶ 14.

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45. [REDACTED]

**Disputed in part, but irrelevant.** P10 never submitted a DMCA-compliant notice complaining such URLs.

The cited evidence does not support the stated proposition. P10 has not submitted the complete notice and has not identified where in that notice this alleged infringement may be found.

The alleged fact may not be asserted in response to Google's DMCA motions because P10 has failed to provide complete discovery regarding this issue. For example, P10 has refused to identify which images are covered by which copyright registrations, assignments, work for hire agreements, or DMCA notices, and where each of those images allegedly was infringed. Kassabian Dec. ¶ 14.

**Undisputed** that the referenced document does not contain a post URL.

46. [REDACTED]

**Disputed, but irrelevant.** P10 never submitted a DMCA-compliant notice complaining of this URL.

The cited evidence does not support the stated proposition.

The alleged fact may not be asserted in response to Google's DMCA motions because P10 has failed to provide complete discovery regarding this issue. For example, P10 has refused to identify which images are covered by which copyright registrations, assignments, work for hire agreements, or DMCA notices, and where each of those images allegedly was infringed. Kassabian Dec. ¶ 14.

**Undisputed** that Google removed the content at the referenced URL.

47. [REDACTED]

**Disputed in part, but irrelevant.** P10 never



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[REDACTED]

submitted a DMCA-compliant notice complaining of such URLs.  
The cited evidence does not support the stated proposition. P10 has not submitted the complete notices and has not identified where in those notices these alleged infringements may be found.  
The Chou Declaration provides no foundation for these assertions.  
The alleged fact may not be asserted in response to Google's DMCA motions because P10 has failed to provide complete discovery regarding this issue. For example, P10 has refused to identify which images are covered by which copyright registrations, assignments, work for hire agreements, or DMCA notices, and where each of those images allegedly was infringed. Kassabian Dec. ¶ 14.

48. [REDACTED]

**Disputed in part, but irrelevant.** P10 never submitted a DMCA-compliant notice complaining of such URLs.  
The cited evidence does not support the stated proposition.  
The alleged fact may not be asserted in response to Google's DMCA motions because P10 has failed to provide complete discovery regarding this issue. For example, P10 has refused to identify which images are covered by which copyright registrations, assignments, work for hire agreements, or DMCA notices, and where each of those images allegedly was infringed. Kassabian Dec. ¶ 14.  
**Undisputed** that Google removed the content at the referenced URL.

49. [REDACTED]

**Disputed, but irrelevant.** P10 never submitted a DMCA-compliant notice complaining of such URLs (nor does P10 even identify them here).  
The cited evidence does not support the stated proposition.  
The alleged fact may not be asserted in response to Google's DMCA motions because P10 has

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[REDACTED]

failed to provide complete discovery regarding this issue. For example, P10 has refused to identify which images are covered by which copyright registrations, assignments, work for hire agreements, or DMCA notices, and where each of those images allegedly was infringed. Kassabian Dec. ¶ 14.

50. [REDACTED]

**Disputed, but irrelevant.** P10 never submitted a DMCA-compliant notice complaining of such URLs.  
The cited evidence does not support the stated proposition.  
The alleged fact may not be asserted in response to Google's DMCA motions because P10 has failed to provide complete discovery regarding this issue. For example, P10 has refused to identify which images are covered by which copyright registrations, assignments, work for hire agreements, or DMCA notices, and where each of those images allegedly was infringed. Kassabian Dec. ¶ 14.  
The statements are demonstrably false. See Poovala Dec., Ex. KK (listing [REDACTED] Blogger removals); Rebuttal Kassabian Dec. ¶ 5 (confirming production of earlier Blogger DMCA tracking spreadsheets).

51. [REDACTED]

**Disputed, but irrelevant.** P10 never submitted a DMCA-compliant notice complaining of such URLs or such alleged infringers. The number of URLs Google has received in DMCA-compliant Blogger notices is not within Google's control.  
The cited evidence does not support the stated proposition.  
The alleged fact may not be asserted in response to Google's DMCA motions because P10 has failed to provide complete discovery regarding this issue. For example, P10 has refused to identify which images are covered by which copyright registrations, assignments, work for hire agreements, or DMCA notices, and where each of those images allegedly was infringed.

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Kassabian Dec. ¶ 14.  
The statements are demonstrably false. *See* Poovala Dec., Ex. KK (listing [REDACTED] Blogger removals); Rebuttal Kassabian Dec. ¶ 5 (confirming production of earlier Blogger DMCA tracking spreadsheets).

52. [REDACTED]

**Undisputed, but irrelevant,** that Google owns the domain ggph.com and that Adobe has a cut and paste feature.  
P10 never submitted a DMCA-compliant notice complaining of such URLs. P10 has not submitted the complete notice and has not identified where in that notice this alleged infringement may be found.  
The cited evidence does not support the stated proposition.  
The alleged fact may not be asserted in response to Google's DMCA motions because P10 has failed to provide complete discovery regarding this issue. For example, P10 has refused to identify which images are covered by which copyright registrations, assignments, work for hire agreements, or DMCA notices, and where each of those images allegedly was infringed.  
Kassabian Dec. ¶ 14.

53. [REDACTED]

**Disputed, but irrelevant,** P10 never submitted a DMCA-compliant notice complaining of alleged infringements on Google Groups.  
The cited evidence does not support the stated proposition. P10 has not submitted the complete notice and has not identified where in that notice this alleged infringement may be found.  
The alleged fact may not be asserted in response to Google's DMCA motions because P10 has failed to provide complete discovery regarding this issue. For example, P10 has refused to identify which images are covered by which copyright registrations, assignments, work for hire agreements, or DMCA notices, and where each of those images allegedly was infringed.

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	Kassabian Dec. ¶ 14.
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54. [REDACTED]	<p><b>Disputed, but irrelevant,</b> P10 never submitted a DMCA-compliant notice complaining of alleged infringements on Google Groups.</p> <p>The cited evidence does not support the stated proposition.</p> <p>The alleged fact may not be asserted in response to Google's DMCA motions because P10 has failed to provide complete discovery regarding this issue. For example, P10 has refused to identify which images are covered by which copyright registrations, assignments, work for hire agreements, or DMCA notices, and where each of those images allegedly was infringed. Kassabian Dec. ¶ 14.</p>
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55. [REDACTED]	<p><b>Disputed, but irrelevant,</b> P10 never submitted a DMCA-compliant notice complaining of alleged infringements on Google Groups.</p> <p>The cited evidence does not support the stated proposition. P10 has not submitted the complete notice and has not identified where in that notice this alleged infringement may be found.</p> <p>The alleged fact may not be asserted in response to Google's DMCA motions because P10 has failed to provide complete discovery regarding this issue. For example, P10 has refused to identify which images are covered by which copyright registrations, assignments, work for hire agreements, or DMCA notices, and where each of those images allegedly was infringed. Kassabian Dec. ¶ 14.</p>
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56. [REDACTED]	<p><b>Disputed, but irrelevant,</b> P10 never submitted a DMCA-compliant notice complaining of alleged infringements on Google Groups or AdSense.</p> <p>The cited evidence does not support the stated proposition.</p> <p>The alleged fact may not be asserted in response to Google's DMCA motions because P10 has failed to provide complete discovery regarding</p>
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this issue. For example, P10 has refused to identify which images are covered by which copyright registrations, assignments, work for hire agreements, or DMCA notices, and where each of those images allegedly was infringed. Kassabian Dec. ¶ 14.

57. [REDACTED]

**Disputed, but irrelevant.** P10 never submitted a DMCA-compliant notice complaining of alleged infringements on Google Groups or AdSense.  
The cited evidence does not support the stated proposition.  
The alleged fact may not be asserted in response to Google's DMCA motions because P10 has failed to provide complete discovery regarding this issue. For example, P10 has refused to identify which images are covered by which copyright registrations, assignments, work for hire agreements, or DMCA notices, and where each of those images allegedly was infringed. Kassabian Dec. ¶ 14.

58. [REDACTED]

**Disputed, but irrelevant.** P10 never submitted a DMCA-compliant notice complaining of alleged infringements on this URL.  
The cited evidence does not support the stated proposition.  
The alleged fact may not be asserted in response to Google's DMCA motions because P10 has failed to provide complete discovery regarding this issue. For example, P10 has refused to identify which images are covered by which copyright registrations, assignments, work for hire agreements, or DMCA notices, and where each of those images allegedly was infringed. Kassabian Dec. ¶ 14.

59. [REDACTED]

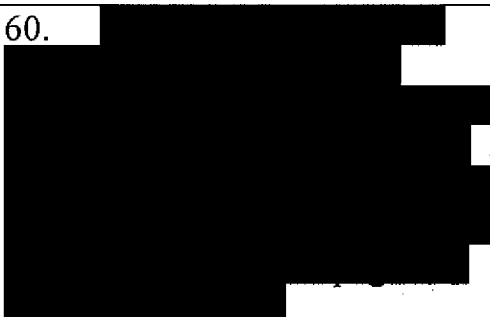
**Undisputed, but irrelevant.** P10 never submitted a DMCA-compliant notice complaining of alleged infringement on this URL.  
The cited evidence does not support the stated proposition. P10 has not submitted the complete

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notice and has not identified where in that notice this alleged infringement may be found.

The alleged fact may not be asserted in response to Google's DMCA motions because P10 has failed to provide complete discovery regarding this issue. For example, P10 has refused to identify which images are covered by which copyright registrations, assignments, work for hire agreements, or DMCA notices, and where each of those images allegedly was infringed. Kassabian Dec. ¶ 14.


**Undisputed** that the referenced URL is not a post URL, as required by Google's published DMCA policy for Blogger.

60.  **Undisputed, but irrelevant**, that Adobe has a cut and paste feature. **Disputed** as to P10's characterization.

P10 never submitted a DMCA-compliant notice complaining of alleged infringements on this URL.

The cited evidence does not support the stated proposition. P10 has not submitted the complete notice and has not identified where in that notice this alleged infringement may be found.

The alleged fact may not be asserted in response to Google's DMCA motions because P10 has failed to provide complete discovery regarding this issue. For example, P10 has refused to identify which images are covered by which copyright registrations, assignments, work for hire agreements, or DMCA notices, and where each of those images allegedly was infringed. Kassabian Dec. ¶ 14.

61.  **Disputed, but irrelevant.** P10 never submitted a DMCA-compliant notice complaining of alleged infringements on this URL.


The cited evidence does not support the stated proposition. P10 has not submitted the complete notice and has not identified where in that notice this alleged infringement may be found.

The alleged fact may not be asserted in response

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to Google's DMCA motions because P10 has failed to provide complete discovery regarding this issue. For example, P10 has refused to identify which images are covered by which copyright registrations, assignments, work for hire agreements, or DMCA notices, and where each of those images allegedly was infringed. Kassabian Dec. ¶ 14.

**Undisputed** that Adobe has a cut and paste feature, which is exactly what Google had to do in attempting to process P10's defective July 2, 2007 notice.


62. 

**Disputed, but irrelevant.** P10 never submitted a DMCA-compliant notice complaining of alleged infringements on this URL.

The cited evidence does not support the stated proposition. P10 has not submitted the complete notice and has not identified where in that notice this alleged infringement may be found.

The alleged fact may not be asserted in response to Google's DMCA motions because P10 has failed to provide complete discovery regarding this issue. For example, P10 has refused to identify which images are covered by which copyright registrations, assignments, work for hire agreements, or DMCA notices, and where each of those images allegedly was infringed. Kassabian Dec. ¶ 14.

**Undisputed** that Adobe has the referenced features, which made no difference in Google's processing.

63. 

**Disputed, but irrelevant.** P10 never submitted a DMCA-compliant notice complaining of alleged infringements on AdSense.

The cited evidence does not support the stated proposition.

The alleged fact may not be asserted in response to Google's DMCA motions because P10 has failed to provide complete discovery regarding this issue. For example, P10 has refused to

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identify which images are covered by which copyright registrations, assignments, work for hire agreements, or DMCA notices, and where each of those images allegedly was infringed. Kassabian Dec. ¶ 14.

64a) [REDACTED]

**Disputed, but irrelevant.** P10 never submitted a DMCA-compliant notice complaining of such alleged infringements.  
The cited evidence does not support the stated proposition. P10 has not submitted the complete notices and has not identified where in those notices these alleged infringements may be found.

64b) [REDACTED]

The alleged fact may not be asserted in response to Google's DMCA motions because P10 has failed to provide complete discovery regarding this issue. For example, P10 has refused to identify which images are covered by which copyright registrations, assignments, work for hire agreements, or DMCA notices, and where each of those images allegedly was infringed. Kassabian Dec. ¶ 14.

Google's AdSense logs speak for themselves. See Poovala Dec., Ex. LL.

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