

1 Jeffrey N. Mausner (State Bar No. 122385)
 2 Law Offices of Jeffrey N. Mausner
 3 Warner Center Towers
 4 21800 Oxnard Street, Suite 910
 5 Woodland Hills, California 91367
 6 Email: Jeff@mausnerlaw.com
 7 Telephone: (310) 617-8100, (818) 992-7500
 8 Facsimile: (818) 716-2773

9 Attorneys for Plaintiff Perfect 10, Inc.

10 UNITED STATES DISTRICT COURT
 11 CENTRAL DISTRICT OF CALIFORNIA

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

14 Plaintiff,

15 v.

16 GOOGLE INC., a corporation,

17 Defendants.

Case No. CV 04-9484 AHM (SHx)

Before Judge Stephen J. Hillman

**DECLARATION OF JEFFREY N.
 MAUSNER IN OPPOSITION TO
 DEFENDANT GOOGLE INC.'S
 MOTION FOR A PROTECTIVE
 ORDER REGARDING PERFECT 10'S
 DEPOSITION NOTICE DIRECTED TO
 DR. ERIC SCHMIDT**

**[Exhibits L, M and N Filed Separately
 Under Seal Pursuant To Protective
 Order]**

Date: June 28, 2010

Time: 2:00 p.m.

Place: Courtroom 550, Courtroom of the
 Honorable Stephen J. Hillman

Discovery Cut-Off Date: None Set

Pretrial Conference Date: None Set

Trial Date: None Set

DECLARATION OF JEFFREY N. MAUSNER

I, Jeffrey N. Mausner, declare as follows:

1. I am a member of the State Bar of California and admitted to practice before this Court. I am counsel of record for Plaintiff Perfect 10, Inc. (“Perfect 10”) in this action. All of the matters stated herein are of my own personal knowledge, except where otherwise stated, and if called as a witness, I could and would testify competently thereto. I make this declaration in connection with Perfect 10’s Opposition to Defendant Google Inc.’s Motion for a Protective Order Regarding Perfect 10’s Deposition Notice Directed to Dr. Eric Schmidt, Google’s chief executive officer.

2. Attached hereto as Exhibit A are true and correct copies of documents that were unsealed in or about March and April, 2010, in the action brought by Viacom against Google and YouTube, Case No. 07-CV-3582, in the United States District Court for the Southern District of New York (the “Viacom Action”). The first 21 pages of Exhibit A are excerpts from the transcript of the deposition of Google CEO Dr. Eric Schmidt, which took place in the Viacom Action on May 6, 2009. Certain portions of the deposition transcript have been highlighted in yellow, including where Dr. Schmidt discusses his practice of regularly deleting emails and where Dr. Schmidt states that he has no recollection on certain key issues. The next three pages of Exhibit A are Google documents from the Viacom Action which discuss Google’s knowledge regarding the draw of infringing content. The last four pages of Exhibit A are excerpts from the Memorandum of Law in Support of Viacom’s Motion for Partial Summary Judgment on Liability and Inapplicability of The Digital Millennium Copyright Act Safe Harbor Defense, filed in the Viacom Action, with certain portions highlighted in yellow, including references to Dr. Schmidt’s “document destruction practices” and “the testimony of Larry Page, one of Google’s two co-founders and top three executives, who essentially disclaimed memory on any topic relevant to this litigation [the Viacom Action].”

1 3. Attached hereto as Exhibit B are true and correct copies of selected
2 pages from Plaintiff's First Set of Requests for the Production of Documents, served
3 by Perfect 10 upon Defendant Google Inc. ("Google") in this action on or about
4 March 4, 2005. Certain portions of Exhibit B, including Requests for Production
5 ("RFP") Nos. 13, 17, 55, and 56, have been highlighted in yellow.

6 4. Attached hereto as Exhibit C are true and correct copies of selected
7 pages from Defendant Google Inc.'s Response to Plaintiff's First Set of Requests for
8 the Production of Documents, served by Google upon Perfect 10 in this action on or
9 about April 18, 2005. Certain portions of Exhibit C, including Google's Responses
10 to RFP Nos. 13, 17, 55, and 56, have been highlighted in yellow.

11 5. Attached hereto as Exhibit D is a true and correct copy of the Order Re
12 Perfect 10's Motion to Compel Defendant Google, Inc. to Produce Documents and
13 to Answer Interrogatories, entered by this Court in this action on May 22, 2006,
14 without the transcript pages attached at the end of the Order. Certain portions of this
15 Order, including those portions concerning RFP Nos. 13, 17, 55, and 56, have been
16 highlighted in yellow.

17 6. Attached hereto as Exhibit E is a true and correct copy of Plaintiff
18 Perfect 10, Inc.'s Reply to Defendant Google Inc.'s Response to Perfect 10's
19 Statement Regarding the Status of Its Motion for Evidentiary and Other Sanctions;
20 Request to Strike Response (Docket No. 859), filed by Perfect 10 in this action on
21 April 27, 2010.

22 7. Attached hereto as Exhibit F is a true and correct copy of Defendant
23 Google Inc.'s Response to Plaintiff's First Set of Interrogatories, served by Google
24 upon Perfect 10 in this action on or about April 18, 2005.

25 8. Attached hereto as Exhibit G is a true and correct copy of Google Inc.'s
26 Response to Perfect 10's Revised Interrogatories, served by Google upon Perfect 10
27 in this action on or about February 24, 2006.

28 9. Attached hereto as Exhibit H is a true and correct copy of Defendant

1 Google Inc.'s Responses to Plaintiff Perfect 10, Inc.'s Second Set of Interrogatories,
2 served by Google upon Perfect 10 in this action on or about April 3, 2008.

3 10. Attached hereto as Exhibit I is a true and correct copy of Defendant
4 Google Inc.'s Responses and Objections to Plaintiff's Eighth Set of Requests for the
5 Production of Documents, served by Google upon Perfect 10 in this action on or
6 about September 4, 2007.

7 11. Attached hereto as Exhibit J is a true and correct copy of Defendant
8 Google Inc.'s Responses to Plaintiff Perfect 10's Ninth Set of Requests for
9 Production of Documents, served by Google upon Perfect 10 in this action on or
10 about February 25, 2008.

11 12. Attached hereto as Exhibit K is a true and correct copy of Defendant
12 Google Inc.'s Responses and Objections to Plaintiff Perfect 10, Inc.'s Tenth Set of
13 Requests for Production of Documents, served by Google upon Perfect 10 in this
14 action on or about October 5, 2009.

15 13. Filed separately under seal as Exhibit L are selected portions of the
16 transcript of the Deposition of Alexander Macgillivray, taken in this action on or
17 about December 19, 2006. Certain portions of the Exhibit L, including those
18 portions identified in Perfect 10's portion of the Joint Stipulation, have been
19 highlighted in yellow. In addition, attached as the last three pages of Exhibit L are
20 true and correct copies of the results of searches of the transcript of the Deposition
21 of Mr. Macgillivray performed under my direction for the terms "I don't know,"
22 "I'm not sure," and "I don't remember." Because the entire transcript of Mr.
23 Macgillivray's deposition is voluminous, it is not attached to this declaration.
24 Perfect 10 will make the entire transcript available to the Court upon request at any
25 time at or before the hearing on Google's motion.

26 14. Filed separately under seal as Exhibit M are selected portions of the
27 transcript of the Deposition of Susan Wojcicki, taken in this action on or about
28 March 5, 2007. Certain portions of the Exhibit M, including those portions

1 identified in Perfect 10's portion of the Joint Stipulation, have been highlighted in
2 yellow. In addition, attached as the last two pages of Exhibit M are true and correct
3 copies of the results of searches of the transcript of the Deposition of Ms. Wojcicki
4 performed under my direction for the terms "I don't know" and "I do not know."
5 Because the entire transcript of Ms. Wojcicki's deposition is voluminous, it is not
6 attached to this declaration. Perfect 10 will make the entire transcript available to
7 the Court upon request at any time at or before the hearing on Google's motion.

8 15. Filed separately under seal as Exhibit N are selected portions of the
9 transcript of the Deposition of Bill Brougher, taken in this action on or about
10 January 11, 2007. Certain portions of the Exhibit N, including those portions
11 identified in Perfect 10's portion of the Joint Stipulation, have been highlighted in
12 yellow. In addition, attached as the last page of Exhibit N is a true and correct copy
13 of the results of a search of the transcript of the Deposition of Mr. Brougher
14 performed under my direction for the term "I don't know." Because the entire
15 transcript of Mr. Brougher's deposition is large, it is not attached to this declaration.
16 Perfect 10 will make the entire transcript available to the Court upon request at any
17 time at or before the hearing on Google's motion.

18 16. Attached hereto as Exhibit O are true and correct copies of selected
19 pages from Plaintiff's Fifth Set of Requests for the Production of Documents to
20 Defendant Google, Inc., served by Perfect 10 upon Google in this action on or about
21 January 18, 2007. RFP No. 131 has been highlighted in yellow.

22 17. Attached hereto as Exhibit P are true and correct copies of selected
23 pages from Defendant Google Inc.'s Responses and Objections to Plaintiff's Fifth
24 Set of Requests for the Production of Documents, served by Google upon Perfect 10
25 in this action on or about February 23, 2007. Google's Response to RFP No. 131
26 has been highlighted in yellow.

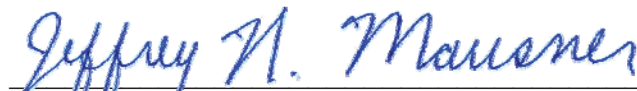
27 18. Attached hereto as Exhibit Q is a true and correct copy of the Order Re
28 Perfect 10's Motion to Compel Defendant Google Inc. to Produce Documents

1 (Docket No. 254), filed in this action on February 22, 2008. The portion of the
2 Order with respect to RFP No. 131, as modified, has been highlighted in yellow.

3 19. Attached hereto as Exhibit R are true and correct copies of selected
4 pages from Defendant Google Inc.'s Responses and Objections to Plaintiff Perfect
5 10, Inc.'s Twelfth Set of Requests for the Production of Documents, served by
6 Google upon Perfect 10 in this action on or about April 29, 2010. Certain portions
7 of Exhibit R, including RFP Nos. 389, 391, 393, and 394 and portions of Google's
8 responses to RFP Nos. 389, 391, 393, and 394, have been highlighted in yellow.

9 I declare under penalty of perjury under the laws of the United States of
10 America that the foregoing is true and correct to the best of my knowledge.

11 Executed this 3rd day of May, 2010 in Los Angeles County, California.

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14 Jeffrey N. Mausner