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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

PERFECT 10, INC.,)	
)	
)	
PLAINTIFF,)	
)	
VS.)	CASE NO. CV 04-9484-AHM(SHX)
)	
)	
GOOGLE, INC., ET AL.,)	LOS ANGELES, CALIFORNIA
)	JANUARY 15, 2010
)	(10:08 A.M. TO 12:44 P.M.)
DEFENDANTS.)	(1:08 P.M. TO 1:51 P.M.)
_____)	

HEARING
BEFORE THE HONORABLE STEPHEN J. HILLMAN
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:	SEE NEXT PAGE
COURT REPORTER:	RECORDED; COURT SMART
COURTROOM DEPUTY:	SANDRA BUTLER
TRANSCRIBER:	DOROTHY BABYKIN COURTHOUSE SERVICES 1218 VALEBROOK PLACE GLENORA, CALIFORNIA 91740 (626) 963-0566

PROCEEDINGS RECORDED BY ELECTRONIC SOUND RECORDING;
TRANSCRIPT PRODUCED BY TRANSCRIPTION SERVICE.

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8 FOR GOOGLE: QUINN EMANUEL URQUHART OLIVER &
9 HEDGES
10 BY: THOMAS NOLAN
11 ATTORNEY AT LAW
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15 QUINN EMANUEL URQUHART OLIVER &
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17 BY: RACHEL M. HERRICK KASSABIAN
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22 QUINN EMANUEL URQUHART OLIVER &
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FOR AMAZON.COM,
ALEXA INTERNET: TOWNSEND TOWNSEND & CREW
BY: MARK JANSEN
ATTORNEY AT LAW
TWO EMBARCADERO CENTER
8TH FLOOR
SAN FRANCISCO, CALIFORNIA 94111

ALSO PRESENT: DR. NORMAN ZADA
PRESIDENT, PERFECT 10

MELANIE POBLETE
LEGAL ASSISTANT, PERFECT 10

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I N D E X

CASE NO. CV 04-9484-AHM(SHX)

JANUARY 15, 2010

PROCEEDINGS:

1. PERFECT 10'S MOTION FOR DOCUMENT PRESERVATION ORDER TO PREVENT FURTHER SPOILIATION OF EVIDENCE;
2. PERFECT 10'S MOTION FOR EVIDENTIARY SANCTIONS AGAINST GOOGLE;
3. GOOGLE'S MOTION FOR DOCUMENT PRESERVATION ORDER TO PREVENT FURTHER SPOILIATION OF EVIDENCE BY PERFECT 10;
4. BATES STAMP ISSUE

1 LOS ANGELES, CALIFORNIA; FRIDAY, JANUARY 15, 2010; 10:08 A.M.

2 THE CLERK: CALLING CASE NUMBER CV 04-9484, PERFECT
3 10 VERSUS GOOGLE.

4 COUNSEL, PLEASE ENTER YOUR APPEARANCE FOR THE
5 RECORD.

6 MR. MAUSNER: GOOD MORNING, YOUR HONOR.

7 JEFF MAUSNER FOR THE PLAINTIFF PERFECT 10. ALSO
8 WITH ME IS DR. NORM ZADA AND LEGAL ASSISTANT MELANIE POBLETE.

9 THE COURT: GOOD MORNING.

10 MS. KASSABIAN: GOOD MORNING, YOUR HONOR.

11 RACHEL HERRICK KASSABIAN FROM QUINN EMANUEL HERE ON
12 BEHALF OF DEFENDANT GOOGLE. AND WITH ME ARE MY COLLEAGUES
13 BRAD LOVE AND TOM NOLAN.

14 THE COURT: GOOD MORNING.

15 MR. JANSEN: GOOD MORNING, YOUR HONOR.

16 MARK JANSEN APPEARING FOR THE AMAZON.COM AND ALEXA
17 INTERNET DEFENDANTS.

18 THE COURT: GOOD MORNING.

19 MR. JANSEN: GOOD MORNING.

20 THE COURT: I'VE SPENT A SUBSTANTIAL NUMBER OF
21 HOURS ON THESE MOTIONS. AND UNLESS SOMEONE HAS A BETTER
22 IDEA, I THOUGHT I WOULD TAKE THEM UP IN THE FOLLOWING ORDER.

23 NUMBER ONE, P-10'S EVIDENTIARY SANCTIONS MOTION,
24 FOLLOWED BY P-10'S DOCUMENT PRESERVATION MOTION, FOLLOWED BY
25 GOOGLE'S DOCUMENT PRESERVATION MOTION, AND FINALLY, AND

1 HOPEFULLY BRIEFLY, THE BATES STAMPING ISSUE FROM LAST TIME.

2 I KNOW I CAN'T FINE TUNE -- WELL, I GUESS I COULD
3 FINE TUNE THE LENGTH OF TIME THAT I EXPECT ARGUMENT TO TAKE
4 ON EACH AND ALL OF THESE MOTIONS. I WON'T TRY TO BE PRECISE,
5 BUT I WILL SAY GIVEN THE AMOUNT OF TIME I'VE SPENT ON THE
6 MOTIONS, I WOULD THINK THAT WE SHOULD BE DONE BY 11:30, IF
7 NOT EARLIER. I JUST DON'T NEED A LOT OF -- OR ANY
8 REITERATION OF THE ARGUMENTS.

9 I'VE GONE OVER THE DECLARATIONS. I'VE GONE OVER
10 ALL THE SURREPLIES AND SUR-SURREPLIES AND OBJECTIONS TO
11 EVIDENCE, AND I THINK I HAVE A PRETTY GOOD GRASP.

12 SO, UNLESS SOMEONE HAS A BETTER IDEA OF HOW TO
13 PROCEED, I'LL LET MR. MAUSNER ADDRESS THE MOTION FOR
14 EVIDENTIARY SANCTIONS.

15 MR. MAUSNER: THANK YOU, YOUR HONOR.

16 THE COURT: AND YOU'RE WELCOME TO REMAIN SEATED.

17 MR. MAUSNER: WE DO HAVE SOME THINGS TO DEMONSTRATE
18 THAT ARE NOT IN THE PAPERS.

19 ONE IS WHETHER THE SHEETS -- THE BLOGGER AND
20 ADSENSE SHEETS THAT GOOGLE PRODUCED ARE SEARCHABLE.

21 DOES YOUR HONOR HAVE ACCESS TO THE --

22 THE COURT: I CAN SEE THAT.

23 MR. MAUSNER: WE CAN TURN IT FOR YOU, IF YOU'D
24 LIKE.

25 THE COURT: ARE THESE THE FIRST MOTIONS IN WHICH

1 THE BLOGGER TERM HAS APPEARED? BECAUSE I DON'T REMEMBER
2 DEALING WITH DISCOVERY ISSUES ON BLOGGER. BUT I COULD BE
3 WRONG.

4 MS. KASSABIAN: THAT'S CORRECT, YOUR HONOR.

5 THE COURT: AND COULD YOU JUST BRIEFLY TELL ME WHAT
6 THAT SERVICE IS?

7 MS. KASSABIAN: YES. THE BLOGGER SERVICE IS A
8 CONTENT-HOSTING SERVICE THAT GOOGLE OFFERS THAT BASICALLY
9 ALLOWS ANY THIRD-PARTY USER TO CREATE A BLOG, A WEB LOG.

10 THE COURT: MM-HMM.

11 MS. KASSABIAN: ARE YOU FAMILIAR WITH THAT?

12 THE COURT: RIGHT. NO, I KNOW THAT MUCH.

13 MS. KASSABIAN: AND PEOPLE CAN OBVIOUSLY, YOU KNOW,
14 POST WHATEVER CONTENT THEY WOULD LIKE ON THERE SUBJECT TO, OF
15 COURSE, GOOGLE'S TERMS AND CONDITIONS FOR USE OF THAT
16 SERVICE. IT'S A FREE SERVICE AND, YOU KNOW --

17 THE COURT: OKAY.

18 MS. KASSABIAN: -- CAN BE USED BY ANY MEMBER OF THE
19 PUBLIC.

20 THE COURT: ALL RIGHT. I ASSUMED THAT WAS THE
21 DEFINITION. BUT I DON'T THINK I'VE ENCOUNTERED IT BEFORE IN
22 THE CONTEXT OF THIS CASE.

23 ALL RIGHT. MR. MAUSNER, SORRY.

24 MR. MAUSNER: OKAY. THE REASON THAT'S IMPORTANT IS
25 BECAUSE WE'VE ALWAYS KNOWN THAT GOOGLE LINKS TO THINGS.

1 AS IT TURNS OUT, AND WE DIDN'T FIND OUT ABOUT THIS
2 UNTIL AFTER THE PRELIMINARY INJUNCTION, GOOGLE IS LINKING TO
3 IMAGES THAT ARE ACTUALLY APPEARING ON THEIR SERVERS.

4 THE COURT: FULL-SIZE IMAGES.

5 MR. MAUSNER: FULL-SIZE IMAGES IN BLOGGER.

6 AND THAT'S IMPORTANT BECAUSE BOTH JUDGE MATZ AND
7 THE NINTH CIRCUIT ADOPTED THE SERVER TEST WHICH IS THAT IT IS
8 A DIRECT INFRINGEMENT IF IT'S ON YOUR SERVERS.

9 SO, WE DIDN'T KNOW ABOUT THAT AT THE TIME OF THE
10 PRELIMINARY INJUNCTION. IF WE HAD KNOWN THAT, WE CERTAINLY
11 WOULD HAVE BROUGHT UP THE FACT THAT GOOGLE IS LINKING TO
12 FULL-SIZE IMAGES THAT ARE ACTUALLY ON GOOGLE'S SERVERS.

13 SO, ANYWAY, YOUR HONOR, AS YOU KNOW, MR. NOLAN AND
14 MS. KASSABIAN BOTH FILED DECLARATIONS STATING THAT GOOGLE
15 PRODUCED ITS BLOGGER AND ADSENSE SHEETS IN SEARCHABLE TIFF
16 FORMAT.

17 GOOGLE NOW ADMITS THAT ITS BLOGGER AND ADSENSE
18 SHEETS WERE NOT PRODUCED IN TIFF FORMAT -- THAT'S IN THEIR
19 SURREPLY, PAGE 4, LINE 11 -- BUT THEY'RE STILL CLAIMING THAT
20 IT IS SEARCHABLE.

21 AND WE PUT TOGETHER SOME EXHIBITS TO SHOW THE COURT
22 THAT THAT'S NOT CORRECT. WE HAVE SOME HANDOUTS, AND WE'RE
23 ALSO GOING TO PUT THIS UP ON THE SCREEN.

24 THE COURT: BUT IN THE CONTEXT OF THIS MOTION, WHAT
25 DISCOVERY ORDER -- IF WHAT YOU'RE SAYING IS CORRECT, WHAT

1 DISCOVERY ORDER DID GOOGLE VIOLATE?

2 MR. MAUSNER: OKAY.

3 THE COURT: TELL ME THAT FIRST.

4 MR. MAUSNER: OKAY. YOUR HONOR ORDERED THAT GOOGLE
5 PRODUCE A DMCA LOG. JUDGE MATZ MODIFIED THAT. AND PART OF
6 HIS MODIFICATION WAS THAT IT BE A SPREADSHEET-TYPE DOCUMENT.

7 OKAY. NOW, WE ALWAYS HAD REQUESTED THAT THESE
8 DOCUMENTS BE PRODUCED IN ELECTRONIC FORMAT. EVERY ONE OF OUR
9 REQUESTS SAYS PRODUCED IN ELECTRONIC FORMAT.

10 THE COURT: BUT WAIT A SECOND. BLOGGER DIDN'T
11 BECOME A PART OF THIS CASE UNTIL AFTER MY RULING AND JUDGE
12 MATZ'S REVISION.

13 MR. MAUSNER: WELL, NO. NO. BLOGGER WAS PART OF
14 THE CASE ALL ALONG TO THE EXTENT THAT BLOGGER SITES APPEARED
15 IN SEARCH. BLOGGER SITES -- YOU KNOW, AS FAR AS SEARCH,
16 THERE'S NO REASON THAT BLOGGER SITES SHOULD BE TREATED
17 DIFFERENTLY THAN ANY OTHER SITE. IN FACT, BECAUSE THEY'RE
18 ACTUALLY HOSTED BY GOOGLE, THERE'S MORE LIABILITY INVOLVED.
19 BUT WE DIDN'T KNOW THAT AT THE TIME.

20 BUT -- AND LET ME FIND THE PLACE.

21 GOOGLE ACTUALLY ADMITS THAT -- HOLD ON.

22 (PAUSE IN PROCEEDINGS.)

23 MR. MAUSNER: THIS IS -- OKAY. IN THE SURREPLY
24 BRIEF, PAGE 8, LINES 3 TO 4, GOOGLE CONCEDES THAT BLOGGER
25 URLS APPEAR IN GOOGLE'S SEARCH RESULTS, AND THAT PERFECT 10

1 GAVE NOTICE TO GOOGLE OF ALLEGEDLY INFRINGING BLOGGER URLS.

2 GOOGLE ADMITS AT PAGE 8, LINES 3 TO 4, BLOGGER --

3 QUOTE:

4 "BLOGGER URLS CERTAINLY DO APPEAR IN GOOGLE'S

5 SEARCH RESULTS ALONG WITH EVERYTHING ELSE

6 GOOGLE INDEXES."

7 THE COURT: RIGHT.

8 MR. MAUSNER: OKAY. BUT THEN THEY SAY:

9 "IT DOES NOT FOLLOW THAT EVERYTHING GOOGLE

10 INDEXES IS PART OF PERFECT 10'S CASE."

11 BUT IF IT IS INFRINGING AND GOOGLE INDEXES IT, THEN

12 IT IS PART OF THE CASE, WHETHER IT'S ON BLOGGER OR WHETHER

13 IT'S ON SOME OTHER WEBSITE.

14 SO THERE REALLY CAN BE NO QUESTION THAT IF IT IS IN

15 GOOGLE'S SEARCH RESULTS AND IT'S INFRINGING, IT'S ALWAYS BEEN

16 PART OF THE CASE WHETHER IT IS BLOGGER OR ANYTHING ELSE. THE

17 ONLY THING THAT WAS ADDED TO THE COMPLAINT IN JULY 2008 WAS

18 THE HOSTING FUNCTION OF BLOGGER.

19 THE COURT: OKAY.

20 MR. MAUSNER: SEARCHING INVOLVING BLOGGER URLS HAS

21 ALWAYS BEEN WITHOUT ANY QUESTION PART OF THE CASE.

22 WHY WOULD A WEBSITE THAT GOOGLE ALSO HOSTS BE

23 TREATED DIFFERENTLY, IN FACT, BE GIVEN IMMUNITY FROM

24 DISCOVERY WHEN AN INFRINGING WEBSITE HOSTED BY A THIRD-PARTY

25 IS IN THE CASE IF IT'S INDEXED BY GOOGLE. SO --

1 THE COURT: BUT, IN ANY EVENT, THEY DID PRODUCE THE
2 MATERIAL THAT YOU'RE ABOUT TO EXPLAIN TO ME ON THE SCREEN.

3 MR. MAUSNER: RIGHT. BUT IT'S --

4 THE COURT: BUT YOU'LL SAY IT WASN'T SEARCHABLE.

5 MR. MAUSNER: IT WASN'T SEARCHABLE OR SORTABLE.

6 THE COURT: OKAY. AND YOU'VE MET AND CONFERRED
7 ABOUT THAT ISSUE, I ASSUME, MANY TIMES.

8 MR. MAUSNER: WE KEPT ASKING THEM WHERE IS YOUR
9 LOG, WHERE IS YOUR SPREADSHEET. MANY, MANY, TIMES WE'VE
10 ASKED THEM THAT.

11 THE COURT: OKAY. ALL RIGHT. AND THE RESPONSE HAS
12 BEEN WHAT?

13 MR. MAUSNER: WELL, IT WAS KIND OF A GRADUAL
14 RESPONSE.

15 FINALLY, THEY SENT US AN EMAIL THAT SAID, HERE IS
16 THE LOG. BUT THEY'VE NEVER GIVEN IT TO US IN SPREADSHEET
17 FORMAT. AND YOU REALLY CAN'T USE THAT. AND WE'LL SHOW YOU
18 IN THIS DEMONSTRATION HOW DIFFICULT IT IS TO USE THE TIFF
19 DOCUMENTS THAT THEY PRODUCED BECAUSE THEY ARE COMPLETELY
20 UNSEARCHABLE AND UNSORTABLE.

21 AND IF YOU DON'T HAVE IT IN SEARCHABLE OR SORTABLE
22 FORMAT, IT'S VERY DIFFICULT TO DETERMINE -- LIKE, IF YOU WANT
23 TO FIND HOW MANY TIMES THERE'S BEEN A NOTICE FOR A WEBSITE,
24 YOU CAN'T DO THAT IF IT'S NOT SEARCHABLE OR SORTABLE. OKAY.

25 AND ANOTHER THING IS, WHAT THEY GAVE US ISN'T

1 ANYWHERE NEAR COMPLETE. IT DOESN'T HAVE -- IT MAYBE HAS 1
2 PERCENT OF WHAT WE KNOW EXISTS. THERE ARE SPECIFIC URLS THAT
3 WE GOT FROM OTHER SOURCES, INCLUDING THE R.I.A.A., THE
4 RECORDING INDUSTRY, OR -- YEAH, THERE'S SPECIFIC URLS FROM
5 THEM. THERE'S STUFF FROM CHILLINGEFFECTS.ORG THAT WE GOT
6 THAT ARE NOT INCLUDED ON THE BLOGGER SHEETS THAT THEY GAVE
7 US. SO WE KNOW THAT IT'S NOT ANYWHERE COMPLETE.

8 IT'S NOT GIVEN TO US IN THE MANNER THAT IT'S
9 MAINTAINED AT GOOGLE. AND IT ABSOLUTELY CANNOT BE A JPG FILE
10 AT GOOGLE BECAUSE YOU CAN'T EVEN ADD ANYTHING TO A J-PEG
11 FILE. SO THAT'S NOT WHAT THEY HAVE.

12 WHAT THEY DID IS THEY PURPOSELY TOOK WHAT THEY HAD
13 THERE, BROKE IT UP INTO HUNDREDS OF PIECES, AND MADE IT
14 UNSEARCHABLE INSTEAD OF GIVING -- GIVING IT TO US IN THE FORM
15 THAT IT EXISTS AT GOOGLE AND IN THE SPREADSHEET-TYPE FORMAT
16 THAT JUDGE MATZ SPECIFICALLY ORDERED.

17 DO YOU WANT THE CITE TO JUDGE MATZ'S ORDER OR DO
18 YOU KNOW WHAT THAT IS?

19 THE COURT: NO, I KNOW WHAT THAT IS.

20 MR. MAUSNER: OKAY. SHOULD I GO ON WITH THE
21 PRESENTATION, YOUR HONOR?

22 THE COURT: WELL, I'D LIKE TO HEAR -- I DON'T WANT
23 TO GO BACK AND FORTH TOO MUCH. BUT I'D LIKE TO HEAR GOOGLE'S
24 RESPONSE JUST TO THOSE BROAD ASSERTIONS SO I KNOW HOW MUCH
25 TIME I NEED TO SPEND ON LOOKING AT THE ACTUAL URLS.

1 YES?

2 MS. KASSABIAN: YOUR HONOR, YOU ASKED THE EXACT
3 RIGHT QUESTION, WHAT DISCOVERY ORDER DOES THIS ALLEGATION
4 IMPLICATE, AND THE ANSWER IS NONE.

5 FIRST OF ALL, ON THE BLOGGER ISSUES -- THE BLOGGER
6 LOGS SPECIFICALLY, YOU'RE CORRECT THAT THIS BLOGGER WAS NOT
7 AT ISSUE IN THIS CASE UNTIL JULY OF 2008 WHEN PERFECT 10 GOT
8 PERMISSION TO ADD BLOGGER CLAIMS TO THE CASE. THEY ASSURED
9 JUDGE MATZ THAT THEY WERE GOING TO BE SERVING ADDITIONAL
10 DISCOVERY ON BLOGGER. THEY NEVER DID.

11 THE FIRST TIME THEY SERVED ANY BLOGGER DISCOVERY ON
12 GOOGLE WAS IN SEPTEMBER OF 2009. AND EVEN THEN, THEY DIDN'T
13 ASK FOR GOOGLE'S BLOGGER DMCA LOGS OR BLOGGER DMCA NOTICES.

14 NEVERTHELESS, GOOGLE VOLUNTARILY PRODUCED ITS
15 BLOGGER LOG ABOUT A MONTH AFTER THOSE CLAIMS WERE ADDED TO
16 THE CASE. THERE'S NEVER BEEN ANY ORDER ABOUT WHAT FORMAT
17 GOOGLE SHOULD PRODUCE ITS DOCUMENTS IN. INSTEAD, THE PARTIES
18 HAVE MADE AGREEMENTS ON THIS.

19 WE SPECIFICALLY EMAILED PERFECT 10 AND SAID, LOOK
20 WE'RE GETTING READY TO DO OUR PRODUCTION HERE. ON MAY 1ST WE
21 WERE ORDERED TO PRODUCE DMCA LOGS. PERFECT 10 KNEW THAT.
22 AND WE SAID, IS IT OKAY IF WE DO THESE IN STANDARD LITIGATION
23 FORMAT, WHICH IS SINGLE-PAGE TIFF. THEY SAID, "YES."

24 WE RELIED ON THAT AGREEMENT. WE PRODUCED THOSE
25 DOCUMENTS IN FULLY OCR SEARCHABLE TIFF -- SINGLE-PAGE TIFF

1 DOCUMENTS, THAT HAVE LOAD FILES THAT ALLOW THEM TO BE
2 SEARCHABLE.

3 AND NEVER ONCE FROM MAY 1ST, 2008 TO JANUARY 15,
4 2010, NEVER ONCE, HAS PERFECT 10 EVER COME BACK TO US AND
5 SAID, YOU KNOW WHAT, WE CHANGED OUR MIND. WE DON'T WANT
6 THESE IN TIFF. WE'RE SORRY. WE'LL PAY FOR YOU TO PRODUCE
7 THEM IN A DIFFERENT FORMAT. WE WANT THEM IN SOME OTHER WAY.

8 THEY NEVER ASKED, LET ALONE DID THEY EVER BRING A
9 MOTION SEEKING AN ORDER COMPELLING GOOGLE TO PRODUCE THESE
10 DOCUMENTS IN SOME FORMAT OTHER THAN STANDARD LITIGATION
11 FORMAT, WHICH IS SINGLE-PAGE TIFF.

12 THIS IS A COMPLETE SIDESHOW. THERE IS NO DISCOVERY
13 ORDER THAT REQUIRED GOOGLE TO PRODUCE THESE DOCUMENTS IN SOME
14 FORMAT OTHER THAN WHAT GOOGLE PRODUCED THEM IN.

15 AS FOR THE SPREADSHEET POINT, THE DOCUMENTS ARE
16 SPREADSHEETS. YOU CAN SEE THAT JUST BY LOOKING AT THEM.
17 THEY HAVE A BUNCH OF COLUMNS AND A BUNCH OF ROWS. THAT IS A
18 SPREADSHEET FORMAT.

19 AT THE TIME OF THE DMCA ORDER, THE ORDER THAT LED
20 TO THE PRODUCTION OF THE DMCA LOGS, PERFECT 10 INSISTED ON
21 PUTTING A DEFINITION IN THAT ORDER. PERFECT 10 CAME UP WITH
22 THAT DEFINITION. AND IN ITS MIND IT WOULD ENVISION THAT
23 THESE LOGS WOULD BE IN SOME SORT OF SPREADSHEET FORMAT. THAT
24 ROUGH DESCRIPTION WAS INCLUDED IN THE ORDER TO MAKE SURE THAT
25 GOOGLE UNDERSTOOD WHAT IT NEEDED TO PRODUCE. AND THAT'S WHAT

1 GOOGLE PRODUCED.

2 YOU CAN SEE BY LOOKING AT THESE DOCUMENTS, YOUR
3 HONOR, THIS IS JUST WHAT MR. MAUSNER JUST HANDED TO YOU,
4 THEY'RE IN SPREADSHEET FORMAT. NO DISCOVERY ORDER IS
5 IMPLICATED BY THIS ENTIRE FORMAT ISSUE.

6 THE COURT: DO YOU WANT TO COMMENT ON THE ASSERTION
7 THAT THEY -- THAT P-10 IS AWARE FROM THIRD PARTIES AND THE
8 RECORDING INDUSTRY IN PARTICULAR, THAT THERE ARE OTHER
9 DOCUMENTS.

10 MS. KASSABIAN: I DON'T THINK THAT'S WHAT PERFECT
11 10 SAID. I THINK WHAT HE'S SAYING IS WE HAVE YOUR LOGS --
12 WELL, FIRST THEY SAY YOU DIDN'T PRODUCE YOUR LOGS. THEN THEY
13 SAY, WELL, OKAY, WE HAVE YOUR LOGS. AND WE BELIEVE THAT
14 CERTAIN ROWS MUST BE MISSING FROM THAT LOG.

15 THAT'S NOT A DISCOVERY ORDER ISSUE. RIGHT.

16 WE PRODUCED THE LOGS AS THEY EXIST AT GOOGLE.
17 WE'RE NOT REQUIRED TO ADD ROWS OR TO MODIFY THE DOCUMENTS IN
18 ANY WAY. THIS IS THE LOG THAT GOOGLE KEEPS. IF PERFECT 10
19 HAS FOUND SOME DMCA NOTICE OUT THERE ON CHILLING EFFECTS THAT
20 FOR SOME REASON DOESN'T APPEAR, MAYBE THAT NOTICE WAS
21 WITHDRAWN. MAYBE THAT NOTICE WAS INVESTIGATED, AND IT TURNED
22 OUT THAT THERE WAS ACTUALLY NO COPYRIGHT INFRINGEMENT.

23 WHO KNOWS. THERE COULD BE A MILLION REASONS WHY A
24 PARTICULAR DMCA NOTICE FOR A PRODUCT IN QUESTION MIGHT NOT
25 WIND UP APPEARING ON THE LOG. THE QUESTION IS, DID GOOGLE

1 PRODUCE ITS BLOGGER LOGS. AND GOOGLE DID.

2 SO, COMPLAINTS ABOUT THE SPECIFIC CONTENTS OF, YOU
3 KNOW, WHETHER CERTAIN COLUMNS ARE THERE OR WHETHER CERTAIN
4 ROWS ARE THERE, THAT GOES TO A MERITS ISSUE OF WHETHER OR NOT
5 GOOGLE'S DMCA PROCESSING EFFORTS ARE COMPLIANT WITH THE LAW.
6 THAT HAS NOTHING TO DO WITH WHETHER GOOGLE DID NOT PRODUCE A
7 DOCUMENT.

8 MR. MAUSNER: MAY I RESPOND, YOUR HONOR.

9 THE COURT: ALL RIGHT.

10 MR. MAUSNER: OKAY.

11 THE COURT: ARE PEOPLE COLD? IT'S A LITTLE BIT
12 CHILLY IN HERE. IS THAT GOOD OR NOT GOOD?

13 MS. KASSABIAN: I'M OKAY.

14 MR. MAUSNER: I'M FINE, YOUR HONOR.

15 THE COURT: OKAY. GO AHEAD.

16 MR. MAUSNER: OKAY. FIRST OF ALL, WE NEVER, EVER,
17 EVER AGREED TO TAKE THE LOGS IN NON-SEARCHABLE FORMAT.

18 AND HERE IS THE EMAIL THAT MS. KASSABIAN IS
19 REFERRING TO.

20 THE COURT: BUT WE'RE TALKING ABOUT A VERY SERIOUS
21 SANCTIONS MOTION.

22 MR. MAUSNER: YES.

23 THE COURT: SO, ASSUMING THAT YOU'RE CORRECT, AND
24 IT'S NOT SEARCHABLE, HOW WOULD THAT LEAD TO A RECOMMENDATION
25 THAT THERE BE EVIDENTIARY SANCTIONS?

1 MR. MAUSNER: THEY DID NOT PRODUCE WHAT THEY WERE
2 SUPPOSED TO PRODUCE -- WHAT WE, FIRST OF ALL, REQUESTED IN
3 ELECTRONIC FORMAT AND A SPREADSHEET-TYPE DOCUMENT AS ORDERED
4 BY JUDGE MATZ, WHICH IS A SPREADSHEET THAT'S SEARCHABLE. A
5 SPREADSHEET IS SEARCHABLE AND SORTABLE.

6 WHAT THEY GAVE US WAS PAGES LIKE PAGE 1 OF HIS
7 HANDOUT, WHICH ARE BARELY READABLE. THEY TOOK IT AND THEY
8 BROKE IT UP INTO OVER A THOUSAND PIECES, THIS SPREADSHEET.
9 AND THEN THEY MADE -- PURPOSEFULLY MADE IT SO THAT WE COULD
10 NOT SEARCH IT JUST TO MAKE IT DIFFICULT FOR US TO LITIGATE
11 THE CASE, TO IMPOSE SUMMARY JUDGMENT MOTIONS AND SO ON.

12 NOW, IF YOU LOOK AT THIS EMAIL, YOUR HONOR, EVEN IF
13 IT DOES APPLY TO THE LOGS, WHICH I DON'T THINK IT DID, IT
14 SPECIFICALLY SAYS:

15 "IT IS ACCEPTABLE FOR GOOGLE TO PRODUCE DOCUMENTS
16 IN THAT FORMAT AS LONG AS THEY ARE EASILY READABLE
17 AND SEARCHABLE." OKAY?

18 AND THEY WERE NOT PRODUCED -- CLEARLY, THEY WERE
19 NOT PRODUCED IN THAT FORMAT.

20 AND WHETHER -- BOTH MR. -- AND MS. KASSABIAN
21 TESTIFIED THAT THESE DOCUMENTS WERE PRODUCED IN TIFF FORMAT.

22 I THINK -- WOULD YOU ASK HER, YOUR HONOR, IF THEY
23 NOW ADMIT THAT THEY WERE NOT PRODUCED IN TIFF FORMAT; THEY
24 WERE PRODUCED IN JPG FORMAT, SO WE CAN GET A CLEAR ANSWER ON
25 THAT.

1 THE COURT: SURE.

2 MS. KASSABIAN: YOUR HONOR, ON MAY 1ST, 2008 ALL OF
3 THE DMCA LOG DOCUMENTS THAT WERE PRODUCED WERE PRODUCED IN
4 TIFF FORMAT. ON AUGUST 29TH, 2008 GOOGLE SUPPLEMENTED ITS
5 PRODUCTION. THOSE WERE ALSO ALL IN TIFF FORMAT. THOSE ARE
6 BOTH -- THESE WERE ALL BOTH BLACK AND WHITE DOCUMENT
7 COLLECTIONS.

8 AND A FEW OF THE DOCUMENTS ON MAY 1ST -- THAT WERE
9 PRODUCED ON MAY 1ST OF 2008, AND A FEW OF THE DOCUMENTS THAT
10 WERE PRODUCED ON SEPTEMBER 12TH, 2008 ARE MAINTAINED BY
11 GOOGLE IN COLOR. WE THOUGHT IT WOULD BE MUCH MORE USABLE TO
12 PRODUCE THEM IN COLOR FOR PERFECT 10 AND WHOEVER ELSE IS
13 REVIEWING THESE DOCUMENTS BECAUSE I THINK THERE'S SOME COLOR
14 CODING OR THE COLOR -- THE COLORS TO THE DOCUMENT HELP
15 UNDERSTAND THE CONTENT OF THE DOCUMENT.

16 WELL, COLOR DOCUMENTS DON'T PRODUCE WELL IN TIFF.
17 SO, AS A COURTESY, WE PRODUCED THE COLOR DOCUMENTS IN
18 SEARCHABLE J-PEG FORMAT BECAUSE J-PEG IS A BETTER MEDIUM FOR
19 COLOR DOCUMENTS. AGAIN, THERE'S NO DISCOVERY ORDER THAT SAYS
20 WHAT FILE FORMAT WE HAD TO PRODUCE THESE IN.

21 BUT WE PRODUCED THE BLACK AND WHITE DOCUMENTS ALL
22 IN SINGLE-PAGE TIFF. AND THE COLOR DOCUMENTS WE PRODUCED IN
23 SEARCHABLE J-PEG BECAUSE THAT FORMAT IS BETTER ABLE TO HANDLE
24 COLOR.

25 MR. MAUSNER: OKAY. AND IS IT GOOGLE'S POSITION

1 THAT THEY DID HAVE TO BE PRODUCED IN SEARCHABLE FORMAT?

2 MS. KASSABIAN: I'M NOT SURE IF THIS IS AN
3 APPROPRIATE INTERROGATION.

4 BUT THERE'S NO COURT ORDER OF ANY KIND REQUIRING
5 THAT EITHER PARTY PRODUCE SEARCHABLE DOCUMENTS. GOOGLE
6 ALWAYS HAS PRODUCED FULLY OCR, SEARCHABLE, SINGLE-PAGE TIFF
7 DOCUMENTS WITH LOAD FILES. WE ALWAYS HAVE. THAT'S STANDARD.
8 AND THAT'S HOW WE DO -- PRODUCE ALL THE DOCUMENTS IN THIS
9 CASE. I BELIEVE THAT'S HOW AMAZON PRODUCES ITS DOCUMENTS.
10 THAT'S PROBABLY HOW MICROSOFT PRODUCES ITS DOCUMENTS. IT'S
11 STANDARD LITIGATION FORMAT.

12 YOU CAN'T --

13 THE COURT: OCR MEANS WHAT?

14 MS. KASSABIAN: OPTICAL CHARACTER RECOGNITION.

15 AND, SO, IN PROCESSING THESE DOCUMENTS FOR
16 PRODUCTION, LOAD FILES ARE CREATED THAT ALLOW -- AND, YOU
17 KNOW, I'M NOT AN EXPERT IN THIS, BUT THE LOAD FILES ALLOW --
18 THE DOCUMENTS ARE OCR'D ON OUR END. AND WHEN YOU LOAD THE
19 DOCUMENT ALONG WITH THE LOAD FILES, IT MAKES THEM SEARCHABLE
20 BECAUSE THEY HAVE BEEN PROCESSED WITH OPTICAL CHARACTER
21 RECOGNITION TECHNOLOGY ON OUR END.

22 THERE'S NO COURT ORDER THAT REQUIRES THAT, YOUR
23 HONOR. BUT WE'VE DONE THAT.

24 MR. MAUSNER: AND DOES GOOGLE AGREE THAT ALL OF THE
25 BLOGGER IN THE ADSENSE SHEETS WERE PRODUCED IN JPG FORMAT NOT

1 IN TIFF FORMAT?

2 MS. KASSABIAN: AS I --

3 THE COURT: I CAN'T BELIEVE YOU'RE HAVING THIS
4 COLLOQUY.

5 MS. KASSABIAN: I CAN'T EITHER, YOUR HONOR.

6 MR. MAUSNER: WE CAN'T --

7 MS. KASSABIAN: I CAN'T EITHER.

8 MR. MAUSNER: WE CAN'T GET ANSWERS TO THIS. BUT
9 WE'LL SHOW YOU. YEAH, DO THEY CONCEDE THAT.

10 WELL, CAN I ASK --

11 THE COURT: ALL RIGHT. I'LL ALLOW -- I'LL ALLOW
12 JUST ONE MORE QUESTION. GO AHEAD.

13 MR. MAUSNER: OKAY.

14 MS. KASSABIAN: AS I JUST EXPLAINED, ALL OF THE
15 COLOR SPREADSHEETS WERE PRODUCED IN J-PEG, AND THE BLACK AND
16 WHITE VERSIONS ARE IN TIFF.

17 MR. MAUSNER: OKAY. CAN I DO THE DEMONSTRATION
18 NOW, YOUR HONOR. BECAUSE WE WANT TO SHOW THAT THESE -- THAT
19 EVERY PAGE OF THE BLOGGER SHEETS AND THE ADSENSE SHEETS WERE
20 PRODUCED IN JPG AND WERE NOT SEARCHABLE. AND SOME OF THEM
21 ARE NOT EVEN READABLE.

22 THE COURT: ALL RIGHT. YOU CAN GIVE A TWO- TO
23 THREE-MINUTE DEMONSTRATION OF THE SAMPLE.

24 MR. MAUSNER: THANK YOU, YOUR HONOR.

25 MS. KASSABIAN: AND, YOUR HONOR, I MEAN, I THINK

1 THIS WHOLE EXERCISE IS A GIANT WASTE OF TIME. I THINK YOUR
2 HONOR UNDERSTANDS THAT THERE'S BEEN NO COURT ORDER REQUIRING
3 ANYTHING. SO THIS PRESENTATION IS IRRELEVANT.

4 IF IT'S JUST TWO OR THREE MINUTES, THAT'S FINE.
5 BUT I'D RATHER NOT WASTE OUR TIME OR THE COURT'S TIME GOING
6 THROUGH THIS EXERCISE FOR LONGER THAN THAT.

7 MR. MAUSNER: PAGE 1 OF HANDOUT 1, AS WELL AS
8 WHAT'S UP ON THE SCREEN, IS THE FIRST PAGE OF GOOGLE'S REPEAT
9 INFRINGER TRACKING SHEETS, WHICH I'LL REFER TO AS THE BLOGGER
10 SHEETS. THIS IS IN JPG FORMAT EXACTLY AS IT WAS PRODUCED TO
11 US.

12 AS YOU CAN SEE, AND AS MELANIE WILL DEMONSTRATE,
13 THIS IS NOT SEARCHABLE BY DOING A CONTROL-F FUNCTION.

14 MR. JANSEN: YOUR HONOR, I'M SORRY. COULD YOU ASK
15 DR. ZADA TO TURN THE SCREEN BACK SO WE CAN ALSO SEE IT.

16 THE COURT: ALL RIGHT.

17 MR. JANSEN: HE JUST NEEDS TO MOVE IT TOWARDS YOU.

18 MS. KASSABIAN: AND I ALSO HAVE A QUESTION FOR MR.
19 MAUSNER.

20 ARE YOU REPRESENTING THAT THIS VERSION THAT YOU'RE
21 USING HERE CAME FROM THE DISK, THE PRODUCTION DISK, THAT WE
22 SENT YOU?

23 MR. MAUSNER: YES, THE FIRST PAGE OF THAT DID.
24 YES.

25 MS. KASSABIAN: SO, IT DIDN'T COME --

1 MR. MAUSNER: EVERYTHING DID, IN FACT.

2 MS. KASSABIAN: SO, IT DIDN'T COME FROM EXHIBIT 2
3 TO CHANTEL'S DECLARATION LIKE IT SAYS HERE, EXHIBIT II.

4 MR. MAUSNER: OH. THE FIRST PAGE IS FROM THE DISK.

5 MS. KASSABIAN: SO, JUST TO BE CLEAR, YOUR HONOR,
6 THIS IS NOT THE FORMAT OF THE DOCUMENT THAT GOOGLE PRODUCED
7 TO PERFECT 10.

8 THE COURT: GREAT.

9 MS. KASSABIAN: THIS IS A PDF FORMAT THAT WAS
10 SUBMITTED --

11 MR. MAUSNER: NO, NO, NO. WE'RE NOT --

12 THE COURT: STOP IT. STOP IT. THIS IS NOT GOING
13 TO DETERIORATE. ALL RIGHT.

14 MR. MAUSNER: MAY I CLARIFY?

15 THE COURT: WELL, THEY'RE SAYING THIS IS NOT THE
16 FORMAT THAT WAS PRODUCED TO YOU.

17 MR. MAUSNER: NO. NO. MAY I CLARIFY, YOUR HONOR.

18 THE FIRST PAGE OF THE HANDOUT IS THE FORMAT THAT IT
19 WAS PRODUCED IN ON THE DISK.

20 MS. KASSABIAN: AND THEN I'D JUST LIKE TO ASK THEN
21 WHY IT SAYS HERE ON THIS FIRST PAGE, "THIS IS TAKEN FROM
22 EXHIBIT II TO THE DECLARATION OF CHANTEL POOVALA.

23 MS. POBLETE: IT'S THERE ON THE SECOND PAGE.

24 MR. MAUSNER: IT DOESN'T SAY THAT ON THE FIRST PAGE

25 --

1 MS. KASSABIAN: OKAY.

2 MR. MAUSNER: IT'S ONLY SAID ON THE SECOND PAGE.

3 MS. KASSABIAN: OKAY. SO, THE SECOND PAGE IS NOT
4 FROM THE PRODUCTION VERSION.

5 MR. MAUSNER: RIGHT. AND I'LL EXPLAIN WHAT IT IS
6 AS WE GO ALONG. OKAY.

7 THE COURT: ALL RIGHT.

8 MR. MAUSNER: OKAY.

9 THE COURT: AND WE'RE GOING ALONG QUICKLY AT THIS
10 POINT.

11 MR. MAUSNER: YES.

12 SO, THERE'S NO FUNCTION TO DIRECTLY SEARCH THE JPG
13 FILE ITSELF.

14 NOW, PAGE 2 OF THE HANDOUT IS A BLOWUP OF WHAT IS
15 ON PAGE 1. AND IT IS AN ADOBE DOCUMENT. WE TURNED IT INTO
16 AN ADOBE DOCUMENT SO IT COULD BE BLOWN UP AND SO THAT CHECK
17 MARKS COULD BE PLACED ON IT. THERE ARE TWO CHECK MARKS BY
18 TWO OF THE URLS ON PAGE 2.

19 AS MS. KASSABIAN SAID, GOOGLE ALSO PROVIDED OCR
20 FILES, WHICH ARE TEXT FILES THAT ARE SUPPOSED TO MATCH THE
21 VISIBLE TEXT IN THE DOCUMENT. WHEN THE OCR FILE HAS TEXT
22 THAT MATCHES THE TEXT IN THE UNDERLYING FILE, THE DOCUMENT IS
23 SEARCHABLE. WHEN THERE'S A SIGNIFICANT DIFFERENCE BETWEEN
24 THE TEXT APPEARING IN THE DOCUMENT AND THE OCR FILE PROVIDED
25 BY GOOGLE, THE DOCUMENT IS NOT SEARCHABLE.

1 PAGE 3 OF THE HANDOUT IS WHAT GOOGLE PROVIDED TO
2 PERFECT 10 AS PART OF THE OCR TEXT FOR PAGE 2. THE FIRST
3 HIGHLIGHTED URL ON PAGE 3 CORRESPONDS TO THE FIRST CHECKED
4 URL ON PAGE 2. THE SECOND HIGHLIGHTED URL ON PAGE 3
5 CORRESPONDS TO THE SECOND CHECKED URL ON PAGE 2.

6 IF YOUR HONOR COMPARES PAGES 2 AND 3, YOU WILL SEE
7 THAT THE OCR TEXT PROVIDED BY GOOGLE HAS LEFT OUT ALL OF THE
8 URLS LISTED BETWEEN THE FIRST AND SECOND CHECKED URLS ON PAGE
9 2.

10 FURTHERMORE, THE TEXT BETWEEN THE URLS ON PAGE 3 IS
11 GARBLED. THIS MEANS THAT PAGE 2, WHICH IS THE BLOWUP OF PAGE
12 1 OF GOOGLE'S BLOGGER SHEETS, IS NOT SEARCHABLE EVEN IF IT IS
13 PROCESSED USING OCR SOFTWARE. SO, BASICALLY A GARBLED OCR
14 TEXT FILE MEANS THE VISIBLE TYPE ON THE PAGE IS TOO SMALL OR
15 UNCLEAR TO BE RECOGNIZED BY THE OCR PROGRAM.

16 SO, WHAT WOULD HAPPEN IS YOU COULD SEARCH WHAT IS
17 HIGHLIGHTED IN YELLOW ON PAGE 3, BUT YOU COULDN'T SEARCH
18 ANYTHING THAT DIDN'T SHOW UP IN THE OCR FILE, WHICH IS THE
19 VAST MAJORITY OF WHAT IS ON PAGES 1 AND 2.

20 SO, THIS IS NOT SEARCHABLE AT ALL. IF YOU PUT IN
21 ANY OF THE URLS THAT ARE UNDERLINED ON PAGE 1, IT WON'T TURN
22 UP IN A SEARCH. AND IT MAKES IT VIRTUALLY IMPOSSIBLE TO WORK
23 WITH THIS TO SHOW -- TO FIND HOW MANY TIMES A URL APPEARS IN
24 THESE SHEETS.

25 THE COURT: ALL RIGHT. I UNDERSTAND.

1 MR. MAUSNER: OKAY.

2 THE COURT: I ACTUALLY UNDERSTAND.

3 ALL RIGHT. NOW, WHAT'S THE RESPONSE?

4 MS. KASSABIAN: WELL, THESE DOCUMENTS ARE
5 MEANINGLESS. I HAVE NO IDEA THE ACCURACY OF ANY OF THESE
6 PRINTOUTS. I DIDN'T BRING A LOAD-FILE EXPERT WITH ME HERE
7 TODAY.

8 WHAT I WILL SAY IS THAT AT NO TIME IN THE PAST YEAR
9 AND A HALF HAS PERFECT 10 EVER BOTHERED TO PICK UP THE PHONE
10 AND --

11 THE COURT: THAT WAS NEXT QUESTION.

12 MS. KASSABIAN: -- SAY, RACHEL, YOU KNOW WHAT, A
13 COUPLE OF THE LOAD FILES IN YOUR PRODUCTION SEEM TO BE
14 GARBLED. CAN YOU PLEASE CHECK YOUR RECORDS AND PRODUCE THOSE
15 PAGES AGAIN.

16 THE COURT: THAT WAS MY QUESTION.

17 MS. KASSABIAN: NOT ONCE.

18 MR. MAUSNER: WE HAVE REPEATEDLY SAID TO THEM,
19 WHERE IS THE SPREADSHEET. WE WANT A SPREADSHEET. WE WANT A
20 SEARCHABLE AND A SORTABLE SPREADSHEET.

21 MS. KASSABIAN: AND THAT'S FALSE. NEVER ONCE HAS
22 PERFECT 10 EVER PICKED UP THE PHONE, CALLED ME AND SAID --

23 THE COURT: ALL RIGHT.

24 MS. KASSABIAN: -- I WOULD LIKE A SORTABLE VERSION
25 OF WHAT YOU PRODUCED.

1 THE COURT: ALL RIGHT. AND I'M ASSUMING THERE IS
2 SOMEONE AT GOOGLE WHO COULD INSTRUCT OR ASSIST, I SHOULD SAY,
3 MR. MAUSNER IN DOING WHAT P-10 WANTS TO DO WITH THESE
4 DOCUMENTS.

5 MS. KASSABIAN: THEY'VE ALREADY DONE IT. DR. ZADA
6 SUBMITTED A DECLARATION SAYING THAT HE USED SOME SOFTWARE TO
7 CONVERT OUR TIFF FILES TO SOME OTHER FORMAT AND RE-CREATE A
8 SEARCHABLE -- THEY ALREADY HAVE IT, YOUR HONOR. THERE'S NO
9 POINT TO THIS WHOLE DISCUSSION. THEY'VE ALREADY --

10 THE COURT: WELL, BUT --

11 MS. KASSABIAN: RATHER THAN ASKING US, THEY JUST
12 DID IT THEMSELVES.

13 THE COURT: BUT TO THE EXTENT THAT THEY MAY NOT BE
14 ABLE TO SEARCH THESE SPREADSHEETS -- OR THIS SPREADSHEET, I'M
15 ASSUMING THERE IS SOMEONE WHO CAN INSTRUCT THEM HOW TO DO SO.

16 MR. MAUSNER: YOUR HONOR, IF WHAT YOU'RE GOING TO
17 DO IS SAY PRODUCE MORE, WHY DON'T THEY JUST PRODUCE THE
18 SPREADSHEET AS IT EXISTS AT GOOGLE, WHICH IS THE ENTIRE
19 SPREADSHEET, NOT BROKEN UP, IN XCEL FORMAT THE WAY THEY KEEP
20 IT. BECAUSE THEN WE CAN SEARCH IT. WE CAN SORT IT. WE CAN
21 DO WHATEVER HAS TO BE DONE WITH IT.

22 MS. KASSABIAN: AND THIS IS A PERFECT EXAMPLE OF
23 WHY THE MEET AND CONFER RULES ARE IN PLACE, YOUR HONOR.
24 NEVER ONCE IN THE PAST 20 MONTHS HAS MR. MAUSNER EVER MADE
25 THAT REQUEST OF ME. I WOULD HAVE BEEN HAPPY TO CONSIDER IT.

1 INSTEAD, WHAT HE DID IS HE AGREED TO A TIFF
2 PRODUCTION. WE SPENT THOUSANDS OF DOLLARS CREATING THAT TIFF
3 PRODUCTION. WE PRODUCED IT. RADIO SILENCE FOR A YEAR AND A
4 HALF. THEN PERFECT 10 WAKES UP IN NOVEMBER AND DECIDES IT'S
5 NOT HAPPY WITH ITS OPPOSITION TO GOOGLE'S DMCA MOTIONS AND
6 FILES THIS SANCTIONS MOTION COMPLAINING ABOUT THINGS THAT IT
7 NEVER RAISED WITH US IN MEET AND CONFER.

8 MR. MAUSNER: IT'S NOT EVEN IN TIFF. THEY'VE
9 ADMITTED THAT IT'S NOT IN TIFF. AND SHE KEEPS GOING BACK TO
10 STATEMENTS SHE MADE IN THE DECLARATION WHICH CLEARLY ARE NOT
11 TRUE. IT IS NOT IN TIFF.

12 AND WE HAVE REPEATEDLY, REPEATEDLY ASKED THEM FOR
13 -- WHERE'S THE LOG. WHERE'S THE LOG. OKAY. WE SHOULD HAVE
14 GOTTEN THIS IN SPREADSHEET FORMAT THE WAY IT EXISTS AT
15 GOOGLE.

16 MS. KASSABIAN: AND, AGAIN, YOUR HONOR, THEY NEVER
17 ASKED FOR IT. THEY AGREED TO A DIFFERENT FORMAT. AND WHEN
18 WE PRODUCED SUPPLEMENTAL PRODUCTIONS IN AUGUST AND IN
19 SEPTEMBER OF 2008, THEY NEVER ONCE OBJECTED TO ANY OF THOSE
20 OR COMPLAINED ABOUT ANY OF THIS.

21 THEY RESPONDED TO OUR DMCA MOTIONS WITH THE
22 DOCUMENTS THEY HAD, WHICH WERE FULLY TEXT SEARCHABLE,
23 SINGLE-PAGE TIFFS AND J-PEGS WITH LOAD FILES. THERE'S NO
24 PREJUDICE HERE. NONE.

25 THEY DON'T NEED GOOGLE TO EXPLAIN HOW TO USE TIFF

1 -- SINGE-PAGE TIFF FILES. THEY JUST NEED A TECHNICIAN.
2 PRESUMABLY DR. ZADA, WHO CLAIMS TO BE A COMPUTER EXPERT,
3 KNOWS ALL ABOUT TIFF FILES. IN HIS DECLARATION HE SAYS HE'S
4 ALREADY TAKEN THESE DOCUMENTS AND CONVERTED THEM TO SOME
5 OTHER FORMAT.

6 BUT WHAT WE PRODUCED WAS FULLY SEARCHABLE, YOUR
7 HONOR, EVEN THOUGH THERE WAS NO ORDER THAT WE DO THAT.

8 THE COURT: ALL RIGHT.

9 MS. KASSABIAN: AND YOU CAN SEE THAT THEY'RE
10 SEARCHING THESE DOCUMENTS AND THESE VARIOUS EXHIBITS THAT
11 THEY'VE PRODUCED.

12 MR. MAUSNER: YOUR HONOR, THEY WERE ORDERED TO
13 PRODUCE A SPREADSHEET. NOW, WHY DID THEY TAKE THE
14 SPREADSHEET -- I KNOW YOU DON'T WANT TO DO A LOT OF
15 QUESTIONS, BUT COULD YOU ASK HER HOW ARE THESE SPREADSHEETS
16 KEPT AT GOOGLE. ARE THEY MICROSOFT XCEL FILES? HOW ARE THEY
17 KEPT AT GOOGLE?

18 AND THEN THE QUESTION IS, WHY DID THEY TAKE THAT
19 VERY SIMPLE DOCUMENT, AND INSTEAD OF GIVING IT TO US, BREAK
20 IT UP INTO PIECES AND MAKE IT UNSEARCHABLE. AND THEY'RE NOT
21 TIFF. THEY'RE J-PEG. THEY'RE COMPLETELY UNSEARCHABLE. WHY
22 DID THEY DO THAT.

23 AND, YOUR HONOR, COULD YOU ASK THEM WHAT FORMAT
24 IT'S KEPT IN SO WE KNOW THAT, SO WE CAN AT LEAST MOVE ON FROM
25 THAT?

1 THE COURT: ARE YOU ABLE TO ANSWER THOSE QUESTIONS?

2 MS. KASSABIAN: YOUR HONOR, OF COURSE, THOSE ARE
3 SPREADSHEETS. I DON'T KNOW WHICH TYPE OF SPREADSHEET
4 SOFTWARE IS USED.

5 BUT THE POINT IS, THERE'S A REASON WHY SINGLE-PAGE
6 TIFFS ARE STANDARD FORMAT FOR MODERN LITIGATION. IT IS THE
7 ONLY WAY TO SAFELY REDACT DOCUMENTS FOR PRIVILEGE. OUR
8 SINGLE-PAGE TIFF -- WE SPENT AN EXORBITANT SUM OF MONEY
9 PROCESSING AND PRODUCING THESE IN SINGLE-PAGE TIFF, WHICH
10 ALLOWS FOR REDACTION OF PRIVILEGED INFORMATION. RIGHT.
11 NATIVE FILES DON'T. THAT'S WHY PARTIES IN MODERN LITIGATION
12 DON'T EXCHANGE DOCUMENTS IN NATIVE FORMAT.

13 AND JUST TO MAKE SURE THAT WE WOULDN'T RUN INTO
14 THIS PROBLEM, WE SPECIFICALLY TOLD PERFECT 10 BEFORE WE DID
15 IT THAT THAT'S WHAT WE WERE GOING TO DO. AND THEY DIDN'T
16 RAISE A STINK UNTIL NOW.

17 THE COURT: ALL RIGHT. IS THERE ANYTHING ELSE ON
18 OTHER ISSUES CONTAINED WITHIN THIS MOTION THAT EITHER SIDE
19 WISHES TO BE HEARD ON?

20 MR. MAUSNER: JUST --

21 THE COURT: YES.

22 MR. MAUSNER: JUST GOING BACK TO THE LOGS, THEY
23 STILL HAVEN'T ANSWERED THE FACT THAT THERE ARE MANY, MANY
24 URLS IN NOTICES. THEY DON'T SHOW UP ON THE LOGS. THEY
25 DIDN'T PRODUCE THE NOTICES TO US. THEY DIDN'T PRODUCE

1 ANYTHING.

2 THE ONLY WAY WE FOUND THEM WAS THE R.I.A.A. SAYS
3 THEY'VE BEEN SENDING THESE TO THEM. THE M.P.A.A. SAYS
4 THEY'VE BEEN SENDING TO THEM. WE JUST FOUND OUT ABOUT THAT
5 RIGHT ABOUT THE TIME THAT WE FILED THE MOTION. WE DIDN'T
6 EVEN KNOW THIS BECAUSE THEY DIDN'T PRODUCE IT.

7 THERE ARE NOTICES ON CHILLING EFFECTS THAT DON'T
8 SHOW UP IN THE LOGS AND DON'T SHOW UP -- WE DIDN'T GET THE
9 ACTUAL NOTICES AND WE DIDN'T GET THE LOGS.

10 THE TERMINATION NOTICES THEY NEVER PRODUCED. YOU
11 ORDERED THEM TO PRODUCE ALL TERMINATION NOTICES. WHERE ARE
12 ALL OF THESE THINGS. THERE ARE MANY, MANY THINGS THAT WE'RE
13 FINDING OUT FROM OTHER SOURCES THAT WERE NEVER PRODUCED TO
14 US.

15 AND ALL OF THE ORDERS SAY, "ALL." AND THEY SHOULD
16 BE ON THE LOGS. WE ASSUMED EVERYTHING WOULD BE ON LOGS. AND
17 WE HAVEN'T GOTTEN THOSE IN ANY FORMAT FROM GOOGLE.

18 THE COURT: OKAY.

19 MR. MAUSNER: SO, WE DON'T KNOW -- THERE COULD BE
20 --

21 THE COURT: TERMINATION NOTICES. AND WHAT WERE THE
22 OTHER CATEGORIES?

23 MR. MAUSNER: DMCA NOTICES, TERMINATION NOTICES,
24 CORRESPONDENCE WITH WEBMASTERS.

25 DR. ZADA: YOUR HONOR, IF YOU DON'T MIND MY

1 INTERRUPTING.

2 THE COURT: I DO.

3 MS. KASSABIAN: CAN I RESPOND?

4 THE COURT: YES.

5 MS. KASSABIAN: OKAY. I'D LIKE TO START WITH THE
6 DMCA NOTICES. IF YOU LOOK AT THE SUPPOSED NOTICES THAT
7 PERFECT 10 ATTACHES THAT GOOGLE SUPPOSEDLY HASN'T PRODUCED,
8 THE VAST MAJORITY OF WHAT THEY ATTACHED TO THEIR SANCTIONS
9 MOTION ARE BLOGGER NOTICES, BLOGGER DMCA NOTICES. AT NO TIME
10 IN THE HISTORY OF THIS ENTIRE CASE HAS PERFECT 10 SERVED THE
11 DOCUMENT REQUEST ASKING FOR BLOGGER DMCA NOTICES, NOT EVEN TO
12 THIS DAY.

13 SECONDLY, A LOT OF THE NOTICES THEY ATTACH IN THEIR
14 SANCTIONS PAPERS ARE RECENT. LOOK AT THE DATES ON THEM.
15 THEY'RE 2008, 2009. GOOGLE HAS NOT RECENTLY SUPPLEMENTED ITS
16 PRODUCTION. EVERY COUPLE OF YEARS, YOU KNOW, THEY PULL
17 TOGETHER THE NEW DOCUMENTS THAT ARE CONSTANTLY BEING CREATED,
18 AS PEOPLE CONTINUE TO COMPLAIN ABOUT THINGS AND NOTICES COME
19 IN AND NOTICES ARE PROCESSED. AND WE SUPPLEMENT OUR
20 PRODUCTION.

21 THE COURT: WELL, BUT --

22 MS. KASSABIAN: SO THE FACT THAT SOME RECENT
23 NOTICES DON'T APPEAR ON SPREADSHEETS DATING IN 2008 IS
24 UNREMARKABLE.

25 THE COURT: GOING BACK TO THE DMCA BLOGGER NOTICES,

1 ARE THEY ARGUABLY CONTAINED IN THE EARLIER -- I THINK IT'S
2 DISCOVERY REQUEST -- 51?

3 MS. KASSABIAN: ABSOLUTELY NOT, YOUR HONOR.

4 THE COURT: WELL, NOW THAT BLOGGER HAS BEEN ADDED
5 TO THE CASE IN GOOD FAITH SHOULD YOU HAVE?

6 MS. KASSABIAN: ABSOLUTELY NOT. NOT EVEN PERFECT
7 10 -- PERFECT 10 HAS NEVER EVEN SENT ME A LETTER ASKING FOR
8 US TO TAKE A LOOK BACK AT ALL OF THE PAST REQUESTS AND
9 DUPLICATE THEM FOR BLOGGER. AND I THINK WE WOULD OBJECT TO
10 THAT. NOT EVERY ONE OF THOSE REQUESTS MIGHT BE RELEVANT TO
11 BLOGGER, MIGHT BE SUITABLE OR APPROPRIATE FOR BLOGGER. SO
12 ABSOLUTELY NOT.

13 THEY'RE ASKING YOUR HONOR TO SANCTION GOOGLE FOR
14 NOT PRODUCING DOCUMENTS REGARDING A 2006 ORDER PERTAINING TO
15 THE SERVICE THAT THEY DIDN'T SUE US ABOUT UNTIL 2008. THAT'S
16 ABSURD. IT TAKES TEN MINUTES TO GENERATE A SET OF DOCUMENT
17 REQUESTS RELATED TO BLOGGER. THEY'VE NEVER DONE IT. AND
18 THEY'RE CERTAINLY NOT ENTITLED TO SANCTIONS FOR GOOGLE NOT
19 HAVING VOLUNTARILY PRODUCED THOSE.

20 THE COURT: AND YOU'RE NOT ASKING -- MR. MAUSNER,
21 YOU'RE NOT ASKING FOR A 56(F) CONTINUANCE SO THAT YOU COULD
22 GET THOSE DOCUMENTS, CORRECT?

23 MR. MAUSNER: WELL, WE THINK THAT THOSE DOCUMENTS
24 SHOULD HAVE BEEN PRODUCED. THEY SHOULD HAVE, FIRST OF ALL,
25 BEEN PRODUCED EVEN BEFORE BLOGGER HOSTING WAS IN THE CASE

1 BECAUSE BLOGGER WAS ALWAYS IN THE CASE FOR SEARCH.

2 ALL OF THE NOTICES INDICATE SEARCHES AS WELL AS
3 HOSTING SO WHY -- YOU KNOW, WHY WOULDN'T THEY BE PRODUCED --

4 THE COURT: AND YOU GOT NONE IN BLOGGER SEARCH?

5 MR. MAUSNER: WE GOT SOME. WE GOT SOME, BUT WE
6 DIDN'T GET THEM ALL.

7 AND THEY REPRESENTED TWICE THAT ALL NOTICES HAD
8 BEEN PRODUCED. THEY REPRESENTED THAT IN RESPONSE TO REQUEST
9 NUMBER 196. AND THEY REPRESENTED IT IN -- BEFORE THIS COURT
10 IN OPPOSING THE MOTION TO COMPEL ON 196 BY SAYING, "ALL
11 NOTICES HAVE BEEN PRODUCED." THEY DIDN'T SAY, ALL NOTICES
12 EXCEPT BLOGGER. THEY SAID, "ALL NOTICES."

13 AND, THEN --

14 THE COURT: BUT ANSWER MY QUESTION.

15 MR. MAUSNER: YES.

16 THE COURT: YOU'RE NOT REQUESTING A 56(F)
17 CONTINUANCE. SO --

18 MR. MAUSNER: WE'RE WORKING -- I MEAN, IF THERE
19 AREN'T GOING TO BE THE SANCTIONS.

20 WE WERE -- WE'RE REQUESTING SOME TYPE OF
21 CONTINUANCE. I'M NOT SURE IF IT'S 56(F), BECAUSE WE ARE --
22 WE DON'T THINK WE HAVE TO PREPARE MORE DISCOVERY. WE THINK
23 THAT THEY JUST HAVE TO ANSWER DISCOVERY THAT'S ALREADY BEEN
24 PROPOUNDED AND ORDERED AT LEAST TWICE.

25 THIS IS NOT A SITUATION WHERE YOU'RE COMING IN AND

1 YOU'RE SAYING --

2 THE COURT: BUT YOU'VE NEVER EVEN FORMALLY
3 REQUESTED BLOGGER DMCA NOTICES ONCE BLOGGER HAS BEEN IN THE
4 CASE. AND YOU CERTAINLY HAVE NOT MOVED FOR THEM.

5 MR. MAUSNER: WELL, WE MOVED FOR ALL NOTICES. WE
6 ASKED FOR ALL NOTICES. WE MOVED FOR ALL NOTICES. AND THE
7 COURT ORDERED ALL NOTICES. AND THEY SAID THAT THEY HAD
8 PRODUCED ALL NOTICES. OKAY.

9 THE COURT: AFTER BLOGGER WAS IN THE CASE? AFTER
10 BLOGGER --

11 MS. KASSABIAN: NO, YOUR HONOR.

12 THE COURT: THERE'S THE BLOGGER SEARCH AND THE
13 BLOGGER -- WHAT'S THE OTHER TERM?

14 MR. MAUSNER: WELL, THE OTHER TERM --

15 MS. KASSABIAN: THERE'S NOT BLOGGER SEARCH. AND HE
16 -- I DON'T KNOW WHAT HE'S TALKING ABOUT. THERE'S A SINGLE
17 BLOGGER SERVICE.

18 MR. MAUSNER: WELL, BUT SEARCH INCLUDES -- WELL,
19 WHEN YOU DO A SEARCH FOR THE NAME OF A PERFECT 10 MODEL, YOU
20 GET WEBSITES --

21 THE COURT: OKAY. YOU KNOW WHAT, TO MOVE THIS
22 ALONG --

23 MR. MAUSNER: OKAY.

24 THE COURT: -- I'M GOING TO SAY THAT -- AND YOU CAN
25 TELL, I'M VERY SKEPTICAL ABOUT P-10'S POSITION ON THIS

1 PARTICULAR MOTION.

2 AND IT SEEMS TO ME TO MOVE THINGS ON AND DO THINGS
3 FAIRLY THAT IF THERE'S GOING TO BE A RULE 56(F) MOTION, AND I
4 DON'T MEAN TO TALK YOU INTO ONE, BUT IF THERE'S GOING TO BE
5 ONE, THERE NEEDS TO BE A FORMAL MOTION. AND EITHER JUDGE
6 MATZ CAN SEND THAT TO ME, WHICH IS FINE, OR -- IT
7 APPROPRIATELY WOULD BE DECIDED BY HIM.

8 BUT I DON'T KNOW THAT I CAN SEGUE THIS MOTION INTO
9 A RULE 56(F) MOTION WHICH YOU MAY NOT EVEN WANT TO MAKE OR
10 MAY NOT EVEN NEED AND CERTAINLY HAVEN'T ASKED FOR.

11 MS. KASSABIAN: AND, YOUR HONOR, NOT ONLY HAS
12 PERFECT 10 NOT ASKED FOR IT, AT PAGE 24 OF THEIR REPLY BRIEF
13 THEY SAY, AND I QUOTE, WE ARE NOT SEEKING A CONTINUANCE --

14 THE COURT: I KNOW.

15 MS. KASSABIAN: -- UNDER RULE 56(F).

16 THE COURT: I KNOW.

17 MS. KASSABIAN: THE MADNESS HAS TO STOP AT SOME
18 POINT. THEY HAVE TO BE HELD TO THEIR REPRESENTATIONS. OKAY.
19 THEY ARE DISAVOWING A 56(F).

20 NOW, IF THEY WANT TO FILE ONE ANYWAY AND CONTRADICT
21 THEMSELVES, JUDGE MATZ CAN DECIDE WHETHER A 56(F) MOTION
22 FILED SEVEN MONTHS LATE IS APPROPRIATE. BUT THEY HAVEN'T
23 ASKED YOU FOR ONE.

24 THE COURT: NO. I'M NOT CONVERTING IT INTO ONE. I
25 AM JUST -- I GUESS, I'M -- I'M TAKEN ABACK BY THE FACT THAT

1 IF P-10 THOUGHT THAT THE PRIOR DISCOVERY ORDERS FOR DMCA
2 NOTICES ABSOLUTELY EMBRACED BLOGGER DMCA NOTICES THAT THAT
3 WOULDN'T HAVE BEEN THRASHED OUT COMPLETELY BEFORE THE HEARING
4 ON THIS MOTION.

5 MS. KASSABIAN: THEY NEVER RAISED IT.

6 MR. MAUSNER: WELL --

7 MS. KASSABIAN: AND CAN I ALSO SAY, YOUR HONOR,
8 THEY'VE NEVER ACTUALLY REQUESTED DMCA NOTICES. WHAT MR.
9 MAUSNER JUST SAID IS NOT CORRECT. THEY CAN'T POINT TO A
10 SINGLE OF THEIR DOCUMENT REQUESTS THAT SAY WE WANT DMCA --
11 THERE'S NOT ONE.

12 THE COURT: FOR BLOGGER.

13 MS. KASSABIAN: FOR ANY SERVICE. THEY HAVE NOT
14 SERVED THAT REQUEST. THEY HAVE ASKED FOR DMCA LOGS, DMCA
15 DOCUMENTS REFLECTING WHAT WAS PROCESSED. THEY HAVE NOT ONE
16 SINGLE DOCUMENT REQUEST THAT SAYS, PRODUCE YOUR DMCA NOTICES.

17 MR. MAUSNER: YOUR HONOR, THOUGH, WHAT HAPPENED WAS
18 WE ASKED FOR LOGS OR OTHER DOCUMENTS THAT WOULD CONTAIN
19 THAT. GOOGLE STATED, WE HAVE PRODUCED ALL NOTICES. THEY
20 STATED THAT TWICE.

21 AND AT THE TIME THEY MADE THOSE STATEMENTS, THEY
22 HAD PRODUCED SOME BLOGGER NOTICES. IT TURNS OUT THEY DIDN'T
23 PRODUCE THEM ALL, NOT ANY WAY NEAR ALL, BUT WHAT ARE WE
24 SUPPOSED TO THINK.

25 WE GET SOME BLOGGER NOTICES FROM THEM. WE GET TWO

1 STATEMENTS FROM THEM STATING WE HAVE PRODUCED ALL NOTICES.

2 THE COURT: UH-HUH.

3 MR. MAUSNER: SO WHY -- WE THOUGHT THEY PRODUCED
4 ALL BLOGGER NOTICES. THEY SAID THEY PRODUCED ALL NOTICES.
5 AND NOW WE FOUND OUT THEY HAVEN'T PRODUCED -- AND THEY'RE
6 ADMITTING IT, THEY HAVEN'T PRODUCED BLOGGER NOTICES -- OR
7 THEY HAVEN'T PRODUCED MOST OF THE BLOGGER NOTICES.

8 YOUR HONOR STATED THAT YOU WERE A LITTLE BIT
9 SKEPTICAL. COULD I ASK YOU WHY, YOUR HONOR, AND MAYBE WE CAN
10 EXPLAIN SOMETHING.

11 THE COURT: WELL, I THINK FROM THE CONTENT OF MY
12 QUESTIONS, I'M NOT SEEING THIS AS SERIOUS DISCOVERY ORDER
13 VIOLATIONS THAT WOULD RISE TO THE LEVEL OF EVIDENTIARY
14 SANCTIONS.

15 MR. MAUSNER: WELL, THAT THEY HAVEN'T PRODUCED
16 PROBABLY 90-SOMETHING PERCENT OF THE BLOGGER NOTICES OR THE
17 BLOGGER URLS. I THINK THEY'LL TELL YOU THAT THAT'S TRUE THAT
18 THEY HAVEN'T. THEY'VE ONLY PRODUCED --

19 THE COURT: BECAUSE THEY --

20 MR. MAUSNER: -- A VERY SMALL PROPORTION OF THEM.

21 THE COURT: BECAUSE THEY ARGUABLY HAVE NOT BEEN
22 REQUESTED.

23 MR. MAUSNER: WELL --

24 MS. KASSABIAN: THAT IS CORRECT, YOUR HONOR. NOT
25 ONE SINGLE OF PERFECT 10'S DOCUMENT REQUESTS ASK FOR ANY KIND

1 OF DMCA NOTICE AND CERTAINLY NONE OF PERFECT 10'S REQUESTS
2 ASK FOR BLOGGER DMCA NOTICES.

3 IF THEY HAVE SUCH A REQUEST, I WOULD LOVE THEM TO
4 POINT IT OUT RIGHT NOW BECAUSE IT DOESN'T EXIST.

5 MR. MAUSNER: OKAY. IN 51, WE ASKED FOR LOGS OR
6 DOCUMENTS THAT WOULD SHOW EVERY -- I'M TRYING TO RECALL IT.
7 I DON'T HAVE IT IN FRONT OF ME -- THAT WOULD SHOW EVERY
8 NOTICE THAT THEY RECEIVED.

9 IN RESPONSE TO THAT, THEY STATED, WE'RE PRODUCING
10 ALL NOTICES. AND THEN TWICE AFTER THAT, THEY REPRESENTED
11 THAT THEY HAD PRODUCED ALL NOTICES.

12 THE COURT: RIGHT. AND THIS WAS IN --

13 MS. KASSABIAN: IN 2005.

14 THE COURT: RULE 51 WAS ORDERED IN 2005?

15 MS. KASSABIAN: THIS WAS 2005.

16 THE COURT: THE BLOGGER --

17 MR. MAUSNER: AND IN THOSE NOTICES --

18 THE COURT: JUST A MINUTE. JUST A MINUTE. WE WANT
19 THE RECORD BECAUSE THIS -- I WANT THE RECORD CLEAR.

20 SO THAT WAS IN 2005. JUDGE MATZ AMENDED MY ORDER
21 IN 2005 OR 6, I GUESS?

22 DR. ZADA: '08.

23 MS. KASSABIAN: I THINK PERFECT 10 IS TALKING ABOUT

24 --

25 MR. MAUSNER: IT WAS .08.

1 MS. KASSABIAN: -- THE 2006 ORDER RIGHT NOW.

2 THE COURT: OKAY.

3 MS. KASSABIAN: IN 2005, PERFECT 10 ASKED FOR DMCA
4 LOG-TYPE DOCUMENTS.

5 THE COURT: OKAY.

6 MS. KASSABIAN: AT THAT TIME, GOOGLE SAID, YOU KNOW
7 WHAT, INSTEAD OF THAT WE'LL GIVE YOU THE NOTICES. SO NOTICES
8 WERE PRODUCED --

9 THE COURT: OKAY.

10 MS. KASSABIAN: -- PERTAINING TO WHAT WAS AT ISSUE
11 IN THE CASE AT THAT TIME.

12 THE COURT: AND BLOGGER WAS ADDED IN '08.

13 MS. KASSABIAN: 2008.

14 THE COURT: OKAY.

15 MR. MAUSNER: BUT IN THOSE -- IN THOSE NOTICES THAT
16 WERE PRODUCED, THEY --

17 (MR. MAUSNER AND DR. ZADA CONFERRING.)

18 DR. ZADA: YOUR HONOR, WE HAVE GIVEN GOOGLE BLOGGER
19 NOTICES IN '05. WE DIDN'T KNOW THAT IT WAS BLOGGER. WE
20 ASKED FOR ALL NOTICES, YOUR HONOR, BECAUSE IN DISCOVERY, AS
21 I'M SURE YOU'RE AWARE, WHEN YOU ASK FOR ALL NOTICES, YOU
22 ASSUME YOU'RE GOING TO FIND OUT WHAT PROGRAMS THEY HAVE. AND
23 SO WE ASKED FOR ALL NOTICES. IF THEY HAD PROVIDED US WITH
24 THE BLOGGER NOTICES, WE WOULD HAVE FOUND OUT ABOUT BLOGGER.

25 THEY ALSO DENIED IN R-PHASE THAT THEY STORED

1 FULL-SIZE IMAGES ON THEIR SERVERS, WHICH, IN FACT, THEY DID.
2 THEY'VE ALSO DENIED IN R-PHASE THAT THEY DID NOT MAINTAIN A
3 DMCA LOG, BUT WE'VE NEVER RECEIVED A DMCA LOG.

4 SO SINCE THIS CASE HAS STARTED IN APRIL OF '05,
5 YOUR HONOR, THEY SAID THEY WOULD RESPOND --

6 THE COURT: '04.

7 DR. ZADA: -- AND PRODUCE DOCUMENTS IN RESPONSE TO
8 51, AND THEY NEVER DID.

9 AND AS A RESULT, WHEN WE FILED OUR MOTION FOR
10 PRELIMINARY INJUNCTION, WE DID NOT HAVE ANY BLOGGER NOTICES,
11 WHICH THEY KNEW ABOUT BECAUSE WE HAD SENT THEM DMCA NOTICES
12 IN FEBRUARY OF '05 ABOUT BLOGGER.

13 THE COURT: WELL, THE CASE WAS FILED IN FEBRUARY OF
14 '04. I DON'T THINK THE BLOGGER SERVICE EVEN EXISTED THEN.

15 MR. MAUSNER: IT WAS -- I THINK IT WAS NOVEMBER
16 '04.

17 DR. ZADA: BUT, YOUR HONOR --

18 MR. MAUSNER: I MAY BE WRONG ABOUT THAT. I'M NOT
19 SURE.

20 DR. ZADA: -- WE HAVE ACCUSED GOOGLE OF DIRECTLY
21 INFRINGING FULL-SIZE PERFECT 10 IMAGES SINCE THE CASE BEGAN.
22 AND THE DIRECT INFRINGEMENT OF THE FULL-SIZE IMAGES OCCURS ON
23 BLOGGER. WE ACCUSED THEM OF THAT.

24 THEY CAME UP WITH THIS STRANGE ARGUMENT THAT
25 BECAUSE THEY WERE INLINE LINKING TO THINGS THAT WEREN'T ON

1 THEIR SERVERS, THAT THEY DID NOT HAVE ANY DIRECT INFRINGEMENT
2 LIABILITY. WHEN THEY WERE MAKING THE ARGUMENT THAT THEY WERE
3 INLINE LINKING TO FULL-SIZE IMAGES THAT WERE NOT ON THEIR
4 SERVERS, THEY CONCEALED THE FACT THAT SOME OF THESE IMAGES
5 WERE ON THEIR SERVERS BECAUSE THEY WERE HOSTED BY GOOGLE.

6 AND, SO, THE PROBLEM IN THIS CASE WAS THAT EVER
7 SINCE THE VERY BEGINNING, GOOGLE HAS INTENTIONALLY CONCEALED
8 THAT THEY STORED FULL-SIZE PERFECT 10 IMAGES ON THEIR
9 SERVERS.

10 AND THE DISCOVERY REQUESTS THAT WE MADE ASKING FOR
11 ALL NOTICES, IF THEY HAD BEEN PROPERLY RESPONDED TO WOULD
12 HAVE REVEALED THE BLOGGER NOTICES, WHICH ARE PART OF SEARCH
13 AS WELL AS HOSTING.

14 THE COURT: I FULLY UNDERSTAND WHAT YOU'RE SAYING.
15 SO, LET ME FULLY UNDERSTAND THE RESPONSE.

16 MS. KASSABIAN: PERFECT 10 HAS NOT SERVED A SINGLE
17 DOCUMENT REQUEST ASKING FOR DMCA NOTICES. PERIOD. FULL
18 STOP. THEY NEVER ASKED. IT'S NEVER BEEN ORDERED.

19 GOOGLE HAS VOLUNTARILY PRODUCED LOTS OF DMCA
20 NOTICES. IN 2006 GOOGLE PRODUCED NOTICES IN LIEU OF
21 PRODUCING A LOG. THAT SHOULD HAVE BEEN ENOUGH. BUT PERFECT
22 10 CAME BACK AND SAID, YOU KNOW WHAT, WE WANT YOUR LOGS TOO.
23 SO, THAT LED TO THE 2008 DISCOVERY ORDER THAT REQUIRED GOOGLE
24 TO PRODUCE ITS LOGS, WHICH GOOGLE DID.

25 THERE IS NOT ONE SINGLE DOCUMENT REQUEST EVER

1 ASKING FOR GOOGLE TO PRODUCE NOTICES OF ANY KIND, LET ALONE
2 BLOGGER NOTICES. IF IT WAS SO IMPORTANT, PERFECT 10 SHOULD
3 HAVE SERVED A DISCOVERY REQUEST ON IT. THEY NEVER DID.
4 NOWHERE IN THEIR PAPERS WILL YOU FIND A SINGLE DOCUMENT
5 REQUEST THAT HAS THE PHRASE "DMCA NOTICES" IN IT. IT WAS NOT
6 REQUESTED.

7 THE COURT: SO, COULD SOMEONE READ ME 51, REQUEST
8 51. AND WHAT WAS THE OTHER ONE? -- 200 SOMETHING?

9 MS. KASSABIAN: YOUR HONOR, IT SAYS:

10 "51. GOOGLE'S DMCA LOG FOR THE YEARS 2001
11 THROUGH 2005, OR ANY OTHER DOCUMENTS SUFFICIENT
12 TO IDENTIFY ALL ENTITIES, OTHER THAN PERFECT 10,
13 FROM WHOM GOOGLE HAS RECEIVED A NOTICE REGARDING
14 AN INTELLECTUAL PROPERTY VIOLATION, THE URLS
15 COMPLAINED ABOUT IN EACH NOTICE FROM EACH SUCH
16 ENTITY, AND THE DATES OF THE COMPLAINTS FOR EACH
17 SUCH URL."

18 THESE DOCUMENTS --

19 DR. ZADA: THAT COVERS BLOGGER, YOUR HONOR.

20 MS. KASSABIAN: "THESE DOCUMENTS SHOULD BE PROVIDED
21 IN ELECTRONIC FORMAT IF AVAILABLE."

22 THEY ASKED FOR THE LOG.

23 THE COURT: AND WHAT WAS THE SECOND REQUEST, THE
24 LATER REQUEST?

25 MS. KASSABIAN: THE LOG. IN 2008 THEY SERVED

1 REQUEST 196 ASKING FOR GOOGLE'S DMCA LOG. THAT'S IT.

2 GOOGLE'S DMCA LOG. THAT'S THE WHOLE THING, AS I RECALL.

3 MR. MAUSNER: AND, THEN, TWICE GOOGLE REPRESENTED
4 WE HAVE PRODUCED ALL NOTICES.

5 DR. ZADA: YOUR HONOR, GOOGLE ONLY HAS ONE DMCA
6 AGENT. ONE DMCA AGENT. ALL OF THE NOTICES REGARDING
7 INTELLECTUAL PROPERTY VIOLATIONS GO TO THAT ONE DMCA AGENT.
8 WE ASKED FOR ALL NOTICES, DOCUMENTS SUFFICIENT --

9 THE COURT: WHERE DID YOU ASK FOR THAT?

10 DR. ZADA: 51. WE ASKED FOR --

11 THE COURT: SO, THAT'S YOUR --

12 DR. ZADA: -- DOCUMENTS SUFFICIENT TO IDENTIFY ALL
13 PARTIES THAT HAVE --

14 THE COURT: OR A LOG.

15 DR. ZADA: PARDON? OR A LOG. THEY DIDN'T GIVE US
16 EITHER OF THEM.

17 THE COURT: BUT DID THEY REPRESENT THAT THEY GAVE
18 YOU --

19 MR. MAUSNER: YES.

20 THE COURT: -- ALL THE NOTICES.

21 DR. ZADA: SEVERAL TIMES, YOUR HONOR. THEY WERE
22 ORDERED BY THE --

23 MR. MAUSNER: LET ME --

24 MS. KASSABIAN: I'M JUST GOING TO SHORT-CIRCUIT
25 THIS. IN 2006 GOOGLE SAID WE'LL PRODUCE THE NOTICES INSTEAD

1 OF THE LOG. HERE YOU GO.

2 DR. ZADA: NO, YOU NEVER SAID THAT.

3 MR. MAUSNER: NO, YOUR HONOR. LET ME --

4 THE COURT: I DO RECALL THAT. THAT'S WHY I'VE BEEN
5 CONFUSED.

6 MS. KASSABIAN: AND, AGAIN, THAT'S NOT AN ORDER.
7 THAT WAS A VOLUNTARY PRODUCTION THAT SATISFIED THAT REQUEST.

8 THE COURT: WELL, WAS IT MISLEADING?

9 DR. ZADA: BUT, YOUR HONOR --

10 MS. KASSABIAN: WE WILL PRODUCE THE NOTICES.

11 THE COURT: ALL OF THEM?

12 MS. KASSABIAN: IN 2006 --

13 DR. ZADA: NO.

14 MS. KASSABIAN: -- IT DID A REASONABLE SEARCH AND
15 PRODUCED EVERYTHING IT COULD FIND AT THAT TIME. BLOGGER
16 WASN'T PART OF THE CASE UNTIL 2008.

17 DR. ZADA: YOUR HONOR --

18 MS. KASSABIAN: GOOGLE HAD NO REASON TO --

19 THE COURT: WELL, HERE'S WHAT I'M COMING BACK TO.
20 THE MORE I HEAR THE LESS COMFORTABLE I WOULD BE TODAY
21 RECOMMENDING VERY SERIOUS -- EXTREMELY SERIOUS SANCTIONS --
22 EVIDENTIARY SANCTIONS.

23 TO MY SIMPLE MIND IT SEEMS LIKE THIS. THAT THERE
24 IS A DISPUTE -- I WON'T CHARACTERIZE IT AS A GOOD FAITH OR A
25 BAD FAITH DISPUTE. THERE IS A DISPUTE AS TO WHAT THE IMPACT,

1 IF ANY, WAS BY ADDING BLOGGER INTO THE CASE IN 2008 AND WHAT
2 GOOGLE'S DISCOVERY RESPONSE OR SUPPLEMENTS TO THEIR PRIOR
3 RESPONSES SHOULD HAVE BEEN IN LIGHT OF A NUMBER OF FACTORS,
4 INCLUDING WHETHER PERFECT 10 ADVISED GOOGLE THAT AS A RESULT
5 OF BLOGGER NOW BEING FORMALLY IN THE CASE THEY SHOULD GO BACK
6 AND SUPPLEMENT ALL PRIOR DISCOVERY ORDERS. SO, THAT'S WHERE
7 THE DISPUTE IS.

8 AND IT SEEMS TO ME THAT ALL I REALLY NEED TO DO IS
9 RULE ON THE EVIDENTIARY SANCTIONS MOTION, WHICH AT THIS POINT
10 OBVIOUSLY I WOULD DENY. AND I WANT TO HEAR A LITTLE BIT MORE
11 BEFORE I -- AND I DIDN'T INTEND TO RULE FROM THE BENCH ON ANY
12 OF THESE, BUT THAT MAY BE WHAT HAPPENS.

13 AND I WANT TO HEAR MORE, BY THE WAY, FROM GOOGLE
14 REGARDING THE TERMINATION NOTICES AND THE CORRESPONDENCE WITH
15 WEBMASTERS THAT MR. MAUSNER MENTIONED.

16 BUT THAT AT THAT POINT EITHER -- IF THAT'S THE REAL
17 DISPUTE, THEN, P-10 CAN EITHER PROCEED WITH A RULE 56(F)
18 MOTION OR NOT. BECAUSE I DON'T KNOW WHETHER THEY BELIEVE
19 THAT ADDITIONAL DISCOVERY COULD DEFEAT THE DMCA MOTION ON THE
20 MERITS.

21 DR. ZADA: YOUR HONOR, CAN I MAKE A POINT.

22 BASICALLY OUR POSITION IS THAT EVER SINCE THE CASE
23 STARTED BACK IN APRIL OF '05, GOOGLE HAS MADE A SEQUENCE OF
24 --

25 THE COURT: APRIL '04.

1 DR. ZADA: WELL, THE CASE WAS FILED IN NOVEMBER OF
2 '04. BUT EVER SINCE GOOGLE'S FIRST DISCOVERY RESPONSE IN
3 APRIL 18, '05 WHERE THEY PROMISED TO PROVIDE US WITH
4 DOCUMENTS RESPONSIVE TO RULE 51 AND, THEN, DID NOT DO SO, DID
5 NOT PROVIDE US WITH ANY NOTICES REGARDING BLOGGER, DID NOT
6 PROVIDE US WITH NOTICES REGARDING ANYTHING, DID NOT PROVIDE
7 US WITH HANDWRITTEN LOGS FROM 2002 AND 2003, WHICH WOULD HAVE
8 EMBARRASSED THEM IF WE HAD THEM BECAUSE WE WOULD HAVE SHOWED
9 THEM TO JUDGE MATZ AND TO THE NINTH CIRCUIT, AND IT WOULD
10 HAVE BEEN OBVIOUS THAT GOOGLE HAS NOT MADE ANY ATTEMPT TO
11 PROCESS DMCA NOTICES.

12 EVER SINCE THAT TIME THEY HAVE VIOLATED A SEQUENCE
13 OF COURT ORDERS BY YOUR HONOR AND BY JUDGE MATZ. THEY WERE
14 ORDERED TO PRODUCE ALL NOTICES OF TERMINATION. THEY DID NOT
15 PRODUCE ANY NOTICES OF TERMINATION FOR ANY THIRD PARTY. THEY
16 ONLY PRODUCED A FEW RELATED TO PERFECT 10 NOTICES.

17 THEY WERE ORDERED TO PRODUCE A DMCA LOG AS A
18 SPREADSHEET. THEY HAD A SPREADSHEET. YOU HAVE TO DO THIS
19 WITH A SPREADSHEET. THEY DID NOT PRODUCE IT. THEY BROKE IT
20 UP INTO THOUSANDS OF PIECES.

21 THEY HAVE VIOLATED SO MANY ORDERS. IF YOUR HONOR
22 DOES NOT SANCTION GOOGLE IN ANY WAY, THERE WOULD BE NO POINT
23 IN DISCOVERY IN THIS CASE. WE WILL NOT BOTHER --

24 THE COURT: ALL RIGHT.

25 DR. ZADA: -- TO TAKE ANY DISCOVERY BECAUSE THEY

1 WILL JUST DISOBEY ORDERS --

2 THE COURT: DR. ZADA --

3 DR. ZADA: -- AND WE WILL NEVER GET ANYTHING. I'M
4 SORRY.

5 THE COURT: DR. ZADA, UNLESS I INVITE YOU TO ARGUE,
6 THAT'S ALL I'M HEARING FROM YOU TODAY, AT LEAST ON THIS
7 MOTION.

8 MS. KASSABIAN: I WOULD APPRECIATE THAT, YOUR
9 HONOR.

10 THE COURT: ALL RIGHT. MS. KASSABIAN, COULD YOU
11 ADDRESS THE TERMINATION NOTICES AND THE WEB MASTER
12 CORRESPONDENCE.

13 MR. MAUSNER: YOUR HONOR, BEFORE WE GO ON TO THAT,
14 MAY WE JUST SHOW YOU WHERE GOOGLE REPRESENTED THAT IT HAD
15 PRODUCED ALL NOTICES. WE'LL PUT THAT UP ON THE SCREEN.
16 OKAY.

17 THE COURT: AND WHAT'S THE DATE OF THIS?

18 MR. MAUSNER: OKAY.

19 MS. KASSABIAN: CAN I HAVE A CITATION TO WHAT IN
20 YOUR PAPERS IS THIS ATTACHED AS AN EXHIBIT?

21 MR. MAUSNER: "GOOGLE'S RESPONSES AND OBJECTIONS TO
22 PLAINTIFF'S FIFTH SET" --

23 MS. KASSABIAN: WHAT EXHIBIT IS THIS IN IN YOUR
24 FILING?

25 MR. MAUSNER: HERE'S A --

1 (PAUSE IN PROCEEDINGS.)

2 MS. KASSABIAN: YOUR HONOR, COULD HE -- COULD I
3 PLEASE HAVE A CITATION SO I CAN KNOW WHERE TO LOOK.

4 THE COURT: ALL RIGHT. HE'S LOOKING -- HE'S
5 LOOKING FOR IT.

6 MS. KASSABIAN: OKAY. I CAN'T -- BECAUSE I CAN'T
7 SEE THAT.

8 THE COURT: OKAY.

9 MR. MAUSNER: IT'S EXHIBIT F TO THE DECLARATION OF
10 JEFFREY M. MAUSNER IN SUPPORT OF PERFECT 10'S MOTION FOR
11 EVIDENTIARY AND OTHER SANCTIONS.

12 MS. KASSABIAN: THANK YOU.

13 MR. MAUSNER: OKAY.

14 THE COURT: OKAY. PAGE WHAT?

15 MR. MAUSNER: LET'S SEE --

16 THE COURT: WELL, IT'S RESPONSE TO 196.

17 MR. MAUSNER: 196, RIGHT.

18 THE COURT: NOT PAGE BUT RESPONSE TO REQUEST 196.

19 MR. MAUSNER: IT SAYS:

20 "GOOGLE ALREADY PRODUCED DOCUMENTS RESPONSIVE
21 TO REQUEST NUMBER 51 CONSTITUTING ALL NOTICES
22 RECEIVED BY GOOGLE REGARDING INTELLECTUAL
23 PROPERTY VIOLATION."

24 THE COURT: OKAY. AND THAT RESPONSE WAS DATED
25 WHAT?

1 MS. KASSABIAN: FEBRUARY 2007.

2 THE COURT: OKAY. AND LET ME ASK, DID THAT REFER
3 TO ALL NOTICES RECEIVED BY GOOGLE FROM ANY SOURCE REGARDING
4 INTELLECTUAL PROPERTY VIOLATIONS FOR A CERTAIN TIME PERIOD?

5 MS. KASSABIAN: THIS IS A WRITTEN RESPONSE TO AN
6 OBJECTION TO A DUPLICATIVE DOCUMENT REQUEST. IN 2007 -- OR
7 LATE 2006, PERFECT 10 SERVED A REDUNDANT DOCUMENT REQUEST,
8 AGAIN ASKING FOR DMCA LOGS EVEN THOUGH THE PARTIES HAD
9 ALREADY HASHED THAT OUT THE PRIOR YEAR. AND GOOGLE SAID, WE
10 OBJECT TO THIS. WE'VE ALREADY GIVEN YOU NOTICES.

11 AND PERFECT 10 KNOWS WHAT IT HAD BECAUSE THOSE
12 PRODUCTIONS HAPPENED IN 2006. SO, GOOGLE DID A REASONABLE
13 SEARCH AND GATHERED THE DMCA NOTICES THAT WERE IMPLICATED BY
14 THE CASE AT THAT TIME, I.E., THERE WAS NO BLOGGER INVOLVED AT
15 THIS POINT IN THE CASE. NOBODY WAS TALKING ABOUT BLOGGER.

16 THE COURT: I UNDERSTAND.

17 MS. KASSABIAN: AND PRODUCED THOSE NOTICES.

18 NOW, ULTIMATELY, GOOGLE LOST THIS FIGHT. GOOGLE'S
19 OBJECTIONS TO REQUEST NUMBER 196 WERE OVERRULED LEADING TO
20 YOUR HONOR'S FEBRUARY 22ND, 2008 ORDER THAT GOOGLE PRODUCE
21 ITS DMCA LOGS. AND GOOGLE DID, SATISFYING THIS REQUEST.
22 THERE'S NO DISCOVERY ORDER VIOLATION IMPLICATED BY ANY OF
23 THIS.

24 IF I COULD -- COULD I ADDRESS YOUR HONOR'S --

25 MR. MAUSNER: AND THERE'S ANOTHER PLACE, YOUR

1 HONOR, IN A JOINT STIPULATION WHERE THEY STATE THAT THEY
2 PRODUCED ALL NOTICES.

3 THE COURT: IN WHAT YEAR ARE YOU REFERRING TO?

4 MR. MAUSNER: IT WAS ALSO BEFORE THE AMENDMENT.

5 THE COURT: OKAY. ALL RIGHT.

6 OKAY. NOW, IF YOU'D ADDRESS THE ISSUES I WANTED TO
7 HEAR ABOUT.

8 MS. KASSABIAN: THANK YOU.

9 JUST TO CLOSE THE LOOP ON THIS BLOGGER DISCOVERY
10 ISSUE. WHEN PERFECT 10 WAS TRYING TO CONVINCING JUDGE MATZ TO
11 ALLOW IT TO AMEND ITS COMPLAINT IN 2008 AND ADD BLOGGER, I
12 SPECIFICALLY SAID, ONE OF THE PROBLEMS WE'RE GOING TO HAVE,
13 YOUR HONOR, IS THAT WE'RE GOING TO HAVE TO PRODUCE A WHOLE --
14 GO THROUGH A WHOLE BUNCH OF DISCOVERY REQUESTS ON THIS NEW
15 SERVICE.

16 AND I SAID:

17 "ALL OF THE DISCOVERY THAT'S ALREADY BEEN
18 SERVED REGARDING SEARCH, I ANTICIPATE THAT
19 PERFECT 10 IS GOING TO ATTEMPT TO SERVE
20 PARALLEL DISCOVERY AIMED AT BLOGGER INSTEAD
21 OF AIMED AT GOOGLE'S SEARCH SERVICE."

22 THE COURT SAYS:

23 "JUDGE MATZ: YOU ARE GOING TO DO THAT, AREN'T YOU,
24 MR. MAUSNER?"

25 "MR. MAUSNER: WELL, I DON'T KNOW IF IT'S

1 GOING TO BE EXACTLY THE SAME. WE ARE GOING TO
2 TAKE DISCOVERY REGARDING BLOGGER, BUT IT
3 DEPENDS ON WHAT WE NEED OBVIOUSLY.

4 "THE COURT: WELL, BUT IT'S GOING TO BE ALONG
5 THE SAME LINES AS THE DISCOVERY YOU HAVE BEEN
6 CONDUCTING ALL ALONG, RIGHT? IT'S JUST ABOUT
7 BLOGGER.

8 "MR. MAUSNER: I DON'T KNOW THAT THE DISCOVERY
9 REQUESTS WOULD BE THE SAME. BUT, YES, YES, WE
10 ARE GOING TO TAKE DISCOVERY ABOUT BLOGGER
11 CERTAINLY."

12 THE COURT: HAS ANY BEEN TAKEN?

13 MS. KASSABIAN: NO.

14 THE COURT: BECAUSE NONE HAS COME TO MY ATTENTION.

15 MS. KASSABIAN: NO. IN SEPTEMBER OF 2009, ABOUT
16 FOUR MONTHS AGO, PERFECT 10 SERVED SOME NEW DOCUMENT
17 REQUESTS, AND I THINK A FEW OF THEM MENTIONED BLOGGER. BUT
18 NONE OF THEM ASKED FOR BLOGGER DMCA NOTICES OR A BLOGGER DMCA
19 LOG.

20 THE COURT: OKAY.

21 MR. MAUSNER: AND THE REASON WAS THEY SAID THAT
22 THEY HAD PRODUCED ALL NOTICES ALREADY.

23 THE COURT: WELL --

24 MR. MAUSNER: NOW WE FOUND OUT THAT'S NOT TRUE.

25 THE COURT: -- I DON'T KNOW IF I WOULD INTERPRET

1 THAT COLLOQUY THE SAME WAY.

2 ALL RIGHT.

3 MS. KASSABIAN: YOUR HONOR, ON THE TWO OTHER
4 ISSUES.

5 THE COURT: YES, SPEAK.

6 MS. KASSABIAN: IF I MAY APPROACH --

7 THE COURT: SURE.

8 MS. KASSABIAN: -- MR. LOVE MAY APPROACH.

9 WE HAVE IN OUR PAPERS, AS YOU KNOW, AND AS YOUR
10 HONOR REQUESTED, WE REPEATEDLY MAKE REFERENCE TO VARIOUS
11 BATES NUMBERS IN GOOGLE'S PRODUCTION WHERE RESPONSIVE
12 DOCUMENTS CAN BE FOUND TO REFUTE PERFECT 10'S CLAIMS THAT
13 GOOGLE DIDN'T PRODUCE THOSE DOCUMENTS.

14 SO, WHAT I'VE ASSEMBLED HERE, AND I'VE ALSO HANDED
15 PERFECT 10 A COURTESY COPY, IS JUST A COLLECTION OF SOME OF
16 THOSE DOCUMENTS, WHICH WERE KIND OF RATHER VOLUMINOUS TO
17 SUBMIT WITH THE BRIEFING. BUT IF YOUR HONOR HAS ANY
18 QUESTIONS WHATSOEVER ABOUT ANY OF THE REPRESENTATIONS IN ANY
19 OF THE PAPERS ABOUT WHAT DOCUMENTS GOOGLE PRODUCED IN
20 RESPONSE TO EACH OF THESE CATEGORIES, THIS COURTESY BINDER
21 SHOWS SAMPLE DOCUMENTS FOR EACH OF THE, I BELIEVE, SEVEN
22 CATEGORIES THAT PERFECT 10 ACCUSES.

23 (GOOGLE COUNSEL BRIEFLY CONFERRING.)

24 MS. KASSABIAN: CATEGORY I(C) IN YOUR BINDER, TAB
25 1(C) HAS SAMPLE TERMINATION NOTICES.

1 THE COURT: BUT ARE YOU REPRESENTING THAT ALL
2 TERMINATION NOTICES WERE PRODUCED?

3 MS. KASSABIAN: I'M REPRESENTING THAT GOOGLE DID A
4 REASONABLE SEARCH AND PRODUCED DOCUMENTS RESPONSIVE, WHICH IS
5 EXACTLY WHAT WAS REQUIRED.

6 THE COURT: OH, THAT WAS ONE OF THE DOCUMENTS
7 RESPONSIVE --

8 MS. KASSABIAN: YEAH, YEAH.

9 THE COURT: -- QUOTE, UNQUOTE. OKAY.

10 MS. KASSABIAN: JUDGE MATZ HAS SORT OF --

11 MR. MAUSNER: NO. NO, YOUR HONOR. THE ORDER WAS
12 ALL TERMINATION NOTICES. AND THEY HAVE ADMITTED THAT THEY
13 HAVE NOT PRODUCED BLOGGER TERMINATION NOTICES.

14 AND ANOTHER POINT --

15 THE COURT: ALL RIGHT. WAIT. WAIT A SECOND.

16 WILL SOMEONE READ ME REQUEST 26 AND 27 -- OR THE
17 ORDER, I GUESS.

18 MR. MAUSNER: THE ORDER.

19 THE COURT: THE ORDER ON 26 AND 27.

20 MR. JANSEN IS GETTING A HEADACHE I CAN TELL.

21 MR. MAUSNER: ANOTHER POINT, YOUR HONOR, IS
22 EVERYTHING THAT WE'VE SAID ABOUT BLOGGER ALSO APPLIES TO
23 ADSENSE. AND ADSENSE WAS SPECIFICALLY MENTIONED IN THE
24 COMPLAINT --

25 THE COURT: THE ORIGINAL COMPLAINT.

1 MR. MAUSNER: -- THE ORIGINAL COMPLAINT, THE FIRST
2 AMENDED COMPLAINT THAT WAS FILED WITHIN A COUPLE OF MONTHS OF
3 THAT. ADSENSE HAS ALWAYS BEEN IN THE CASE. EVERYTHING THAT
4 WE'VE SAID ABOUT THEM NOT PRODUCING NOTICES, ABOUT NOT
5 PRODUCING TERMINATION NOTICES APPLIES TO ADSENSE AS WELL.
6 AND THERE CAN BE NO QUESTION THAT ADSENSE HAS ALWAYS BEEN IN
7 THE CASE.

8 THE COURT: ALL RIGHT. WHAT WAS THE FINAL RULING
9 BY EITHER ME OR JUDGE MATZ ON 26 AND 27?

10 MR. MAUSNER: WE'RE GETTING THAT UP ON THE SCREEN
11 IN ONE SECOND, YOUR HONOR.

12 THE COURT: OKAY.

13 MS. KASSABIAN: I CAN READ IT IF YOU'D LIKE.

14 THE COURT: ALL RIGHT. WAS THIS MINE OR JUDGE
15 MATZ?

16 MS. KASSABIAN: THIS WAS YOURS.

17 THE COURT: OKAY.

18 MS. KASSABIAN: (READING.)

19 "GOOGLE IS ORDERED TO PRODUCE ALL DOCUMENTS
20 IN RESPONSE TO PERFECT 10'S REQUESTS FOR
21 PRODUCTION NUMBERS 26 AND 27, WHICH ARE
22 NOW COMBINED AND MODIFIED INTO ONE REQUEST AS
23 FOLLOWS:

24 "ALL NOTICES OF TERMINATION ISSUED BY GOOGLE
25 AS A RESULT OF ALLEGED INTELLECTUAL PROPERTY

1 VIOLATIONS."

2 AND IT SETS A PRODUCTION DATE. AND, THEN, I
3 BELIEVE THERE WAS A DEFINITION --

4 MR. NOLAN: YES, THE REQUESTS THEMSELVES, YOUR
5 HONOR, PERFECT 10 DEFINED CERTAIN TERMS -- GOOGLE-AFFILIATED
6 WEB SITES AND OTHERS THAT THEY USED IN THOSE REQUESTS, 26 AND
7 27. AND THAT DEFINITION SPECIFICALLY LIMITED IT TO GOOGLE
8 ADVERTISING PRODUCTS, SUCH AS ADWORDS AND ADSENSE.

9 THE COURT: ALL RIGHT. AND THE REPRESENTATION FROM
10 GOOGLE IS THAT EVERYTHING --

11 MS. KASSABIAN: THIS WAS, AGAIN, BACK IN 2006 --

12 THE COURT: YES.

13 MS. KASSABIAN: -- I BELIEVE.

14 THE COURT: YES.

15 MS. KASSABIAN: AND GOOGLE DID A REASONABLE SEARCH
16 AND PRODUCED WHAT IT FOUND. NOW, WE ARE CONSTANTLY
17 SUPPLEMENTING PRODUCTION. BUT FOR PERFECT 10 TO SAY THAT
18 GOOGLE DIDN'T PRODUCE BLOGGER-RELATED TERMINATION NOTICES --

19 THE COURT: WELL, IT'S THE SAME ARGUMENT AS --

20 MS. KASSABIAN: -- IT'S THE SAME ARGUMENT, YOUR
21 HONOR. BLOGGER WAS NOT REQUESTED.

22 THE COURT: OKAY.

23 MS. KASSABIAN: AND BEHIND TAB 1(C) YOU WILL SEE
24 SOME SAMPLE DOCUMENTS FROM OUR PRODUCTION. WE ASSUMED THE
25 COURT DIDN'T WANT A TRUCKLOAD OF DOCUMENTS SO WE CREATED THIS

1 HANDY BINDER.

2 THE COURT: YOU KNOW ME WELL.

3 MR. MAUSNER: YOUR HONOR.

4 THE COURT: YES?

5 MR. MAUSNER: IT'S UP ON THE SCREEN NOW.

6 THE COURT: OKAY.

7 MR. MAUSNER: IT SAYS:

8 "ALL NOTICES OF TERMINATION ISSUED BY GOOGLE
9 AS A RESULT OF ALLEGED INTELLECTUAL PROPERTY
10 VIOLATION."

11 THE COURT: OKAY.

12 MR. MAUSNER: OKAY. NOW, THEY ALSO -- THEY HAVE
13 NOT PRODUCED ALL ADSENSE TERMINATION NOTICES. OKAY. THEY
14 ADMIT THEY HAVEN'T PRODUCED ALL BLOGGER NOTICES --

15 THE COURT: WELL --

16 MR. MAUSNER: -- BUT THEY HAVE THIS EXCUSE --

17 THE COURT: BUT THEY'RE STILL PRODUCING THEM THEY
18 SAY.

19 MR. MAUSNER: WELL --

20 MS. KASSABIAN: PERFECT 10 HAS NO BASIS FOR THE
21 STATEMENT THAT IT'S MAKING RIGHT NOW.

22 MR. MAUSNER: WELL, IS SHE REPRESENTING THAT THEY
23 HAVE PRODUCED ALL ADSENSE NOTICES?

24 MS. KASSABIAN: I ALREADY MADE THIS REPRESENTATION
25 BACK IN 2006 AND PROBABLY IN SOME OF THE SUPPLEMENTAL

1 PRODUCTIONS. GOOGLE SEARCHED FOR RESPONSIVE DOCUMENTS AND
2 PRODUCED THEM AS THEY WERE FOUND AND AS THEY'VE BEEN CREATED.

3 I CANNOT SIT HERE -- GOOGLE IS A HUGE COMPANY. I
4 CANNOT SIT HERE AND SAY THERE'S NOT A SINGLE NOTICE SOMEWHERE
5 THAT MIGHT HAVE BEEN MISSED. BUT GOOGLE DID WHAT IT WAS
6 OBLIGED TO DO UNDER THE RULES, CONDUCTED A REASONABLE SEARCH.

7 PERFECT 10 ADMITS THAT MANY OF THESE DOCUMENTS HAVE
8 BEEN PRODUCED. IT SAYS, WE SPECULATE THAT THERE MUST BE MORE
9 THAT YOU DIDN'T PRODUCE.

10 WELL, MY FIRST QUESTION IS -- OR MY FIRST STATEMENT
11 IS THEY HAVE NO BASIS FOR THAT SPECULATION.

12 AND MY SECOND STATEMENT IS THIS IS A DOCUMENT
13 PRODUCTION THAT'S CONTINUALLY BEING UPDATED AS NEW DOCUMENTS
14 ARE CREATED.

15 AND MY THIRD STATEMENT IS WHAT IS THE PREJUDICE.
16 PERFECT 10 HAD DOZENS OF THESE -- I THINK WE SUBMITTED DOZENS
17 OF EXAMPLES. THEY HAD THESE DOCUMENTS WITH THEM WHEN THEY
18 OPPOSED OUR DMCA MOTIONS. THEY ALSO HAD THE GOOGLE DMCA
19 PROCESSING SPREADSHEETS, I.E., THE DMCA LOGS WHICH HAVE A
20 COLUMN LISTING TERMINATIONS. WHAT IS THE HARM. THEY HAVE
21 THAT EVIDENCE. THEY USED IT IN OPPOSITION TO THE DMCA
22 MOTIONS. WHAT'S THE PREJUDICE. YOU HAVE TO SHOW PREJUDICE
23 WHEN YOU'RE TRYING TO OBTAIN EVIDENTIARY SANCTIONS BY AN
24 AFFIRMATIVE DEFENSE.

25 THE COURT: LET ME JUST HEAR FROM MS. KASSABIAN

1 ABOUT THE LAST CATEGORY THAT I HAVE, WHICH IS CORRESPONDENCE
2 OF WEB MASTERS.

3 AND, THEN, I WOULD LIKE YOU TO ADDRESS EXACTLY WHAT
4 SHE JUST MENTIONED, PREJUDICE.

5 MS. KASSABIAN: THAT WOULD BE TAB 1(D) IN YOUR
6 BINDER, YOUR HONOR. SAME THING. I BELIEVE --

7 WHICH NUMBER, REQUEST NUMBER --

8 MR. NOLAN: 29.

9 THE COURT: OKAY. I SEE IT.

10 MS. KASSABIAN: THIS IS REQUEST NUMBER 29, I
11 BELIEVE. AND I THINK THIS WAS THE ORDER THAT THE COURT
12 SPECIFICALLY LIMITED TO -- GOOGLE HAD TO PRODUCE
13 COMMUNICATIONS WITH CERTAIN ENUMERATED WEB SITES THAT PERFECT
14 10 HAD LISTED IN ITS REQUESTS LIMITED BY -- ONLY WITH RESPECT
15 TO INFORMATION THAT GOOGLE HAD ACCESS TO REGARDING WHO OWNED
16 THOSE WEB SITES. THAT'S WRITTEN INTO THE ORDER. AND THAT IS
17 EXACTLY WHAT GOOGLE DID.

18 PERFECT 10 EVEN POINTS TO SOME OF THESE
19 COMMUNICATIONS IN ITS OWN PAPERS AND SAYS, WELL, WE THINK
20 THERE SHOULD BE MORE.

21 IT'S PURE SPECULATION. THE DOCUMENTS HAVE BEEN
22 PRODUCED. AND, AGAIN, SUBJECT TO SUPPLEMENTATION AS ALL OF
23 THIS IS.

24 THE COURT: ALL RIGHT. MR. MAUSNER.

25 WELL, LET ME SAY THIS. THIS IS THE FINAL ROUND OF

1 ARGUMENT ON THIS MOTION. IF MS. KASSABIAN WHEN SHE'S READY
2 HAS ANYTHING ELSE SHE WOULD LIKE TO SAY, SHE MAY SAY SO.
3 THEN, I'LL HEAR FROM MR. MAUSNER. AND THEN THE MOTION IS
4 TAKEN UNDER SUBMISSION.

5 SO, LET ME ASK MS. KASSABIAN. ANYTHING ELSE YOU
6 WANT TO SAY GENERALLY ABOUT THIS MOTION?

7 MS. KASSABIAN: WELL, YOUR HONOR, I DON'T THINK THE
8 STANDARD HAS BEEN MET. IF YOUR HONOR HAS ANY QUESTIONS ABOUT
9 WHETHER GOOGLE HAS PRODUCED CERTAIN CATEGORIES OF DOCUMENTS,
10 I WANT TO ANSWER THOSE FOR YOU --

11 THE COURT: OKAY.

12 MS. KASSABIAN: -- IF THERE'S ANY DOUBTS IN YOUR
13 MIND.

14 BUT ONE THING THAT'S IMPORTANT TO NOTE IS THAT FOR
15 MANY OF THESE CATEGORIES OF DOCUMENTS THEY'VE NEVER BEEN
16 REQUESTED. AND FOR THE CATEGORIES THAT HAVE BEEN REQUESTED,
17 WE'VE PRODUCED EVIDENCE THAT GOOGLE DID, IN FACT, MAKE THOSE
18 PRODUCTIONS.

19 SO, I DON'T WANT TO WASTE ANY MORE OF YOUR HONOR'S
20 TIME UNLESS THE COURT HAS ANY --

21 THE COURT: NO ONE IS WASTING MY TIME, BUT I --

22 MS. KASSABIAN: UNLESS YOUR HONOR HAS ANY SPECIFIC
23 QUESTIONS.

24 THE COURT: ALL RIGHT.

25 MR. MAUSNER.

1 MR. MAUSNER: NOW, FIRST OF ALL, AS TO WHETHER THE
2 DOCUMENTS WERE REQUESTED. WE ASKED FOR ALL.

3 NOW, THERE ARE THOUSANDS OF INFRINGING WEBSITES.
4 WE DIDN'T -- WHEN WE MADE A REQUEST FOR -- OR WHEN THEY
5 REPRESENTED THEY HAD PRODUCED ALL -- YOU KNOW, YOU DON'T
6 BREAK THESE DOWN BY CELEBSFANTASY.COM. YOU DON'T LIST ALL OF
7 THE INFRINGING WEBSITES.

8 AT THE TIME WE MADE THE REQUEST BLOGGER WAS JUST
9 ONE OF THOSE MANY WEBSITES BECAUSE WE DIDN'T KNOW THAT IT WAS
10 ALSO OWNED BY GOOGLE. THEY SHOULD HAVE PRODUCED IT AT THAT
11 TIME.

12 AND THEY DID PRODUCE SOME. THEY JUST DIDN'T
13 PRODUCE ALL. AND IT WAS TOTALLY MISLEADING TO US WHEN THEY
14 SAID WE PRODUCED THEM ALL.

15 ONCE THE ORDER GOES INTO PLACE THAT THE HOSTING IS
16 ADDED, THEN WHAT EXCUSE DO THEY HAVE FOR NOT UPDATING AND
17 PRODUCING THESE THINGS. THEY SHOULD --

18 THE COURT: ONE EXCUSE THEY WOULD ASSERT IS --
19 GOING BACK TO THE COLLOQUY BEFORE JUDGE MATZ -- IS THAT THERE
20 WAS NOTHING THERE. YOU HAD THE RIGHT TO STAND UP AND SAY,
21 WE'RE NOT GOING TO PRODUCE -- WE'RE NOT GOING TO SERVE ANY
22 MORE DISCOVERY. WE'RE GOING TO RELY ON THEM UPDATING ALL THE
23 PRIOR DISCOVERY NOW THAT BLOGGER IS IN THE CASE. AND THEY
24 WOULD HAVE SAID WHATEVER THEY WOULD HAVE SAID. SO --

25 MR. MAUSNER: WELL, I DIDN'T THINK OF THAT.

1 THE COURT: I'M NOT SAYING YOU WERE MISLEADING, BUT
2 I'M JUST SAYING THAT'S WHAT THE ARGUMENT WOULD BE.

3 MR. MAUSNER: WELL, I DIDN'T KNOW IF WE WERE GOING
4 TO PROPOUND DISCOVERY.

5 THE COURT: SO, WHAT IS THE PREJUDICE? DO YOU WANT
6 -- IS THERE SOMETHING ELSE THAT YOU NEED TO EFFECTIVELY
7 SUPPLEMENT YOUR OPPOSITION TO THE DMCA NOTICES. AND THERE IS
8 NO RULE 56(F) MOTION BEFORE ME, AND YOU HAVEN'T MADE IT
9 BEFORE JUDGE MATZ.

10 MR. MAUSNER: WELL, THE PREJUDICE IS WE DON'T KNOW
11 A LOT OF THINGS, AND WE HAVEN'T BEEN ABLE TO OPPOSE THE
12 SUMMARY JUDGMENT MOTIONS WITH THE DOCUMENTS THAT WE DON'T
13 HAVE. OKAY. WE DON'T KNOW HOW MANY DMCA NOTICES THERE HAVE
14 BEEN ALTOGETHER. WE DON'T KNOW HOW MANY COMPLAINING PARTIES
15 THERE HAVE BEEN. WE DON'T KNOW HOW MANY TERMINATION NOTICES
16 THERE HAVE BEEN. WE DON'T KNOW HOW MUCH CORRESPONDENCE
17 THERE'S BEEN BETWEEN GOOGLE AND THE INFRINGERS.

18 FOR EXAMPLE, THE CORRESPONDENCE THAT YOUR HONOR
19 ORDERED WAS WITH WEBMASTERS, THAT THEY HAD INFORMATION ABOUT
20 WHO THEY ARE. ANYONE WHO'S AN ADSENSE WEBMASTER THEY HAD
21 THAT INFORMATION BECAUSE THEY PAY THEM. THEY PAY THEM FOR
22 CLICKS ON THEIR WEBSITE. SO, THEY HAVE TO KNOW THE NAME --
23 THEY HAVE TO PROBABLY KNOW THE SOCIAL SECURITY NUMBER AND
24 WHERE TO SEND THE MONEY.

25 I'LL BET THAT THEY NEVER CHECKED WITH ACCOUNTING TO

1 GET THOSE RECORDS. THEY JUST SAID, SEARCH DOESN'T KNOW THIS.
2 SO, WE'RE NOT GOING TO GIVE YOU THIS.

3 THE COURT: LET ME ASK YOU THIS.

4 MR. MAUSNER: YOU'RE GOING --

5 THE COURT: AND I REALLY WANT A BRIEF ANSWER.

6 MR. MAUSNER: OKAY.

7 THE COURT: I HAVE NOT READ THE DMCA MOTIONS. NOT
8 SURPRISINGLY I DON'T THINK, BUT I HAVE NOT READ THE MOTIONS.
9 I HAVE SOME GUESS AS TO WHAT THEY MUST SAY. BUT WHAT
10 SPECIFIC ARGUMENTS IN THEIR MOTIONS COULD MORE DOCUMENTS HELP
11 YOU ADDRESS?

12 MR. MAUSNER: THERE ARE SEVERAL THINGS. THERE ARE
13 BASICALLY TWO GROUNDS ON WHICH WE'RE OPPOSING THE MOTIONS.

14 ONE IS THAT THEY DID NOT EXPEDITIOUSLY RESPOND TO
15 PERFECT 10'S NOTICES. IF WE HAD A FULL LOG FROM THEM SHOWING
16 -- WE KNOW WHEN THEY RECEIVED PERFECT 10'S NOTICES, BUT WE
17 DON'T KNOW WHEN OR IF THEY DISABLED ACCESS TO THE INFRINGING
18 MATERIAL. OKAY. SO, IF WE HAD A FULL LOG --

19 THE COURT: BUT WAIT A SECOND.

20 MR. MAUSNER: -- WE WOULD HAVE THAT.

21 THE COURT: WHY DO YOU NOT ONLY DISAVOW WANTING A
22 56(F) CONTINUANCE IN THIS MOTION, BUT HAVE FAILED TO MAKE A
23 SEPARATE MOTION TO JUDGE MATZ?

24 MR. MAUSNER: I DON'T KNOW THE ANSWER TO THIS LEGAL
25 --

1 THE COURT: YOU KNOW, HE'S NOT --

2 MR. MAUSNER: -- TO THIS LEGAL QUESTION, WHETHER IT
3 IS A 56(F) MOTION. IF YOUR POSITION IS --

4 THE COURT: THE POSITION IS THAT A 56(F) MOTION IS
5 MY SIDE NEEDS ADDITIONAL DISCOVERY IN ORDER TO FAIRLY OPPOSE
6 A SUMMARY JUDGMENT MOTION.

7 MR. MAUSNER: OKAY. WELL, OUR POSITION IS WE
8 PROPOUNDED THAT DISCOVERY. NOT ONLY DID WE PROPOUND IT, WE
9 ALSO -- WITH A LOT OF WORK, AS YOU KNOW, ON BOTH OF OUR
10 PARTS, WE GOT ORDERS NOT ONLY FROM YOU, FROM JUDGE MATZ,
11 ORDERING THEM TO PRODUCE THIS STUFF.

12 AND IT TURNS OUT -- AND WE FOUND OUT A LOT OF THIS
13 AFTER OUR --

14 THE COURT: BUT THEY HAVE TURNED OVER TERMINATION
15 NOTICES. THEY HAVE TURNED --

16 MR. MAUSNER: YOUR HONOR --

17 THE COURT: JUST A MINUTE. THEY HAVE TURNED OVER
18 CORRESPONDENCE WITH THE CERTAIN WEBMASTERS. THEY UNDERSTAND
19 THEIR DUTY IS CONTINUING UNTIL THE DAY OF TRIAL. BUT IF
20 THEY'RE NOT DOING IT FAST ENOUGH FOR YOU TO MEANINGFULLY
21 OPPOSE THEIR SUMMARY JUDGMENT MOTION, THEN, IT SEEMS TO ME
22 YOU NEED TO MAKE A RULE 56(F) MOTION.

23 MR. MAUSNER: OKAY. IF THAT'S -- IF THAT IS
24 COVERED UNDER RULE 56(F). MY UNDERSTANDING WAS 56(F) IS
25 YOU'VE GOT TO PROPOUND MORE DISCOVERY. IF IT'S ALREADY BEEN

1 PROPOUNDED AND ORDERED, IT WOULDN'T REALLY BE A 56(F). IT
2 WOULD BE WHAT WE DID, WHICH IS A SANCTIONS MOTION.

3 MAY I SAY ONE THING ABOUT THE TERMINATION NOTICES?

4 THE COURT: YES.

5 MR. MAUSNER: WE HAD A DEMONSTRATION HERE. AND IF
6 YOUR HONOR DOESN'T WANT THE DEMONSTRATION, WE WOULD JUST ASK
7 IF WE COULD SUBMIT THE DOCUMENTS LATER ON. THEY HAVE NOT
8 EVEN PRODUCED -- SHE SAID DOZENS. I DON'T THINK THEY'VE EVEN
9 PRODUCED A DOZEN OR TWO DOZEN TERMINATION NOTICES. MOST OF
10 THE STUFF THAT THEY HAVE IN THE BATES RANGE WHICH THEY JUST
11 IN THEIR SURREPLY -- THEIR SURREPLY WAS THE FIRST TIME THEY
12 EVER IDENTIFIED WHAT THEY SAID AT THEIR TERMINATION NOTICES.
13 MOST OF THE STUFF IN THERE ISN'T EVEN CLOSE TO TERMINATION
14 NOTICES. IT'S OUR NOTICES, THE GENERAL PRACTICES. THERE ARE
15 I WOULD SAY DEFINITELY LESS THAN TWO DOZEN, PROBABLY LESS
16 THAN A DOZEN TERMINATION NOTICES IN THERE.

17 THE COURT: WELL --

18 MR. MAUSNER: THEY SHOULD BE PRECLUDED FROM
19 CLAIMING THAT THEY TERMINATED ANYONE THAT'S NOT IN THEIR
20 TERMINATION NOTICES -- IF THEY'RE SAYING THAT THAT'S
21 EVERYTHING.

22 WE'RE A SMALL -- I'M A SOLE PRACTITIONER. PERFECT
23 10 IS A SMALL COMPANY. WE'RE UP AGAINST THIS BEHEMOTH WITH
24 AT LEAST SEVERAL LAWYERS THAT I KNOW ABOUT AT GOOGLE,
25 PROBABLY MORE BEHIND THE SCENES. AND, YOUR HONOR, THEY'RE

1 JUST KILLING US WITH THIS STUFF, AND WE CAN'T DEAL WITH IT.

2 THE COURT: WELL, LET ME --

3 MR. MAUSNER: THIS IS SO UNFAIR.

4 THE COURT: LET ME COMMENT ON SOMETHING THAT YOU
5 SAID A MINUTE AGO CORRECTLY. AND THAT IS THAT -- I THINK
6 YOU'RE RIGHT, THAT RULE 56(F) IS IN THE SITUATION WHERE YOU
7 WANT TO PROPOUND NEW DISCOVERY TO OPPOSE THE MERITS OF A
8 SUMMARY JUDGMENT MOTION. IT'S JUST IN THE CONTEXT OF THIS
9 CASE IT'S MURKIER THAN THAT.

10 WHAT I FIND APPALLING ON BOTH SIDES IS THAT THIS
11 ISSUE OF WHETHER THE PRIOR DISCOVERY REQUESTS SHOULD HAVE
12 BEEN SUPPLEMENTED BECAUSE OF BLOGGER BEING FORMALLY ADDED TO
13 THE CASE, WHY THAT WAS NOT FLUSHED OUT AND BROUGHT TO ME, IF
14 NECESSARY, AS A FREESTANDING DISCOVERY MOTION, OR EVEN A
15 MOTION FOR A PROTECTIVE ORDER, SOMEHOW BROUGHT TO THE COURT'S
16 ATTENTION BEFORE THIS VERY SERIOUS SANCTIONS MOTION WAS
17 BROUGHT IS REALLY VERY, VERY TROUBLING.

18 AND I AGREE WITH YOU. I UNDERSTAND YOUR POINT.
19 BUT BEFORE I WOULD RECOMMEND THIS TYPE OF SANCTIONS MOTION I
20 WOULD HAVE TO BE UTTERLY CONVINCED THAT THERE HAD BEEN A
21 MEETING OF THE MINDS AS TO WHAT WAS REQUIRED BY MY ORDERS AND
22 JUDGE MATZ'S ORDERS, AND THAT THERE WAS A -- THAT CONTEMPT
23 WAS SHOWN, THAT GOOGLE WAS NOT RESPONDING TO THOSE ORDERS,
24 AND, THEREFORE, EVIDENTIARY SANCTIONS OR THE ONLY SANCTIONS
25 THAT -- SANCTION THAT WOULD DO JUSTICE IN THIS CASE.

1 SO, YOU MAY BE RIGHT THAT RULE 56 MAY NOT --
2 IF YOU'D LET MR. MAUSNER DO HIS WORK. HE'S DOING A
3 GOOD JOB, DR. ZADA. OKAY. IF YOU NEED A BREAK, WE'LL TAKE A
4 BREAK.

5 JUST A MINUTE.

6 MR. MAUSNER: MAY I SAY ONE THING, YOUR HONOR?

7 WE DIDN'T KNOW THAT THIS -- ALL OF THIS HAD NOT
8 BEEN PRODUCED. WE'RE GETTING BOMBARDED WITH --

9 THE COURT: WELL, YOU KNEW BEFORE YOU FILED THE
10 MOTION.

11 MR. MAUSNER: YES. BUT, SEE, WE WERE ALREADY IN
12 THE POSITION WHERE WE HAD TO RESPOND -- WE GOT THREE SUMMARY
13 JUDGMENT MOTIONS FROM THEM.

14 THE COURT: YES.

15 MR. MAUSNER: WE HAD TO RESPOND TO THIS. WE WERE
16 WORKING, YOU KNOW, UNBELIEVABLE DAY AND NIGHT. IN THE COURSE
17 OF DOING THAT, WE'RE FINDING, WAIT A MINUTE. IT DOESN'T LOOK
18 LIKE EVERYTHING IS HERE. AND THEN WE START -- LIKE I TALKED
19 TO THE R.I.A.A. I TALKED TO THE M.P.A.A.

20 IT TURNS OUT THEY'RE SENDING ALL OF THESE NOTICES.

21 THE COURT: OKAY. BUT THEN YOU --

22 MR. MAUSNER: WE NEVER KNEW ABOUT IT.

23 THE COURT: THEN YOU COME UP WITH THE IDEA OF
24 FILING THIS MOTION. AND WHAT HAPPENS TO THE MEET AND CONFER.
25 I MEAN, WHAT WENT ON. WAS THERE A MEET AND CONFER.

1 MS. KASSABIAN: I'LL TELL YOU WHAT HAPPENED, YOUR
2 HONOR. THEY SENT US A LETTER. THERE WAS NO SUBSTANTIVE MEET
3 AND CONFER. THEY SENT US A LETTER SAYING WE'RE GOING TO FILE
4 A MOTION FOR EVIDENTIARY SANCTIONS AGAINST YOU FOR THE
5 FOLLOWING TEN REASONS. IT WAS THREE OR FOUR LETTERS. THE
6 FIRST LETTER DIDN'T REALLY GIVE ANY DETAIL. WE WROTE BACK
7 AND SAID, WHAT ARE YOU TALKING ABOUT. THEY FINALLY GAVE US
8 SOME DETAIL. WE SENT THEM A VERY DETAILED LETTER BACK
9 POINTING THEM TO SPECIFIC BATES NUMBERS WHERE THEY COULD FIND
10 THE DOCUMENTS THAT THEY THOUGHT WERE MISSING --

11 THE COURT: WHAT ABOUT THE WHOLE BLOGGER ISSUE?

12 MS. KASSABIAN: -- WHEN THEY FILED THIS MOTION.

13 THE COURT: THE WHOLE BLOGGER ISSUE.

14 MS. KASSABIAN: THEY NEVER RAISED IT IN ONE LETTER
15 -- THEY NEVER SAID TO US WE'D LIKE YOU TO SUPPLEMENT YOUR
16 PRODUCTION. ALL OF THE PAST REQUESTS, PLEASE APPLY THOSE TO
17 BLOGGER. THEY NEVER SO MUCH AS ASKED IT.

18 THE COURT: EVEN IN PREPARATION FOR THIS MOTION?

19 MS. KASSABIAN: I DON'T THINK SO. THE MEET AND
20 CONFER LETTER --

21 THE COURT: WELL, WAS THERE --

22 MS. KASSABIAN: -- I THINK WE POINTED -- WE POINTED
23 OUT TO THEM THAT -- WHEN THEY ASKED, WHERE ARE THESE BLOGGER
24 DOCUMENTS, I THINK WE POINTED OUT YOU HAVEN'T REQUESTED THEM.

25 BUT, THEN, THEY DIDN'T RESPOND AND SAY, OKAY.

1 WELL, WE'RE GOING TO SERVE A REQUEST ON YOU.

2 THEY JUST FILED THE MOTION. THEY DON'T WANT THE
3 DOCUMENTS. THEY WANT OUR DMCA MOTION DENIED. THAT'S WHAT
4 THIS IS ABOUT.

5 THE COURT: WAS THERE AT LEAST A TELEPHONIC MEET
6 AND CONFER ON THIS MOTION?

7 MS. KASSABIAN: NO, THERE WAS NOT.

8 MR. MAUSNER: I THINK WE SENT THEM PROBABLY OVER 20
9 PAGES OF SINGLE-SPACED DOCUMENTS SETTING FORTH WHAT WE
10 THOUGHT WAS MISSING AND THE BASIS FOR THIS MOTION.

11 THE COURT: DID YOU DISCUSS IT WITH MS. KASSABIAN
12 AND SAY, WE ARE FUNDAMENTALLY AT ODDS OVER WHAT DISCOVERY
13 OBLIGATIONS YOU HAVE NOW THAT BLOGGER IS IN THE CASE. AND WE
14 NEED TO GET THIS RESOLVED. AND IF WE DON'T, THEN, WE'LL
15 PROCEED WITH A DIFFERENT MOTION.

16 BUT I DON'T THINK THAT HAPPENED. NOW I KNOW THAT
17 MY TIME IS BEING WASTED.

18 MS. KASSABIAN: IT IS, YOUR HONOR. THEY SENT US A
19 LETTER. WE RESPONDED. THEY FILED THEIR MOTION. THEY'VE
20 NEVER ASKED FOR BLOGGER DOCUMENTS.

21 THE COURT: ALL RIGHT.

22 MS. KASSABIAN: IF THEY WANTED THEM, THEY COULD
23 HAVE SERVED A REQUEST.

24 THE COURT: I'M MOVING ON TO THE NEXT MOTION.

25 MR. MAUSNER: YOUR HONOR, MAY I -- YOU KNOW, THAT'S

1 NOT THE WAY THINGS HAPPENED. WE TRIED TO GET THIS STUFF FROM
2 THEM VERY HARD. THEY STONEWALL US ON EVERYTHING. I MEAN, WE
3 -- AND IT DOES -- THE LETTERS I SENT TO THEM DO MENTION
4 BLOGGER.

5 OKAY. THIS IS MY DECLARATION. LET'S SEE, EXHIBIT
6 L TO MY DECLARATION IN SUPPORT OF THE SANCTIONS. YOU'LL SEE
7 IN THERE THERE ARE VERY DETAILED LETTERS ABOUT WHAT WE WERE
8 SAYING IS MISSING. SPECIFICALLY MENTIONS BLOGGER IN THERE.

9 MS. KASSABIAN: WHICH PAGE?

10 MR. MAUSNER: 127.

11 MS. KASSABIAN: OF THE LETTER. WHAT PAGE OF THE
12 LETTER?

13 MR. MAUSNER: OH. PAGE 2 OF THE OCTOBER 25 LETTER.

14 MS. KASSABIAN: SO, YOU'RE TALKING ABOUT HEADING
15 NUMBER 1, SECTION 1? "GOOGLE HAS FAILED TO PRODUCE THOUSANDS
16 OF NOTICES."

17 IS THAT WHAT YOU'RE REFERRING TO WHEN YOU SAY --

18 MR. MAUSNER: WELL, IT -- YES, IT ALSO HAS IT --
19 YES, IN SEVERAL PLACES ACTUALLY.

20 MS. KASSABIAN: SO, THEY SAY WE DIDN'T PRODUCE
21 BLOGGER NOTICES IN THEIR LETTER. AND WE WROTE THEM BACKING
22 SAYING --

23 THE COURT: SAYING NOTICES WERE NEVER REQUESTED.

24 MS. KASSABIAN: -- YOU'VE NEVER REQUESTED IT. AND
25 THEY DIDN'T THEN SEND US A REQUEST. THEY FILED THIS MOTION.

1 THE COURT: ALL RIGHT. I'VE HEARD ENOUGH ON THIS
2 MOTION. I'M MOVING ON.

3 I THINK I SAID THE NEXT ONE WOULD BE P-10'S MOTION
4 FOR A DOCUMENT PRESERVATION ORDER -- I MIGHT HAVE SAID
5 GOOGLE'S MOTION.

6 MR. MAUSNER: YOU SAID P-10'S AND THEN GOOGLE'S.

7 THE COURT: I SAID -- OKAY. SO, LET'S DO THAT.

8 ALL RIGHT. MR. MAUSNER, YOU WANT TO BE HEARD ON
9 THIS MOTION.

10 MR. MAUSNER: ACTUALLY I DO, YES.

11 (PAUSE IN PROCEEDINGS.)

12 THE COURT: LET ME GIVE YOU MY THOUGHTS ON THIS ONE
13 BECAUSE IT'S ALREADY PAST 11:30. THE REASON I PUT THIS
14 MOTION SECOND IS I WANT TO SEE OBVIOUSLY WHAT TRANSPIRED IN
15 ARGUMENT OF THE FIRST MOTION. AND GIVEN WHAT HAS TRANSPIRED,
16 I DO NOT INTEND TO GRANT THIS SPOILATION MOTION.

17 THE ONE CONCERN I HAVE AFTER ALL IS SAID AND DONE
18 IS THE SUFFICIENCY OF CHRIS BREWER'S KNOWLEDGE REGARDING WHAT
19 HAPPENED EARLY ON IN THIS CASE -- BECAUSE SHE WAS NOT THERE.
20 AND HER -- PARAGRAPHS OF HER DECLARATION ARE ARGUABLY
21 SOMEWHAT CONCLUSORY.

22 ON THE OTHER HAND, I'M PRETTY CONVINCED THAT GOOGLE
23 HAS HAD A SERIOUS LITIGATION HOLD POLICY IN PLACE IN GENERAL
24 AND IN THIS CASE.

25 IF P-10 WANTED -- WHICH THEY DIDN'T ASK TO

1 CROSS-EXAMINE THE DECLARANT, BUT IF THEY WANTED TO TAKE MS.
2 BREWER'S DEPOSITION, I MIGHT CONSIDER THAT BEFORE I RULE ON
3 THIS MOTION. BUT I JUST DON'T THINK THERE'S ANY REAL DEBATE
4 OVER -- CERTAINLY NOTHING HAS BEEN SHOWN TO ME TO HAVE BEEN
5 DESTROYED OR MADE UNACCESSIBLE.

6 THOSE ARE MY THOUGHTS.

7 MR. MAUSNER: YOUR HONOR, I THINK THIS MOTION GOES
8 WITH THE PREVIOUS MOTION BECAUSE WE'RE JUST NOT GETTING THESE
9 THINGS. OKAY. AND MS. KASSABIAN NOW IS SAYING, WELL, WE'VE
10 DONE A REASONABLE SEARCH TO GET THEM. WHERE ARE ADDITIONAL
11 TERMINATION NOTICES, YOU KNOW, ABOVE THE MAYBE 12 OR SO THAT
12 THEY PRODUCED.

13 THE COURT: WHEN WAS THE LAST PRODUCTION, IF YOU
14 KNOW, OF TERMINATION NOTICES? WHEN WAS THE LAST SUPPLEMENT?
15 WITHIN SIX MONTHS?

16 (MR. MAUSNER CONFERRING WITH DR. ZADA.)

17 MR. MAUSNER: AROUND MAY OF 2006.

18 THE COURT: OKAY.

19 MR. MAUSNER: AS I WAS SAYING, FOR CORRESPONDENCE
20 WITH THE WEBMASTERS THAT THEY KNOW THE IDENTITIES OF, THEY GO
21 TO -- YOU KNOW, HAVE THEY GONE TO THE ACCOUNTING DEPARTMENT
22 TO SEE THE IDENTITY OF THESE WEBMASTERS.

23 MY GUESS IS BECAUSE WE GOT SO FEW DOCUMENTS THEY
24 JUST SAY, WELL, YOU KNOW, SEARCH DOESN'T KNOW THE IDENTITY OF
25 THEM. AND THEY NEVER WENT TO CHECK TO SEE IF THEY HAVE

1 ACCOUNTING RECORDS OF THESE IDENTITIES -- THE IDENTITIES OF
2 THESE WEBMASTERS. ARE THOSE BEING PRESERVED.

3 WE HAVEN'T GOTTEN THE DOCUMENTS SO I THINK THE
4 PRESUMPTION IS -- THE DOCUMENTS MAY HAVE BEEN DESTROYED IF WE
5 DIDN'T GET THEM. EITHER THEY'RE NOT PRODUCING THEM AS THEY
6 SHOULD, AND THEY'RE NOT DOING A REASONABLE SEARCH FOR THEM,
7 OR THEY WERE DESTROYED.

8 WHAT'S UP ON THE SCREEN NOW IS A LIST OF EMPLOYEES
9 WHO REVIEWED OR PROCESSED PERFECT 10'S ALLEGED NOTICES OF
10 INFRINGEMENT. WE'D LIKE TO KNOW DID EACH OF THESE EMPLOYEES
11 RECEIVE LITIGATION HOLD INSTRUCTIONS. THERE'S NO EVIDENCE
12 WHATSOEVER ON THAT. AND MS. BREWER DIDN'T SUBMIT ANY
13 EVIDENCE. IT'S SEVERAL PAGES. YOU CAN PAGE THROUGH THIS.

14 THERE ARE A LARGE NUMBER OF EMPLOYEES. WERE ALL
15 THE DOCUMENTS ON EACH OF THESE EMPLOYEES' COMPUTERS
16 PRESERVED. WERE ALL THESE EMPLOYEES' COMPUTERS SEARCHED FOR
17 EMAILS AND OTHER DOCUMENTS THAT WERE ORDERED PRODUCED OR
18 REQUESTED BY PERFECT 10.

19 AND THE SAME SHOULD BE TRUE FOR ALL GOOGLE
20 EMPLOYEES WHO REVIEWED OR PROCESSED --

21 THE COURT: WELL --

22 MR. MAUSNER: -- THIRD-PARTY NOTICES.

23 THE COURT: -- THIS IS ALL ALONG THE LINES OF WHAT I
24 WAS SAYING JUST IN MORE DETAIL. I MAY ORDER THAT, BUT.

25 MS. KASSABIAN: CAN I RESPOND, YOUR HONOR?

1 THE COURT: YES.

2 MS. KASSABIAN: THERE IS A VEHICLE -- THERE IS A
3 MECHANISM FOR TAKING THIS KIND OF DISCOVERY. PERFECT 10
4 HASN'T DONE IT. IF THEY WANT TO TAKE A DEPOSITION, THEN
5 NOTICE THE DEPOSITION. WE ARE HERE ON PERFECT 10'S MOTION
6 ACCUSING US OF SPOILATION. THEY'VE PRODUCED ZERO EVIDENCE OF
7 SPOILATION. THEY'VE PRODUCED ZERO EVIDENCE OF DOCUMENT LOSS
8 OR DESTRUCTION. EVERY CASE THAT PERFECT 10 HAS CITED TO THE
9 COURT WHERE A PRESERVATION ORDER WAS ISSUED INVOLVED SWORN
10 TESTIMONY CONFIRMING DESTRUCTION OR INTENTIONAL SPOILATION OF
11 DOCUMENTS. PERFECT 10 HAS NONE OF THAT HERE.

12 AND I'D LIKE TO READ YOU A SENTENCE FROM THE
13 CAPRICORN CASE THAT'S CITED IN BOTH PARTIES' BRIEFS.

14 IT SAYS HERE:

15 "PLAINTIFF'S MOTION READS MORE LIKE A MOTION
16 TO COMPEL DOCUMENTS AND THINGS NOT PREVIOUSLY
17 PRODUCED THAN A MOTION FOR A PRESERVATION
18 ORDER. THERE IS NO INDICATION THAT THOSE
19 MATERIALS SOUGHT ARE IN DANGER OF BEING
20 LOST OR DESTROYED."

21 THAT'S THE SITUATION HERE. THEY HAVE ABSOLUTELY
22 CATEGORICALLY NOT MET THEIR BURDEN IN ANY WAY, SHAPE, OR
23 FORM. IF THEY HAVE QUESTIONS ABOUT DOCUMENT PRESERVATION,
24 PARTIES ROUTINELY TAKE DEPOSITIONS ON THAT SUBJECT OR SERVE
25 DOCUMENT REQUESTS OR WHAT HAVE YOU.

1 WE 'VE PRODUCED OUR DOCUMENT PRESERVATION POLICIES.
2 WE 'VE ANSWERED -- EVEN THOUGH PERFECT 10 CAME TO US WITH ZERO
3 BASIS FOR EVEN WANTING TO MEET AND CONFER ABOUT THIS. WE 'VE
4 ANSWERED THEM AS BEST WE CAN. WE SUBMITTED A DECLARATION
5 THAT I DON'T EVEN THINK WE WERE OBLIGED TO GIVEN THE COMPLETE
6 ABSENCE OF ANY SHOWING OF NEED HERE.

7 ON THIS MOTION PERFECT 10 HASN'T MET THEIR BURDEN.
8 IT SHOULD BE DENIED. IF THEY WANT TO TAKE DISCOVERY, WE CAN
9 DO THAT. WE DON'T HAVE TO BOTHER YOUR HONOR WITH THAT.

10 THE COURT: WELL, THEY MAY WANT TO TAKE A 30(B)(6)
11 -- A PERSON MOST KNOWLEDGEABLE DEPO AS TO EVENTS THAT
12 OCCURRED PRIOR TO MS. BREWER'S DECLARATION.

13 MS. KASSABIAN: AND ON THAT POINT, YOUR HONOR, I
14 JUST WANT TO SAY WE 'VE CITED A NUMBER OF AUTHORITIES
15 ESTABLISHING THAT CORPORATE EMPLOYEES CAN ABSOLUTELY TESTIFY
16 TO THE CORPORATE BOOKS AND RECORDS.

17 THE COURT: I LOOKED AT THE --

18 MS. KASSABIAN: THERE'S ABUNDANT AUTHORITY ON THAT.

19 MS. BREWER TESTIFIES THAT SHE RELIED ON GOOGLE'S
20 BOOKS AND RECORDS DOCUMENTING WHAT WE 'VE DESCRIBED HERE IN
21 PREPARING HER DECLARATION. SHE DIDN'T MAKE IT UP. SHE
22 DIDN'T GUESS. IT HAS NOTHING TO DO WITH HER BEING IN LAW
23 SCHOOL.

24 THE COURT: ALL RIGHT. I NEED TO REVIEW HER
25 DECLARATION AGAIN AND THE OBJECTIONS AND THE RESPONSE FOR THE

1 OBJECTIONS.

2 MR. MAUSNER: YOUR HONOR, GOOGLE SEEMS TO HAVE A
3 DOUBLE STANDARD AS TO WHAT THE LAW IS. WHEN THEY FIRST FILED
4 THEIR MOTION FOR A PRESERVATION ORDER AGAINST US, THEY SAID
5 THAT THERE DOES NOT HAVE TO BE ANY EVIDENCE OF SPOILATION. I
6 THINK THE SAME LAW SHOULD APPLY, WHATEVER YOUR HONOR DECIDES
7 TO DO, AS TO BOTH PARTIES.

8 THE COURT: LET'S MOVE ON TO GOOGLE'S SPOILATION --
9 I MEAN, PRESERVATION. EXCUSE ME. WELL, IT IS A SPOILATION
10 MOTION.

11 I HAVE ONE QUESTION FOR YOU, MR. MAUSNER, AND THAT
12 IS FOR HOW LONG HAS P-10 BEEN LOOKING FOR THE EMAIL BACKUP
13 DATA, (A).

14 (B) HAS ANYTHING BEEN FOUND.

15 (C) IF SO, HAS ANYTHING BEEN PRODUCED BY WAY OF
16 EMAIL BACKUP.

17 AND, (D), IF NOT, BECAUSE OF AN ASSERTION OF
18 PRIVILEGE, HAS THERE BEEN A PRIVILEGE LOG SERVED.

19 BUT IT IS CURIOUS -- IT SEEMS TO ME THAT P-10 HAS
20 BEEN LOOKING OR ASSERTS THAT IT'S BEEN LOOKING FOR THE BACKUP
21 EMAILS FOR MONTHS NOW, AND NOTHING -- IT SEEMS LIKE NOTHING
22 HAS BEEN LOCATED. AND IF IT'S BEEN PRIVILEGED DOCUMENTS
23 ONLY, WHICH I DON'T THINK WOULD BE THE CASE, THEN, WHERE'S
24 THE LOG.

25 MR. MAUSNER: AS FAR AS THE LOG, YOUR HONOR, WE

1 HAVE AN AGREEMENT WITH THE OTHER SIDE THAT THERE DO NOT HAVE
2 TO BE DETAILED LOGS. ANYTHING THAT'S BETWEEN ATTORNEYS AND
3 THE CLIENTS IS JUST -- YOU KNOW, FALLS UNDER THAT CATEGORY.
4 WE'VE DONE THAT.

5 THE COURT: BUT A LOT OF THESE EMAILS WOULD NOT BE
6 APPARENTLY.

7 ANYWAY, GO BACK. HOW LONG HAVE YOU WORKING? HAVE
8 YOU FOUND ANY?

9 MR. MAUSNER: OKAY. TWO THINGS HAVE BEEN LOOKED
10 AT. ONE IS THE BACKUP. THE BACKUP IS A HUGE FILE THAT IS IN
11 -- TEXT FORMAT? TEXT FORMAT. NOTHING -- NO EMAILS OF WENDY
12 AUGUSTINE HAVE BEEN -- I DON'T THINK ANY --

13 (MR. MAUSNER CONFERRING.)

14 MR. MAUSNER: OKAY. MOST OF IT APPEARS TO BE SPAM.
15 THERE ARE SOME PERSONAL EMAILS THAT HAVE BEEN LOCATED, AND
16 THAT'S IT SO FAR. STILL LOOKING IN THAT.

17 THE COURT: HOW LONG IS THAT GOING TO TAKE?

18 MR. MAUSNER: 6 GIGABITS.

19 WE ALSO TRIED -- OR PERFECT 10 ALSO TRIED TO
20 RECOVER THE DRIVE THAT WAS DESTROYED BY A VIRUS, AND THAT
21 COULD NOT BE DONE. SO, THAT'S NOT GOING TO LEAD TO ANYTHING.

22 WHAT WAS YOUR OTHER QUESTION, YOUR HONOR?

23 THE COURT: I GUESS -- THOSE WERE MY QUESTIONS.

24 MR. MAUSNER: OKAY.

25 THE COURT: DOES SOMEONE HAVE A COPY OF THE

1 PROPOSED ORDER ON THIS MOTION? I JUST WANTED TO LOOK AT THE
2 VARIOUS --

3 MS. KASSABIAN: I BELIEVE WE DO, YOUR HONOR.

4 (PAUSE IN PROCEEDINGS.)

5 THE COURT: THEN, AS WE SIT HERE TODAY, DOCUMENTS,
6 EMAILS HAVE BEEN LOST AND HAVE NOT BEEN -- BACKUPS HAVE NOT
7 BEEN LOCATED.

8 AND AS WE SIT HERE TODAY, PERFECT 10 HAS NOT SHOWN
9 ME THAT EVEN TODAY THEY HAVE A DOCUMENT RETENTION POLICY FOR
10 LITIGATION, OR THAT IT HAS --

11 MR. MAUSNER: YOUR HONOR --

12 THE COURT: OR THAT IT HAS BEEN COMMUNICATED TO
13 THEIR EMPLOYEES OR CONTRACTORS.

14 MR. MAUSNER: IF I MAY SHOW YOU SOMETHING --

15 THE COURT: YES.

16 MR. MAUSNER: -- IN CAMERA, YOUR HONOR, THAT'S
17 PRIVILEGED.

18 THE COURT: WELL, ANSWER WHAT I JUST SAID.

19 MR. MAUSNER: OKAY. YES, IT HAS BEEN -- I HAVE IT
20 RIGHT HERE IF YOU'D LIKE TO SEE IT. IF IT CAN BE SHOWN TO
21 YOU IN CAMERA.

22 MS. KASSABIAN: YOUR HONOR, THE EXISTENCE OF THAT
23 COMMUNICATION IS NOT PRIVILEGED. IF IT'S --

24 THE COURT: WELL, I DON'T KNOW WHAT HE'S GOING TO
25 SHOW ME. ARE YOU GOING TO SHOW ME A POLICY, OR ARE YOU GOING

1 TO SHOW ME INSTRUCTIONS, OR?

2 MR. MAUSNER: EMAILS TO EMPLOYEES FROM ME.

3 MS. KASSABIAN: DATED WHEN? I MEAN, WE'VE NEVER
4 HEARD ABOUT THEM.

5 THE COURT: THAT WAS MY FIRST QUESTION. YOU ARE
6 SMART.

7 MR. MAUSNER: IT'S AUGUST 2009.

8 THE COURT: YES. OKAY. I DON'T NEED TO SEE IT.

9 MR. MAUSNER: YOU WOULDN'T --

10 THE COURT: I DON'T NEED TO SEE THAT -- I DON'T
11 NEED TO SEE IT IN CAMERA CERTAINLY. BUT THAT ONLY HEIGHTENS
12 MY CONCERN.

13 MR. MAUSNER: I'M SORRY. WHAT DID YOU --

14 THE COURT: THAT ONLY HEIGHTENS MY CONCERN. I
15 MEAN, P-10 IS NOT A FORTUNE 500 COMPANY. I WOULDN'T
16 NECESSARILY EXPECT DR. ZADA TO HAVE THE POLICY, WRITTEN
17 POLICIES THAT A GOOGLE HAS. BUT, NEVERTHELESS, THIS IS WHERE
18 WE ARE.

19 AND, BY THE WAY, I DON'T PERSONALLY SEE A
20 PRESERVATION ORDER AS PUNITIVE IN ANY WAY BUT, RATHER,
21 PROPHYLACTIC. AND IT IS NOT A BADGE OF SHAME TO HAVE A
22 PRESERVATION ORDER ENTERED AGAINST ONE. IT IS PERHAPS
23 PRUDENT -- WELL, IT IS PRUDENT IN CERTAIN INSTANCES.

24 BUT WHAT WE HAVE NOW IS A SITUATION WHERE I SEE MS.
25 AUGUSTINE AS A PRETTY IMPORTANT PLAYER IN THE CASE -- WITNESS

1 IN THE CASE. HER EMAILS WERE DESTROYED. BACKUPS SO FAR HAVE
2 PRODUCED NOTHING RELEVANT TO THIS CASE. AND THE ONLY
3 DOCUMENT PRESERVATION INSTRUCTIONS ARE APPARENTLY AS OF
4 AUGUST OF '09.

5 SO, IT WOULD SEEM PRUDENT AND NOT PUNITIVE TO ENTER
6 AN ORDER EVEN IF IT'S A UNILATERAL ORDER.

7 AND I KNOW YOU WANT IT BOTH WAYS, BUT I'VE ALREADY
8 GIVEN MY THOUGHTS ON THE OTHER ONE. I MEAN, WHAT IS THE HARM
9 -- WHAT IS THE HARM OF MY SIGNING THIS PROPOSED ORDER.
10 BECAUSE WE DON'T KNOW -- I DON'T KNOW THE ANSWERS TO ANY OF
11 THESE QUESTIONS.

12 DR. ZADA: YOUR HONOR, COULD --

13 MR. MAUSNER: MAY I GIVE YOU ANSWERS TO THOSE
14 QUESTIONS, YOUR HONOR.

15 THE COURT: I DON'T WANT TO HEAR TODAY A
16 DESCRIPTION OF HOW THE SETTINGS WERE SET AND WHEN AND BY WHOM
17 ON MS. AUGUSTINE'S EMAIL ACCOUNT AND HOW MANY HAVE BEEN
18 DELETED. YOU CAN'T GIVE ME ALL THAT INFORMATION TODAY I
19 DON'T THINK.

20 MR. MAUSNER: I CAN ACTUALLY.

21 THE COURT: BUT IF YOU CAN GIVE IT TO ME, THEN YOU
22 CAN GIVE IT TO THEM UNDER AN ORDER. IF YOU'RE PREPARED TO
23 ANSWER ALL OF THESE THINGS.

24 I DON'T KNOW HOW YOU CAN ANSWER THE LAST BULLET
25 POINT ON PAGE 1.

1 "IDENTIFY ANY OTHER LOSS OR DESTRUCTION OF
2 DOCUMENTS THAT HAS AFFECTED THE DISCOVERY
3 P-10 HAS PROVIDED TO GOOGLE."

4 I MEAN, IF THE ANSWER IS NONE, THEN, I GUESS IT'S
5 NONE.

6 MR. MAUSNER: THE ANSWER IS I THINK THERE WERE
7 DIFFERENT -- SIMILAR QUESTIONS. IT MAY HAVE BEEN A DIFFERENT
8 MOTION OR SOMETHING, LET'S SAY.

9 (PAUSE IN PROCEEDINGS.)

10 THE COURT: IT'S REALLY NOT 1:00. IT'S ALMOST
11 NOON.

12 MS. KASSABIAN: I THOUGHT THE SAME THING, YOUR
13 HONOR. IT'S NOT. IT'S NOON. BUT IT'S STILL GETTING LATE IN
14 THE MORNING.

15 THE COURT: I'M SORRY. MR. MAUSNER, IF YOU WANT TO
16 ADDRESS A FEW OF THESE, THAT'S FINE. BUT MY QUESTION IS IF
17 THIS ORDER -- IF IT'S NOT PUNITIVE AND NOT COSTLY AND IS
18 PROPHYLACTICALLY WISE, WHY SHOULDN'T I ORDER IT?

19 MR. MAUSNER: WELL, ONE THING, YOUR HONOR. WOULD
20 YOU PUT IN HERE THAT IT IS NOT PUNITIVE. PERFECT 10 HAS NOT
21 DONE ANYTHING WRONG. THE WHOLE PROBLEM AROSE BECAUSE OF A
22 VIRUS, WHICH WAS VERY PREVALENT AT THAT TIME. AND IT WASN'T
23 OUR FAULT THAT THESE EMAILS WERE DESTROYED.

24 THE COURT: WELL, I'M NOT SAYING THAT I KNOW THAT
25 THEY ARE, AND I DON'T THINK GOOGLE IS SAYING THAT THEY KNOW

1 THAT THEY ARE. I'M NOT GOING TO -- I DO FIND FAULT IF THERE
2 HAS BEEN NO LITIGATION HOLD AND DOCUMENT PRESERVATION ORDER
3 FROM THE INCEPTION OF THIS CASE UNTIL LATE IN '09. THAT IS
4 TROUBLING.

5 MR. MAUSNER: YOUR HONOR, THERE HAS BEEN. THERE
6 HAS ALWAYS BEEN A LITIGATION HOLD AS FAR AS DR. ZADA IS
7 CONCERNED. AND HE HAS ALL OF HIS EMAILS, AND THEY'RE BACKED
8 UP AS WELL.

9 THE COURT: BUT IT'S NOT -- IT'S NOT IN OPPOSITION
10 TO THIS MOTION, IS IT?

11 MR. MAUSNER: WELL, I'M SAYING THAT RIGHT NOW. AND
12 DR. ZADA IS HERE, AND HE CAN SAY IT AS WELL.

13 THE COURT: ALL RIGHT. WELL --

14 MR. MAUSNER: I MEAN, WE --

15 THE COURT: I'M TELLING YOU, I'M NOT GOING TO -- I
16 MAY ADD A SENTENCE. I MAY NOT. I'M TELLING YOU, THIS IS NOT
17 A SANCTION. OKAY.

18 MR. MAUSNER: OKAY.

19 THE COURT: THIS IS NOT A SANCTION.

20 MR. MAUSNER: THANK YOU, YOUR HONOR.

21 DR. ZADA: YOUR HONOR, COULD I JUST SAY ONE THING?

22 THE COURT: YES.

23 DR. ZADA: GOOGLE HAS NOT PRODUCED ANY DMCA NOTICES
24 OF ANY KIND EVEN THOUGH ORDERED BY THIS COURT PRIOR TO MARCH
25 10TH OF 2002. NO DMCA NOTICES AT ALL.

1 MS. POOVALA TESTIFIES IN HER DECLARATION THAT
2 GOOGLE HAS BEEN PROCESSING DMCA NOTICES PRIOR TO 2002. MR.
3 MAC GILLVARY TESTIFIED THAT GOOGLE RECEIVED THOUSANDS OF
4 INQUIRIES EVERY DAY IN SUPPORT OF THEIR OPPOSITION TO OUR
5 MOTION FOR PRELIMINARY INJUNCTION.

6 BY THE TESTIMONY OF THE GOOGLE WITNESSES THERE
7 SHOULD BE THOUSANDS AND THOUSANDS AND THOUSANDS OF INQUIRIES
8 AND NOTICES AND NOTICES GOING BACK BEFORE MARCH OF 2002.

9 I BELIEVE THAT A DESTRUCTION OF ALL THE NOTICES
10 PRIOR TO MARCH OF 2002 HAS OCCURRED. THEY HAVE NOT PRODUCED
11 THEM. AND TO ME THAT IS A FAR MORE SIGNIFICANT ISSUE THAN
12 WHETHER A LEGAL ASSISTANT OF JEFF MAUSNER HAD A VIRUS ATTACK
13 ON HER COMPUTER AND LOST SOME EMAILS.

14 I MEAN, THERE IS -- THEY HAVE PRODUCED 12
15 TERMINATION NOTICES. THEY HAVE PRODUCED NO TERMINATION
16 NOTICES REGARDING ANY OF THE URLS IN THEIR AD SHEETS --
17 ADSENSE SHEETS. THEY HAVE PRODUCED NO TERMINATION NOTICES
18 FOR THEIR BLOGGER SHEETS. THEY HAVE PRODUCED NO TERMINATION
19 NOTICES PERIOD. ALL WERE ORDERED. THEY HAVE PRODUCED NEXT
20 TO NOTHING, YOUR HONOR.

21 AND THE PROBLEM IS, FOR EXAMPLE, MS. KASSABIAN
22 REFERS TO A BATES RANGE IN HER THING. THAT BATES RANGE THERE
23 ARE PERFECT 10 DMCA NOTICES IN THERE. THERE ARE NOTICES
24 SAYING, WHERE'S MY PAYMENT.

25 THE PROBLEM IS THEY NEVER PRODUCED ANY DOCUMENTS

1 WHICH ACTUALLY SHOW WHAT'S THERE. THEY REFER THE COURT TO
2 THOUSANDS OF PAGES OF THINGS. THERE'S NOTHING THERE.

3 AND THE PROBLEM IS WE HAVE BEEN FIGHTING THIS
4 BATTLE. WE'RE A VERY SMALL COMPANY. I'VE HAD TO FIRE ALMOST
5 EVERYBODY. AND WE CAN'T DEAL WITH THIS CLEAR ATTEMPT TO
6 OBFUSCATE THE WHOLE CASE. THEY HAVE THESE LOGS. THEY'RE IN
7 XCEL FORMAT. THEY SHOULD HAVE PRODUCED THEM THAT WAY.

8 OUR POSITION IS WE WERE VERY SUBSTANTIALLY
9 PREJUDICED. IF THEY HAVE A DMCA LOG IN XCEL FORMAT, WE
10 SHOULD GET IT.

11 MR. MAUSNER: YOUR HONOR, I THINK THAT AT THE VERY
12 LEAST, YOUR HONOR, IF YOU'RE NOT -- AND IT SOUNDS LIKE YOU'RE
13 NOT GOING TO IMPOSE SANCTIONS -- CAN WE GET AN ORDER THAT
14 THEY PRODUCE THE ENTIRE DMCA LOG IN THE FORMAT THAT THEY HAVE
15 IT IN. IF IT'S XCEL SPREADSHEET OR SOME OTHER KIND OF A
16 SPREADSHEET, THAT THEY PRODUCE IT IN THAT MANNER THE ENTIRE
17 LOG. I MEAN, THAT SHOULD BE THE VERY LEAST THAT WE GET.

18 DR. ZADA: THE OTHER THING THAT I WOULD REQUEST,
19 YOUR HONOR --

20 THE COURT: LET ME HEAR THEIR RESPONSE. AND I --

21 MS. KASSABIAN: YOUR HONOR, WE'VE ARGUED THAT
22 MOTION. THAT'S DONE. WE'RE NOT HERE ON A MOTION TO COMPEL.
23 WE'RE HERE ON A MOTION FOR EVIDENTIARY SANCTIONS. THEY'RE
24 ASKING YOUR HONOR TO FIND THAT GOOGLE'S NOT ENTITLED TO DMCA
25 SAFE HARBOR. THAT'S WHY WE'RE HERE.

1 THE COURT: WELL, I'M NOT -- I'M NOT DEALING WITH
2 THAT.

3 MS. KASSABIAN: THEY CAN'T SIT HERE AND MAKE UP --

4 THE COURT: THAT'S NOT THE MOTION BEFORE ME.

5 MS. KASSABIAN: WELL, I'M JUST SAYING IN TERMS OF
6 THEM GOING BACK AND REHASHING THE DMCA LOG FORMAT ISSUE THAT
7 WE SPENT AN HOUR AND A HALF TALKING ABOUT. THAT'S DONE. ALL
8 RIGHT. THERE'S BEEN NO COURT ORDER REQUIRING IT PRODUCED IN
9 ANY FORMAT. WE PRODUCED PURSUANT TO AN AGREED FORMAT. END
10 OF STORY.

11 DR. ZADA: YOUR HONOR, WE WOULD LIKE THE
12 OPPORTUNITY -- THERE'S A REAL PROBLEM HERE BECAUSE YOUR HONOR
13 BELIEVES THAT THEY HAVE PRODUCED ALL TERMINATION NOTICES.
14 THEY HAVE PRODUCED --

15 THE COURT: NO, NO. I DON'T KNOW THAT THEY HAVE.

16 DR. ZADA: OKAY.

17 THE COURT: AND I DON'T KNOW THAT THEY'RE SAYING
18 THEY HAVE.

19 DR. ZADA: OKAY. WE WOULD LIKE AN OPPORTUNITY,
20 YOUR HONOR, TO PROVE TO THE COURT THAT THEY --

21 MR. MAUSNER: HOW ABOUT THIS, YOUR HONOR. WE MAKE
22 AN ORDER THAT THEY PRODUCE ALL OF THESE THINGS THAT HAVE BEEN
23 PREVIOUSLY ORDERED AND THAT IT DOES INCLUDE BLOGGER. BECAUSE
24 THEY PRODUCED SOME BLOGGER BUT NOT ALL OF IT. I MEAN,
25 THERE'S NO QUESTION AT THIS POINT --

1 THE COURT: WELL, AS TO THE FIRST PART OF THAT,
2 THEY'RE UNDER A CONTINUING OBLIGATION TO PRODUCE WHAT THEY'VE
3 ALREADY BEEN ORDERED TO PRODUCE. OKAY.

4 GIVEN THE COLLOQUY -- SECONDLY, GIVEN THE COLLOQUY
5 THAT WAS MADE BEFORE JUDGE MATZ WHERE HE ASKED, ARE YOU GOING
6 TO PROPOUND NEW BLOGGER DISCOVERY, AND THE ANSWER WAS WE'LL
7 SEE.

8 BUT YOU DID NOT SAY, NEVERTHELESS, JUDGE,
9 EVERYTHING BEFORE NOW APPLIES EQUALLY TO BLOGGER AND HEAR
10 WHAT GOOGLE'S RESPONSE WOULD BE AND WHAT JUDGE MATZ'S IS. I
11 CAN'T JUST ORDER THAT.

12 MR. MAUSNER: I THINK YOU CAN, YOUR HONOR. JUDGE
13 MATZ HAS --

14 THE COURT: WELL, I THINK -- I CAN --

15 MR. MAUSNER: -- DELEGATED THIS -- EVERYTHING HERE
16 IN THIS MOTION TO YOU. AND THEY HAVE AN OBLIGATION TO
17 PRODUCE IT TO US. AND THEY'RE STILL SITTING HERE AND THEY'RE
18 SAYING, THEY'RE NOT GOING -- WE'RE NOT GOING TO UPDATE IT, OR
19 WE'RE GOING TO WAIT TWO YEARS TO UPDATE IT. THAT'S NOT FAIR
20 TO US.

21 MS. KASSABIAN: YOUR HONOR, WE'VE BEEN HERE BEFORE.
22 WE'RE NOT OBLIGATED TO PRODUCE ANYTHING THAT WASN'T
23 REQUESTED. IF PERFECT 10 WANTS TO REQUEST SOMETHING, THEY
24 KNOW HOW TO DO IT.

25 DR. ZADA: YOUR HONOR --

1 MS. KASSABIAN: WE'RE NOT HERE ON A MOTION TO
2 COMPEL. WE'RE HERE ON A MOTION FOR EVIDENTIARY SANCTIONS.

3 THE COURT: WELL, IF YOUR POSITION IS THAT ALL OF
4 THE BLOGGER DOCUMENTS ARE EMBRACED WITHIN THE PRIOR DISCOVERY
5 ORDERS, AND THAT GOOGLE IS ACTING IN BAD FAITH BY NOT SO
6 RECOGNIZING AFTER REPEATEDLY BEING ADVISED THAT P-10
7 CONSTRUES THE PRIOR ORDERS THAT WAY, THEN, I'LL DECIDE THAT
8 MOTION.

9 MR. MAUSNER: YES.

10 THE COURT: IF THERE'S A SEPARATE MOTION --

11 MR. MAUSNER: YES.

12 THE COURT: -- WHICH IS, NO, WE CONCEDE WE'RE NOT
13 HAPPY, BUT WE CAN UNDERSTAND THAT GOOGLE IN GOOD FAITH DID
14 NOT BELIEVE THAT BLOGGER WAS EMBRACED WITHIN THE PRIOR
15 DISCOVERY ORDERS, BUT WE WISH TO SEEK THAT, THAT IS A
16 SEPARATE MOTION.

17 MR. MAUSNER: WE TAKE THAT POSITION THAT BLOGGER --
18 THAT EVERYTHING, ALL, WAS WITHIN THE PRIOR ORDERS, AND THAT
19 IT SHOULD HAVE BEEN PRODUCED TO US.

20 THE COURT: DESPITE THE COLLOQUY OR WHAT YOU SAID
21 --

22 MR. MAUSNER: YES.

23 THE COURT: -- TO JUDGE MATZ?

24 MR. MAUSNER: YES.

25 MS. KASSABIAN: THEY ASSURED JUDGE MATZ THAT THEY

1 WEREN'T NECESSARILY GOING TO REQUIRE THE SAME DISCOVERY
2 REQUESTS REGARDING BLOGGER. THEY WERE GOING TO WAIT AND SEE,
3 AND THEY WOULD DO FURTHER DISCOVERY REGARDING BLOGGER. THEY
4 NEVER DID IT. END OF STORY.

5 MR. MAUSNER: WELL, WHY DID WE HAVE TO PROPOUND THE
6 SAME DISCOVERY REQUESTS IF IT ALREADY COVERED ALL, AND THE
7 ORDER HAS ALREADY COVERED ALL.

8 WE PROPOUNDED --

9 THE COURT: BECAUSE YOU DIDN'T SAY THAT TO HIM.

10 MR. MAUSNER: IT'S HARD TO REMEMBER WHAT I WAS
11 THINKING.

12 BUT, YOUR HONOR, WE -- IF YOU LOOK AT WHAT THE
13 ACTUAL ORDERS ARE -- PLEASE, JUST LOOK AT THE ORDERS. LOOK
14 AT THEIR REPRESENTATIONS. THEY SAID ALL NOTICES INVOLVING
15 INTELLECTUAL PROPERTY. ALL. ALL.

16 WHY ISN'T BLOGGER INCLUDED IN THAT. IT SHOULD HAVE
17 INCLUDED BLOGGER PRIOR TO THE AMENDMENT. BUT, CLEARLY, IT
18 NOW COVERS BLOGGER. AND THEY HAVE A CONTINUING DUTY TO
19 PRODUCE IT, AND THEY HAVEN'T.

20 IF WE GO AND WE PREPARE NEW DISCOVERY REQUESTS,
21 THEY'RE GOING TO OBJECT TO IT. AND THEN WE'RE GOING TO BE
22 BACK HERE IN FRONT OF YOU. IT'S GOING TO BE MONTHS, IF NOT
23 MORE, BEFORE THAT GETS DECIDED. WHAT'S THE POINT OF THAT.

24 THE COURT: FIRST OF ALL, I CANNOT REMEMBER WHAT
25 THE DEBATE WAS AND WHAT THE MEET AND CONFER WAS A FEW YEARS

1 AGO IN THIS CASE ON THE ISSUE OF ALL INTELLECTUAL PROPERTY OR
2 AS LIMITED BY SOME PARAMETERS.

3 AND I DON'T KNOW IF COUNSEL DO, BUT --

4 MR. MAUSNER: IN THAT SAME COLLOQUY WITH JUDGE
5 MATZ, HE SAID I'M NOT GOING TO LIMIT THIS REQUEST IN ANY WAY.

6 CAN YOU FIND THAT. IT'S THE EXHIBIT TO THE
7 KASSABIAN REPLY DECLARATION, I BELIEVE. SHE ATTACHED THE
8 TRANSCRIPT.

9 THE COURT: OKAY. THIS IS WHAT I -- THIS IS WHAT I
10 WOULD LIKE.

11 MR. MAUSNER: HE SAID I'M NOT LIMITING IT --

12 MS. KASSABIAN: HE WAS TALKING ABOUT ORDERING THE
13 DMCA LOGS.

14 MR. MAUSNER: YES.

15 MS. KASSABIAN: IS THAT WHAT YOU WERE REFERRING TO?

16 MR. MAUSNER: YES.

17 MS. KASSABIAN: HE ORDERED DMCA LOGS PRODUCED.
18 REGARDLESS OF WHETHER IT CALLED FOR BLOGGER OR NOT WE
19 PRODUCED THEM.

20 THE COURT: AND YOU DID THAT. YOU DID THAT.

21 MR. MAUSNER: NO.

22 MS. KASSABIAN: PERFECT 10 HAS THEM.

23 MR. MAUSNER: OKAY. IF THEY PRODUCED BLOGGER LOGS,
24 AND THEY'RE SAYING THEY PRODUCED THAT --

25 DR. ZADA: WHERE ARE THEY.

1 MR. MAUSNER: -- IN RESPONSE TO JUDGE MATZ'S ORDER
2 -- IN OTHER WORDS, BLOGGER IS COVERED BY THAT -- WHY ISN'T
3 BLOGGER ALSO COVERED BY THEIR EARLIER REPRESENTATIONS AS
4 WELL.

5 MS. KASSABIAN: IT'S NOT --

6 MR. MAUSNER: -- ALL, ALL, ALL.

7 MS. KASSABIAN: BLOGGER WAS NOT COVERED BY AN ORDER
8 ISSUED BEFORE THERE WERE BLOGGER CLAIMS IN THE CASE. THAT'S
9 ALL THERE IS TO SAY ABOUT THIS. AND WE'VE TALKED ABOUT IT
10 ABOUT SEVEN TIMES NOW.

11 MR. MAUSNER: -- WHY DID THEY PRODUCE SOME OF THEM.

12 THE COURT: BECAUSE THEY WERE PART OF THE DMCA
13 LOGS.

14 DR. ZADA: YES, BUT, YOUR HONOR, THE PROBLEM IS IT
15 GOES WAY BEYOND BLOGGER. THEY HAVEN'T PRODUCED ANY ADSENSE
16 TERMINATION NOTICES AT ALL FOR THEIR ADSENSE SHEET. THEY
17 FILE A MOTION FOR SUMMARY JUDGMENT. MS. POOVALA CLAIMS THAT
18 THEY HAVE AGGRESSIVELY TERMINATED PEOPLE. THEY PRODUCED AN
19 ADSENSE LOG WITH ONLY 634 URLS, BUT THERE'S NOT A SINGLE
20 TERMINATION NOTICE THAT THEY HAD PRODUCED FOR ANY ONE OF
21 THOSE 634 URLS.

22 THEY HAVE NOT PRODUCED ANY OF THE DOCUMENTS THAT
23 WOULD HAVE GIVEN US AN OPPORTUNITY TO SAY, YOU KNOW WHAT,
24 THEY NEVER ACTUALLY PRODUCED ANY OF THOSE PEOPLE. THIS COURT
25 ORDERED THEM TO PRODUCE ALL TERMINATION NOTICES. WE GOT NO

1 TERMINATION NOTICES FOR ADSENSE. WE GOT NO TERMINATION
2 NOTICES FOR BLOGGER. IN FACT, THE ONLY TERMINATION NOTICES
3 THAT THEY PRODUCED WERE A COUPLE OF EMAILS REGARDING OUR
4 NOTICES.

5 WHAT THEY ACTUALLY PRODUCED WERE A FEW TERMINATION
6 NOTICES REGARDING OUR NOTICES. NO TERMINATION NOTICES OF ANY
7 KIND FOR ANY THIRD-PARTY NOTICES.

8 AND I WOULD REQUEST THE COURT THAT WE BE GIVEN AN
9 OPPORTUNITY, AND THEY BE ORDERED, TO SAY HOW MANY TERMINATION
10 NOTICES THEY HAVE ISSUED.

11 AND THIS, BY THE WAY, WOULD ALWAYS HAVE BEEN PART
12 OF THE DMCA LOG. IF WE EVER GOT THE DMCA LOG THAT WAS
13 ORDERED BY JUDGE MATZ AND YOUR HONOR, WE WOULD HAVE SEEN WHO
14 THEY TERMINATED. IF WE EVER GOT THE DMCA LOG, WE WOULD SEE
15 HOW MANY NOTICES THEY GOT, HOW MANY URLS THEY DISABLED, AND
16 WAS IT EXPEDITIOUS.

17 THEY HAVE BEEN SYSTEMATICALLY OBFUSCATING THE
18 DISCOVERY IN THIS CASE SINCE THE VERY BEGINNING. THEY DON'T
19 WANT TO PRODUCE A DMCA LOG THAT ANYBODY CAN UNDERSTAND,
20 THAT'S IN A MICROSOFT SPREADSHEET BECAUSE THEY DON'T WANT US
21 TO BE ABLE TO SAY, YOU KNOW WHAT, MAC GILLVARY LIED, POVALA
22 LIED, AND EVERYBODY ELSE LIED BECAUSE BASICALLY THEY HAVEN'T
23 BEEN DOING ANYTHING REGARDING THE DMCA SINCE THIS CASE
24 STARTED UNTIL WE FINALLY FILED OUR LAWSUIT.

25 THE DMCA LOG WILL TELL THE WHOLE STORY. THEY WERE

1 ORDERED TO PRODUCE IT, YOUR HONOR. AND WE WOULD REQUEST THAT
2 YOUR HONOR ORDER THEM TO PRODUCE THEIR ACTUAL DMCA LOG IN
3 XCEL FORMAT AS IT HAS TO BE MAINTAINED. YOU CAN'T ADD NEW
4 ENTRIES TO A J-PEG FILE. IT HAS TO BE PRODUCED -- MAINTAINED
5 IN XCEL FORMAT.

6 MR. MAUSNER: YOUR HONOR --

7 THE COURT: LET ME -- WAIT.

8 MR. MAUSNER: -- JUST TO SPEED THINGS ALONG, TO
9 SPEED THIS CASE ALONG, WE REQUEST THAT YOU ORDER THAT THEY
10 PRODUCE A LOT OF THESE THINGS. THEY PRODUCE A FULL DMCA LOG
11 IN SPREADSHEET FORMAT. AND THEY PRODUCE ALL DMCA NOTICES AND
12 ALL NOTICES OF TERMINATION. AND THAT INCLUDES BLOGGER, WHICH
13 WITHOUT ANY QUESTION NOW IS IN THE CASE. THEY EVEN MADE A
14 SUMMARY JUDGMENT MOTION REGARDING IT, AND WE HAVEN'T GOTTEN
15 THOSE DOCUMENTS.

16 AND I THINK A REASONABLE PERSON, AND CERTAINLY I,
17 THOUGHT WHEN THEY SAID ALL IT MEANT EVERYTHING.

18 THE COURT: MR. JANSEN.

19 MR. JANSEN: WELL, YOUR HONOR, I -- YES, I
20 APPRECIATE THE -- I KNOW IT'S THE AFTERNOON RIGHT NOW, AND
21 I'M NOT SURE WHEN THE COURT PLANS TO RECESS. BUT I CAN'T
22 COMMENT OBVIOUSLY ON WHETHER OR NOT GOOGLE HAS OR HASN'T
23 COMPLIED WITH THE COURT'S ORDERS OR THAT KIND OF ISSUE, BUT
24 ONE ISSUE THAT HAS COME UP, WHICH I THINK HAS KIND OF BEEN
25 DEFLECTED HERE, IS A VERY SERIOUS CONCERN ON THE PART OF

1 AMAZON.COM THAT IT APPEARS, AS MR. MAUSNER REVEALED JUST THIS
2 MORNING, THAT APPARENTLY THERE NEVER WAS A LITIGATION HOLD
3 PUT ON PERFECT 10 DOCUMENTS.

4 AND AS THE COURT NOTICED, WENDY AUGUSTINE IS A VERY
5 IMPORTANT WITNESS. SHE'S A PERFECT 10 --

6 THE COURT: WELL, I'VE ALREADY SIGNED THE ORDER.

7 MR. JANSEN: YOU HAVE. OKAY. I WAS NOT AWARE OF
8 IT. I THINK IT'S IMPORTANT --

9 THE COURT: TEN MINUTES AGO I SIGNED THE ORDER.

10 MR. JANSEN: OKAY. BECAUSE WE HAVE THAT ISSUE
11 ABOUT THE --

12 THE COURT: NO, I SIGNED THAT ORDER WITH TWO SMALL
13 MODIFICATIONS, AND THAT IS THAT I WANT A DECLARATION FILED,
14 NOT JUST SUBMITTED, AND I WANT IT WITHIN TEN DAYS.

15 MR. JANSEN: OKAY.

16 THE COURT: YES.

17 MS. KASSABIAN: YOUR HONOR, I ONLY WANT TO RESPOND
18 TO THAT COLLOQUY IF YOUR COURT -- IF YOUR HONOR HAS ANY
19 CONCERNS ABOUT IT. I THINK IT'S JUST A REHASH OF WHAT WE'VE
20 ALREADY COVERED.

21 THE COURT: WELL, LET ME -- I DO WANT TO ADDRESS
22 IT.

23 JUST A MINUTE.

24 (PAUSE IN PROCEEDINGS.)

25 THE COURT: I AM CONCERNED ABOUT MOVING THIS

1 LENGTHY CASE ALONG. AND I AM VERY INTERESTED IN GETTING P-10
2 THE DMCA LOG AS IT EXISTS IN XCEL SPREADSHEET FORMAT. I AM
3 INTERESTED IN GETTING THEM ALL DMCA NOTICES. AND I AM VERY
4 CONCERNED ABOUT THE OVERARCHING BLOGGER DISCOVERY ISSUE.

5 IF GOOGLE IS PREPARED TO STATE ON THE RECORD THAT
6 THEY WOULD PRODUCE THE DMCA LOG IN THE XCEL SPREADSHEET
7 FORMAT TODAY, THAT WOULD BE USEFUL -- AS WELL AS ALL DMCA
8 NOTICES INCLUDING BLOGGER NOTICES.

9 I DON'T WANT TO BLUDGEON YOU INTO THAT IF YOU'RE
10 NOT PREPARED TO DO THAT TODAY. BUT I THINK THAT'S LIKELY
11 WHAT I WOULD ORDER PRODUCED IF THERE WAS A MOTION.

12 MS. KASSABIAN: WELL, THAT'S JUST THE PROBLEM, YOUR
13 HONOR. THEY'VE NEVER ASKED FOR ANY OF THOSE THINGS. AND
14 THEY'VE COME INTO COURT --

15 THE COURT: I KNOW.

16 MS. KASSABIAN: -- AND YOUR HONOR IS NOT GOING THEIR
17 WAY. SO, NOW THEY'RE TRYING TO CHANGE UP THEIR MOTION ON THE
18 FLY TO GET SOME SORT OF ORDER OUT OF YOU AND AGAINST GOOGLE.
19 THAT'S NOT FAIR.

20 IF THEY WANT TO SERVE DISCOVERY REQUESTS OR SEND ME
21 A MEET AND CONFER LETTER ASKING FOR ANY OF THOSE THINGS, I
22 WILL BE MORE THAN HAPPY TO GET RIGHT ON THAT AS EXPEDITIOUSLY
23 AS POSSIBLE.

24 ON THE ISSUE -- THE FIRST ISSUE OF THE DMCA LOG, IT
25 COSTS GOOGLE A GREAT DEAL OF TIME AND MONEY TO PRODUCE THOSE

1 DOCUMENTS AS IT DID IN RELIANCE ON THE AGREEMENT THAT WE HAD
2 WITH PERFECT 10. IF THEY WANT US TO REPRODUCE DOCUMENTS IN A
3 DIFFERENT FORMAT, THERE'S GOING TO BE A HUGE ADDITIONAL COST
4 BURDEN THERE.

5 A PARALLEL ISSUE WAS RAISED WITH PERFECT 10.
6 THEY'RE INSISTING WE DON'T WANT TO REPRODUCE ALL DOCUMENTS
7 FOR YOU, GOOGLE, WITH BATES STAMPS ON IT. WHY SHOULD GOOGLE
8 HAVE TO REPRODUCE ITS IDENTICAL DOCUMENTS IN A DIFFERENT
9 FORMAT.

10 THE COURT: YOU HAD TO REMIND ME OF THAT ISSUE. I
11 THOUGHT WE WERE ALMOST DONE.

12 MS. KASSABIAN: IT'S RIDICULOUS, YOUR HONOR. IT'S
13 RIDICULOUS. IT'S ABSOLUTELY RIDICULOUS. THEY NEVER ONCE
14 EVEN SENT ME A LETTER ASKING THAT VERY QUESTION. IT IS
15 ABSOLUTELY UNFAIR FOR THEM TO DRAG US IN COURT ON A SANCTIONS
16 MOTION AND THEN QUICKLY ON THE FLY TRY TO TURN IT INTO A
17 MOTION TO COMPEL HEARING ON DOCUMENTS THEY'VE NEVER REQUESTED
18 IN A FORMAT THEY'VE NEVER REQUESTED. THAT'S NOT FAIR. AND
19 THAT'S NOT WHY YOUR HONOR IS HERE.

20 THERE ARE VEHICLES AND CHANNELS FOR PERFECT 10 TO
21 REACH OUT TO US AND TO ASK FOR WHAT IT WANTS AND WHAT IT
22 BELIEVES IT NEEDS. PERFECT 10 HAS NOT EXTENDED THAT
23 COURTESY.

24 THE COURT: WELL, I SAID I'M NOT GOING TO BLUDGEON
25 YOU INTO AGREEING TO THAT TODAY. I --

1 MS. KASSABIAN: I CAN'T AGREE TO THESE THINGS --

2 THE COURT: I WOULD ASK YOU TO -- I WOULD ASK YOU
3 TO TRY TO RESOLVE THIS PARTICULAR ISSUE --

4 MS. KASSABIAN: I'M HAPPY TO.

5 THE COURT: -- WITHOUT A MOTION. I'D LIKE YOU TO
6 TRY TO RESOLVE THE DMCA -- ALL DMCA NOTICES ISSUE WITHOUT A
7 MOTION. AND ON THE BLOGGER DISCOVERY DOCUMENT REQUEST 51, ET
8 CETERA --

9 DR. ZADA: WE'VE ASKED FOR THIS MATERIAL SINCE THE
10 CASE STARTED.

11 THE COURT: OH, PLEASE, PLEASE.

12 MS. KASSABIAN: YOUR HONOR, I OBJECT. I OBJECT TO
13 THIS CONTINUED COLLOQUY BY DR. ZADA. WE'RE NEVER GOING TO
14 GET OUT OF HERE.

15 THE COURT: THAT WAS THE WRONG THING FOR HIM TO
16 SAY. I'LL SAY THAT.

17 MR. MAUSNER: MAY I SAY SOMETHING, YOUR HONOR?

18 THE COURT: BRIEFLY.

19 MR. MAUSNER: OKAY. THERE SHOULDN'T BE ANY BURDEN
20 IN PRODUCING THIS. WE'RE ASKING FOR IT IN THE VERY FORMAT
21 THAT IT ALREADY EXISTS. ALL THEY GOT TO DO IS TAKE THE
22 SPREADSHEET, AND THEY CAN EVEN EMAIL IT TO US.

23 I DON'T UNDERSTAND IF YOU THINK THIS WILL MOVE THE
24 CASE ALONG, PREVENT FURTHER WORK BY EVERYBODY, FURTHER
25 MOTIONS, WHY WOULDN'T YOU JUST ORDER THAT THEY PRODUCE TO US

1 THE XCEL -- THE SPREADSHEET IN XCEL FORMAT AS IT EXISTS.

2 IT'S NOT GOING TO TAKE THEM VERY LONG TO DO THAT. AND --

3 THE COURT: LET'S SEE WHAT HAPPENS OVER THE NEXT
4 WEEK OR SO. AND I CAN RESOLVE ALL OF THIS I THINK ON A
5 TELEPHONIC CONFERENCE WITHOUT BRIEFING.

6 MS. KASSABIAN: AND, YOUR HONOR, IF I COULD JUST --

7 THE COURT: IF NECESSARY.

8 MR. MAUSNER: BUT, YOUR HONOR, WE KNOW EXACTLY WHAT
9 HAS TO BE DONE HERE. THEY JUST HAVE TO PRODUCE TO US THE
10 XCEL SPREADSHEET, ALL THE DMCA NOTICES. YOU KNOW, WHY --
11 PLEASE JUST ORDER IT SO WE CAN MOVE ON FROM THIS AND GO
12 FORWARD.

13 THE COURT: WELL, I'M NOT GOING TO DO IT TODAY.

14 MR. MAUSNER: OKAY.

15 THE COURT: I'M TELLING YOU I'LL MAKE MYSELF
16 AVAILABLE.

17 YES?

18 MS. KASSABIAN: TO BE CLEAR, PERFECT 10 IS
19 ABSOLUTELY WRONG TO SAY JUST EMAIL US THE FILES. WE'RE
20 TALKING ABOUT MASSIVE MULTI-HUNDRED THOUSAND -- HUNDRED,
21 SLASH, THOUSAND -- NOT HUNDRED THOUSAND -- PAGE FILES THAT
22 HAVE BEEN CONVERTED TO TIFF AND PAINSTAKINGLY REDACTED FOR
23 PRIVILEGE. IT WILL TAKE A VERY LONG TIME AND COST A VERY
24 GREAT DEAL OF MONEY TO REDO THAT PROCESS.

25 DOCUMENTS CANNOT BE REDACTED IN NATIVE FORMAT.

1 THIS IS NOT THE SIMPLE ISSUE THAT PERFECT 10 MAKES IT OUT TO
2 BE. THERE'S A REASON WHY PARTIES USE SINGLE-PAGE TIFF. THAT
3 WAS SUFFICIENT. THAT'S ALL WE HAD TO DO. THEY WERE FULLY
4 SEARCHABLE. AND ACCORDING TO DR. ZADA, HE HAS ALREADY USED
5 SOFTWARE TO CONVERT THAT TO SOME OTHER FORMAT THAT HE
6 PREFERS.

7 MR. MAUSNER: YOUR HONOR, WE RECEIVED APPROXIMATELY
8 1,000 PAGES OF THE JPG FILES THAT THEY'RE CLAIMING IS A LOG.
9 AND NOW SHE'S SAYING THAT A HUNDRED THOUSAND PAGES --

10 MS. KASSABIAN: I DIDN'T SAY A HUNDRED THOUSAND. I
11 SAID HUNDREDS OR AT LEAST A THOUSAND.

12 IT'S MANY, MANY PAGES OF DOCUMENTS, YOUR HONOR.
13 THIS IS NOT -- FIRST OF ALL, THIS IS NOT WHAT THEY REQUESTED
14 IN THEIR MOTION.

15 MR. MAUSNER: BUT WE --

16 MS. KASSABIAN: NOWHERE IN THEIR MOTION -- SIR, MAY
17 I FINISH?

18 MR. MAUSNER: YES.

19 MS. KASSABIAN: NOWHERE IN THEIR MOTION DID THEY
20 ASK YOUR HONOR TO ORDER THAT GOOGLE PRODUCE THE DMCA LOG IN A
21 DIFFERENT FORMAT. THIS IS JUST AN EXCUSE TO TRY TO GET
22 BEFORE THE COURT AND OFFER MORE EVIDENCE ON THEIR DMCA
23 MOTIONS. IT'S INAPPROPRIATE.

24 MR. MAUSNER: OKAY. YOUR HONOR, I'M LOOKING AT THE
25 PROPOSED ORDER THAT WE SUBMITTED, PARAGRAPH 3.

1 "GOOGLE IS HEREBY ORDERED TO PRODUCE THE
2 DOCUMENTS WHICH IT HAS FAILED TO PRODUCE
3 AS SET FORTH IN PERFECT 10'S MEMORANDUM
4 OF POINTS AND AUTHORITIES WITHIN TEN
5 DAYS OF THIS ORDER.

6 "THESE DOCUMENTS INCLUDE THE FOLLOWING:

7 (A) THE SPREADSHEET-TYPE DMCA LOG SUMMARIZING
8 DMCA NOTICES RECEIVED, THE IDENTITY OF THE
9 NOTIFYING PARTY AND THE ACCUSED INFRINGER, AND
10 THE ACTIONS, IF ANY, TAKEN IN RESPONSE WHICH
11 GOOGLE HAS FAILED TO PRODUCE IN VIOLATION OF
12 THE COURT'S MAY 13TH, 2008 ORDER AND EARLIER
13 ORDERS BY JUDGE HILLMAN;

14 (B) THE DMCA NOTICES AND OTHER DOCUMENTS
15 THAT GOOGLE HAS FAILED TO PRODUCE IN VIOLATION
16 OF THE COURT'S ORDERS AND GOOGLE'S REPRESENTATIONS
17 THAT SUCH DOCUMENTS HAVE BEEN PRODUCED."

18 SPECIFICALLY, WE REQUESTED IT IN THIS ORDER, AND
19 WE'RE ASKING YOU TO DO THAT NOW, YOUR HONOR.

20 MS. KASSABIAN: AND, YOUR HONOR, IN THEIR REPLY
21 BRIEF THEY EXPRESSLY DISCLAIMED ANY REQUEST TO CONTINUE
22 GOOGLE'S DMCA MOTION SO THAT THEY COULD OBTAIN ADDITIONAL
23 DISCOVERY.

24 WHAT IS THE ULTIMATE POINT OF -- LET'S JUST ASSUME
25 FOR A MOMENT THAT PERFECT 10 HAS PROVEN THAT EVEN ONE PAGE OF

1 DOCUMENTS WASN'T PRODUCED WHEN IT SHOULD HAVE BEEN PRODUCED.
2 LET'S JUST ASSUME THAT THAT'S TRUE. WHAT IS THE POINT HERE.
3 PERFECT 10 HAS STATED IN THEIR SIGNED FILING THAT THEY ARE
4 NOT SEEKING TO CONTINUE THE DMCA BRIEFING ON THAT. IN FACT
5 --

6 MR. MAUSNER: THAT'S NOT WHAT WE REPRESENTED.

7 MS. KASSABIAN: PERFECT 10 FILED -- CAN I FINISH.

8 IN FACT, THEY FILED THEIR OWN CROSS MOTION FOR
9 SUMMARY JUDGMENT.

10 IT'S CLEAR FROM THE CASE LAW THAT WE CITED THAT
11 WHEN A PARTY FILES ITS OWN MOTION FOR SUMMARY JUDGMENT, THAT
12 IS A CONCESSION TO THE COURT --

13 THE COURT: THAT THEY'RE READY.

14 MS. KASSABIAN: -- THAT NO FURTHER DISCOVERY IS
15 NECESSARY. SO, WHAT IS THE POINT OF THIS EXERCISE. THOSE
16 MOTIONS ARE UNDER SUBMISSION. AND PERFECT 10 IS NOT ASKING
17 FOR A 56(F) CONTINUANCE.

18 MR. MAUSNER: YOUR HONOR, WE ALREADY TALKED ABOUT
19 WHETHER IT'S A 56(F) IF YOU PROPOUNDED THE DISCOVERY -- IT'S
20 BEEN ORDERED, BUT YOU HAVEN'T GOTTEN IT YET. SO, THAT'S --

21 YOU KNOW, CERTAINLY WHEN WE GET THESE DOCUMENTS,
22 WE'RE GOING TO LOOK AT THEM, AND WE'RE GOING TO SEE IF
23 THERE'S ANYTHING THAT --

24 THE COURT: I'LL TELL YOU RIGHT NOW, IF I WERE TO
25 ORDER THE DMCA LOG IN XCEL FORM, AND IF IT WAS EXPENSIVE, AT

1 THIS POINT I WOULD TURN TO P-10 BECAUSE OF THE HISTORY OF
2 PRODUCTION AND THE PRIOR AGREEMENT. SO, YOU BETTER BE SURE
3 BEFORE YOU INSIST ON THIS THAT YOU'RE PREPARED TO PAY --

4 MR. MAUSNER: WHAT WOULD THAT -- I THINK THE ANSWER
5 IS YES, BUT WHAT WOULD THAT INVOLVE? WE ORDERED --

6 THE COURT: YOU'RE ASKING ME?

7 MR. MAUSNER: WE ORDERED IT IN THE FORMAT THAT IT
8 EXISTS.

9 MS. KASSABIAN: YOUR HONOR, THEY'VE NEVER EVEN
10 DISCUSSED THIS WITH ME. THIS IS THE FIRST TIME I'M HEARING
11 ANY OF THIS.

12 THE COURT: THAT'S WHY I'M JUST --

13 MS. KASSABIAN: WE DON'T NEED TO WASTE YOUR TIME
14 WITH THIS.

15 THE COURT: -- AT MY WIT'S END.

16 MS. KASSABIAN: IF THEY WANT THAT FILE, THEN, THEY
17 SHOULD ASK FOR IT. THEY'VE NEVER DONE THAT. AND WE CAN TALK
18 ABOUT COST ISSUES. WE CAN TALK ABOUT PRIOR AGREEMENTS. WE
19 CAN TALK ABOUT WHAT IT WOULD MEAN, WHAT WE WOULD HAVE TO DO.
20 WE CAN TALK ABOUT WHETHER THEY NEED IT SINCE DR. ZADA HAS
21 ALREADY CREATED A SORTABLE SPREADSHEET FROM OUR DOCUMENTS.
22 WE CAN TALK ABOUT ALL THOSE THINGS WITHOUT WASTING YOUR
23 HONOR'S TIME.

24 MR. MAUSNER: YOUR HONOR, THEY PAY FOR IT UP TO
25 \$5,000. IF IT'S ABOVE THAT, WE'LL DISCUSS IT WITH THEM. I

1 DON'T THINK IT SHOULD BE EVEN CLOSE TO THAT, AND WE WILL
2 PROBABLY PAY IT ALL. BUT WE WILL PAY FOR IT. WE WANT THIS
3 IN XCEL FORMAT. IT SHOULD HAVE BEEN PRODUCED ALREADY. BUT
4 TO MOVE THIS ALONG, WE'LL AGREE TO PAY FOR IT. OKAY.

5 WE ASKED FOR THIS, YOUR HONOR, IN OUR PROPOSED
6 ORDER. AND I DON'T UNDERSTAND WHY -- WHY THERE SHOULD BE ANY
7 HESITATION. WE SHOULD HAVE IT ALREADY. WE SHOULD HAVE HAD
8 IT A LONG TIME AGO.

9 WHAT'S GOING TO HAPPEN WHEN WE ASK THEM FOR THIS.
10 IN FRONT OF YOU --

11 MS. KASSABIAN: THAT'S WHAT A MEET AND CONFER IS
12 ABOUT.

13 MR. MAUSNER: -- IN FRONT OF YOU, YOUR HONOR, IN
14 FRONT OF YOU, THEY'VE GIVEN US SUCH A HARD TIME ABOUT THIS.
15 DO YOU THINK THEY'RE GOING TO GIVE US THE TIME OF DAY. WHEN
16 WE ASKED THEM TO PRODUCE THIS IN XCEL FORMAT WERE THEY NOT
17 EVEN THERE.

18 PLEASE JUST ORDER THIS. WE'LL GET THE THING.
19 WE'LL LOOK AT IT. WE'LL DECIDE IF THERE'S ANYTHING FURTHER
20 THAT HAS TO BE SUBMITTED IN CONNECTION WITH THE SUMMARY
21 JUDGMENT MOTIONS, AND WE CAN MOVE ON.

22 THE COURT: I'M NOT GOING TO ORDER IT TODAY.

23 MS. KASSABIAN: THANK YOU, YOUR HONOR.

24 MR. MAUSNER: WHEN CAN WE --

25 MS. KASSABIAN: I'D ASK THAT THE COURT REQUIRE

1 PERFECT 10 TO FOLLOW THE LOCAL RULES AND MEET AND CONFER ON
2 ISSUES LIKE THIS BEFORE DRAGGING THEM IN FRONT OF THIS COURT.

3 MR. MAUSNER: YOUR HONOR, CAN WE SET A TELEPHONIC
4 HEARING. WE'LL TALK TO THEM, AND, THEN, CAN WE SET A
5 TELEPHONIC HEARING?

6 THE COURT: I DON'T HAVE MY CALENDAR RIGHT NOW.
7 YOU CAN SET IT UP EARLY NEXT WEEK.

8 NOW, WHAT ABOUT THE OVERARCHING BLOGGER ISSUE? I'M
9 TRYING TO FIGURE OUT --

10 MS. KASSABIAN: YOUR HONOR, PERFECT 10 REPRESENTED
11 TO JUDGE MATZ THAT IT WAS NOT GOING TO PROPOUND THE SAME
12 DISCOVERY ON BLOGGER NECESSARILY THAT IT PROPOUNDED FOR THE
13 OTHER SERVICES.

14 THE COURT: AND THEN IT DID NOTHING. AND THEN IT
15 DID NOTHING.

16 MS. KASSABIAN: AND THEN THEY DID NOTHING.

17 SO, THERE'S NOTHING TO ORDER ON BLOGGER. IF THEY
18 WANT TO SERVE DISCOVERY ON BLOGGER, NO ONE HAS TO STOP THEM.
19 NO ONE IS REFUSING. WE'RE NOT SEEKING A PROTECTIVE ORDER
20 FROM BLOGGER DISCOVERY. THEY NEED TO FOLLOW THE FEDERAL
21 RULES. THIS IS SO ELEMENTARY.

22 THE COURT: WELL, BASED ON WHAT I HAVE READ AND
23 HEARD, I AM NOT LEFT WITH THE IMPRESSION THAT GOOGLE HAS
24 VIOLATED A COURT ORDER.

25 NOW, IF MS. KASSABIAN WANTS TO ADDRESS THE OTHER

1 ISSUES THAT DR. ZADA WAS TALKING ABOUT, ADSENSE AND OTHER
2 ISSUES AND WHETHER TERMINATION NOTICES AND WHETHER EVERYTHING
3 HAS BEEN PRODUCED, YOU KNOW, I THINK WE'VE ADDRESSED THAT
4 ALREADY.

5 MS. KASSABIAN: I THINK WE'VE COVERED IT.

6 THE COURT: BUT --

7 DR. ZADA: WELL, YOUR HONOR --

8 THE COURT: I'M NOW LEFT WITH THE IMPRESSION THAT
9 SANCTIONS ARE WARRANTED OR WOULD BE WARRANTED -- EVIDENTIARY
10 SANCTIONS ARE WARRANTED BECAUSE BLOGGER DISCOVERY HAS NOT
11 BEEN FORTHCOMING.

12 TO THE CONTRARY, I DON'T THINK BLOGGER DISCOVERY
13 HAS BEEN PROPOUNDED BASED ON WHAT'S BEEN QUOTED TO ME AND THE
14 EXCERPTS THAT I HAVE SEEN OF THE DISCOVERY AND THE ORDERS. I
15 DON'T.

16 AND I'M APPALLED THAT IT TOOK UNTIL TODAY FOR YOU
17 TO EVEN GET THEIR UNDERSTANDING -- GOOGLE'S UNDERSTANDING OF
18 WHAT YOU WERE REALLY TALKING ABOUT. TALK ABOUT A WASTE OF
19 MONEY.

20 MS. KASSABIAN: AND THAT'S WHY WE'VE ASKED FOR
21 SANCTIONS, YOUR HONOR. WE'VE ASKED THAT PERFECT 10 BE
22 SANCTIONED FOR FAILING TO TALK THESE ISSUES THROUGH BEFORE
23 THEY FILED THIS MOTION.

24 THE COURT: IT SEEMS TO ME THAT SIX MONTHS AGO THAT
25 YOU SHOULD HAVE BEEN SAYING -- MS. KASSABIAN -- WE

1 FUNDAMENTALLY DISAGREE ABOUT WHETHER BLOGGER DISCOVERY WAS
2 EMBRACED IN THE EARLIER COURT ORDERS. AND IF WE AGREE TO
3 DISAGREE, THEN LET'S GO BACK TO HILLMAN AND GET IT RESOLVED
4 BEFORE AN EVIDENTIARY SANCTIONS MOTION, BEFORE WE RESPOND TO
5 THE SUMMARY JUDGMENT MOTION AND FILE OUR OWN SUMMARY JUDGMENT
6 MOTION. LET'S GET IT RESOLVED BECAUSE WE HAVE A GOOD FAITH
7 DISAGREEMENT.

8 MR. MAUSNER: YOUR HONOR, SIX MONTHS AGO WE DID NOT
9 KNOW THAT THEY HAD NOT GIVEN US ALL BLOGGER DISCOVERY. WE
10 HAD SOME BLOGGER DISCOVERY. AND WE THOUGHT THAT THEY HAD
11 GIVEN US ALL BLOGGER DISCOVERY. WE DIDN'T KNOW THIS, THAT
12 THEY HADN'T UNTIL WE WERE ALREADY WORKING ON THE OPPOSITIONS
13 TO THE SUMMARY JUDGMENT MOTION. AND WE DIDN'T KNOW THE SCOPE
14 OF IT UNTIL WE WERE COMPLETELY DONE WITH THE SUMMARY JUDGMENT
15 MOTIONS. SIX MONTHS AGO WE HAD NO IDEA OF THAT BECAUSE --

16 THE COURT: BUT WHEN DID YOU FIRST SAY -- EXCUSE ME
17 FOR USING YOUR FIRST NAME. EXCUSE ME, RACHEL, I DON'T
18 UNDERSTAND WHY YOU HAVEN'T GIVEN US TONS OF BLOGGER DISCOVERY
19 GIVEN THE PRIOR COURT ORDERS.

20 WHEN WAS THAT FIRST SAID?

21 MR. MAUSNER: IT WAS SAID IN THE -- AFTER THE
22 SUMMARY JUDGMENT BECAUSE THAT'S WHEN WE REALIZED IT IN THE
23 MEET AND CONFER LETTERS.

24 MS. KASSABIAN: OCTOBER 22ND, 2009 -- 27TH, 2009
25 WHEN PERFECT 10 SENT ITS DEMAND LETTER REGARDING THIS

1 EVIDENTIARY SANCTIONS MOTION. THAT'S THE FIRST TIME THEY
2 SAID -- AND THEY DIDN'T SAY WHAT YOU JUST SAID. THEY DIDN'T
3 SAY, WE BELIEVE AND WE WOULD LIKE GOOGLE TO AGREE THAT THE
4 PRIOR REQUESTS SHALL ALSO NOW APPLY TO BLOGGER.

5 THAT HAS NEVER BEEN UTTERED BY PERFECT 10 EXCEPT AT
6 THIS HEARING AND IN THE BRIEFING. BUT ON OCTOBER 25TH, 2009
7 THEY SENT A DEMAND LETTER SAYING WHERE ARE ALL THE BLOGGER
8 DMCA NOTICES. AND WE WROTE BACK A FEW DAYS LATER AND SAID,
9 WHAT ARE YOU TALKING ABOUT. YOU'VE NEVER SERVED A DISCOVERY
10 REQUEST ASKING FOR THOSE DOCUMENTS.

11 DESPITE KNOWING THAT, THEY COULD HAVE RESPONDED AND
12 SAID, OOPS, OUR BAD. CAN WE MAKE AN AGREEMENT THAT ALL THE
13 PRIOR DISCOVERY REQUESTS WILL APPLY TO BLOGGER, AND WE'LL
14 GIVE YOU SIX MONTHS, OR HOWEVER LONG IT MIGHT TAKE, FOR YOU
15 TO GO THROUGH ALL THOSE 400 REQUESTS AND APPLY THEM ALL TO
16 BLOGGER.

17 OR LET'S TALK ABOUT EACH ONE. FOR INSTANCE, ONE OF
18 THEM INVOLVES REVENUES, RIGHT, FOR SERVICES THAT YOU HAVE TO
19 PAY FOR. AND, OF COURSE, YOU DON'T HAVE TO PAY FOR BLOGGER.
20 SO, THAT MIGHT BE ONE THAT WOULDN'T APPLY FROM THE PRIOR
21 DISCOVERY.

22 THIS CONVERSATION HAS NEVER TRANSPIRED. PERFECT 10
23 HAS NEVER APPROACHED US ABOUT THIS. THAT HAS TO COME FIRST
24 BEFORE ANY ARGUMENT CAN BE MADE THAT YOUR HONOR SHOULD ISSUE
25 AN ORDER ON SOMETHING THAT HASN'T EVEN BEEN REQUESTED OR

1 DISCUSSED IN MEET AND CONFER.

2 MR. MAUSNER: WELL, I HAVE ALWAYS THOUGHT THAT IT
3 WAS REQUESTED BECAUSE IT SAID ALL. THIS BLOGGER THING IS
4 JUST A -- BLOGGER SHOULD BE NO DIFFERENT FROM ANYTHING ELSE.
5 THEY SHOULD HAVE TURNED THIS STUFF OVER TO US. WE THOUGHT
6 THEY DID.

7 FOR HER TO SAY, OH, IF YOU HAD COME TO US, WE WOULD
8 HAVE GIVEN IT. THEY'RE NOT GOING TO GIVE IT TO US. WE'RE
9 SITTING RIGHT HERE. THEY'RE STILL SAYING WE'RE NOT GOING TO
10 GIVE IT TO YOU. WE ASKED FOR IT. WE MET AND CONFERRED ON
11 IT. WE SENT THEM --

12 WHAT'S THE EXHIBIT TO MY DECLARATION?

13 WE SENT THEM SEVERAL VERY DETAILED AND LONG LETTERS
14 ABOUT THIS. IF THEY THOUGHT THAT -- YOU KNOW, IF THEY WERE
15 GOING TO EVER GIVE US THIS STUFF, WHY DIDN'T THEY GIVE IT TO
16 US THEN.

17 MS. KASSABIAN: YOUR HONOR --

18 MR. MAUSNER: EXHIBIT O TO MY DECLARATION.

19 MS. KASSABIAN: THOSE ARE ALL LETTERS THAT WERE
20 SENT TO US A FEW WEEKS BEFORE THEY FILED THIS MOTION. AND
21 NONE OF THOSE LETTERS -- IN NONE OF THOSE LETTERS DOES
22 PERFECT 10 SAY, YOU KNOW WHAT, WE HAVE THIS UNDERSTANDING.
23 YOU OBVIOUSLY HAVE THIS OTHER UNDERSTANDING. LET'S REACH
24 AGREEMENT AND GIVE US THOSE BLOGGER DOCUMENTS.

25 THEY DIDN'T WANT THAT ANSWER. THEY DIDN'T CARE

1 ABOUT THAT ANSWER. WE GAVE THEM OUR RESPONSE. WE SAID YOU
2 DIDN'T REQUEST THEM. NOW WHAT DO YOU HAVE TO SAY, PERFECT
3 10.

4 MR. MAUSNER: OKAY. THEY --

5 MS. KASSABIAN: AND THEIR RESPONSE WAS JUST TO FILE
6 THIS MOTION.

7 MR. MAUSNER: OKAY. THEY DIDN'T COME UP WITH THIS
8 EXCUSE OR ARGUMENT THAT THEY DIDN'T GIVE IT TO US BECAUSE
9 THEY WERE BLOGGER UNTIL THEIR OPPOSITION. WE DIDN'T EVEN
10 KNOW THAT THAT WAS GOING TO BE THE BASIS THAT THEY WERE
11 OPPOSING THIS ON. ALL WE KNEW WAS --

12 THE COURT: THERE WAS NO MEET AND CONFER.

13 MR. MAUSNER: YEAH. WELL, THE MEET AND CONFER
14 SAID, YOU DIDN'T GIVE US ALL OF THESE NOTICES.

15 THE COURT: THAT'S NOT THE MEET AND CONFER, AND YOU
16 KNOW THAT.

17 MR. MAUSNER: IT IS.

18 THE COURT: A MEET AND CONFER IS A DISCUSSION
19 BETWEEN COUNSEL PREFERABLY IN PERSON AND, IF NOT IN PERSON
20 BECAUSE COUNSEL IS IN THE NORTHERN DISTRICT, THEN, AT LEAST
21 TELEPHONICALLY.

22 MR. MAUSNER: OKAY. YOUR HONOR, I SENT THEM
23 SEVERAL LETTERS. AND IN THOSE LETTERS I SAID IF YOU WANT TO
24 DISCUSS THIS FURTHER, PLEASE CALL ME -- SEVERAL TIMES. I
25 TRIED TO CALL THEM, AND I LEFT MESSAGES SEVERAL TIMES. OKAY.

1 MS. KASSABIAN: MR. MAUSNER DID CALL ME ON A DAY
2 THAT HE KNEW I WAS OUT ON VACATION, AND I WAS NOT THERE, AND
3 I DID NOT ANSWER THE PHONE.

4 MR. MAUSNER: I ALSO CALLED TOM NOLAN.
5 AND I CALLED HER ON MORE THAN ONE OCCASION.

6 YOUR HONOR, YOU KNOW, YOU -- I'M NOT SURE WHY, BUT
7 YOU HAVE THIS VERY -- THIS VIEW ABOUT HOW WE ARE OPERATING OR
8 SOMETHING LIKE THIS. WHY IN THE WORLD WOULD A VERY SMALL
9 COMPANY AND A VERY SMALL LAW FIRM WANT TO FILE MOTIONS IF
10 THEY THOUGHT THAT THEY COULD GET THIS STUFF WITHOUT IT.

11 THIS IS NOT -- YOU KNOW, WE'RE GETTING KILLED IN
12 THIS THING. WE'RE GETTING CRUSHED BY THEM BECAUSE THEY HAVE
13 SO MUCH MORE RESOURCES THAN WE HAVE. WE HAVE TRIED TO GET
14 THIS STUFF. YOU THINK THAT WE HAVE 20/20 HINDSIGHT ABOUT
15 EVERYTHING IN THE PAST. YOU THINK BACK IN 2006 WHEN WE GOT
16 AN ORDER TO PRODUCE A LOG, AND THEY WERE REPRESENTING WE
17 PRODUCED ALL NOTICES, THAT WE SOMEHOW SHOULD HAVE KNOWN THAT
18 THEY WERE EXCLUDING BLOGGER NOTICES EVEN THOUGH THEY NEVER
19 SAID IT.

20 WE DON'T HAVE 20/20 HINDSIGHT. WE'VE BEEN TRYING
21 OUR HARDEST TO GET THIS STUFF AND LITIGATE THE CASE PROPERLY
22 AND SO ON. AND WE JUST KEEP -- LIKE SHE WRITES THAT EMAIL TO
23 ME SAYING WE'RE GOING TO PRODUCE THIS IN TIFF FORMAT UNLESS
24 WE HEAR TO THE CONTRARY. AT THE TIME SHE WAS MAYBE THINKING,
25 OH, OKAY. YEAH, WE'RE GOING TO PRODUCE THESE SPREADSHEETS IN

1 TIFF FORMAT.

2 SO, I GET THE THING AND I SAID, WELL, TIFF
3 GENERALLY IS OKAY FOR REGULAR DOCUMENTS. AND I SAID, THAT'S
4 OKAY AS LONG AS IT IS EASILY READABLE AND SEARCHABLE. I
5 WASN'T EVEN THINKING ABOUT THE SPREADSHEETS BEING INCLUDED IN
6 THAT. OKAY. AND, THEN, THEY DON'T EVEN PRODUCE THEM IN
7 TIFF. THEY PRODUCE THEM IN JPG WHICH NO QUESTION IS NOT
8 SEARCHABLE.

9 BUT YOU'RE KIND OF -- I DON'T KNOW, IT SEEMS LIKE
10 YOU'RE VIEWING WHAT WE DID AS SOMEHOW, YOU KNOW, WE JUST WANT
11 TO GO OUT AND FILE A MOTION. OF COURSE WE DON'T. BECAUSE
12 THEY'RE -- IT'S ADVANTAGEOUS FOR THEM. THEY'RE GETTING LOTS
13 OF FEES FROM THESE MOTIONS. AND GOOGLE IS --

14 THE COURT: YOU KNOW WHAT, I --

15 MR. MAUSNER: -- YOU KNOW, IT'S DELAYING AND
16 DELAYING --

17 THE COURT: YOU KNOW I THINK WELL OF YOU. AND I
18 KNOW YOU'RE UNDER THE GUN. I JUST DON'T THINK THAT EITHER OF
19 THE MOTIONS YOU BROUGHT -- AND I'M NOT TALKING SANCTIONS. I
20 DON'T THINK EITHER OF THE MOTIONS YOU BROUGHT WERE WORTH THE
21 EXPENSE OF BRINGING THEM.

22 AND THE MOTION THAT WOULD HAVE BEEN THE MOST USEFUL
23 TO BOTH SIDES WOULD BE TO CLARIFY THIS VERY ISSUE OF BLOGGER
24 DISCOVERY. THUMBS UP OR THUMBS DOWN. AND IT COULD HAVE BEEN
25 DONE EARLIER AND MUCH CHEAPER AND WITH LOT LESS VOLLEY OF

1 VITRIOL ON BOTH SIDES -- WHOEVER WROTE THAT PHRASE, I LIKE
2 THAT.

3 YOU KNOW, IT'S JUST -- YOU TALK ABOUT EXPEDITIOUS
4 AND ECONOMICAL. THAT WOULD HAVE BEEN THE MOTION. THAT'S ALL
5 I'M SAYING.

6 MR. MAUSNER: OKAY.

7 THE COURT: AND I DON'T THINK THAT YOU EXHAUSTED --
8 YOU CLEARLY DID NOT EXHAUST THE MEET AND CONFER REQUIREMENT
9 FULLY. OR THIS MOTION -- THESE MOTIONS, OR, AT LEAST, THIS
10 EVIDENTIARY MOTION, WOULD HAVE NOT BEEN FILED. YOU WOULD
11 HAVE BROUGHT THE OTHER MOTION.

12 HE WOULD HAVE SAID, YOU KNOW WHAT, WE AGREE TO
13 DISAGREE, AND WE'RE SHOCKED THAT YOU READ THE PRIOR ORDERS
14 THIS WAY. AND WE THINK YOU'RE DOING IT IN GOOD FAITH -- BAD
15 FAITH. AND OF COURSE IT INCLUDES THIS. AND THAT MOTION
16 COULD HAVE BEEN RESOLVED. NOW, IT'S NOT EVEN BEFORE ME.

17 MR. MAUSNER: WELL, IT IS, YOUR HONOR, BECAUSE
18 WE'RE ASKING THAT YOU ORDER -- IN THE PROPOSED ORDER WE ASK
19 THAT YOU ORDER THAT THESE DOCUMENTS BE PRODUCED.

20 AND, YOUR HONOR, IT'S -- HOW ABOUT THIS, YOUR
21 HONOR. WE'LL TAKE A RECESS OVER LUNCH. WE'LL SEE IF THEY'LL
22 PRODUCE THEM. AND, THEN, WE'LL COME BACK. AND I'M ALMOST
23 POSITIVE THAT THEY'RE GOING TO SAY WE'RE NOT GOING TO GIVE
24 THIS TO YOU. AND AT THAT POINT WE'LL ASK YOU, WOULD YOU
25 PLEASE ORDER THAT THESE DOCUMENTS BE PRODUCED SO WE CAN MOVE

1 ON WITH THIS PART OF THE CASE.

2 MS. KASSABIAN: YOUR HONOR, IF THAT'S WHAT PERFECT
3 10 WANTS, THAT'S WHAT THEY SHOULD HAVE DONE DURING THE MEET
4 AND CONFER PROCESS BEFORE WE EVER GOT HERE.

5 THEY HAVE SERVED SOMETHING IN THE NEIGHBORHOOD OF
6 3- OR 400 REQUESTS FOR PRODUCTION OF DOCUMENTS IN THIS CASE.
7 FOR THEM TO ASK ME TO STEP OUT INTO THE HALLWAY AND JUST GIVE
8 A BLANKET AGREEMENT THAT WE WILL PRODUCE BLOGGER TYPES OF
9 DOCUMENTS FOR EVERY REQUEST IN THOSE 400 DOCUMENT REQUESTS IS
10 OUTRAGEOUS. THEY NEED TO TAKE THIS UP IN THE PROPER CONTEXT.

11 THE COURT: ALL RIGHT. LET'S MOVE ON BRIEFLY TO --

12 MR. MAUSNER: HOW ABOUT DOING TWO OF THEM, THE XCEL
13 SPREADSHEET AND THE DMCA NOTICES. SHE CAN SAY YES OR NO NOW
14 OR OVER LUNCH --

15 THE COURT: WE'RE GOING TO FINISH THIS HEARING IN
16 THE NEXT TEN MINUTES. AND, THEN, YOU'RE WELCOME TO USE THE
17 COURTROOM THE REST OF THE DAY IF YOU WANT TO, BUT WE'RE NOT
18 TAKING A LUNCH BREAK.

19 THE LAST THING IS THE BATES STAMPING ISSUE. AND I
20 THINK THE LAST THING I SAID ON THIS MOTION WAS THAT I WAS
21 FAVORING GOOGLE'S ALTERNATIVE ARGUMENT FROM A FEW MONTHS AGO,
22 THAT WHEN DOCUMENTS ARE FILED IN MOTIONS, THAT THEY HAVE
23 DISCRETE BATES STAMPING ON THEM.

24 AND BEYOND THAT I JUST -- THEY'VE ALWAYS GOTTEN
25 ALONG ON THIS ISSUE, STUMBLING ALONG SO FAR WITHOUT BATES

1 STAMPING, SO. THAT'S SORT OF WHERE I WAS.

2 MR. MAUSNER: OKAY. THANK YOU. THANK YOU, YOUR
3 HONOR.

4 MS. KASSABIAN: SO, I GUESS I'M NOT --

5 THE COURT: DO YOU REMEMBER YOUR SECOND ALTERNATIVE
6 --

7 MS. KASSABIAN: -- A HUNDRED PERCENT CLEAR, THAT
8 PERFECT 10 IDENTIFY A FILE PATH FOR --

9 THE COURT: -- A FILE PATH AND --

10 MS. KASSABIAN: -- THE SPECIFIC FILE PATH AND
11 PRODUCTION DATE FOR --

12 THE COURT: OR FILED DOC- -- FOR DOCUMENTS FILED
13 AS PART OF MOTIONS.

14 MS. KASSABIAN: DOCUMENTS FILED AS PART OF MOTIONS.

15 THE COURT: RIGHT. SO THAT THEY HAVE DISCRETE FILE
16 PATHS AND BATES STAMPS.

17 MR. MAUSNER: YOUR HONOR, THE OTHER THING WE WOULD
18 ASK IS THAT BOTH PARTIES IDENTIFY DOCUMENTS THAT WAY.

19 THE COURT: YES.

20 MS. KASSABIAN: YOUR HONOR, THERE ARE NO FILE PATHS
21 FOR OUR DOCUMENTS. OUR DOCUMENTS HAVE BATES NUMBERS. THEY
22 ARE SELF-IDENTIFIED. THAT'S WHY THEY DID THAT. THAT'S WHY
23 PARTIES DO THAT IN LITIGATION.

24 MR. MAUSNER: I'M NOT SAYING FOR THEIR DOCUMENTS.
25 WHEN THEY USE ONE OF OUR DOCUMENTS, THEY DO THE SAME THING.

1 THEY IDENTIFIED THE FILE PATH WHERE THEY GOT THE DOCUMENT.

2 MS. KASSABIAN: THAT'S OUTRAGEOUS. THESE ARE
3 PERFECT 10'S DOCUMENTS. WE SHOULDN'T SUFFER THE BURDEN OF
4 HAVING TO GO THROUGH EXTRA STEPS WHEN USING --

5 THE COURT: WELL, IF YOU'RE USING THEIR DOCUMENT,
6 YOU'RE USING THEIR FILE PATH AND THEIR BATES STAMP NUMBER.

7 MS. KASSABIAN: UNLESS I'M USING A PAPER FILE.

8 THE POINT OF DOING THIS, YOUR HONOR, IS SO THAT
9 GOOGLE CAN KNOW WHETHER THE DOCUMENT HAS BEEN PRODUCED.
10 PERFECT 10 ALREADY KNOWS WHAT IS IN ITS PRODUCTION. THEY ARE
11 THE MASTER OF THEIR PRODUCTION.

12 MR. MAUSNER: YOUR HONOR, IF THEY'RE USING THE
13 DOCUMENT, THEY OBVIOUSLY GOT IT. SO, THEY KNOW THE FILE
14 PATH.

15 MS. KASSABIAN: ONE MORE POINT, YOUR HONOR. WE --

16 MR. MAUSNER: WE JUST ASK THAT IT BE -- THAT THE
17 ORDER BE EQUAL AS TO BOTH PARTIES.

18 MS. KASSABIAN: YOUR HONOR, MR. LOVE HAS JUST
19 POINTED SOMETHING OUT TO ME THAT I FORGOT. WE DON'T USE ALL
20 OF THE INDIVIDUAL HARD DRIVES AND DISKS ON A DAILY BASIS TO
21 ACCESS PERFECT 10'S PRODUCTION. IT MAKES IT IMPOSSIBLE TO
22 WORK WITH THEM.

23 YOU'D HAVE TO -- WHEN YOU'RE LOOKING FOR A
24 DOCUMENT, YOU'D HAVE TO PLUG IN EACH SEPARATE HARD DRIVE AND
25 EACH DISK ONE AT A TIME AND RUN SEARCHES IN EACH OF THOSE

1 MEDIA. SO, INSTEAD, WE'VE LOADED EVERYTHING ONTO A DATABASE.
2 SO, WE DON'T USE THE DISKS -- THE MEDIA THAT HAVE THE FILE
3 PATH STRUCTURE ON THEM. OUR DATABASE HAS THE DOCUMENTS
4 LOADED ON THERE.

5 THE COURT: DOES SOMEONE HAVE THE PROPOSED ORDER ON
6 THIS MOTION? I HAVE --

7 MR. MAUSNER: YOUR HONOR, THAT'S A VERY INTERESTING
8 ADMISSION. AND I KNEW BASED ON THEIR BROCHURE THAT THAT WAS
9 TRUE.

10 THEY'VE TAKEN ALL THESE DOCUMENTS. THEY PUT IT
11 INTO A DATABASE. THEY CAN VERY, VERY EASILY LOCATE ANY
12 DOCUMENT THAT THEY USE AND THEY KNOW IT WAS IN THE
13 PRODUCTION.

14 YOUR HONOR, I THINK THAT THAT JUST SHOWS THAT ALL
15 OF THIS REALLY WAS A RED HERRING JUST TO PUT US TO THIS
16 UNBELIEVABLE BURDEN OF BATES STAMPING ALL OF THE DOCUMENTS.

17 THEY HAVE THE DOCUMENTS IN A DATABASE. THEY CAN
18 VERY EASILY -- IF A DOCUMENT IS THERE, THEY CAN RUN A SEARCH
19 ON THEIR DATABASE AND FIND THE DOCUMENT. I --

20 MS. KASSABIAN: THAT'S COMPLETELY FALSE, YOUR
21 HONOR. THAT'S NOT AN ADMISSION OF ANY KIND.

22 WE TOOK CERTAIN STEPS TO GET SOME OF THEIR
23 DOCUMENTS ONTO A DATABASE SO THAT WE COULD MAKE SOME USE OF
24 THEM. THAT DOESN'T CHANGE THE FACT THAT WHEN PERFECT 10
25 LOOKS AT A DOCUMENT THAT HAS NO BATES STAMP, OR FILES A

1 DOCUMENT THAT HAS NO BATES STAMP, WE HAVE NO IDEA IF THEY
2 PRODUCED IT.

3 AND MOST OF THEIR DOCUMENTS, A GOOD PORTION OF
4 THEIR DOCUMENTS AREN'T OCR'D. SO, EVEN THOUGH THEY MIGHT BE
5 ON A HARD DRIVE OR IN A DATABASE, RUNNING SEARCHES WON'T DO
6 ANYTHING. YOU CAN'T FIND THEM.

7 THE COURT: DO COUNSEL HAVE A COPY OF THE PROPOSED
8 ORDER?

9 MS. KASSABIAN: I'M LOOKING FOR THAT RIGHT NOW.

10 THE COURT: OKAY.

11 MR. JANSEN: YOUR HONOR --

12 THE COURT: MR. JANSEN.

13 MR. JANSEN: YOUR HONOR, YOUR HONOR, I JUST WANT TO
14 ADDRESS -- I THINK SOME ISSUES IS THAT -- YOU KNOW, THE
15 PERFECT 10 DOCUMENT PRODUCTION IS VERY DISORGANIZED. AND
16 HEADING TOWARDS TRIAL, YOU KNOW, JUST THINKING ABOUT TRIAL,
17 HOW ARE WE GOING TO -- IN A PRETRIAL STATEMENT WHEN PERFECT
18 10 LISTS ITS EXHIBITS, HOW ARE WE GOING TO BE ABLE TO FIGURE
19 OUT WHERE THEY CAME FROM AND WHETHER THEY'VE ACTUALLY BEEN
20 PRODUCED BEFORE.

21 THE COURT: WELL, THIS --

22 MR. JANSEN: AND THE REASON THIS IS AN ISSUE, YOUR
23 HONOR, IS BECAUSE PERFECT 10 HAS CERTAIN RULE 26 OBLIGATIONS
24 TO PRODUCE DOCUMENTS THAT IT RELIES ON THAT IT EXPECTS TO USE
25 IN ITS CASE.

1 WHAT'S ACTUALLY HAPPENING IS THAT WHEN THEY TAKE
2 DEPOSITIONS IN THIS CASE OF -- FOR EXAMPLE, THEY TOOK THE
3 DEPOSITION OF JONATHAN MC LANE FROM A-9 IN MID-NOVEMBER. AND
4 VIRTUALLY EVERY DOCUMENT THAT WAS MARKED AT THAT DEPOSITION
5 WAS A DOCUMENT THAT PERFECT 10 HAD NEVER PRODUCED BEFORE.
6 THEY WERE JUST PULLING THEM OUT OF THE HAT. THEY HAD BEEN
7 APPARENTLY IN SOME CASES TAKEN OFF THE WEB A COUPLE DAYS
8 BEFORE. BUT THEY HAD NOT BEEN PRODUCED. AND THEY DIDN'T
9 HAVE DOCUMENT PRODUCTIONS ON THEM -- DOCUMENT PRODUCTION
10 NUMBERS ON THEM.

11 SO, A FUNDAMENTAL PROBLEM IS THAT PERFECT 10 HAS
12 MADE WHAT THEY CALL A MASSIVE PRODUCTION OF DOCUMENTS IN THIS
13 CASE. AND THEY HAVE. IT'S AN ENORMOUS PRODUCTION OF LARGELY
14 COMPLETELY IRRELEVANT DOCUMENTS.

15 AND WHEN THEY ACTUALLY COME TO EXAMINE A WITNESS AT
16 A DEPOSITION, THEY PULL DOCUMENTS OUT THAT HAVE NEVER BEEN
17 PRODUCED.

18 AND THAT'S A FUNDAMENTAL PROBLEM. I THINK THEY
19 SHOULD BE ORDERED TO PRODUCE ALL THE DOCUMENTS ON WHICH THEY
20 EXPECT TO BASE THEIR CASE WITHIN THE NEXT TWO WEEKS.

21 AND I THINK THEY SHOULD ALSO BE ORDERED TO PRODUCE
22 ALL DOCUMENTS -- THIS CASE HAS BEEN GOING ON SINCE 1990- --
23 2005. THEY SUED AMAZON IN JULY 2005. IF THEY HAVEN'T
24 PRODUCED ALL THE DOCUMENTS ON WHICH THEY'VE BASED THEIR CASE
25 BY THIS POINT WE HAVE SERIOUS PROBLEMS THAT WE NEED TO

1 ADDRESS NOW BECAUSE IT'S NOT FAIR FOR THEM TO BE PULLING OUT
2 AT A DEPOSITION OF ONE OF MY WITNESSES DOCUMENTS THAT THEY
3 HAVE NEVER PRODUCED. AND 90 PERCENT OF THE DOCUMENTS AT THE
4 DEPOSITION ARE ONES THAT HAVE NEVER BEEN PRODUCED BY THEM.

5 THE COURT: OKAY.

6 MR. JANSEN: AND THAT IS A SERIOUS PROBLEM. I
7 THINK WE NEED TO ADDRESS THAT, NUMBER ONE -- AS A NUMBER ONE
8 ISSUE.

9 AND, THEN, I THINK ALSO THE COURT SHOULD ORDER THAT
10 AS TO AT LEAST FUTURE PRODUCTIONS MADE BY PERFECT 10, THAT
11 THEY BE BATES STAMPED.

12 YOU MAY RECALL THAT YOU ORDERED -- AFTER THE
13 SEPTEMBER 22ND HEARING WE HAD HERE LAST YEAR YOU ORDERED
14 PERFECT 10 TO PRODUCE DOCUMENTS, ESPECIALLY FINANCIAL
15 DOCUMENTS AND OTHER DOCUMENTS THAT --

16 THE COURT: YES, I'M LOOKING AT THAT ORDER RIGHT
17 NOW.

18 MR. JANSEN: YES. AND I DON'T THINK YOU'VE SEEN
19 THEIR RESPONSE. I THINK THEIR RESPONSE IS VERY TELLING. I'D
20 LIKE TO PASS THAT UP TO YOU. BECAUSE YOU ORDERED THEM -- YOU
21 RECOGNIZED OVER THE PHONE THAT WHAT THEY PRODUCED IN RESPONSE
22 WAS A HARD DRIVE AND SOME DISKS THAT WERE NOT ORGANIZED, WERE
23 NOT NUMBER STAMPED, AND YOU ORDERED THEM TO COME BACK AND
24 GIVE A STATEMENT AS TO WHAT DOCUMENTS WERE RESPONSIVE TO YOUR
25 ORDER.

1 I'D LIKE TO JUST PASS IT UP IF I COULD TO YOU.

2 HERE'S A COPY, JEFF.

3 MR. MAUSNER: YOUR HONOR, IF WE'RE GOING TO BE
4 GOING A FEW MINUTES, CAN WE JUST TAKE A VERY SHORT BREAK.

5 THE COURT: ALL RIGHT. ALL RIGHT.

6 THE ORDER I'M LOOKING FOR --

7 MR. JANSEN: I HAVE A COPY OF YOUR ORDER TOO, YOUR
8 HONOR.

9 THE COURT: WELL, NO, I HAVE THAT ONE.

10 I'M LOOKING FOR A PROPOSED ORDER THAT LISTS THIS
11 ALTERNATIVE. AND I DON'T KNOW WHERE THAT IS.

12 MS. KASSABIAN: YOUR HONOR, I BELIEVE IT'S DOCKET
13 NUMBER 407.

14 (COUNSEL CONFERRING.)

15 THE COURT: MS. BUTLER FOUND IT. SHE GETS LUNCH.
16 NO ONE ELSE GETS LUNCH.

17 (LAUGHTER.)

18 THE COURT: DO YOU WANT TO TAKE A BREAK NOW?

19 MR. MAUSNER: JUST A COUPLE OF MINUTES, YOUR HONOR.

20 THE COURT: ALL RIGHT. LET'S TAKE 10 MINUTES.

21 MR. JANSEN: WE'LL TRY TO FIND THAT.

22 THE COURT: ALL RIGHT.

23 (RECESS, 12:43 P.M. TO 1:08 P.M.)

24 MR. JANSEN: SO, YOUR HONOR, I DON'T HAVE -- WE
25 DON'T HAVE A MOTION OBVIOUSLY ON THIS PARTICULAR ISSUE, BUT I

1 JUST THINK THIS SORT OF ILLUSTRATES THE CONCERN. ESPECIALLY
2 FROM THE AMAZON.COM AND ALEXA INTERNET PERSPECTIVE,
3 REGARDLESS OF WHAT HAPPENS WITH THE PAST PRODUCTIONS, ON A
4 GO-FORWARD BASIS CERTAINLY WITH FUTURE PRODUCTIONS PERFECT 10
5 SHOULD BE NUMBERING ITS PRODUCTIONS.

6 AND I THINK THE PROBLEM IS SORT OF ILLUSTRATED BY
7 THEIR RESPONSE TO THE COURT'S ORDER, WHAT YOU ISSUED WHEN YOU
8 RAISED THE CONCERN THAT THEIR PRODUCTION FOLLOWING THE
9 SEPTEMBER 22ND, 2009 DISCOVERY HEARING WAS JUST A HUGE
10 MISHMASH, AGAIN, OF UNNUMBERED DISORGANIZED DOCUMENTS, A LOT
11 OF WHICH WERE ON A DISK, SOME OF WHICH WERE ON A HARD DRIVE.

12 AND IN RESPONSE WE HAD THE TELEPHONE CONFERENCE
13 CALL, AND THEN YOU ISSUED THE ORDER REQUIRING THEM TO
14 IDENTIFY WHERE IN THE PRODUCTION THE RESPONSIVE DOCUMENTS
15 WERE LOCATED.

16 AND IF YOU LOOK AT THE RESPONSE -- AND I FLAGGED
17 TWO PAGES, BUT I THINK IF YOU'RE JUST LOOKING AT THE VERY
18 FIRST PARAGRAPH IN RESPONSE ON PAGE --

19 THE COURT: I GOT -- I UNDERSTAND.

20 MR. JANSEN: IT BASICALLY JUST REFERRED TO --
21 THERE'S A FINANCIAL DOCUMENTS DISK. IT CONTAINS 2,600 PAGES
22 OF FINANCIAL STATEMENTS. AND THEN THEY GO THROUGH -- TO
23 ALLEGEDLY COMPLY WITH YOUR ORDER FROM NOVEMBER 12TH, THEY
24 JUST SAY, WELL, THESE ARE ON THE FINANCIAL DOCUMENTS DISK.
25 WHERE?

1 THE LACK OF NUMBERING MAKES IT IMPOSSIBLE FOR THEM
2 TO COMPLY WITH THE COURT'S ORDER. IT MAKES IT IMPOSSIBLE FOR
3 US TO FIND THE DOCUMENTS THEY'RE REFERRING TO. IT MAKES US
4 -- IT'S GOING TO MAKE IT VERY DIFFICULT FOR US TO MAKE A
5 RECORD WHEN WE TAKE MR. HERSH'S DEPOSITION EVENTUALLY.

6 AND THIS IS NOT JUST -- AS YOU KNOW, YOU ALSO HAVE
7 AN ORDER OUT WHICH PERFECT 10 IS SUPPOSED TO BE PRODUCING
8 ADDITIONAL DOCUMENTS TEN DAYS BEFORE MR. HERSH'S DEPOSITION,
9 WHICH WE'RE TRYING TO SCHEDULE FOR EARLY IN FEBRUARY.

10 AND, SO, WHEN THAT PRODUCTION GETS MADE IN ABOUT
11 TEN DAYS OR WHENEVER, THOSE DOCUMENTS SHOULD BE ORDERED
12 NUMBERED.

13 AND, AGAIN, THESE -- AS MS. KASSABIAN POINTED OUT
14 EARLIER IN CONNECTION WITH THE BATES NUMBERING ISSUE, THERE
15 IS A PROGRAM ON ADOBE WHICH ON THE PRESS OF A BUTTON CAN
16 AUTOMATICALLY NUMBER THESE DOCUMENTS.

17 NOW, THIS PARTICULAR FINANCIAL DOCUMENT DISK THAT
18 THEY PRODUCED ON AN UNNUMBERED BASIS, WE HAD IT NUMBERED.
19 SO, WE HAVE A NUMBERED -- WE HAVE NUMBERED THOSE DOCUMENTS.
20 BUT THAT DOESN'T HELP PERFECT 10 COMPLY WITH YOUR ORDER THAT
21 IT IDENTIFY WHICH DOCUMENTS ARE RESPONSIVE TO WHICH OF THESE
22 REQUESTS.

23 AND THAT'S THE PROBLEM. THAT'S WHY THEY NEED TO
24 NUMBER THE DOCUMENTS. WE SHOULDN'T HAVE TO NUMBER THE
25 DOCUMENTS AFTER THEY PRODUCED THEM SO WE CAN KEEP CONTROL OF

1 THEM.

2 MR. MAUSNER: YOUR HONOR, ALL OF THE FINANCIAL
3 DOCUMENTS ARE RESPONSIVE TO EACH OF THOSE REQUESTS. IT ISN'T
4 JUST SOME OF THEM. THEY ASK, LIKE, ALL DOCUMENTS THAT RELATE
5 TO DAMAGES. SO, WHAT ARE THOSE DOCUMENTS. THEY'RE THE
6 DOCUMENTS ON THE FINANCIAL DOCUMENTS DISK. YOUR HONOR, WE'RE
7 NOT GOING TO SPECIFY ANY MORE THAN THAT.

8 AND THOSE ARE ARRANGED VERY WELL. THEY'RE ARRANGED
9 CHRONOLOGICALLY. IT'S A SEARCHABLE DOCUMENT. I MEAN, IT'S
10 -- NONE OF THIS IS BEFORE -- THIS IS MUCH LESS BEFORE THE
11 COURT THAN THE THINGS THAT WE'VE REQUESTED ORDERS ON THAT WE
12 CANNOT GET ORDERS ON. SO, UNLESS --

13 THE COURT: WELL, I SEE THAT THEY WERE PRODUCED --

14 MR. MAUSNER: AND, BY THE WAY, NO ONE HAS EVER
15 RAISED -- EVER, EVER RAISED ANY ISSUE REGARDING PERFECT 10'S
16 RESPONSE TO THE NOVEMBER 12TH, 2009 ORDER OF JUDGE HILLMAN.
17 OKAY. NOT A LETTER. NOT AN EMAIL. NOT A CALL. NOTHING.

18 MR. JANSEN: INTERESTING WITH RESPECT TO -- THIS
19 GOES TO THE BATES STAMPING ISSUE, YOUR HONOR, WHICH YOU ASKED
20 TO JUST ADDRESS I THINK, YOU KNOW, WITHOUT A LOT OF
21 ADDITIONAL BRIEFING, WHICH WE COULD HAVE SUBMITTED.

22 BUT JUST SIMPLY TO RAISE THE POINT THAT WHATEVER
23 HAPPENS WITH RESPECT TO PAST PRODUCTIONS AND, YOU KNOW,
24 WHETHER OR NOT IT MAY BE APPROPRIATE, AND PROBABLY IT IS FOR
25 PERFECT 10 TO BE ABLE TO IDENTIFY EVERY DOCUMENT IT RELIES ON

1 BY ITS FILE PATH DIRECTORY IDENTIFICATION, THAT'S SOMETHING I
2 THINK WE WERE ALWAYS AMENABLE TO, TO THEM DOING IT IN LIEU OF
3 NUMBERING.

4 BUT ON A GO-FORWARD BASIS THEIR DOCUMENTS SHOULD BE
5 NUMBERED ON ALL PRODUCTIONS.

6 MS. KASSABIAN: WE AGREE WITH THAT, YOUR HONOR. IT
7 APPEARS TO BE TECHNOLOGICALLY FEASIBLE, WOULDN'T REQUIRE
8 RE-PRODUCING OLD DOCUMENTS. I --

9 THE COURT: ALL RIGHT. SO, THE LANGUAGE -- WE
10 CAN'T FIND THE PROPOSED ORDER, BUT THE LANGUAGE IS -- OH, DID
11 WE FIND IT?

12 THE CLERK: SHE'S GETTING IT RIGHT NOW, YOUR HONOR.

13 THE COURT: ALL RIGHT.

14 MS. KASSABIAN: SO, YOUR HONOR, I BELIEVE WHAT THAT
15 WAS WAS A FILING, LIKE A BRIEF, SUPPLEMENTAL MEMO FROM US --

16 THE COURT: IT WAS A BRIEF. OKAY.

17 MS. KASSABIAN: -- WHERE WE PUT THAT IN THERE AS AN
18 ALTERNATIVE. IT WAS NEVER EMBODIED IN A PROPOSED ORDER, BUT
19 YOU HAVE THE LANGUAGE.

20 THE COURT: OKAY.

21 MS. KASSABIAN: AND WE'RE HAPPY TO STICK IT IN A
22 PROPOSED ORDER OR SANDRA COULD.

23 THE COURT: WELL, LET'S LOOK AT THE LANGUAGE AGAIN.
24 ALL RIGHT.

25 (PAUSE IN PROCEEDINGS.)

1 THE COURT: LET ME ASK GOOGLE ON THIS COURTESY
2 BINDER -- I DON'T THINK IT NEEDS TO BE FILED, BUT IF YOU WANT
3 TO FILE IT --

4 MS. KASSABIAN: WE WANT YOUR HONOR --

5 THE COURT: HAS IT BEEN -- HAS IT BEEN SERVED?

6 MS. KASSABIAN: YES.

7 WE WANT YOUR HONOR TO HAVE ACCESS TO IT IF YOUR
8 HONOR NEEDS IT TO RULE ON THE MOTIONS. WE CAN EITHER JUST
9 LEAVE IT WITH YOU AS A CHAMBERS COPY --

10 THE COURT: ALL RIGHT.

11 MS. KASSABIAN: -- AND RETRIEVE IT -- YOU KNOW, WE
12 COULD LODGE IT AND RETRIEVE IT WHEN YOU'RE DONE IF YOU'D
13 LIKE.

14 THE COURT: WELL, I DON'T KNOW THAT I'M GOING TO
15 WRITE A VERY LENGTHY ORDER ON THESE -- ON P-10'S MOTIONS.

16 MS. KASSABIAN: OR WE COULD TAKE IT HOME TODAY IF
17 YOU DON'T WANT.

18 THE COURT: WELL, YOU CAN -- I'LL KEEP IT.

19 MS. KASSABIAN: OKAY.

20 THE COURT: I DON'T THINK IT NEEDS TO BE FILED.

21 MR. MAUSNER: YOUR HONOR, THERE ARE OTHER HAND-OUTS
22 THAT WE HAD BESIDES EXHIBIT 1, AND WE WOULD LIKE TO FILE
23 THOSE.

24 IS THAT OKAY?

25 THE COURT: SURE. YES.

1 MR. MAUSNER: THERE WERE OTHERS THAT WE DIDN'T GET
2 A CHANCE TO GO INTO, BUT WE WOULD LIKE TO FILE THOSE.

3 THE COURT: I DON'T KNOW HOW LENGTHY AN ORDER I'M
4 GOING TO WRITE ON THESE, BUT I'LL SEE.

5 (PAUSE IN PROCEEDINGS.)

6 THE COURT: IT'S ON PAGE 5.

7 (PAUSE IN PROCEEDINGS.)

8 MS. KASSABIAN: AND, YOUR HONOR, THE ONLY
9 MODIFICATION TO THIS I BELIEVE WAS AFTER WE FILED THIS
10 DOCUMENT PERFECT 10 OBJECTED THAT IT DIDN'T WANT TO HAVE TO
11 PRODUCE THE FILE PATHS IN ADVANCE OF THE DEPOSITION.

12 AND, SO, WE SAID, WELL, THAT'S FINE. YOU CAN
13 PROVIDE THE FILE PATHS AT THE DEPOSITION IF YOU DON'T WANT US
14 TO KNOW IN ADVANCE WHAT EXHIBITS YOU'RE GOING TO BE USING AT
15 THE DEPOSITION.

16 THAT'S THE ONLY CHANGE I WOULD NOTE.

17 THE COURT: WELL, LET ME ASK YOU THIS. DO YOU
18 REALLY NEED A DECLARATION, OR DO YOU JUST NEED --

19 MS. KASSABIAN: WELL, I MEAN --

20 THE COURT: -- AN EMBEDDED FILE PATH AND PRODUCTION
21 DATE ON ANY NON-BATES STAMPED DOCUMENTS?

22 MS. KASSABIAN: IF IT CAN BE PRINTED RIGHT ON
23 THERE, THAT WOULD BE FINE. BUT I THINK THAT PROBABLY WOULD
24 BE MORE BURDENSOME FOR THEM. BUT --

25 THE COURT: I THINK A DECLARATION WOULD BE MORE

1 BURDENSOME.

2 MS. KASSABIAN: WELL, WHATEVER LOGISTICALLY WOULD
3 BE THE EASIEST IS FINE WITH US AS LONG AS THERE IS A SPECIFIC
4 FILE PATH ASSOCIATED WITH EACH DOCUMENT.

5 THE COURT: ALL RIGHT. I COULD CHANGE IT TO AN
6 ORDER THAT P-10 SUFFICIENTLY IDENTIFY THE FILE PATH AND
7 PRODUCTION DATE FOR ANY NON-BATES STAMPED NUMBERED DOCUMENTS,
8 ET CETERA. IF YOU DON'T WANT TO MAKE THAT CHOICE RIGHT NOW.

9 MR. MAUSNER: THAT WOULD BE BETTER, YOUR HONOR.

10 THE COURT: ALL RIGHT.

11 MR. MAUSNER: EITHER A SEPARATE PIECE OF PAPER OR
12 IN THE FILE PATH.

13 AND, THEN, I DO ASK AGAIN, YOUR HONOR, THAT IT
14 SHOULD BE APPLICABLE TO BOTH PARTIES. BOTH PARTIES SHOULD
15 IDENTIFY WHERE THE DOCUMENT COMES FROM.

16 MS. KASSABIAN: AND, AGAIN, WE VIGOROUSLY OBJECT
17 FOR MANY REASONS, INCLUDING THE FACT THAT GOOGLE AND AMAZON
18 SHOULD NOT HAVE TO PAY THE PRICE OF AN EXTRA BURDEN OF
19 IDENTIFYING PERFECT 10'S OWN DOCUMENT TO IT.

20 THE COURT: WELL, YOU'RE USING BATES STAMPS.

21 MS. KASSABIAN: SORRY?

22 THE COURT: YOU'RE USING BATES STAMPS.

23 MS. KASSABIAN: IN OUR DOCUMENTS.

24 THE COURT: YES.

25 MS. KASSABIAN: THAT'S CORRECT.

1 THE COURT: SO --

2 MR. MAUSNER: BUT FOR OUR -- WE'RE SAYING FOR OUR
3 DOCUMENTS THEY JUST DO THE SAME THING WE'RE GOING TO DO.

4 MS. KASSABIAN: PERFECT 10 IS --

5 MR. MAUSNER: EITHER A --

6 MS. KASSABIAN: THEY'RE SAYING, GOOGLE --

7 MR. MAUSNER: -- OR A SEPARATE PIECE OF PAPER.

8 MS. KASSABIAN: THEY'RE SAYING, GOOGLE, IF YOU USE
9 A PERFECT 10 DOCUMENT IN A FILING, YOU HAVE TO IDENTIFY FOR
10 US WHERE WE PRODUCED THAT DOCUMENT TO YOU.

11 THAT'S RIDICULOUS. IF WE HAVE THE DOCUMENT, IT'S
12 IN THEIR PRODUCTION. WHERE ELSE WOULD WE HAVE GOTTEN IT.

13 THE COURT: RIGHT. AND IT WOULD MAKE MORE SENSE
14 FOR YOU TO JUST USE THE SAME I.D. PATH THAT THEY'VE USED. I
15 MEAN, THE DOCUMENT AT THAT POINT IS GOING TO BE
16 SELF-AUTHENTICATING.

17 MS. KASSABIAN: IF WE HAVE IT, AND WE SAY ATTACHED
18 AS EXHIBIT A TO RACHEL'S DECLARATION IS A PRINT-OUT FROM
19 PERFECT 10'S PRODUCTION, THEN, OBVIOUSLY, PERFECT 10 -- IF WE
20 HAVE IT, AND WE'RE SWEARING THAT WE GOT IT FROM PERFECT 10'S
21 PRODUCTION, THEN, PERFECT 10 KNOWS WHERE IT IS. THEY'RE THE
22 MASTER OF THEIR OWN PRODUCTION.

23 THE REASON WHY WE WANT PERFECT 10 TO IDENTIFY THE
24 FILE PATH IS BECAUSE WHEN WE RECEIVE A DOCUMENT FROM THEM,
25 AND THEY SAY -- WELL, USUALLY, THEY DON'T SAY, BUT IF THEY

1 WERE TO SAY, TRUST US, WE PRODUCED THIS, WE CAN'T FIND WHERE
2 THEY PRODUCED THAT. BECAUSE THEY HAVEN'T AFFIXED NUMBERS
3 CONFIRMING THAT.

4 SO, THIS SHOULD NOT BE AN EQUAL BURDEN. THIS IS TO
5 PROVIDE THE COURTESY TO AMAZON AND GOOGLE EQUIVALENT TO A
6 BATES-STAMPING FUNCTION OF CONFIRMING FOR US THAT SOMETHING
7 WE'RE SEEING IN A FILING OR DEPOSITION OR WHAT HAVE YOU HAS
8 IN FACT BEEN PRODUCED TO US.

9 IF WE ARE USING A PERFECT 10 DOCUMENT, OBVIOUSLY IT
10 CAME FROM THEIR PRODUCTION BECAUSE HOW ELSE WOULD WE HAVE
11 GOTTEN IT.

12 DO YOU SEE WHAT I'M SAYING, YOUR HONOR?

13 MR. MAUSNER: WELL, THEY CANNOT SHOW -- BOTH SIDES
14 SHOULD -- IF THEY'RE USING THE DOCUMENT KNOW WHERE IT CAME
15 FROM. BUT THEY CAN FIND IT MUCH EASIER BECAUSE THEY HAVE
16 THAT HUGE DATABASE WHICH IS JUST SEARCHABLE IN ONE THING.

17 AND I DON'T THINK IT'S -- IT'S CERTAINLY NOT MORE
18 BURDENSOME. IT'S PROBABLY LESS BURDENSOME FOR THEM TO DO IT
19 THAN IT IS FOR US TO DO IT. AND I THINK THINGS SHOULD JUST
20 BE APPLIED EQUAL.

21 THE COURT: BUT WHAT'S THE BENEFIT? WHAT'S THE
22 BENEFIT?

23 MS. KASSABIAN: EXACTLY.

24 MR. MAUSNER: SO WE KNOW WHERE THIS DOCUMENT WAS.
25 I MEAN, WE DON'T KNOW OFF THE TOP OF OUR HEAD WHERE EVERY

1 SINGLE DOCUMENT IS LOCATED.

2 MS. KASSABIAN: THAT'S NOT WHAT THIS IS ABOUT.
3 THIS IS ABOUT THEM BEING ABLE TO CONFIRM TO US THAT THEY
4 PRODUCED IT AND TO VERIFY THAT. THAT'S WHY A FILE PATH IS
5 NECESSARY.

6 MS. POBLETE: YOUR HONOR, THE ONLY PROBLEM WITH
7 THAT -- THIS IS MELANIE. THE ONLY PROBLEM WITH THAT IS, FOR
8 INSTANCE, IF THEY USED A PHOTOGRAPH FROM ONE OF OUR DEPOSIT
9 MATERIALS, HOW ARE WE TO KNOW WHICH DEPOSIT MATERIAL, WHICH
10 PHOTOGRAPH THEY USED. THERE'S NO IDENTIFYING -- THERE MAY BE
11 -- WHAT I'M SAYING IS THERE MAY BE ONE PHOTOGRAPH ASSOCIATED
12 TO A DEPOSIT MATERIAL AS WELL AS LIKE A DOWNLOAD FROM A
13 USENET SITE.

14 MS. KASSABIAN: THAT'S OUR POINT. THAT'S WHY THEY
15 SHOULD HAVE BATES STAMPED. BUT THEY DIDN'T. WE SHOULDN'T
16 BEAR THE BURDEN OF HAVING TO LABEL THEIR DOCUMENTS FOR THEM,
17 EITHER WITH THE FILE PATH OR WITH THE BATES NUMBER. THIS ALL
18 COULD HAVE BEEN AVOIDED HAD THEY USED A BATES-NUMBERING
19 SOFTWARE IN THE FIRST PLACE.

20 GOOGLE AND AMAZON SHOULD NOT HAVE TO INCUR EXTRA
21 LEGAL AND PARALEGAL FEES TRYING TO LABEL PERFECT 10'S
22 DOCUMENTS FOR IT. YOU MIGHT AS WELL ORDER US TO BATES STAMP
23 THE DOCUMENTS. IF WE HAVE TO AFFIX A LABEL TO THEIR
24 DOCUMENTS WE'RE NO BETTER OFF THAN WE WERE -- WE'RE WORSE OFF
25 THAN WE WERE BEFORE WE BROUGHT THE MOTION.

1 MR. MAUSNER: AS USUAL EVERYTHING IS OKAY AS LONG
2 AS WE HAVE TO DO IT. BUT FOR THEM TO BE SUBJECT TO THE SAME
3 THING, THEN, ALL OF A SUDDEN IT SHOULDN'T BE --

4 THE COURT: WELL, IT'S NOT THE SAME THING. THERE'S
5 TWO DIFFERENT CONCEPTS HERE. YOU'RE NOT --

6 MS. KASSABIAN: THAT'S EXACTLY RIGHT.

7 THE COURT: THEY ARE IDENTIFYING ADEQUATELY THEIR
8 OWN PRODUCTIONS TO YOU.

9 THE QUESTION IS WHETHER THEY NEED TO LAY A
10 FOUNDATION IN ESSENCE FOR P-10 DOCUMENTS THAT HAVE BEEN
11 PRODUCED BY P-10 TO GOOGLE WHEN GOOGLE WANTS TO USE THEM IN
12 DEPOSITIONS OR MOTIONS.

13 MR. MAUSNER: RIGHT.

14 THE COURT: SO, IT'S APPLES AND ORANGES.

15 MS. KASSABIAN: IT ABSOLUTELY IS, YOUR HONOR. THIS
16 ISN'T ABOUT EQUALITY. THESE ARE TWO DIFFERENT ISSUES.

17 THE COURT: SO, WHAT IS THE PURPOSE OF -- WHAT
18 WOULD BE THE PURPOSE OF MY ORDERING THEM TO DO THAT?

19 MR. MAUSNER: THE SAME PURPOSE AS FOR US SO WE CAN
20 FIND WHERE IT WAS IN THE PRODUCTION. I MEAN, WE DON'T KNOW
21 OFF THE TOP --

22 THE COURT: LIKE THAT THEY WANT TO KNOW WHETHER IT
23 WAS PRODUCED --

24 MS. KASSABIAN: THAT'S RIGHT, YOUR HONOR.

25 THE COURT: -- NOT WHERE IN THE PRODUCTION.

1 MR. MAUSNER: WELL, THEN --

2 THE COURT: WELL, NOT JUST WHERE. THEY WANT TO
3 KNOW THAT YOU ACTUALLY PRODUCED SOMETHING. WHEREAS, IF
4 THEY'RE USING IT, IPSO FACTO, IT WAS PRODUCED.

5 MR. MAUSNER: WELL -- YES, WE CAN ALSO REPRESENT
6 THAT SOMETHING WAS PRODUCED. THAT'S A LOT EASIER THAN
7 FINDING THE FILE PATH.

8 IF THEY REPRESENT THAT WE PRODUCED IT, OKAY, SO
9 WE'D LIKE TO KNOW WHERE THE FILE PATH IS. I MEAN, IT'S JUST
10 -- IT'S JUST A MATTER OF FAIRNESS TOO.

11 IF WE'RE GOING TO HAVE TO DO THIS, THEN WHY
12 SHOULDN'T THEY -- WITH MUCH MORE RESOURCES AND THEIR
13 SEARCHABLE DATABASE, WHICH SHOWS THAT, YOU KNOW, THIS WHOLE
14 BATES NUMBERING THING WAS NEVER REALLY NECESSARY TO BEGIN
15 WITH, THEN WHY SHOULDN'T THEY BE SUBJECT TO THE SAME
16 REQUIREMENT.

17 MS. KASSABIAN: YOUR HONOR, THAT'S JUST -- FIRST OF
18 ALL, MR. MAUSNER DOESN'T KNOW WHAT HE'S TALKING ABOUT. HE'S
19 NEVER BEEN TO MY LAW OFFICES. HE'S NEVER SEEN WHAT DATABASES
20 I KEEP.

21 THIS ISN'T ABOUT -- THIS ISN'T JUST ABOUT FINDING
22 DOCUMENTS. THIS IS ABOUT KNOWING WHAT THE UNIVERSE OF
23 DOCUMENTS IN THIS CASE IS, CONFINING IT IN SOME WAY.

24 GOOGLE AND AMAZON HAVE DONE THEIR JOB AND BATES
25 STAMPED DOCUMENTS, WHICH IS STANDARD LITIGATION PRACTICE, SO

1 THAT PEOPLE KNOW WHAT'S IN AND WHAT'S OUT. WE DON'T KNOW
2 THAT WITH PERFECT 10'S PRODUCTION. SO WE'RE ASKING THAT THEY
3 LABEL THEM SOMEHOW.

4 FIRST WE SUGGESTED BATES STAMPING. THAT'S NOT
5 GOING TO BE ORDERED. SO, NOW WE'VE SUGGESTED THIS FILE PATH
6 OPTION, WHICH WILL BE JUST FINE. AND YOUR HONOR'S RIGHT THAT
7 THAT WOULD WORK JUST FINE FOR US.

8 BUT TO SAY, GOOD FOR THE GOOSE, GOOD FOR THE GANDER
9 IN A SITUATION THAT'S APPLES AND ORANGES MAKES NO SENSE. WE
10 SHOULDN'T HAVE TO TELL PERFECT 10 WHERE IN ITS OWN PRODUCTION
11 PERFECT 10 CAN FIND PERFECT 10'S OWN DOCUMENTS.

12 THE COURT: WELL --

13 MS. KASSABIAN: THEY'VE GOT A TEAM OF PARALEGALS TO
14 DO THAT.

15 THE COURT: YOU WOULD AGREE THEN TO AT LEAST
16 AMENDING THE LANGUAGE ON PAGE 5 OF THIS -- THIS BRIEF,
17 SUPPLEMENTAL MEMO. YOU WOULD AGREE THAT I COULD FAIRLY AMEND
18 IT TO SAY THAT P-10 IS ORDERED TO SUBMIT -- TO SUFFICIENTLY
19 IDENTIFY THE FILE PATH AND PRODUCTION DATE OF P-10 DOCUMENTS,
20 NOT JUST --IT WOULDN'T BE GOOGLE DOCUMENTS.

21 MS. KASSABIAN: ABSOLUTELY.

22 THE COURT: OKAY.

23 MS. KASSABIAN: BECAUSE THEY WOULD USE GOOGLE'S
24 BATES NUMBERS FOR THAT.

25 THE COURT: FOR ANY P-10 NON-BATES NUMBERED

1 DOCUMENTS P-10 OFFERS AS EVIDENCE IN ANY COURT PROCEEDING, ET
2 CETERA.

3 AND THEN STRIKE THE LAST SENTENCE -- ABOUT FIVE
4 DAYS PRIOR TO A DEPO.

5 MS. KASSABIAN: YES, THAT'S FINE. THE POINT IS IS
6 THAT AT THE TIME THAT WE -- THE DOCUMENT IS BEING USED --

7 THE COURT: RIGHT.

8 MS. KASSABIAN: -- THAT WE BE PROVIDED WITH THAT.

9 THE COURT: I'LL JUST SAY, SUFFICIENTLY AND TIMELY.

10 MS. KASSABIAN: WELL, I THINK IT SHOULD SAY, AT THE
11 TIME THE DOCUMENT IS OFFERED EITHER IN A MOTION, AT A
12 HEARING, AT A TRIAL.

13 MR. JANSEN: I THINK WITH RESPECT TO TRIAL, YOUR
14 HONOR, I THINK WE SHOULD --

15 MS. KASSABIAN: WELL --

16 MR. JANSEN: -- THE ORDER SHOULD APPLY TO THE
17 PRETRIAL SUBMISSION OF EXHIBITS. SO THAT WE HAVE TIME TO
18 ACTUALLY LOOK AT THE -- ADEQUATE TIME TO ACTUALLY LOOK AT THE
19 PRODUCTION AND MAKE SURE THAT, IN FACT, IT WAS PRODUCED AS
20 REPRESENTED. SO IT NEEDS TO BE IN CONNECTION WITH THE, YOU
21 KNOW, THE PRETRIAL FILING OF EXHIBIT LISTS.

22 MS. KASSABIAN: SO PERHAPS IT COULD SAY AT THE TIME
23 THE DOCUMENT IS -- I MEAN, I PRESUME WE'RE GOING TO BE
24 EXCHANGING EXHIBITS IN ADVANCE. SO AT THE TIME THE DOCUMENT
25 IS OFFERED.

1 WOULD THAT --

2 MR. JANSEN: THE TIME -- YEAH, THE TIME OF EXCHANGE
3 OF EXHIBIT LISTS. RIGHT. PRETRIAL.

4 THE COURT: WELL, THAT'S GOING TO BE UP TO JUDGE
5 MATZ AS FOR TRIAL.

6 MR. MAUSNER: COULD YOU READ THE -- THE ORDER, YOUR
7 HONOR.

8 THE COURT: IF I CAN DECIPHER THIS.

9 P-10 IS SUFFICIENTLY -- NO.

10 P-10 IS ORDERED TO SUFFICIENTLY IDENTIFY THE
11 FILE PATH AND PRODUCTION DATE FOR ANY P-10
12 NON-BATES NUMBERED DOCUMENTS WHICH P-10
13 OFFERS IN EVIDENCE OR EXHIBIT IN ANY
14 COURT PROCEEDING INCLUDING MOTIONS, DEPOSITIONS
15 AND PRETRIAL HEARINGS, AT THE TIME SUCH DOCUMENTS
16 ARE FIRST INTRODUCED.

17 HOW DOES THAT SOUND?

18 MS. KASSABIAN: I THINK THAT WORKS.

19 IS THAT OKAY WITH YOU, MR. JANSEN?

20 MR. JANSEN: I'M JUST CONCERNED ABOUT THE FIRST
21 INTRODUCED PART, YOUR HONOR, BECAUSE THAT WILL AFFECT THE
22 PRETRIAL HEARING. I BELIEVE AT THE END OF -- THE
23 IDENTIFICATION NEEDS A COMMON -- PRETRIAL EXHIBITS ARE
24 EXCHANGED OR LISTED.

25 MS. KASSABIAN: I THINK THAT'S --

1 THE COURT: I'M NOT DEALING WITH PRETRIAL
2 CONFERENCE OR TRIAL.

3 MR. JANSEN: OKAY. A PRETRIAL CONFERENCE.

4 THE COURT: RIGHT.

5 MR. JANSEN: OKAY. I UNDERSTAND. OKAY.

6 THE COURT: BECAUSE I DON'T KNOW WHAT JUDGE MATZ
7 WOULD WANT.

8 MS. KASSABIAN: WHEN SUCH DOCUMENTS ARE FIRST
9 INTRODUCED OR FILED?

10 THE COURT: OR FILED.

11 MS. KASSABIAN: BECAUSE YOU CAN INTRODUCE A
12 DOCUMENT AT A DEPOSITION OR A HEARING.

13 THE COURT: RIGHT. RIGHT.

14 MR. MAUSNER: YOUR HONOR, ONE THING. THERE MAY
15 NEED TO BE AN EXCEPTION FOR LIKE EX PARTE -- FOR OPPOSITIONS
16 OR, IN PARTICULAR, EX PARTE OPPOSITIONS BECAUSE WE MAY NOT --
17 NOT HAVE TIME TO DO IT AT THE TIME.

18 SO, COULD IT SAY, OR REASONABLY -- REASONABLE TIME
19 THEREAFTER?

20 MS. KASSABIAN: YOUR HONOR, THAT WOULD MAKE IT
21 IMPOSSIBLE FOR US TO REPLY. SO WE OBJECT TO THAT.

22 MR. JANSEN: YOUR HONOR, IF PERFECT 10 IS ABLE TO
23 PULL A DOCUMENT OUT OF ITS DOCUMENT PRODUCTION TO ATTACH TO A
24 REPLY TO AN EX PARTE APPLICATION, THEY CAN IDENTIFY WHERE
25 THEY GOT IT WHEN THEY -- WHEN THEY FILE THEIR MOTION OR THEIR

1 PAPERS.

2 MR. MAUSNER: WELL, THAT MAY NOT ALWAYS BE TRUE.
3 WE MAY NOT KNOW WHEN IT WAS FIRST PRODUCED, YOU KNOW, RIGHT
4 THEN. AND WE MAY HAVE TO LOOK BACK FOR THAT.

5 THE COURT: WELL, YOU DON'T NEED TO DO THE
6 PRODUCTION DATE IF YOU SUFFICIENTLY IDENTIFY THE FILE PATH.

7 MR. MAUSNER: BUT, IT --

8 THE COURT: NO, I GUESS THE ORDER SAYS, "AND
9 PRODUCTION DATE."

10 MS. KASSABIAN: BUT THEY'LL KNOW WHERE THEY GOT IT
11 FROM. IF THEY PULL A HARD DRIVE OUT OF THE DRAWER, STICK IT
12 IN THE COMPUTER --

13 THE COURT: I'M GOING TO --

14 MS. KASSABIAN: -- FIND THE DOCUMENT.

15 THE COURT: I'M GOING TO LEAVE IT AT THAT. IF
16 THERE'S SOME EXIGENT CIRCUMSTANCE, WE'LL WORRY ABOUT THAT
17 NEXT YEAR.

18 SO, WHY DON'T YOU READ BACK WHAT I JUST SAID,
19 PLEASE, SOMEONE.

20 MS. KASSABIAN: TOM, DO YOU HAVE IT?

21 MR. NOLAN: YES. PERFECT 10 --

22 MS. KASSABIAN: TOM, INTO THE MICROPHONE.

23 MR. NOLAN: WHAT I'VE TRANSCRIBED OF YOUR HONOR'S
24 ORDER IS:

25 PERFECT 10 IS ORDERED TO SUFFICIENTLY

1 IDENTIFY THE FILE PATH AND PRODUCTION
2 DATE FOR ANY PERFECT 10 NON-BATES NUMBERED
3 DOCUMENTS THAT PERFECT 10 OFFERS AS EVIDENCE
4 OR AS AN EXHIBIT IN ANY COURT PROCEEDING,
5 INCLUDING MOTIONS, DEPOSITIONS AND PRETRIAL
6 HEARINGS AT THE TIME SUCH DOCUMENTS ARE FIRST
7 INTRODUCED OR FILED.

8 MR. MAUSNER: AND I DON'T KNOW IF IT HAS TO GO INTO
9 THE ORDER, YOUR HONOR, BUT -- YOU KNOW, SOMETIMES WE DO GET
10 THINGS RIGHT OFF OF THE INTERNET A DAY OR TWO OR A WEEK
11 BEFORE THAT HAVEN'T BEEN PRODUCED. SO, IF THEY HAVEN'T BEEN
12 PRODUCED YET, WE WILL JUST SAY --

13 THE COURT: RIGHT.

14 MR. MAUSNER: -- NOT PRODUCED YET.

15 THE COURT: ALL RIGHT. IF YOU WOULD PUT THAT IN A
16 PROPOSED ORDER NEXT WEEK.

17 MS. KASSABIAN: WE WILL, YOUR HONOR.

18 MR. MAUSNER: YOUR HONOR, MAY I JUST SAY SOMETHING.
19 I KNOW YOU'VE DECIDED THESE THINGS.

20 THE COURT: YES.

21 MR. MAUSNER: BUT PERFECT 10 PRODUCED ITS DOCUMENTS
22 IN THEIR NATIVE FORMAT. WE DIDN'T ALTER THEM IN ANY WAY. WE
23 PRODUCED THEM EXACTLY AS THEY WERE, MOST OF THEM SEARCHABLE
24 ADOBE DOCUMENTS.

25 GOOGLE TOOK THOSE LIKE ITS -- ITS SPREADSHEET,

1 TURNED THEM INTO NON-SEARCHABLE JPG FILES, PUT A NUMBER ON
2 THEM. AND WE'RE THE ONES WHO ARE NOT GETTING A SEARCHABLE
3 DOCUMENT. WE'RE GETTING PENALIZED FOR EVERYTHING. AND I
4 JUST THINK THE OUTCOME OF THIS HAS BEEN VERY UNFAIR.

5 MR. JANSEN: YOUR HONOR, I CAN REPRESENT THAT WHAT
6 MR. MAUSNER HAS SAID IS NOT TRUE. IT'S NOT ACCURATE.

7 THE DOCUMENTS WE'VE GOTTEN FROM THEM ARE ALSO NOT
8 IN NATIVE FORMAT. WE HAVE NOT GOTTEN "WORD" VERSIONS OF
9 THEIR DMCA NOTICES, FOR EXAMPLE. WE'VE JUST GOTTEN COPIES
10 THAT ARE REALLY NOT SORTABLE.

11 SO, WE HAVE THE SAME ISSUE, AND WE'LL BE DISCUSSING
12 THAT WITH THEM.

13 MR. MAUSNER: WELL, THEY'VE GOTTEN PDF VERSIONS,
14 WHICH IS EXACTLY WHAT WE SENT TO THEM.

15 MS. KASSABIAN: WHICH IS NOT NATIVE FROM THE
16 DOCUMENT THAT WAS CREATED. I AGREE WITH MR. JANSEN ON THAT.
17 BUT I THINK IT'S A SIDE ISSUE. I THINK WE'RE DONE HERE.

18 MR. MAUSNER: WHEN YOU TAKE UP -- WHEN YOU SEND
19 SOMEONE A LETTER, YOU WRITE IT IN "WORD," AND THEN YOU TURN
20 IT INTO A PDF DOCUMENT BEFORE YOU SEND IT TO HIM. YOU DON'T
21 SEND HIM SOMETHING IN "WORD." AND THE PDFS ARE SEARCHABLE.
22 I MEAN --

23 MS. KASSABIAN: THEY'RE JUST NOT NATIVE. I'M JUST
24 -- WE'RE JUST -- I THINK MR. JANSEN IS RIGHT ABOUT THAT.

25 DR. ZADA: THERE'S BIG DIFFERENCE BETWEEN TAKING A

1 MICROSOFT XCEL SPREADSHEET, WHICH IS SORTABLE AND SEARCHABLE
2 AND CAN BE COPIED IN ONE SECOND AND DOESN'T REQUIRE \$5,000 TO
3 COPY. AND CONVERTING IT INTO 1,096 PIECES OF ADOBE,
4 UNSEARCHABLE -- EXCUSE ME -- J-PEG UNSEARCHABLE, THAT IS A
5 CLEAR DESTRUCTION OF THE ORIGINAL DOCUMENT. AND IT WAS
6 DESIGNED TO PREVENT US FROM DISCOVERING THE TRUTH QUICKLY
7 ENOUGH FOR US TO OPPOSE YOUR MOTION.

8 WE OPPOSED IT WELL ANYWAY, BUT WE WERE
9 SUBSTANTIALLY PREJUDICED BY THIS, YOUR HONOR. AND I THINK
10 WE'RE ENTITLED --

11 THE COURT: WELL, WHY DIDN'T YOU BRING THIS TO MY
12 ATTENTION.

13 DR. ZADA: BECAUSE, YOUR HONOR, WE CAN'T DO
14 EVERYTHING. WE'RE A SMALL LITTLE COMPANY. WE HAD MULTIPLE
15 ORDERS SAYING, PRODUCE A DMCA LOG.

16 THEY HAVE -- THEY HAVE DENIED THAT THEY DID NOT
17 HAVE A DMCA LOG IN THEIR REQUEST FOR ADMISSIONS. AND THEN
18 THEY HAVE NEVER, NEVER PRODUCED A DMCA LOG. THEY HAVE NEVER
19 PRODUCED A DMCA LOG WHICH SUMMARIZES ALL THE NOTICES
20 RECEIVED.

21 THEY HAVE PRODUCED TWO -- A BLOGGER AND ADSENSE
22 SPREADSHEET AFTER MATZ'S ORDER BY THREE MONTHS. IT WASN'T
23 EVEN IDENTIFIED IN THEIR DMCA LOG BATES RANGE. AND WE DIDN'T
24 EVEN KNOW WHAT IT WAS. THEY DIDN'T EVEN SAY, OH, THIS IS THE
25 DMCA LOG THAT'S RESPONSIVE TO JUDGE MATZ'S ORDER. THEY JUST

1 BURIED IT IN 50,000 PAGES OF UNFATHOMABLE MATERIAL. THAT'S A
2 PROBLEM.

3 MS. KASSABIAN: YOUR HONOR, I WOULD --

4 DR. ZADA: YOUR HONOR CAN'T SEE THEIR PRODUCTIONS.
5 THAT'S THE PROBLEM. SHE MAKES A DECLARATION WHICH SAYS, WE
6 PRODUCED THESE TERMINATION NOTICES. THERE'S 311 PAGES AND 12
7 WERE TERMINATION NOTICES. AND THEY WERE ONLY RELATED TO OUR
8 NOTICES. THEY DID NOT PRODUCE ANY ADSENSE TERMINATION
9 NOTICES. THEY DID NOT PRODUCE ANY BLOGGER TERMINATIONS, YOUR
10 HONOR. AND, YOUR HONOR, VERY HONESTLY, WHEN I -- THE WORD
11 "ALL" TO ME IS ALL.

12 AND WHEN YOU DO DISCOVERY AND YOU SAY, WE WANT ALL
13 NOTICES OF TERMINATION, THAT'S NOT ALL NOTICES, MINUS
14 ADSENSE, MINUS GOOGLE GROUPS, MINUS BLOGGER, MINUS PAGE &
15 PIER. THAT'S ALL.

16 MS. KASSABIAN: AND, YOUR HONOR --

17 DR. ZADA: AND WE HAVE STRUGGLED. WE HAVE HAD
18 THREE MOTIONS, YOUR HONOR. WE FIRST FILED OUR DISCOVERY
19 APRIL 18TH, '05. THEY SAID THEY PRODUCED RESPONSIVE
20 DOCUMENTS. THEY PRODUCED NOTHING.

21 THEN WE GO IN FOR A MOTION TO COMPEL. YOU ORDERED
22 REQUEST 51. IT CLEARLY SAYS, ALL INTELLECTUAL NOTICES --
23 VIOLATIONS. IT DOESN'T SAY NOT BLOGGER. WE DON'T EVEN KNOW
24 WHAT BLOGGER IS. THAT'S THE PURPOSE OF DISCOVERY.

25 THE PURPOSE OF DISCOVERY IS TO FIND OUT ABOUT

1 BLOGGER. I'M NOT PSYCHIC. I CAN'T MAKE A DISCOVERY MOTION
2 ABOUT BLOGGER IF I DON'T KNOW THAT BLOGGER EXISTS. I HAVE TO
3 MAKE A MOTION ABOUT ALL. AND ALL IS ALL. AND IT COVERS ALL
4 TERMINATION NOTICES. WE DIDN'T GET THAT.

5 WE WANT AN OPPORTUNITY TO SHOW THAT THEY DIDN'T
6 PRODUCE -- THEY PRODUCED LIKE 1 PERCENT OF THE TERMINATION
7 NOTICES, YOUR HONOR. SHE MAKES THIS STATEMENT, IT MAKES IT
8 SEEM LIKE THEY PRODUCED ALL OF THEM. THEY PRODUCED 12.

9 MS. KASSABIAN: AND, YOUR HONOR, I AGAIN OBJECT AND
10 ASK THAT PERFECT 10 BE -- APPEAR THROUGH ITS COUNSEL AT THIS
11 HEARING.

12 THE COURT: THE COURT JUST HAS ONE MORE QUESTION,
13 AND THEN WE'RE DONE. AND YOU'LL PROBABLY TELL ME TEN
14 DIFFERENT TIMES.

15 WHY WEREN'T BLOGGER DOCUMENTS PART OF THE ORDER
16 REGARDING REQUEST 51 EVEN BEFORE BLOGGER CAME INTO THE CASE?

17 MS. KASSABIAN: BECAUSE THERE WERE NO BLOGGER
18 CLAIMS IN THE CASE AT THE TIME. THEY DIDN'T REQUEST BLOGGER
19 DOCUMENTS AND THE ORDER DOESN'T REQUIRE --

20 THE COURT: BUT THE REQUEST WAS FOR ALL -- WHAT WAS
21 THE REQUEST, AGAIN?

22 MS. KASSABIAN: NO, IT WASN'T. THE REQUEST WAS FOR
23 A DMCA LOG, RIGHT? THAT'S 51?

24 DR. ZADA: WHICH THEY DIDN'T GIVE US.

25 MS. KASSABIAN: AND -- AND --

1 THE COURT: AND THERE WERE --

2 MS. KASSABIAN: AND THEN --

3 THE COURT: -- BLOGGER DOCUMENTS PRODUCED.

4 MS. KASSABIAN: NO. NO. THE REQUEST WAS FOR A
5 DMCA LOG AND IN RESPONSE -- OR DOCUMENTS THAT --

6 THE COURT: MM-HMM.

7 MS. KASSABIAN: -- YOU KNOW, SUFFICIENT TO SHOW
8 DMCA LOG INFORMATION.

9 AND GOOGLE SAID, WE WILL PRODUCE NOTICES INSTEAD
10 AND PRODUCED THE NOTICES THAT WERE IMPLICATED BY THE SCOPE OF
11 THE CASE AT THAT TIME.

12 MR. MAUSNER: AND THEY SAID ALL, ALL NOTICES.

13 "ALL THE INTELLECTUAL PROPERTY NOTICES HAVE
14 BEEN PRODUCED."

15 THAT'S WHAT THEY SAID.

16 THE COURT: OKAY. AND --

17 MS. KASSABIAN: YOUR HONOR, THERE ARE 25 -- I THINK
18 GOOGLE SERVICES -- THERE ARE A DOZEN OR TWO GOOGLE SERVICES
19 THAT HAVE DMCA PROCEDURES. THERE'S ABSOLUTELY NO REASON TO
20 ENGAGE IN DISCOVERY ABOUT SERVICES THAT HAPPEN TO BE OPERATED
21 OR OWNED BY GOOGLE THAT AREN'T IMPLICATED BY THIS CASE.

22 IF PERFECT 10 HAD ASKED FOR DISCOVERY ABOUT A
23 SERVICE THAT HAD NOTHING TO DO WITH ITS COMPLAINTS, WE
24 PROBABLY WOULD HAVE REJECTED AS IRRELEVANT. BUT FOR ALL THE
25 DISCOVERY REQUESTS THAT THEY'VE PROPOUNDED THAT HAD TO DO

1 WITH SERVICES AT ISSUE IN THE CASE, GOOGLE HAS PRODUCED THAT
2 INFORMATION.

3 IF THEY WANTED BLOGGER LOGS OR BLOGGER NOTICES, WHY
4 DIDN'T THEY JUST ASK. WHY DIDN'T THEY --

5 DR. ZADA: BECAUSE WE DIDN'T KNOW THEY EXISTED.

6 MS. KASSABIAN: SIR, IF I CAN FINISH.

7 WHY DIDN'T THEY JUST SERVE A REQUEST. WHY ARE THEY
8 TRYING TO SHOEHORN A 2006 ORDER INTO SOMETHING THAT IT'S NOT,
9 AN ORDER ON CLAIMS THAT WEREN'T EVEN IN THE CASE AT THAT
10 TIME. I MEAN, THAT WOULD REQUIRE PSYCHIC ABILITIES ON
11 GOOGLE'S BEHALF TO KNOW THAT IT WAS OBLIGED TO PRODUCE
12 DOCUMENTS REGARDING VARIOUS SERVICES THAT IT OFFERED THAT AT
13 THE TIME WERE NOT IN THE CASE.

14 MR. MAUSNER: YOUR HONOR --

15 MS. KASSABIAN: THERE ARE OTHER SERVICES AS WELL
16 THAT ARE NOT CURRENTLY IMPLICATED. WE'RE NOT OBLIGED TO
17 PRODUCE THOSE DOCUMENTS EITHER AND CERTAINLY NOT OBLIGED TO
18 PRODUCE DOCUMENTS THAT HAVEN'T BEEN REQUESTED.

19 AND ONE MORE POINT, YOUR HONOR, I WANT TO MAKE
20 CLEAR. REQUEST 51 CALLED FOR A LOG. GOOGLE HAS PRODUCED ITS
21 BLOGGER LOG. THERE IS NO PREJUDICE HERE WHATSOEVER.

22 EVEN IF PERFECT 10 IS RIGHT, AND IT'S NOT, THE MAY
23 2008 ORDER THAT SAID, GOOGLE MUST PRODUCE ITS DMCA LOG
24 APPLIED TO BLOGGER. EVEN THOUGH BLOGGER WASN'T IN THE CASE.
25 EVEN THOUGH GOOGLE HAD NO NOTICE THAT THAT'S WHAT PERFECT 10

1 THOUGHT THAT THAT REQUEST MEANT.

2 GOOGLE PRODUCED ITS BLOGGER LOG IN AUGUST, A COUPLE
3 OF MONTHS LATER AND ONLY ONE MONTH AFTER PERFECT 10 WAS
4 GRANTED LEAVE TO ADD ITS BLOGGER CLAIMS AND BEFORE PERFECT 10
5 EVEN REQUESTED IT. THERE'S BEEN NO DISCOVERY ORDER VIOLATION
6 HERE.

7 THE COURT: I JUST, YOU KNOW -- I GET CONCERNED
8 BECAUSE I DON'T -- I REALLY WANT --

9 MS. KASSABIAN: BUT THEY'VE GOT IT, YOUR HONOR.

10 THE COURT: NO, I KNOW.

11 MS. KASSABIAN: THEY'VE GOT THE LOG.

12 THE COURT: NO, NO, I'M JUST -- I WANT TO MAKE SURE
13 THAT I FEEL THE RESULT IS FAIR, THE RESULTS ON THESE
14 REMAINING TWO MOTIONS ARE FAIR.

15 IT'S JUST INCONCEIVABLE FROM WHAT I KNOW ABOUT THE
16 CASE THAT PRIOR TO BLOGGER BEING FORMALLY ADDED TO THE CASE,
17 THAT GOOGLE WAS ON ANY KIND OF NOTICE THAT ANYTHING OTHER
18 THAN GOOGLE'S SEARCH WAS THE NATURE OF THE CASE.

19 MS. KASSABIAN: THAT IS EXACTLY RIGHT, YOUR HONOR.

20 MR. MAUSNER: IT WAS GOOGLE'S --

21 MS. KASSABIAN: YOU ARE EXACTLY RIGHT. AND THAT'S
22 THE END OF IT. THAT IS THE EXACT ARGUMENT THAT WE'VE
23 PRESENTED IN THESE BRIEFS, AND YOU'VE GOT IT RIGHT.

24 MR. MAUSNER: OKAY. GOOGLE'S SEARCH INCLUDES
25 BLOGGER WEBSITES. EVERY BLOGGER WEBSITE IS INCLUDED IN

1 GOOGLE'S SEARCH INDEX. AND EVERY TIME YOU DO A SEARCH THAT
2 HAS A TERM LIKE THE NAME OF A PERFECT 10 MODEL THAT'S ON THE
3 BLOGGER SITE, IT WILL TURN UP IN THE SEARCH THAT YOU DO --
4 YOU KNOW, JUST AS ANY OTHER WEBSITE DOES -- IN THE SEARCH
5 RESULTS. YOU CLICK ON IT, AND IT TAKES YOU TO THE INFRINGING
6 IMAGE. OKAY?

7 WHAT WAS I GOING TO SAY.

8 MS. KASSABIAN: THAT'S ACTUALLY INCORRECT. THAT'S
9 NOT HOW BLOGGER WORKS. IT'S NOT AUTOMATIC THAT ALL BLOGGER
10 URLS ARE INCLUDED IN SEARCH. SO JUST AS A PRELIMINARY MATTER
11 THAT'S FALSE.

12 BUT THE POINT IS --

13 MR. MAUSNER: WELL, WHAT YOU SAID IS THAT BLOGGER
14 URLS ARE INCLUDED IN SEARCH.

15 MS. KASSABIAN: SEARCH IS THE SERVICE THAT WAS AT
16 ISSUE AT THE TIME THAT ORDER CAME OUT AND GOOGLE PRODUCED ITS
17 NOTICES REGARDING SEARCH.

18 THE COURT: AND THAT WAS THE ISSUE THAT WENT TO THE
19 CIRCUIT. AND THAT WAS THE ONLY ISSUE THAT WENT TO THE
20 CIRCUIT.

21 MS. KASSABIAN: THAT'S RIGHT, YOUR HONOR. THIS IS
22 A GIANT WASTE OF TIME. THERE'S NO BEAR THERE.

23 DR. ZADA: YOUR HONOR, SEARCH HAS GOOGLE GROUPS.
24 IT HAS BLOGGER. IT HAS NOW GOOGLE SITES. IT HAS MANY OTHER
25 DIFFERENT GOOGLE FUNCTIONS.

1 WHEN WE STARTED THIS CASE IN 2005, IF YOU WENT TO
2 THEIR DMCA PAGE, THEY HAD ONE AGENT. AND THERE WERE ONLY TWO
3 TYPES OF SEARCH -- THERE WERE ONLY TWO OPTIONS, WEB SEARCH
4 AND GOOGLE GROUPS. BLOGGER WAS NOT EVEN MENTIONED IN THEIR
5 DMCA PAGE.

6 YOU COULDN'T SEND A BLOGGER NOTICE, AND WE DIDN'T
7 KNOW ABOUT BLOGGER IN 2005. WE DID SEND SOME DMCA NOTICES
8 REGARDING INFRINGEMENTS ON BLOGGER WEBSITES, BUT WE HAD NO
9 WAY OF KNOWING THAT GOOGLE HOSTED THEM.

10 AND I THINK IT'S VERY RELEVANT IN THIS CASE THAT AS
11 LONG AS THEY LINK TO THE SITE, THAT WAS PART OF THE CASE.
12 THEY HAD BEEN LINKING TO BLOGGER SITES AND GOOGLE GROUP SITES
13 AND ALL OF THESE OTHER SITES SINCE THE BEGINNING OF THE CASE.

14 AND MY UNDERSTANDING ABOUT DISCOVERY IS, THE
15 PURPOSE OF DISCOVERY IS WHEN YOU DON'T KNOW SOMETHING, YOU
16 ASK TO GIVE ALL NOTICES. AND WHEN YOU ASK FOR ALL NOTICES
17 AND ALL TERMINATION NOTICES, YOU'RE SUPPOSED TO GET ALL
18 NOTICES. YOU'RE NOT SUPPOSED TO GET JUST THE ONES WE WANT TO
19 GIVE YOU.

20 AND, FURTHERMORE, IF YOU DON'T KNOW ABOUT BLOGGER,
21 HOW ARE YOU GOING TO FIND OUT ABOUT BLOGGER UNLESS YOU ASK
22 FOR ALL NOTICES. THAT'S HOW YOU FIND OUT ABOUT BLOGGER.

23 AND THAT'S THE PROBLEM. WE DID WHAT WE COULD DO AT
24 THE TIME. WE ASKED FOR ALL NOTICES, AND THEY HAD AN
25 OBLIGATION TO PROVIDE ALL NOTICES TO US. AND THEY DIDN'T DO

1 THAT.

2 NOT ONLY DID THEY NOT DO BLOGGER, YOUR HONOR, THEY
3 DIDN'T DO ADSENSE. AND WE'VE ALREADY SHOWN EVIDENCE THERE'S
4 A LOT OF OTHER NOTICES. AND I DON'T CONSIDER 200,000 URLS
5 AND 1,500 NOTICES FROM THE R.I.A.A. TO BE A MINOR
6 TECHNICALITY.

7 IF THEY ARE SAYING -- REPRESENTING, MS. POOVALA
8 SAID THE BLOGGER SHEETS COVER BASICALLY THE LIST. NO, IT
9 WASN'T A COMPLETE LIST. IT HAD 19,000 URLS, BUT GUESS WHAT,
10 IT WAS MISSING 200,000 URLS FROM THE R.I.A.A. AND IT WAS
11 MISSING URLS FROM THE M.P.A.A.

12 AND IF WE HAD OPPOSED THEIR MOTION AND INSTEAD OF
13 SAYING TO JUDGE MATZ, THERE'S 19,000 URLS, IF WE SAID, JUDGE
14 MATZ, THERE'S 500,000 URLS, THAT MIGHT HAVE HAD A DIFFERENT
15 OUTCOME HERE BECAUSE THEN THE INFRINGEMENT IS SO MASSIVE ON
16 THEIR SYSTEM, THAT THEY MIGHT HAVE BEEN HELD TO A DIFFERENT
17 STANDARD.

18 THE PROBLEM WAS, WE ASKED THE RIGHT QUESTIONS. WE
19 ASKED FOR ALL. WE WERE ORDERED ALL. WE WERE ORDERED ALL
20 AGAIN. THEY REPRESENTED THEY PRODUCED ALL, ALL INTELLECTUAL
21 PROPERTY NOTICES.

22 AND, REMEMBER, ALSO THEY HAVE ONE DMCA AGENT. ONE
23 DMCA AGENT IS GETTING ALL OF THESE NOTICES. SO, THEY DON'T
24 HAVE A SEPARATE DMCA AGENT FOR BLOGGER.

25 SO, WHEN WE ASKED FOR ALL NOTICES, WE ASSUMED IT

1 WAS ALL THE NOTICES THEIR DMCA AGENT GOT, AND IT INCLUDED
2 BLOGGER, AND BLOGGER WAS IN THE CASE FROM THE VERY BEGINNING
3 BECAUSE IT WAS PART OF THEIR SEARCH RESULTS. GOOGLE GROUPS
4 IS IN THE CASE SINCE THE VERY BEGINNING.

5 THE ONLY REASON WE AMENDED TO INCLUDE BLOGGER FOR
6 HOSTING, YOUR HONOR, WAS BECAUSE WE WANTED TO MAKE SURE THAT
7 WE HAD THE HOSTING FUNCTION COVERED ALSO. THE SEARCH
8 FUNCTION WAS ALWAYS COVERED IN THE CASE. AND BLOGGER WAS
9 ALWAYS IN THE CASE. AND IT'S CERTAINLY PART OF ALL.

10 MS. KASSABIAN: I'M GOING TO SAY IT ONE MORE TIME,
11 YOUR HONOR. PERFECT 10 HAS NEVER SERVED A REQUEST FOR ANY
12 DMCA NOTICES, BLOGGER OR OTHERWISE.

13 I KNOW DR. ZADA, IF HE SCREAMS IT LOUD ENOUGH,
14 HE'LL MAKE IT TRUE, IS WHAT HE THINKS. BUT THAT'S JUST NOT
15 TRUE.

16 DR. ZADA: WELL, IT --

17 MS. KASSABIAN: THEY NEVER SERVED A SINGLE REQUEST
18 NOR A --

19 MR. JANSEN: YOUR HONOR, I'D LIKE --

20 MR. MAUSNER: WE WERE AFTER THE LOG --

21 MS. KASSABIAN: IF I CAN FINISH -- MR. MAUSNER, MAY
22 I FINISH?

23 THE COURT: LET HER FINISH. LET HER FINISH. AND
24 WE'RE GOING TO BE DONE IN TWO MINUTES. GO AHEAD.

25 MS. KASSABIAN: THEY HAVE NEVER SERVED A SINGLE

1 DOCUMENT REQUEST ASKING FOR DMCA NOTICES NOR HAS AN ORDER
2 ISSUED TO THAT EFFECT ON BLOGGER OR OTHERWISE -- BUT,
3 CERTAINLY, AS TO BLOGGER, SINCE THEY'VE NEVER REQUESTED ANY
4 DISCOVERY ON BLOGGER UNTIL SEPTEMBER OF 2009.

5 AND YOUR HONOR IS RIGHT THAT ORDERS ISSUED BEFORE
6 THE COMPLAINT WAS AMENDED TO ADD BLOGGER CLAIMS CANNOT
7 POSSIBLY HAVE APPLIED TO SERVICES THAT WEREN'T AT ISSUE, THAT
8 PERFECT 10 TOLD JUDGE MATZ IT WAS UNAWARE OF AT THE TIME
9 THOSE ORDERS CAME OUT.

10 MR. JANSEN: YOUR HONOR, I JUST THINK THAT -- I DO
11 THINK THAT IN FAIRNESS TO THE DEFENDANTS AT GOOGLE AS WELL AS
12 AMAZON IN THE FUTURE THAT THE WAY THE PLAINTIFF'S CASE HAS
13 MORPHED SINCE IT WAS FILED, IN LIGHT OF THE DISTRICT COURT'S
14 RULING ON THE PRELIMINARY INJUNCTION AND THEN THE NINTH
15 CIRCUIT BASICALLY REJECTING THE PLAINTIFF'S THEORY OF -- YOU
16 KNOW, BASICALLY ACCEPTING A FAIR-USE DEFENSE. THEN THE
17 PLAINTIFF'S CASE HAS MORPHED SINCE THAT RULING CAME DOWN FROM
18 THE NINTH CIRCUIT TO ENCOMPASS OTHER KINDS OF ACTIVITY. SO,
19 THE CASE HAS TOTALLY MORPHED.

20 IF YOU LOOK AT THE ORIGINAL COMPLAINTS, THEY WERE
21 FOCUSED EXCLUSIVELY ON SO-CALLED IMAGE SEARCH RESULTS AND THE
22 THUMBNAILS THAT IT CAME UP IN THOSE SEARCHES.

23 NOW, SINCE THE DISTRICT COURT REJECTED THOSE
24 THEORIES, AND THE NINTH CIRCUIT SAID THIS IS COMPLETELY A
25 FAIR USE TO BRING UP THESE, YOU KNOW, TO SHOW THESE, TO LINK

1 TO THESE SMALL, REDUCED SIZED IMAGES, THE PLAINTIFF'S CASE
2 HAS TOTALLY MORPHED. THEY'VE COME UP WITH NEW THEORIES. AND
3 I THINK IT'S JUST FUNDAMENTALLY UNFAIR TO TRY AND
4 RETROACTIVELY APPLY ALL DISCOVERY REQUESTS THAT WERE ISSUED
5 UNDER THE OLD THEORIES AND PRIOR DISCOVERY ORDERS TO THE NEW
6 THEORIES THE PLAINTIFFS HAVE HAD TO TRY AND COME UP WITH TO
7 DEAL WITH THE NINTH CIRCUIT'S RULING.

8 MR. MAUSNER: YOU DON'T EVEN HAVE THE CHRONOLOGY
9 RIGHT BECAUSE JUDGE MATZ'S ORDER WAS AFTER THE NINTH CIRCUIT.

10 BUT BLOGGER HAS -- BLOGGER'S ALWAYS BEEN PART OF
11 THE CASE AS FAR SEARCH IS CONCERNED. AND THESE THINGS SHOULD
12 -- SOME OF THEM WERE, IN FACT, TURNED OVER. HOW CAN YOU
13 SAY, WELL, SOME OF THESE IT WAS RIGHT TO TURN OVER.

14 AND THEY SAY TWICE WE'VE GIVEN YOU ALL. THEY GAVE
15 US SOME. THEN THEY SAY, WE'VE GIVEN YOU ALL NOTICES. AND
16 THEN THEY SAY, WELL, WE DIDN'T HAVE TO GIVE YOU THE OTHER
17 ONES EVEN THOUGH WE SAID WE GAVE THEM -- GAVE THEM ALL, AND
18 WE GAVE YOU SOME. I MEAN, HOW COULD YOU NOT BE MISLED BY
19 THAT.

20 I MEAN, IT'S JUST -- WE THOUGHT THEY GAVE US ALL.
21 THERE WERE SOME OF THEM THERE. AND THEN IT TURNS OUT THEY
22 DIDN'T.

23 AND WE'VE BEEN PREJUDICED BECAUSE WE COULDN'T USE
24 THE OTHER ONES THAT WE ALL KNOW EXIST AND WE ONLY FOUND OUT
25 VERY RECENTLY IN THEIR OPPOSITION TO THE SUMMARY JUDGMENT.

1 AND THEY'RE GETTING AWAY WITH TOTALLY MISLEADING US ON THIS.

2 MS. KASSABIAN: YOUR HONOR, CAN I JUST REMIND THE
3 COURT THAT IN JULY OF 2009 PERFECT 10 FILED A MOTION FOR
4 SUMMARY JUDGMENT REGARDING BLOGGER AGAINST GOOGLE. THAT
5 MOTION IS ON FILE WITH THE COURT RIGHT NOW.

6 THE COURT: I DIDN'T KNOW THAT.

7 MS. KASSABIAN: IF PERFECT 10 NEEDED DISCOVERY, WHY
8 WOULD IT HAVE FILED A MOTION FOR SUMMARY JUDGMENT, TELLING
9 THE COURT, YOU KNOW WHAT, WE HAVE WHAT WE NEED. WE THINK
10 WE'RE ENTITLED TO JUDGMENT AS A MATTER OF LAW BASED ON THE
11 RECORD. PLEASE RULE ON OUR MOTION. THAT'S WHAT THEY SAID.
12 AND THERE'S ABUNDANT CASE LAW THAT SAYS THAT'S DISPOSITIVE.

13 MR. MAUSNER: OKAY. THAT EXACTLY PROVES OUR POINT.
14 WE THOUGHT AT THE TIME WE FILED THAT MOTION THAT WE DO HAVE
15 ALL OF THE NOTICES AND EVERY DOCUMENT THAT THEY SAID THAT
16 THEY PRODUCED AND THAT THEY WERE ORDERED TO PRODUCE. THAT'S
17 WHY WE WENT THROUGH WITH THE SUMMARY JUDGMENT MOTION.

18 MS. KASSABIAN: WELL, YOU SAID THAT YOU SUBMITTED
19 THOSE DOCUMENTS WITH YOUR -- WITH YOUR MOTION FOR SUMMARY
20 JUDGMENT ON BLOGGER?

21 MR. MAUSNER: YES, WE SUBMITTED -- WE SUBMITTED
22 WHAT WE HAD BECAUSE THAT'S ALL WE HAD. WE COULD MAKE A
23 STRONGER MOTION AND WE CAN MAKE A STRONGER OPPOSITION IF WE
24 HAD EVERYTHING. WE THOUGHT WE HAD IT UNTIL VERY RECENTLY
25 BECAUSE THEY MISLED US.

1 THE COURT: BUT --

2 MS. KASSABIAN: THAT'S UTTERLY FALSE, YOUR HONOR.
3 WHEN A PARTY FILES FOR SUMMARY JUDGMENT, IT'S TELLING THE
4 COURT, WE HAVE WHAT WE NEED. WE'RE ENTITLED TO JUDGMENT AS A
5 MATTER OF LAW.

6 THE COURT: WE'RE DONE FOR TODAY.

7 MS. KASSABIAN: THANK YOU, YOUR HONOR.

8 MR. MAUSNER: THANK YOU, YOUR HONOR.

9 MR. JANSEN: THANK YOU, YOUR HONOR.

10 THE CLERK: COURT IS ADJOURNED.

11 (PROCEEDINGS ADJOURNED 1:51 P.M.)

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C E R T I F I C A T E

I CERTIFY THAT THE FOREGOING IS A CORRECT
TRANSCRIPT FROM THE ELECTRONIC SOUND RECORDING OF THE
PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

DOROTHY BABYKIN

2/20/10

FEDERALLY CERTIFIED TRANSCRIBER

DATED

DOROTHY BABYKIN