

Exhibit A

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

VIACOM INTERNATIONAL, INC., COMEDY)
PARTNERS, COUNTRY MUSIC)
TELEVISION, INC., PARAMOUNT)
PICTURES CORPORATION, and BLACK)
ENTERTAINMENT TELEVISION, LLC,)

Plaintiffs,)

vs.)

NO. 07-CV-2203)

YOUTUBE, INC., YOUTUBE, LLC,)
and GOOGLE, INC.,)

Defendants.)

THE FOOTBALL ASSOCIATION PREMIER)
LEAGUE LIMITED, BOURNE CO., et al.,)
on behalf of themselves and all)
others similarly situated,)

Plaintiffs,)

vs.)

NO. 07-CV-3582)

YOUTUBE, INC., YOUTUBE, LLC, and)
GOOGLE, INC.,)

Defendants.)

VIDEOTAPED DEPOSITION OF ERIC SCHMIDT
SAN FRANCISCO, CALIFORNIA
WEDNESDAY, MAY 6, 2009

JOB NO. 16802

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MAY 6, 2009

9:14 a.m.

VIDEOTAPED DEPOSITION OF ERIC SCHMIDT,
held at the offices of WILSON, SONSINI,
GOODRICH & ROSATI, 601 California Avenue,
Palo Alto, California, pursuant to notice,
before ANDREA M. IGNACIO HOWARD, CLR, CCRR, RPR,
CSR License No. 9830.

1 A P P E A R A N C E S:

2

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10 FOR THE LEAD PLAINTIFFS AND PROSPECTIVE CLASS:

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17 FOR THE PLAINTIFFS VIACOM INTERNATIONAL INC.:

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SCHMIDT, ERIC

A P P E A R A N C E S (Continued.)

FOR THE DEFENDANTS YOUTUBE, INC., YOUTUBE, LLC and
GOOGLE, INC.:

MAYER BROWN, LLP

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ALSO PRESENT:

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KEN REESER, Videographer.

---oOo---

1 SCHMIDT, ERIC
2 PALO ALTO, CALIFORNIA
3 WEDNESDAY, MAY 6, 2009, 9:14 A.M.
4
5

09:14:24 6 THE VIDEOGRAPHER: Good morning.

09:14:25 7 Today's videotaped deposition of Eric Schmidt
09:14:28 8 is taken on May 6th, 2009, at 601 California Avenue,
09:14:36 9 Palo Alto, California.

09:14:38 10 In the matter of Viacom International,
09:14:38 11 et al., vs. YouTube, Incorporated, et al., and The
09:14:38 12 Football Association Premier League Limited, et al.,
09:14:38 13 vs. YouTube, Incorporated.

09:14:49 14 Case Nos. 07-CV-2203 and 07-CV-3582. In the
09:15:01 15 U.S. District Court for the Southern District of
09:15:03 16 New York.

09:15:04 17 My name is Ken Reeser. I represent David
09:15:07 18 Feldman Worldwide, located at 600 Anton Boulevard,
09:15:13 19 Suite 1100, Costa Mesa, California.

09:15:15 20 We are now commencing at 9:14 a.m.

09:15:17 21 Will all present please identify themselves,
09:15:21 22 beginning with the witness.

09:15:22 23 THE WITNESS: Eric Schmidt.

09:15:24 24 MR. MANCINI: John Mancini, Mayer Brown, for
09:15:26 25 defendants Google and YouTube.

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09:15:29 2 MR. MCGILL: David McGill, also from Mayer
09:15:32 3 Brown, for the defendants.

09:15:33 4 MR. WALKER: Kent Walker, Google.

09:15:35 5 MS. LACAVERA: Catherine Lacavera, Google.

09:15:40 6 MR. BASKIN: Stuart Baskin, Shearman &
09:15:42 7 Sterling, for Viacom.

09:15:42 8 MR. STRAUSS: Sean Strauss, Shearman &
09:15:43 9 Sterling, for Viacom.

09:15:43 10 MS. KOHLMANN: Susan Kohlmann, Jenner &
09:15:45 11 Block, for Viacom.

09:15:48 12 MS. FORSHEIT: Tanya Forsheit, Proskauer
09:15:53 13 Rose, for The Premier League and The Class.

09:15:53 14 THE VIDEOGRAPHER: Thank you.

09:15:54 15 Would the court reporter please swear in the
09:15:56 16 witness.

09:15:56 17 ERIC SCHMIDT,
09:15:56 18 having been sworn as a witness testified as follows:

09:15:56 19

09:16:07 20 EXAMINATION BY MR. BASKIN

09:16:07 21 MR. BASKIN: Good morning, sir.

09:16:13 22 Q Did you have the opportunity to prepare for
09:16:15 23 this deposition?

09:16:16 24 A I did.

09:16:17 25 Q And how long did you prepare for the

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09:16:18 2 deposition?

09:16:21 3 A Yesterday, a few hours.

09:16:23 4 Q Now, I assume you have e-mail service on your
09:16:31 5 computer at Google?

09:16:32 6 A I do.

09:16:33 7 Q How many computers do you have, by the way?
09:16:36 8 I'm impressed with all the computers in the room. How
09:16:39 9 many computers do you have?

09:16:40 10 A Me personally, probably 30.

09:16:41 11 Q And over the course of these 30 computers, do
09:16:47 12 you frequently e-mail during the course of the day?

09:16:49 13 A I do.

09:16:52 14 Q Did you participate in gathering documents
09:16:56 15 for -- or your e-mails in connection with this
09:16:59 16 litigation?

09:17:01 17 MR. MANCINI: Objection to form.

09:17:03 18 MR. BASKIN: Q. Did you play any role in
09:17:04 19 collecting your e-mails or other documents for this
09:17:06 20 litigation?

09:17:07 21 MR. MANCINI: Objection to form.

09:17:08 22 THE WITNESS: I -- yes.

09:17:10 23 MR. BASKIN: Q. What did you do, sir?

09:17:17 24 A I was given what I believe is a protective
09:17:21 25 order, is what it's called, and I followed that.

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09:17:25 2 Q And did you make the selection yourself as to
09:17:29 3 what is produceable in this litigation?

09:17:31 4 MR. MANCINI: Objection to form.

09:17:32 5 THE WITNESS: No.

09:17:37 6 MR. BASKIN: Q. You made it in conjunction
09:17:38 7 with somebody else?

09:17:41 8 MR. MANCINI: Objection to form.

09:17:42 9 THE WITNESS: Yes.

09:17:42 10 MR. BASKIN: Okay.

09:17:43 11 Q And with whom did you make the decision as to
09:17:47 12 what is produceable in this litigation?

09:17:50 13 MR. MANCINI: Objection to form.

09:17:52 14 THE WITNESS: I'm not sure I understand the
09:17:54 15 question very well, because you're using a precise
09:17:57 16 word, which is jointly producing something.

09:18:00 17 MR. BASKIN: Okay. Well let me -- let me --
09:18:02 18 let me show you what -- let's mark as Schmidt
09:18:07 19 Exhibit 1.

09:18:07 20 (Document marked Schmidt Exhibit 1
09:18:10 21 for identification.)

09:18:10 22 MR. BASKIN: I'll pass these out to the gang.

09:18:21 23 MR. MANCINI: The court reporter will hand it
09:18:22 24 to you.

09:18:23 25 MR. BASKIN: And let me hand you Schmidt

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09:28:36 2 related to this case but none that are related to this
09:28:40 3 case?

09:28:40 4 MR. MANCINI: Objection; lacks foundation.

09:28:42 5 THE WITNESS: Some people have permanent data
09:28:51 6 stores of all communications for their whole lives.
09:28:55 7 Other people over time either delete or lose some of
09:29:01 8 that e-mail.

09:29:03 9 It has been my practice for 30 years to not
09:29:05 10 retain my e-mails unless asked specifically.

09:29:11 11 There are other people who would have copies
09:29:13 12 of e-mails that I had sent, for example, in 2005, that
09:29:20 13 you might find an e-mail that I sent to them that
09:29:23 14 would not be in my copy but might be in their copy.

09:29:27 15 MR. BASKIN: Q. Now, do I understand that it
09:29:34 16 has been your practice for -- strike that.

09:29:37 17 For 30 years, for how long have you preserved
09:29:43 18 your e-mails before they are deleted?

09:29:47 19 MR. MANCINI: Objection to form; objection to
09:29:49 20 the characterization of the testimony.

09:29:50 21 THE WITNESS: That's not what I said, so...

09:29:53 22 MR. BASKIN: Okay.

09:29:53 23 Q I thought you told me if not -- I'm not
09:29:56 24 fencing with you. I just want to know the answer.
09:29:56 25 You said that --

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09:29:58 2 A Yeah.

09:29:58 3 Q -- I thought you said that for 30 years it's
09:30:01 4 been your practice not to preserve or to delete
09:30:05 5 e-mails?

09:30:05 6 MR. MANCINI: Objection to form; objection to
09:30:07 7 the characterization of the testimony.

09:30:09 8 MR. BASKIN: Q. Is that accurate?

09:30:10 9 A Again, I'll answer the question previously
09:30:14 10 asked, which was it has been my practice to not keep
09:30:16 11 my e-mails.

09:30:17 12 Q And is this on some sort of automatic system
09:30:20 13 where they are deleted in the ordinary course over
09:30:24 14 some ordinary period of time?

09:30:25 15 MR. MANCINI: Objection to form; objection,
09:30:26 16 lacks foundation.

09:30:27 17 THE WITNESS: Depending on the e-mail system
09:30:29 18 and the company and so forth, the answer would vary.

09:30:32 19 MR. BASKIN: Okay.

09:30:32 20 Q Well, let's take Google in 2005. What was
09:30:41 21 your practice then as to the length of time in which
09:30:44 22 you preserved your e-mails before they were deleted?

09:30:47 23 MR. MANCINI: Objection to form.

09:30:48 24 THE WITNESS: It was my practice to delete or
09:30:52 25 otherwise cause the e-mails that I had read to go away

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09:30:56 2 as quickly as possible.

09:30:57 3 MR. BASKIN: Q. Within days?

09:31:01 4 A Yes.

09:31:01 5 Q And I assume that practice carried over to
09:31:11 6 2006 and 2007 and 2008?

09:31:13 7 MR. MANCINI: Objection; lacks foundation.

09:31:14 8 THE WITNESS: In -- again, without the
09:31:21 9 specific dates, in principle, yes.

09:31:24 10 MR. BASKIN: Q. Now, when the lawsuit was
09:31:28 11 filed in February 2007, did anyone instruct you that
09:31:36 12 you should preserve your e-mails relevant to the
09:31:41 13 litigation?

09:31:44 14 Excuse me. As of -- excuse me. As of the
09:31:47 15 filing of this complaint, which is March of 2007, did
09:31:50 16 anyone instruct you to preserve your e-mails that
09:31:53 17 might be relevant to this litigation?

09:31:54 18 MR. MANCINI: Objection to the extent it
09:31:55 19 calls for a privileged communication.

09:31:58 20 THE WITNESS: I want to be careful not to
09:32:04 21 discuss a legal conversation that I had.

09:32:08 22 You used a precise month. A -- a clear -- a
09:32:14 23 clear and precise answer would be that I did change my
09:32:16 24 practice after this lawsuit was filed and I was
09:32:20 25 notified.

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10:38:05 2 MR. MCGILL: I'm fine. Thank you.

10:38:06 3 MR. BASKIN: Q. Most importantly, would you
10:38:06 4 like one, sir?

10:38:09 5 A I'm fine.

10:38:09 6 Q You okay? Okay.

10:38:09 7 A Thank you.

10:38:14 8 Q Prior to Google's purchase of YouTube, did
10:38:19 9 you ever hear a Google executive complain that YouTube
10:38:26 10 was competing unfairly because of the way it dealt
10:38:30 11 with copyrighted material on its site?

10:38:33 12 MR. MANCINI: Objection; lacks foundation;
10:38:35 13 and objection to the form to the extent it seeks a
10:38:37 14 legal conclusion.

10:38:38 15 THE WITNESS: I'm trying to think.

10:38:50 16 I don't recall. I mean, I may -- someone may
10:38:55 17 have said something, but it would have been in general
10:38:59 18 terms. It wouldn't have been with the specificity of
10:39:02 19 your question.

10:39:03 20 MR. BASKIN: Q. Well, did you ever hear any
10:39:08 21 Google executives criticize YouTube because of the way
10:39:11 22 it dealt with copyright issues --

10:39:15 23 MR. MANCINI: Same objections.

10:39:16 24 MR. BASKIN: Q. -- prior to your acquisition
10:39:17 25 of it?

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10:39:17 2 MR. MANCINI: Same objections.

10:39:19 3 THE WITNESS: Again, I recall complaints
10:39:27 4 about YouTube having different policies, but not
10:39:31 5 specific in the way you asked your question.

10:39:36 6 MR. BASKIN: Q. Well, did you ever read an
10:39:39 7 internal Google document in which a Google executive
10:39:44 8 criticized YouTube because of the way it dealt with
10:39:47 9 copyright issues?

10:39:47 10 MR. MANCINI: Objection; lacks foundation;
10:39:50 11 calls for a legal conclusion; and objection to form.

10:39:52 12 THE WITNESS: I may have. I don't -- I don't
10:39:55 13 recall specifics.

10:39:56 14 MR. BASKIN: Q. Do you remember being told
10:40:12 15 by a senior Google executive that a large part of
10:40:20 16 YouTube's traffic is from pirated content?

10:40:24 17 MR. MANCINI: Objection; lacks foundation;
10:40:26 18 objection to form.

10:40:29 19 THE WITNESS: No specific recollection, no.

10:40:34 20 MR. BASKIN: Let me hand you what we will
10:40:36 21 mark as Schmidt 7. It was Drummond 17, I believe, and
10:40:47 22 Eun -- is that the way you pronounce it, E-U-N, Eun,
10:40:50 23 Eun 12?

10:40:51 24 THE WITNESS: Eun.

10:40:51 25 ///

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10:44:42 2 meetings. Normally I am in the meetings.

10:44:43 3 MR. BASKIN: Q. What about Mr. Brin?

10:44:46 4 MR. MANCINI: Objection; lacks foundation.

10:44:48 5 THE WITNESS: Some percentage of the time.

10:44:51 6 MR. BASKIN: Q. Do you recall if Mr. Brin

10:44:53 7 attended --

10:44:54 8 A I do --

10:44:54 9 Q -- the Video GPS?

10:44:56 10 A -- I do not. I do not.

10:44:57 11 Q And what about Mr. Page?

10:45:02 12 A Again, no recollection.

10:45:03 13 Q In the ordinary course, does he tend to

10:45:08 14 attend Video GPS meetings?

10:45:09 15 MR. MANCINI: Objection to form.

10:45:13 16 THE WITNESS: Larry more than Sergey. But

10:45:17 17 their meetings -- the GPS's are built around me, so

10:45:20 18 the normal course of business, I'm there and the

10:45:23 19 others may or may not be there.

10:45:26 20 MR. BASKIN: Okay.

10:45:28 21 Q Now, you said -- I think you said that you

10:45:30 22 read Mr. Eun's -- am I pronouncing that right, by the

10:45:35 23 way?

10:45:36 24 A That's correct.

10:45:37 25 Q So it's E-U-N.

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10:45:38 2 You read Mr. Eun's e-mail as preparatory to
10:45:42 3 the Video GPS; correct?

10:45:45 4 A That is correct.

10:45:46 5 Q Now, he tells you that -- strike that.

10:46:00 6 Do you read this e-mail as focusing on the
10:46:03 7 issue of how to beat YouTube?

10:46:05 8 MR. MANCINI: Objection to the
10:46:06 9 characterization of the document.

10:46:07 10 THE WITNESS: Well, I haven't read the whole
10:46:12 11 e-mail, but it starts by saying, "We are preparing in
10:46:18 12 preparation for the GPS how we beat YouTube in the
10:46:23 13 short term and how we win over time."

10:46:25 14 So that would be consistent with your
10:46:25 15 assertion.

10:46:27 16 MR. BASKIN: Q. And do you recall that one
10:46:28 17 of the topics being discussed as a way of beating
10:46:32 18 YouTube was whether Google Video should relax
10:46:36 19 enforcement of our copyright policies in an effort to
10:46:41 20 stimulate traffic growth?

10:46:43 21 MR. MANCINI: Objection to the
10:46:43 22 characterization of the document.

10:46:45 23 THE WITNESS: You would have to point me to a
10:46:47 24 paragraph or a sentence here.

10:46:49 25 MR. BASKIN: Q. Well, first, do you -- do

1 SCHMIDT, ERIC

10:46:51 2 you recall this e-mail?

10:46:52 3 A I do not.

10:46:52 4 Q Have you seen this e-mail prior to today, to
10:46:55 5 the best of your recollection?

10:46:57 6 A I think --

10:46:58 7 MR. MANCINI: Objection.

10:46:58 8 THE WITNESS: Go ahead.

10:46:59 9 MR. MANCINI: Objection to the extent it
10:47:01 10 seeks communications with counsel.

10:47:02 11 MR. BASKIN: Okay. Fair enough.

10:47:03 12 Q Now, so let's go to the e-mail, sir, at the
10:47:05 13 bottom. You see it says -- the paragraph that reads
10:47:11 14 as follows, let me point it out to you, "there is a
10:47:17 15 chance of pursuing short-term goals with such
10:47:21 16 zealously that we develop blind spots that could
10:47:25 17 hurt us later. For example, there was heated debate
10:47:31 18 about whether we should relax enforcement of our
10:47:34 19 copyright policies in an effort to stimulate traffic
10:47:38 20 growth, despite the inevitable damage it would cause
10:47:43 21 to relationships with content owners."

10:47:48 22 Do you see that, sir?

10:47:50 23 A I do see that paragraph.

10:47:51 24 Q Do you remember reading that paragraph in and
10:47:53 25 around May 2006?

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10:47:55 2 MR. MANCINI: Objection; lacks foundation.

10:47:56 3 THE WITNESS: As I indicated, I do not recall
10:47:58 4 the e-mail.

10:47:58 5 MR. BASKIN: Q. Do you recall being party to
10:48:00 6 a discussion as to whether Google Video should relax
10:48:04 7 its copyright policies --

10:48:05 8 MR. MANCINI: Objection to the extent it
10:48:06 9 seeks a leading conclusion.

10:48:06 10 MR. BASKIN: Excuse me. Excuse me. Let me
10:48:08 11 finish. Then you may register your objection.

10:48:11 12 Q Do you recall whether -- strike that.

10:48:17 13 Do you recall being involved in discussions
10:48:20 14 in and around May 2006 on the topic of whether Google
10:48:29 15 Video should relax enforcement of its copyright
10:48:31 16 policies in an effort to stimulate traffic growth?

10:48:34 17 MR. MANCINI: Objection to form; and
10:48:35 18 objection to the extent it seeks communications with
10:48:37 19 counsel, to which I instruct the witness not to
10:48:39 20 answer.

10:48:39 21 THE WITNESS: I only have a vague
10:48:43 22 recollection of their -- as I testified previously, I
10:48:48 23 have only a vague recollection of us talking about the
10:48:51 24 difference between their policies, "their" being
10:48:55 25 YouTube's and ours.

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10:48:57 2 MR. BASKIN: Q. So you do not have a
10:48:58 3 recollection of being party to a discussion about
10:49:01 4 whether Google Video should relax its policies to
10:49:03 5 comport with YouTube's?

10:49:05 6 MR. MANCINI: Same objections.

10:49:07 7 THE WITNESS: And again, I have no specific
10:49:08 8 recollection in that area.

10:49:11 9 MR. BASKIN: Q. Now, in the next paragraph,
10:49:16 10 Mr. Eun says, "I think we should beat YouTube - and
10:49:25 11 all competitors - but not at all costs. A large part
10:49:31 12 of their traffic is from pirated content."

10:49:34 13 Do you see that, sir?

10:49:35 14 A I see that.

10:49:36 15 Q Does -- do you recall reading that sentence
10:49:38 16 in and around May of 2006?

10:49:39 17 MR. MANCINI: Objection; lacks foundation.

10:49:40 18 THE WITNESS: As I previously said, I don't
10:49:43 19 recall this e-mail and, therefore, I don't recall this
10:49:44 20 sentence.

10:49:45 21 MR. BASKIN: Q. Do you recall a conversation
10:49:46 22 with Mr. Eun on the topic that a large part of
10:49:54 23 YouTube's traffic is from pirated content?

10:49:57 24 MR. MANCINI: Objection to form; lacks
10:49:59 25 foundation.

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12:39:01 2 companies to protect the -- their content on the
12:39:06 3 YouTube website?

12:39:07 4 MR. MANCINI: Objection; lacks foundation;
12:39:08 5 and objection to form.

12:39:09 6 THE WITNESS: Okay. There were a lot of
12:39:12 7 negatives in that question.

12:39:13 8 MR. BASKIN: Yeah. It was a lousy question.

12:39:15 9 THE WITNESS: Yeah.

12:39:16 10 MR. BASKIN: Let me withdraw it. That was a
12:39:16 11 real bad question. Let me try again.

12:39:18 12 MR. MANCINI: Good idea.

12:39:20 13 MR. BASKIN: Q. Did you ever reach the
12:39:22 14 conclusion, in your own mind, sir, that Google simply
12:39:29 15 couldn't afford the license fee necessary to make
12:39:35 16 Audible Magic technology available to content owners
12:39:39 17 who wanted it in the end of 2006 and the early parts
12:39:46 18 of 2007, irrespective of whether they entered into a
12:39:50 19 license agreement with YouTube?

12:39:51 20 MR. MANCINI: Objection; lacks foundation;
12:39:53 21 objection to form; and objection to the extent it's
12:39:56 22 seeking mental impressions.

12:39:57 23 THE WITNESS: I -- I have no recollection in
12:39:59 24 this area.

12:40:15 25 MR. BASKIN: Q. Let me ask you this: Based

1 SCHMIDT, ERIC

12:40:37 2 on your -- strike that.

12:40:44 3 Q In 2006, can you tell us, for the record, the
12:41:00 4 name of even one large media company that was given
12:41:09 5 access to available fingerprint technologies on
12:41:15 6 YouTube in the absence of a revenue-sharing agreement?

12:41:19 7 MR. MANCINI: Objection to form.

12:41:21 8 THE WITNESS: I'm sorry. In 2006, I -- I
12:41:27 9 don't know.

12:41:28 10 MR. BASKIN: Q. And what about 2007? Can
12:41:32 11 you give me the name of one media company that was
12:41:37 12 given access to available fingerprint technologies in
12:41:45 13 the absence of a revenue deal?

12:41:46 14 MR. MANCINI: I just want to object --
12:41:48 15 continuing objection that the witness has indicated
12:41:49 16 his lack of recollection in this area.

12:41:52 17 THE WITNESS: Yeah. I just -- I don't know
12:41:54 18 the details, so I don't recall.

12:41:55 19 MR. BASKIN: Q. You don't recall the name of
12:41:57 20 one company, right, sir?

12:41:59 21 MR. MANCINI: Same objection.

12:42:01 22 THE WITNESS: Yeah.

12:42:04 23 MR. BASKIN: Q. Correct?

12:42:04 24 A That is correct.

12:42:05 25 Q Now, I just want to do five more minutes and

DAVID FELDMAN WORLDWIDE, INC.

805 Third Avenue, New York, New York 10022 (212) 705-8585

1 SCHMIDT, ERIC

13:47:46 2 Q Are you familiar that there's a segment of
13:47:49 3 the YouTube website that displays so-called private
13:47:53 4 videos?

13:47:55 5 MR. MANCINI: Objection to form.

13:47:56 6 THE WITNESS: I've heard the term, but I
13:47:58 7 don't know what "private videos" means.

13:48:00 8 MR. BASKIN: Q. So you have no idea how the
13:48:02 9 private videos sector of the website operates?

13:48:07 10 A No.

13:48:09 11 Q Okay. Would you know, as you sit here today,
13:48:20 12 whether a content company is capable of searching the
13:48:31 13 private sector of the website to ascertain whether any
13:48:36 14 of its copyrighted materials are contained in the
13:48:39 15 private sector of the website and to try to take it
13:48:41 16 down?

13:48:41 17 MR. MANCINI: Objection; the witness has
13:48:43 18 testified to his lack of knowledge in this area.

13:48:46 19 THE WITNESS: I don't know what private part
13:48:48 20 of the website is.

13:48:49 21 MR. BASKIN: Okay. Fair enough.

13:48:50 22 Q Now, in 2006 and early 2007, am I correct
13:48:59 23 that Viacom and Google were in a negotiation to try to
13:49:03 24 achieve a revenue-sharing deal between the companies?

13:49:07 25 MR. MANCINI: Objection to the

Important points to make somewhere in the deck:

- YouTube's business model is completely sustained by pirated content. They are at the mercy of companies not responding with DMCA requests. When they do (like CSPAN did with S. Colbert), they suffer
- The DMCA law could be overturned if the media industry engages in sustained lobbying efforts (it was written before the viral video craze took off), and it is risky to build an entire business model on this law. It is also not scalable to expand internationally since DMCA is a US law
- The YouTube business model is also not monetizable. They are an AdSense publisher, so we have a good sense of their rate of monetization: PV
- YouTube is going after one slice of the internet video market -- funny, user-made videos. There are many more slices in the pie and GV should try to be the broadest possible index
- We need to continue CBG support for video internationally b/c we don't have good ad monetization solutions yet, and some content producers will only distribute their content if they can sell it
- There is a big market for high quality premium content, but it is largely going to be shorter form, as opposed to 2 hour movies. Perhaps this means we should be working with media companies to get 2-4 minute funny clips from their shows. This will drive traffic, raise awareness of their TV shows (e.g., Lazy Sunday boosted SNL's ratings), and be very monetizable

The Google logo is displayed in its characteristic multi-colored font (blue, red, yellow, blue, green, red) against a dark, textured background.

Potential results of changing copyright enforcement policies

- Likely acceptance among users (especially highly media-aware young demographic)
 - Higher traffic, higher profile as destination site
 - Increased uploads of user content as well as copyrighted content
 - Potential to monetize higher volume of traffic
 - Achieve OKRs on traffic and uploads
- Inability to independently gauge what kind of impact on traffic other options can have
 - Improvements in features and user experience
 - Modifying copyright protection through applying public pressure through increased collaboration with content owners and indirect pressure through press and public policy
- Some content owners sue Google
 - Diversion of management attention
 - Negative PR
 - Potential monetary damages
- Loss of trust from content providers
 - Reduced future access to content
 - Reduced willingness to partner with other Google properties
 - Reduced AdSense partnerships and revenues (not just in Video)
- Inconsistent with assertions in book search and library partner program for respecting copyrights
 - Press, public and potentially courts will see loosening of video standards as sign of overall approach to copyrights
- Loss of trust from advertisers
 - Wish to avoid negative associations
 - Reduced ad revenues



We may be able to coax or force access to viral premium content

Ways to give users access to premium content (examples)

- Get working ads model to monetize premium content to show for free
- Enable download-to-own or streaming of short clips at pennies per clip from prepaid Google user account funds
- Install hotline arrangements for fast-tracking short clips with some bulk (capped) after-the-fact payment by Google
- Include in partnership terms that content owners will do at least one of the following:
 - clamp down on copyright infringers with DMCA notice within X hours
 - officially supply us their master version of viral clip for free streaming within Y hours
 - allow us to upload viral clip from infringing site and host it ourselves

or... pay us for lost traffic

- Threaten a change in copyright policy as part of a PR campaign complaining about harm to users' interests through content owner foot-dragging – use threat to get standard deal sign-up

on extrapolations or interpretations from these documents. Defendants' own words, in plain English, speak for themselves – clearly and forcefully.

And this is a case where these written words speak all the more powerfully given the Defendants' failure to preserve and produce many key documents and the ostensible memory failures of their key executives when deposed. Among the most compelling documents are the internal emails and memoranda of YouTube's founders. Almost none of these key internal documents were produced by Google or YouTube, which claims they were all lost. Hohengarten Decl. ¶ 263. Among others, Chad Hurley, a founder and YouTube's Chief Executive from its inception to today, revealed for the first time of his deposition that he "lost all" of his YouTube emails for the key time period of this case. *Id.* ¶ 264. Fortunately, Karim, who left YouTube in 2006 and preserved these materials on his own personal computer, discharged his duties to this Court and produced them. *Id.* ¶¶ 218-63. Otherwise they would have never surfaced in this litigation.

Similarly unusual are the document destruction practices followed by Google's CEO Eric Schmidt. He claims to use and email from "probably 30" different computers. *Id.* ¶ 348 & Ex. 314, at 7:7-10. As set forth above, Schmidt was deeply involved in the decision to acquire YouTube and its post-acquisition policies. Yet, for the key period from June 2006 (when Google started intensely to focus on YouTube's policies and practices and debated whether to acquire it) through February 2007 (when negotiations fell apart with Viacom and the MPAA, resulting in this lawsuit), Schmidt's search for responsive materials "yielded 19 documents." *Id.* ¶¶ 266, 348 & Ex. 314 at 18. The absence of emails and documents is explained by a practice litigation-conscious in the extreme. Schmidt explained: "[i]t has been my practice for 30 years to not retain my emails unless asked specifically." *Id.* ¶ 348 & Ex. 314 at 18. He went on to testify:

“It was my practice to delete or otherwise cause the emails that I had read to go away as quickly as possible.” *Id.* at 18-19.¹⁴

Similar bizarre practices surfaced when senior executives testified about these key documents. When Mr. Hurley was shown the email chains preserved by Mr. Karim, he developed serial amnesia. This is no lawyer’s exaggeration: we include pages 177-317 of Mr. Hurley’s testimony (Hohengarten Decl. ¶ 346 & Ex. 312) and invite the Court to review it. To the same effect is 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, even including, for example, whether he was in favor of Google’s acquisition of YouTube, even though it was Google’s largest corporate transaction to date and viewed as transformative to its business. Hohengarten Decl. ¶ 349 & Ex. 315, at 129:23-134:15. We enclose Mr. Page’s entire deposition as Exhibit 315 to the Hohengarten Declaration. This Court can decide whether these key executives and witnesses behaved with the level of candor and respect for the legal process that this Court has a right to expect from senior executives of important public companies.

Due to these practices, we and the Court will never know what else was “lost” or made to “go away as quickly as possible.” Fortunately, the documents that fortuitously survived and were produced still provide ample indisputable evidence of unlawful intent. Given Defendants’ wholesale failures to preserve relevant documents or recall key salient facts, the surviving documents speak all the more loudly as undisputed facts that warrant summary judgment.

¹⁴ This practice is certainly ironic coming from the CEO of a company that prominently markets its email service to the public as providing “lots of space” and “free storage” for emails. Hohengarten Decl. ¶ 316 & Ex. 288.

CONCLUSION

Viacom's motion for partial summary judgment should be granted.

Respectfully submitted,

By: /s/ Stuart J. Baskin _____

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By: /s/ Paul M. Smith _____

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Exhibit B

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2 JEFFREY D. GOLDMAN (State Bar No. 155589)
3 MITCHELL SILBERBERG & KNUPP LLP
4 11377 West Olympic Boulevard
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Telephone: (310) 312-2000
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5 JEFFREY N. MAUSNER (State Bar No. 122385)
6 BERMAN, MAUSNER & RESSER
7 11601 Wilshire Boulevard, Suite 600
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8 DANIEL J. COOPER (State Bar No. 198460)
9 PERFECT 10, INC.
10 72 Beverly Park Dr.
11 Beverly Hills, California 90210
Telephone: (310) 205-9817
Facsimile: (310) 205-9638

12 Attorneys for Plaintiff

13 UNITED STATES DISTRICT COURT
14
15 CENTRAL DISTRICT OF CALIFORNIA

16 PERFECT 10, INC., a California
17 corporation,

18 Plaintiff,

19 v.

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

22 Defendants.

CASE No. CV 04-9484 NM (CW)

**PLAINTIFF'S FIRST SET OF REQUESTS
FOR THE PRODUCTION OF
DOCUMENTS**

23 TO DEFENDANT GOOGLE, Inc. AND ITS COUNSEL OF RECORD
24 HEREIN: Pursuant to Rule 34 of the Federal Rules of Civil Procedure, Plaintiff
25 Perfect 10, Inc. propounds the following First Set of Requests for the Production of
26 DOCUMENTS to Defendant GOOGLE, Inc. Documents shall be produced to
27 Daniel Cooper, Esq., 72 Beverly Park, Beverly Hills, CA, 30 days after the service
28 of these requests.

- 1 9. DOCUMENTS sufficient to determine the number of images DISPLAYED
2 ON GOOGLE SERVERS since 2001 that have, when clicked upon,
3 purportedly LINKED users to perfect10.com or perfectten.com.
- 4 10. DOCUMENTS sufficient to determine the number of times, since
5 November 20, 2001, that a user has clicked upon an image DISPLAYED
6 ON GOOGLE SERVERS which purportedly LINKED users to
7 perfect10.com or perfectten.com.
- 8 11. DOCUMENTS sufficient to determine the number of times since November
9 20, 2001 that anyone has clicked on an image DISPLAYED ON GOOGLE
10 SERVERS of any model whose name is listed in Exhibit 2.
- 11 12. All DOCUMENTS that constitute or embody GOOGLE's contractual
12 arrangements for the use of digital images on Image Search, including but
13 not limited to, distribution or license agreements with studios, stock houses,
14 independent photographers, and digital artists.
- 15 13. All DOCUMENTS that constitute or embody communications between or
16 among employees of GOOGLE that refer to or relate to plaintiff, Perfect 10.
- 17 14. GOOGLE's minutes of Board of Director and/or other Executive
18 Committee meetings that refer to, relate to, or mention copyright
19 infringement, misappropriation of rights of publicity, or trademark
20 infringement.
- 21 15. GOOGLE's minutes of Board of Director and/or other Executive
22 Committee meetings that refer to, relate to, or mention adult content,
23 pornography, sexual content, nude images, or celebrity images.
- 24 16. GOOGLE's minutes of Board of Director and/or other Executive
25 Committee meetings that refer to, relate to, or mention Perfect 10, Playboy,
26 or Penthouse.
- 27 17. All DOCUMENTS that constitute or embody communications between or
28 among employees of GOOGLE that refer to or relate to GOOGLE'S
potential liability for copyright infringement, misappropriation of rights of

1 publicity or trademark infringement.

- 2 18. All studies, reports, memoranda, letters, or notes that refer to, relate to, or
3 reflect the extent to which adult content available through GOOGLE's Web
4 Search and Image Search serves as a draw for traffic to GOOGLE.com.
- 5 19. All studies, reports, memoranda, letters, or notes that refer to, relate to, or
6 reflect the extent to which adult content available through GOOGLE's Web
7 Search and Image Search affects GOOGLE's revenues.
- 8 20. All DOCUMENTS that constitute or embody communications between or
9 among employees of GOOGLE that refer to, relate to, or reflect the extent
10 to which adult content available through GOOGLE's Web Search and
11 Image Search serves as a draw for traffic to GOOGLE.com.
- 12 21. All DOCUMENTS that constitute or embody communications between or
13 among employees of GOOGLE that refer to, relate to, or reflect the extent
14 to which adult content available through GOOGLE's Web Search and
15 Image Search affects GOOGLE's revenues.
- 16 22. All DOCUMENTS that refer to or reflect the DISABLING of any of the
17 BASE URLs listed in Exhibit 4.
- 18 23. DOCUMENTS sufficient to IDENTIFY all BASE URLs DISABLED by
19 GOOGLE as a result of notices sent by Perfect 10.
- 20 24. All DOCUMENTS that constitute or embody communications between
21 GOOGLE and ENTITIES that own or control the GOOGLE AFFILIATED
22 WEBSITES identified in YOUR response to Interrogatory 1.
- 23 25. All communications between GOOGLE and the ENTITIES identified in
24 YOUR response to Interrogatory No. 2.
- 25 26. All notices of TERMINATION (as a result of intellectual property
26 violations) sent by GOOGLE to any ENTITY that has owned or controlled
27 a GOOGLE LISTED WEBSITE.
- 28 27. All notices of TERMINATION sent by GOOGLE to any ENTITY that has
owned or controlled a GOOGLE LISTED WEBSITE.

1 DOCUMENTS should be provided in electronic format if available.

2 52. DOCUMENTS sufficient to IDENTIFY all GOOGLE AFFILIATED
3 WEBSITES that have used as “key words” (as the term is used by
4 GOOGLE in connection with its Adwords program) either “Perfect 10,”
5 “perfect10.com,” “perfectten.com,” or the names of any Perfect 10 models
6 listed in Exhibit 2, and for each such website, which terms were used, along
7 with the dates of such use.

8 53. All versions of form contracts or agreements between GOOGLE and any
9 Adwords or Adsense websites used from 2001 to the present.

10 54. All versions of GOOGLE rules, regulations and guidelines relating to
11 content on any Adwords or Adsense websites, from 2001 to the present.

12 55. All communications with third parties that refer to Plaintiff, Perfect 10.

13 56. All internal documents that refer to Plaintiff, Perfect 10.

14 57. All DOCUMENTS that refer to GOOGLE’S document retention policy.

15 58. All DOCUMENTS that refer or relate to the designation of a copyright
16 agent under the DMCA.

17 59. All complaints filed (in any jurisdiction in the U.S. and in any foreign
18 country) against GOOGLE relating to copyright infringement, trademark
19 infringement, or infringement of right of publicity.

20 60. All DOCUMENTS relating to any insurance that GOOGLE has or claims to
21 have in connection with any of the claims asserted.

22 61. All DOCUMENTS relating to any indemnity claims made by GOOGLE to
23 any third party with respect to the claims in the amended complaint.

24 62. All DOCUMENTS that relate to, evidence, refer to, or reflect
25 communications with any webmaster with respect to any of the Perfect 10
26 copyrighted works or Perfect 10 models or Perfect 10 trademarks.

27 63. All DOCUMENTS that support GOOGLE’S fourteenth affirmative
28 defense.

64. All DOCUMENTS that support GOOGLE’S fifteenth affirmative defense.

1 assist GOOGLE in more expeditious handling of Perfect 10's notices.

2
3 Dated: March 4, 2005

4 JEFFREY N. MAUSNER
5 BERMAN, MAUSNER & RESSER,
6 A LAW CORPORATION

7 Daniel J. Cooper
8 PERFECT 10, INC.

9 By: Jeffrey N. Mausner
10 Jeffrey N. Mausner
11 Attorneys for Plaintiff, PERFECT 10, INC.

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the county of Los Angeles, State of California.

I am over the age of 18 and am not a party to the within action; my business address is: 11601 Wilshire Boulevard, Suite 600, Los Angeles, California 90025-1742.

On March 4, 2005, I served the foregoing document(s) described as follows:

**PLAINTIFF PERFECT 10, INC.'S FIRST SET OF REQUESTS FOR ADMISSION TO
DEFENDANT GOOGLE, INC.**

on the interested party(ies) in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

**Michael S. Brophy
WINSTON & STRAWN, LLP
333 South Grand Avenue
Los Angeles, California 90071-1543**

PERSONAL: I delivered such envelope by hand to the addressee(s) or the office of the addressee(s).

FEDERAL: I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made. I declare, under penalty of perjury, that the foregoing is true and correct.

Executed on **March 4, 2005**, at Los Angeles, California.

BY: 

Mary Trinh

Exhibit C

Winston & Strawn LLP
101 California Street
San Francisco, CA 94111-5894

1 WINSTON & STRAWN LLP
Andrew P. Bridges (SBN: 122761)
2 Michael S. Brophy (SBN: 197940)
Jennifer A. Golinveaux (SBN: 203056)
3 101 California Street, Suite 3900
San Francisco, CA 94111-5894
4 Telephone: (415) 591-1000
Facsimile: (415) 591-1400
5 E-mail: abridges@winston.com, mbrophy@winston.com,
jgolinveaux@winston.com

FILE COPY

6 Attorneys for Defendant and Counterclaimant
7 GOOGLE INC.

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

11
12 PERFECT 10, INC., a California
corporation,

13 Plaintiff,

14 vs.

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

17 Defendant.

18 GOOGLE INC., a corporation,

19 Counterclaimant,

20 vs.

21 PERFECT 10, INC., a California
corporation,

22 Counter-defendant.

Case No. CV04-9484 NM (CWx)

**DEFENDANT GOOGLE INC.'S
RESPONSE TO PLAINTIFF'S
FIRST SET OF REQUESTS FOR
THE PRODUCTION OF
DOCUMENTS**

24 PROPOUNDING PARTY: PLAINTIFF PERFECT 10, INC.

25 RESPONDING PARTY: DEFENDANT GOOGLE INC.

26 SET NUMBER: ONE

1 **RESPONSE TO REQUEST NO. 12:**

2 In addition to its General Objections, Google objects to this request as vague
3 and ambiguous.

4 **REQUEST NO. 13:**

5 All DOCUMENTS that constitute or embody communications between or
6 among employees of GOOGLE that refer to or relate to plaintiff, Perfect 10.

7 **RESPONSE TO REQUEST NO. 13:**

8 Google objects to this request to the extent it seeks documents that are
9 protected by the attorney-client privilege, and/or the work product privilege.

10 Without waiving, and subject to, its General and specific objections, Google
11 responds that it will produce non-privileged documents that are responsive to this
12 request, to the extent such documents are found within its possession, custody, or
13 control after a reasonable and diligent search.

14 **REQUEST NO. 14:**

15 GOOGLE's minutes of Board of Director and/or other Executive Committee
16 meetings that refer to, relate to, or mention copyright infringement, misappropriation
17 of rights of publicity, or trademark infringement.

18 **RESPONSE TO REQUEST NO. 14:**

19 In addition to its General Objections, Google objects to this request to the
20 extent it seeks documents that are protected by the attorney-client privilege, and/or
21 the work product privilege. Google further objects to this request as vastly overbroad
22 and as seeking documents outside the scope of permissible discovery in that it seeks
23 information that is not relevant to the subject matter of this action and is not
24 reasonably calculated to lead to the discovery of admissible evidence.

25 **REQUEST NO. 15:**

26 GOOGLE's minutes of Board of Director and/or other Executive Committee
27 meetings that refer to, relate to, or mention adult content, pornography, sexual
28 content, nude images, or celebrity images.

1 **RESPONSE TO REQUEST NO. 15:**

2 In addition to its General Objections, Google objects to this request to the
3 extent it seeks documents that are protected by the attorney-client privilege, and/or
4 the work product privilege. Google further objects to this request as vastly overbroad
5 and as seeking documents outside the scope of permissible discovery in that it seeks
6 information that is not relevant to the subject matter of this action and is not
7 reasonably calculated to lead to the discovery of admissible evidence.

8 **REQUEST NO. 16:**

9 GOOGLE's minutes of Board of Director and/or other Executive Committee
10 meetings that refer to, relate to, or mention Perfect 10, Playboy, or Penthouse.

11 **RESPONSE TO REQUEST NO. 16:**

12 In addition to its General Objections, Google objects to this request to the
13 extent it seeks documents that are protected by the attorney-client privilege, and/or
14 the work product privilege. Google further objects to this request as seeking
15 documents outside the scope of permissible discovery in that it seeks information that
16 is not relevant to the subject matter of this action and is not reasonably calculated to
17 lead to the discovery of admissible evidence as to Playboy or Penthouse.

18 Without waiving, and subject to, its General and specific objections, Google
19 responds that it will produce non-privileged documents as to Perfect 10 that are
20 responsive to this request, to the extent such documents are found within its
21 possession, custody, or control after a reasonable and diligent search.

22 **REQUEST NO. 17:**

23 **All DOCUMENTS that constitute or embody communications between or**
24 **among employees of GOOGLE that refer to or relate to GOOGLE's potential**
25 **liability for copyright infringement, misappropriation of rights of publicity or**
26 **trademark infringement.**

1 **RESPONSE TO REQUEST NO. 17:**

2 In addition to its General Objections, Google objects to this request to the
3 extent it seeks documents that are protected by the attorney-client privilege, and/or
4 the work product privilege. Google further objects to this request as vastly overbroad
5 and as seeking documents outside the scope of permissible discovery in that it seeks
6 information that is not relevant to the subject matter of this action and is not
7 reasonably calculated to lead to the discovery of admissible evidence.

8 **REQUEST NO. 18:**

9 All studies, reports, memoranda, letters, or notes that refer to, relate to, or
10 reflect the extent to which adult content available through GOOGLE's Web Search
11 and Image Search serves as a draw for traffic to GOOGLE.com.

12 **RESPONSE TO REQUEST NO. 18:**

13 In addition to its General Objections, Google objects to this request to the
14 extent it seeks documents that are protected by the attorney-client privilege, and/or
15 the work product privilege. Google further objects to this request as vague and
16 ambiguous. Google further objects to this request as vague and ambiguous. Google
17 further objects to this request as seeking documents outside the scope of permissible
18 discovery in that it seeks information that is not relevant to the subject matter of this
19 action and is not reasonably calculated to lead to the discovery of admissible
20 evidence.

21 **REQUEST NO. 19:**

22 All studies, reports, memoranda, letters, or notes that refer to, relate to, or
23 reflect the extent to which adult content available through GOOGLE's Web Search
24 and Image Search affects GOOGLE's revenues.

25 **RESPONSE TO REQUEST NO. 19:**

26 In addition to its General Objections, Google objects to this request to the
27 extent it seeks documents that are protected by the attorney-client privilege, and/or
28 the work product privilege. Google further objects to this request as vague and

1 to the extent it seeks documents that are protected by the attorney-client privilege,
2 and/or the work product privilege.

3 **REQUEST NO. 54:**

4 All versions of GOOGLE rules, regulations and guidelines relating to content
5 on any Adwords or Adsense websites, from 2001 to the present.

6 **RESPONSE TO REQUEST NO. 54:**

7 In addition to its General Objections, Google objects to this request as vague
8 and ambiguous as to the phrase "relating to content."

9 **REQUEST NO. 55:**

10 All communications with third parties that refer to Plaintiff, Perfect 10.

11 **RESPONSE TO REQUEST NO. 55:**

12 Google objects to this request to the extent it seeks documents that are
13 protected by the attorney-client privilege, and/or the work product privilege. Google
14 further objects to this request as vague and ambiguous, overly broad, unduly
15 burdensome, and as seeking documents outside the scope of permissible discovery in
16 that it seeks information that is not relevant to the subject matter of this action and is
17 not reasonably calculated to lead to the discovery of admissible evidence.

18 Without waiving, and subject to, its General and specific objections, Google
19 responds that it will produce non-privileged documents that are responsive to this
20 request, to the extent such documents are found within its possession, custody, or
21 control after a reasonable and diligent search, that constitute emails and letters
22 between Google and third parties that refer to Plaintiff, Perfect 10.

23 **REQUEST NO. 56:**

24 All internal documents that refer to Plaintiff, Perfect 10.

25 **RESPONSE TO REQUEST NO. 56:**

26 Google objects to this request to the extent it seeks documents that are
27 protected by the attorney-client privilege, and/or the work product privilege. Google
28 further objects to this request as vague and ambiguous, overly broad, unduly

1 burdensome, and as seeking documents outside the scope of permissible discovery in
2 that it seeks information that is not relevant to the subject matter of this action and is
3 not reasonably calculated to lead to the discovery of admissible evidence. Google
4 further objects to this request as vague and ambiguous as to the term "internal."

5 Without waiving, and subject to, its General and specific objections, Google
6 responds that it will produce non-privileged documents that are responsive to this
7 request, to the extent such documents are found within its possession, custody, or
8 control after a reasonable and diligent search.

9 **REQUEST NO. 57:**

10 All DOCUMENTS that refer to GOOGLE's document retention policy.

11 **RESPONSE TO REQUEST NO. 57:**

12 Google objects to this request to the extent it seeks documents that are
13 protected by the attorney-client privilege, and/or the work product privilege.

14 Without waiving, and subject to, its General and specific objections, Google
15 responds that it will produce non-privileged documents that are responsive to this
16 request, to the extent such documents are found within its possession, custody, or
17 control after a reasonable and diligent search.

18 **REQUEST NO. 58:**

19 All DOCUMENTS that refer or relate to the designation of a copyright agent
20 under the DMCA.

21 **RESPONSE TO REQUEST NO. 58:**

22 Google objects to this request to the extent it seeks documents that are
23 protected by the attorney-client privilege, and/or the work product privilege. Google
24 objects to this request as overly broad and unduly burdensome.

25 Without waiving, and subject to, its General and specific objections, Google
26 responds that it will produce non-privileged documents that are responsive to this
27 request, to the extent such documents are found within its possession, custody, or
28 control after a reasonable and diligent search.

Winston & Strawn LLP
101 California Street
San Francisco, CA 94111-5894

1 **REQUEST NO. 77:**

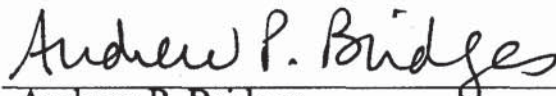
2 All DOCUMENTS that support or contradict YOUR contention in Paragraph
3 50 of your cross-complaint that Perfect 10 refused to take steps to assist GOOGLE in
4 more expeditious handling of Perfect 10's notices.

5 **RESPONSE TO REQUEST NO. 77:**

6 In addition to its General Objections, Google objects to this request as seeking
7 documents that are protected by the attorney-client privilege, and/or the work product
8 privilege.

9
10
11
12 Dated: April 18, 2005

13 WINSTON & STRAWN LLP

14
15
16
17
18 
19 Andrew P. Bridges
20 Michael S. Brophy
21 Jennifer A. Golinveaux
22 Attorneys for Defendant and
23 Counterclaimant Google Inc.
24
25
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1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA)
3 COUNTY OF SAN FRANCISCO) ss

4 I am a resident of the State of California, over the age of eighteen years, and
5 not a party to the within action. My business address is Winston & Strawn LLP,
6 101 California Street, San Francisco, CA 94111-5894. On April 18, 2005, I
served the within documents:

7 **DEFENDANT GOOGLE INC.'S RESPONSE TO PLAINTIFF'S**
8 **FIRST SET OF REQUESTS FOR THE PRODUCTION OF**
9 **DOCUMENTS**

9 I sent such document from facsimile machine 415-591-1400 on April 18,
10 2005. I certify that said transmission was completed and that all pages
11 were received and that a report was generated by facsimile machine 415-
12 591-1400 which confirms said transmission and receipt. I, thereafter,
mailed a copy to the interested party(ies) in this action by placing a true
copy thereof enclosed in sealed envelop(s) addressed to the parties listed
below.

13 by placing the document(s) listed above in a sealed envelope with postage
14 thereon fully prepaid, in the United States mail at San Francisco,
addressed as set forth below.

15 by personally delivering the document(s) listed above to the person(s) at
16 the address(es) set forth below.

17 by sending it via Overnight mail.

18 See Attached Service List

19 I am readily familiar with the firm's practice of collection and processing
20 correspondence for mailing. Under that practice it would be deposited with the
21 U.S. Postal Service on that same day with postage thereon fully prepaid in the
22 ordinary course of business. I am aware that on motion of the party served, service
is presumed invalid if postal cancellation date or postage meter date is more than
on day after the date of deposit for mailing in affidavit.

23
24 I declare that I am employed in the office of a member of the bar of this
court whose direction the service was made.

25 Executed on April 18, 2005, at San Francisco, California

26 
27 _____
28 Eva M. Franko

Service List

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Daniel J. Cooper
PERFECT 10, INC.
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Exhibit D

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72 Beverly Park Dr.
7 Beverly Hills, California 90210
Telephone: (310) 205-9817
8 Facsimile: (310) 205-9638

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10 BERMAN, MAUSNER & RESSER
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11 Facsimile: (310) 473-8303

12 Attorneys for Plaintiff
13 Perfect 10, Inc.

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MAY 22 2006
CENTRAL DISTRICT OF CALIFORNIA
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

17 PERFECT 10, INC., a California
18 corporation,

19 Plaintiff,

20 v.

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

22 Defendants.

MASTER FILE No. CV04-9484 AHM
(SHX)

(PROPOSED) ORDER RE PERFECT 10'S
MOTION TO COMPEL DEFENDANT
GOOGLE, INC. TO PRODUCE
DOCUMENTS AND TO ANSWER
INTERROGATORIES

(SET NO. ONE)

Date: February 21, 2006
Time: 10 A.M.
Place: Courtroom of Judge Hillman

23 AND CONSOLIDATED CASE

DOCKETED ON CM
MAY 22 2006
BY [Signature] 046

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INTRODUCTORY STATEMENT

Perfect 10, Inc. and Google Inc. submit this proposed order regarding Perfect 10's Motion to Compel Production of Documents and Responses to Interrogatories. Although the parties have attempted to agree on all provisions of this order, they have been unable to agree as to what the Court ordered with respect to Perfect 10's Document Requests Nos. 47 and 48. Accordingly, for these two requests, the parties have set forth below their respective understanding of what the Court ordered and respectfully request that the Court clarify its ruling as to these requests.

PROPOSED ORDER

Plaintiff Perfect 10 Inc.'s Motion to Compel Defendant Google Inc., to produce Documents (Set No. One) and to Answer Interrogatories (Set No. One) propounded to Defendant Google, Inc., came on regularly for hearing at the above noted time and place, the Honorable Stephen J. Hillman presiding. Jeffrey N. Mausner, Esq., of Berman Mausner & Resser, appeared on behalf of Plaintiff Perfect 10, Inc. ("Perfect 10"). Jennifer A. Golinveaux, Esq., Andrew P. Bridges, Esq., and Susan E. Lee, Esq., of Winston & Strawn, appeared on behalf of Defendant Google, Inc.

Upon consideration of all papers and records on file and the parties' oral argument, the Court orders as follows:

**ORDERS RE PERFECT 10'S MOTION TO
COMPEL PRODUCTION OF DOCUMENTS**

Document Requests 1, 2, 3, 4, 5, 6, 7, 8, 12, 13, 30, 51, 55, 56, 57, 58, 59, 60, 61, 65, 66, 67, 68, 69, 70, 71, 74, 75.

Google has agreed to produce non-privileged responsive documents for the following document requests of Perfect 10, either as originally propounded, or as modified as set forth herein: 1, 2, 3, 4, 5, 6, 7, 8, 12, 13, 30, 51, 55 (subject to the limitation set forth in Google's written response), 56, 57, 58, 59 (limited to the United

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1 States), 60 (subject to the limitation set forth in Google's written response), 61, 65, 66,
2 67, 68 (relating to Google's Web Search and Image Search services, and Google's
3 advertising programs), 69 (relating to Google's Web Search and Image Search services,
4 and Google's advertising programs), 70 (relating to Google's Web Search and Image
5 Search services, and Google's advertising programs), 71, 74, 75. The Court ordered that
6 these documents are to be produced by Google by April 15, 2006.

7 **Document Requests Nos. 9, 10, 11, 15, 24, 25, 35, 39, 40, 41, 43, 44, 45, 46, 52**

8 The Court defers ruling on Perfect 10's Requests for Production of
9 Documents Nos. 9, 10, 11, 15, 24, 25, 35, 39, 40, 41, 43, 44, 45, 46, 52 at this time.

10 **Document Request No. 28**

11 Google is ordered to produce all documents in response to Perfect 10's
12 Request For Production of Documents No. 28 (as modified): "All notices of
13 termination sent by GOOGLE to any ENTITY as a result of complaints from
14 Perfect 10." The documents shall be produced by April 15, 2006.

15 **Document Request No.72 (as modified)**

16 Google has agreed to produce all documents in response to Perfect 10's
17 Request For Production of Documents No. 72 (as modified): "Documents sufficient
18 to describe how an image is 'extracted' as alleged in Paragraph 18 of the
19 Counterclaim". The Court ordered that these documents shall be produced by April
20 15, 2006.

21 **Document Request No.73 (as modified)**

22 Google is ordered to produce all documents in response to Perfect 10's
23 Request For Production of Documents No. 73 (as modified): "DOCUMENTS
24 sufficient to establish Google's allegations in Paragraph 58 of the Counterclaim."
25 These documents shall be produced by April 15, 2006.

26 **Document Request No. 77 (as modified)**

27 Google is ordered to produce all documents in response to Perfect 10's Request For
28 Production of Documents No. 77 (as modified): "All DOCUMENTS that evidence,

1 contradict, refer to, or relate to YOUR contention in Paragraph 50 of your cross-
2 complaint that Perfect 10 refused to take steps to assist GOOGLE in more
3 expeditious handling of Perfect 10's notices." These documents shall be produced
4 by April 15, 2006.

5 **Document Request No. 22 (as modified)**

6 Subject to the limitations set forth in its written responses, Google has agreed
7 to produce the following documents in response to Perfect 10's Request For
8 Production of Documents No. 22 (as modified): "All DOCUMENTS that refer to or
9 reflect the suppression of any of the URLs listed in Exhibit 4 from appearing in Google
10 Image and Web Search results." (Exhibit 4 is attached to the Revised Document
11 Requests.) The Court ordered that these documents shall be produced by April 15,
12 2006.

13 **Document Request No. 23 (as modified)**

14 Subject to the limitations set forth in its written responses, Google has
15 agreed to produce the following documents in response to Perfect 10's Request For
16 Production of Documents No. 23 (as modified): "DOCUMENTS sufficient to
17 IDENTIFY all URLs DISABLED by GOOGLE as a result of notices sent by Perfect
18 10." The Court ordered that these documents shall be produced by April 15, 2006.

19 **Document Request No. 14 (as modified)**

20 Google is ordered to produce all documents in response to Perfect 10's
21 Request for Production of Documents No. 14, modified as follows: "Google's
22 minutes of board of director and other executive committee meetings that refer to,
23 relate to or mention copyright infringement, misappropriation of rights, or
24 trademark infringement in connection with adult content, from the formation of
25 Google to the present." These documents shall be produced by April 15, 2006.

26 **Document Request No. 16 (as modified)**

27 Google has agreed to produce all documents in response to Perfect 10's
28 Request for Production of Documents No. 16, modified as follows: "Google's

1 minutes of Board of Director and/or other executive committee meetings that refer
2 to, relate to or mention Perfect 10.” The Court ordered that these documents shall be
3 produced by April 15, 2006.

4 **Document Request No. 17 (as modified)**

5 Google is ordered to produce all documents in response to Perfect 10’s
6 Request for Production of Documents No. 17, modified as follows: “All
7 DOCUMENTS that constitute or embody communications between or among employees
8 of GOOGLE that refer to or relate to GOOGLE’S potential liability for copyright
9 infringement, misappropriation of rights of publicity or trademark infringement in
10 connection with adult content, from the formation of Google to the present.” The
11 presumptive deadline for production is April 15, 2006.

12 **Document Requests Nos. 18, 19, 20, and 21**

13 The Court took Perfect 10’s Motion to Compel Document Requests Nos. 18,
14 19, 20, and 21 under submission.

15 **Document Requests Nos. 26 and 27 (as modified)**

16 Google is ordered to produce all documents in response to Perfect 10’s
17 Request for Production of Documents Nos. 26 and 27, which are now combined
18 and modified into one Request as follows: “All notices of termination issued by
19 Google as a result of alleged intellectual property violations.” The Court sets April 15,
20 2006 as a target date for production.

21 **Document Request No. 29 (as modified)**

22 Google is ordered to produce all documents in response to Perfect 10’s
23 Request for Production of Documents No. 29, modified as follows: All documents
24 that relate to, constitute or embody communications between Google and the owners
25 of the following websites, to the extent that ownership information is reflected in
26 Google’s records:

27 000celebs.com.ar, 1024x768wallpapers.com, 21stars.net, abc-celebs.com,
28 aclasscelebs.com, adoredcelebrities.com, adult.backwash.com, alibabaweb.com, all-nude-

1 celebrities-free.com, annasayfa.host.sk, antoninoc.net, averlo.com, babefocus.com,
2 big.clarence.com, Britney-spears-nudes.net, bukuroshe.parajsa.com, celeb guru.com,
3 celebrities.nice.ru, celebrityarchive.de, celebritybattles.com, celebritypictures.com,
4 celebritypicturesarchive.com, celebsdb.com, celebstation.org, chez.com, cubic2003.free-
5 sex.cz, desktopgirls.ru, e-celeb.by.ru, eracle.it, extremefakecelebs.com, family-incest-
6 sex.net, famouspeoplepics.com, fotochicas.com, fotomodellefamose.com, free-nude-and-
7 naked-celebs-fakes.com, gossip.babeleweb.net, greh.ru, gwool.com, home.tiscali.be,
8 home-2.worldonline.nl, icycelebs.com, incest-search.com, index.hr, indexedivx.com, i-
9 sd.com, Jennifer-anniston-naked.com, jerkengine.com, lairofluxlucre.com,
10 kobiety.website.pl, mapage.noos.fr, eros.externet.hu, megapolis.com.ar, miss.mgn.ru,
11 modellemania.net, monitor.hr, nejcpass.com, nude-celebrity.net, mg.danboss.com,
12 minovia.com, moono.com, ottoperuna.altervista.org, paparazzi-nude.com,
13 perfectpeople.net, photoglamour.it, pix.alronix.net, platinum-celebs.com,
14 playboy.fason.ru, pornosaur.com, postalesmix.com, promethyl.org, ragazzesexy.tv, rape-
15 videos.us, rate-celebs.com, realcelebs4u.com, robbscelebs.co.uk, russiancelebrities.org,
16 russiancelebrities.net, spacesurfer.com, stofffr.com, superbabes.nl, thecelebzone.com,
17 topesexy.net, trillionfakes.com, vamp.dk, wallpapy.net, wscan.org.

18 These documents shall be produced by April 15, 2006.

19 **Document Requests Nos. 31, 32, 33 and 34**

20 With respect to Perfect 10's Document Requests 31, 32, 33 and 34, the
21 parties are ordered to continue to meet and confer in order to identify current and
22 former employees of Google in connection with these requests.

23 **Document Request No. 37**

24 The Court orders Google to produce the following documents in response
25 to Perfect 10's Document Request No. 37: "Any indemnification agreements
26 between GOOGLE and Amazon." These documents shall be produced by April 15,
27 2006. The Court reserves ruling on the remainder of the documents requested by
28 Perfect 10 in Document Request No. 37.

Document Request No. 38

The Court orders Google to produce the following documents in response
to Perfect 10's Document Request No. 38: "All contracts between GOOGLE and
Amazon for provision of search services." These documents shall be produced by
April 15, 2006. The Court reserves ruling on the remainder of the documents
requested by Perfect 10 in Document Request No. 37.

Document Request No. 42

The Court defers ruling on Perfect 10's Document Request No. 42.

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1 Nevertheless, the Court requests that Google assist Perfect 10 in finding out, on a
2 real time basis, what is currently stored on Google's servers for three of the
3 following websites: czeckmate.hpg.ig.com.br, animald.com, celebs-online.com,
4 freehostempire.com, web1000.com, celebclub.com, celebsxposed.com, eroticcountry.com,
5 celebritypictures.com, movieman.com, erotichomepages.com, femcelebs.wo.to, boom.ru,
6 perso.respublica.fr, tomsk.ru, sex.erotism.com, spika-presents.com, ultimate-celebs.com,
7 and xoom.it.

8 **Document Request Nos. 47 and 48**

9 Having been unable to agree as to precisely what the Court ordered
10 regarding Document Request Nos. 47 and 48, the parties set forth below their
11 respective understandings of the Court's order. For the Court's convenience, the full
12 transcript of the February 21-22 discovery hearings is attached to the Proposed
13 Order re Google's Motion to Compel Production of Documents and Responses to
14 Interrogatories as Exhibit A.

15 **Perfect 10's version re Document Request Nos. 47 and 48:**

16 The Court orders Google to produce the following documents: Any internal
17 reports or documents currently in existence that discuss the amount or percentage of
18 searches on Google Image Search and/or Web Search on any of the following terms:
19 sex, tit, nude, porn, fuck, Lolita, bestiality, bestiality, model, hardcore, anal, intercourse,
20 blowjob, naked, Perfect 10, Playboy, Penthouse, supermodel, orgasm, rape, incest, and
21 Britney Spears, for any period of time from December 31, 2001 to the present. Any such
22 documents shall be produced by April 15, 2006. The Court defers ruling on the
23 remainder of Perfect 10's Document Requests Nos. 47 and 48.

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24 ^{ORDER}
Google's version re Document Request Nos. 47 and 48:

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25 The Court orders Google to produce the following documents: Internal
26 summary reports currently in existence sufficient to determine the amount or
27 percentage of searches on Google Image Search and Web Search on each of the
28 following terms: sex, tit, nude, porn, fuck, Lolita, bestiality, bestiality, model, hardcore,

1 anal, intercourse, blowjob, naked, Perfect 10, Playboy, Penthouse, supermodel, orgasm,
2 rape, incest, and Britney Spears, for each year ^{and/or} for shorter periods of time if ~~annual~~
3 ^{they} reports ~~do not~~ exist), from December 31, 2001 to the present. Any such documents shall
4 be produced by April 15, 2006. The Court defers ruling on the remainder of Perfect
5 10's Document Requests Nos. 47 and 48.

6 Perfect 10's explanation of why the Court should adopt Perfect 10's version:

7 These 2 Document Requests were dealt with at the hearing on February 22, 2006
8 (see February 22, 2006 Transcript, from page 15, line 23 to page 23, line 12, copies of
9 which are attached hereto as Exhibit A). After discussion, at page 21, lines 18-23, the
10 Court invited Mr. Mausner, counsel for Perfect 10, to rephrase the requests. The following
11 rephrasing of the requests was accepted by the Court verbatim, without further argument
12 by either side:

13 Mr. Mausner: "Any internal reports or documents currently in existence that
14 discuss the amount or percentage of searches on any of the following terms."

15 The Court: "Yes. For the dates listed, and I will grant the revised request, and I will
16 not rule on the request as stated at this time. In terms of compliance date, I suppose April
17 15th."

18 Mr. Bridges: "Thank you, Your Honor".
19 (February 22, Transcript, page 23, lines 3-11).

20 Google's proposed version tries to limit the order by rephrasing it to read "internal
21 summary reports" as opposed to what was ordered, "any internal reports or documents."
22 Google may have documents which are not "internal summary reports" which should be
23 produced, as specifically ordered by the Court.

24 Perfect 10 also believes that the Court did not intend the Requests, as rephrased, to
25 limit production by Google to documents or reports only prepared for a yearly period, but
26 intended for Google to produce documents responsive to the rephrased requests, even if
27 the same deal with shorter time periods. Hence, Perfect 10's version includes the
28 wording "for any period of time" from December 31, 2001 to the present. Perfect 10 is

1 concerned that if Google's version is adopted, Google would use it as a pretext to not
2 produce responsive documents, claiming that it only has to produce documents showing
3 the frequency of search terms for full year periods. In other words, if documents existed
4 showing that there were 20 million searches for the term "sex" on one day in 2005,
5 Google could claim that it does not have to produce that document because it does not
6 show how many searches there were for all of 2005 (i.e. "for each year"). Perfect 10
7 believes that the Court's order at the hearing was clear that Google is to produce any
8 existing reports or documents showing the frequency of the listed search terms from
9 December 31, 2001 to the present, whether that document covers a day, a week, or a
10 month during that time period, and that the Court's ruling was not limited to only
11 documents which show the frequency of search terms for an entire year. Perfect 10
12 believes that Google is trying to evade producing documents by phrasing the Order in its
13 way, and refusing to agree to the language Perfect 10 has suggested.

14 The discussion at the hearing concerning Document Requests 47 and 48 is found at
15 pages 18-23 of the February 22, 2006 Transcript, Exhibit A. It is clear that the Court, in
16 stating the documents should be produced "For the dates listed" logically meant any
17 documents covering any period of time from December 31, 2001 to the present, and not
18 only documents covering an entire year period. In fact, counsel for Perfect 10 specifically
19 stated that the documents might reflect search frequency by month, by year, or on a certain
20 day. (February 22, 2006 Transcript, page 18 lines 10-15.)

21 A similar issue concerning time frames came up at the hearing with respect to
22 Interrogatory No. 24. In that discussion (page 29, lines 11-17, February 22 transcript,
23 Exhibit A), the Court stated: "I think what I'm prepared to grant is harmonious with what I
24 did a few minutes ago, which would be to order responses—a response to interrogatory 24
25 to the extent that Google can answer the interrogatory based on currently existing
26 historical reports and *whether they can answer on a yearly basis or a monthly basis*
27 *whatever.*" (Emphasis added.)

28 The same is true for Document Requests 47 and 48, as the Court specifically noted

1 when it said that this was harmonious with what it did a few minutes ago. Hence, Google
2 should be required to produce any existing reports or documents that discuss the amount
3 or percentage of searches on Google Image Search and/or Web Search for any of the listed
4 terms, for any period of time (i.e., a day, week, month, or year, etc.) from December 31,
5 2001 to the present.

6 Google's explanation of why the Court should adopt Google's version:

7 Google's proposed order re document requests 47 and 48 differs from P10's
8 version in two important respects. First, Google's proposed order calls for "[i]nternal
9 summary reports currently in existence sufficient to determine the amount or
10 percentage of searches on, while P10's version calls for "[a]ny internal reports or
11 documents currently in existence that discuss the amount or percentage of searches
12 on" the specified terms. **Google's proposed language simply tracks P10's**
13 **requests**, which sought "documents sufficient to determine the percentage" of
14 searches on the specified terms. Moreover, as Google's counsel explained to P10's
15 counsel, the term "internal summary reports" in Google's version as opposed to "any
16 internal reports or documents" in P10's version, is necessary to make clear that the
17 Court deferred the request as a mega request to the extent that it would require
18 Google to mine data from underlying logs or to produce massive underlying logs,
19 which would arguably be called for by P10's proposed language "any internal
20 reports or documents."

21 The second difference is that P10's proposed order calls for documents "for
22 any period of time from December 31, 2001 to the present," while Google's version
23 accurately reflects the Court's order in calling for documents "for each year (or for shorter
24 periods of time if annual reports do not exist), from December 31, 2001 to the present."
25 At the hearing, the Court specifically ordered production of internal reports "for the dates
26 listed" in Plaintiff's document requests 47 and 48 (February 22, 2006 Transcript, page 23
27 line 7, attached hereto as Exhibit A), which called for documents "sufficient to determine
28 the percentage of all searches . . . for each year from December 31, 2001 to the present"

1 and from "2001 to the present," respectively. Moreover, while P10 argues that Google's
2 proposed language is unacceptable because "if documents existed showing that there were
3 20 million searches for the term "sex" on one day in 2005, Google could claim that it does
4 not have to produce that document because it does not show how many searches there
5 were for all of 2005," P10's point is not well taken, because Google's proposed language
6 *specifically calls for* documents "for each year (or for shorter periods of time if annual
7 reports do not exist) (emphasis added)." Google's proposed language accurately reflects
8 P10's requests and the Court's order, while P10's proposed language does not.

9 **Document Requests Nos. 49 and 50**

10 The Court orders Google to produce a sample contractual agreement for the Book
11 Search Program, with a presumptive deadline of April 15, 2006. The Court denies,
12 without prejudice, Perfect 10's Motion to Compel the remainder of Document Requests
13 Nos. 49 and 50.

14 **Document Request No. 53**

15 The Court orders Google to produce documents responsive to Perfect 10's
16 Document Request number 53 revised as follows: A representative sample of each type
17 of Adwords and Adsense form contracts or agreements used from 2001 to the present.
18 These documents shall be produced by April 15, 2006.

19 **Document Request No. 54**

20 The Court orders Google to produce documents responsive to Perfect 10's
21 Document Request number 54 as follows: "A representative sample of each type of
22 GOOGLE rules, regulations and guidelines relating to content on any Adwords or
23 Adsense websites, from 2001 to the present." These documents shall be produced
24 by April 15, 2006.

25 **Document Request No. 62**

26 Google is ordered to produce all internal documents and/or communications that
27 refer to Perfect 10. Based on that, the Court denies Perfect 10's Motion to Compel
28 with respect to its Document Request No. 62 on the basis that it is redundant.

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**ORDERS RE PERFECT 10'S MOTION TO
COMPEL ANSWERS TO INTERROGATORIES**

Revised Interrogatories Nos. 25, 26, 27, 28, 30, 31, 32, and 33.

Google has agreed to answer Revised Interrogatories 25, 26, 27, 28, 30, 31, 32, and 33 by April 15, 2006, and the Court so orders.

Revised Interrogatory No. 24

Revised Interrogatory No. 24 states: "Please identify the fifty most frequently used search terms in Google's Web Search in order of use, and the fifty most frequently used search terms in Google's Image Search in order of use, for each of the years 2002 and 2005 and for each such term, state the percentage of all Google Web searches and the percentage of all Google Image searches during each of those years that contained that term." The Court orders Google to provide information in response to Revised Interrogatory No. 24 to the extent that Google can answer based on currently existing historical reports, even if the currently existing reports are for different or partial time periods. Google can respond either in a narrative or by way of document production. Google shall provide such information by April 15, 2006. The Court reserves its ruling on the remainder of Perfect 10's Revised Interrogatory No. 24.

Revised Interrogatory No. 29

The Court defers its ruling on Interrogatory No. 29.

Revised Interrogatory No. 34

The Court orders Google to answer Revised Interrogatory No. 34 which states as follows: "Please IDENTIFY any ENTITIES that Google has terminated as a consequence of notices sent by Perfect 10, the nature of the termination, and the date of such termination." Google shall provide the answer to this interrogatory by April 15, 2006. Google may answer this interrogatory by producing notices of termination.

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Revised Interrogatory No. 35

The Court defers its ruling on Interrogatory No. 35.

Dated: May 16, 2006

Respectfully submitted,

**JEFFREY N. MAUSNER
BERMAN, MAUSNER & RESSER**

By: Jeffrey N. Mausner (D.T.)
Jeffrey N. Mausner
Attorneys for Plaintiff, PERFECT 10, INC.

Approved as to form only:

WINSTON & STRAWN LLP

Dated: May 16, 2006

By: Andrew P. Bridges
Andrew P. Bridges
Jennifer Golinveaux
Attorneys for Defendant and
Counterclaimant GOOGLE INC.

IT IS SO ORDERED

Dated: 5/22/06

Stephen J. Hillman
STEPHEN J. HILLMAN
United States Magistrate Judge