

Exhibit E

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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

**PLAINTIFF PERFECT 10, INC.’S
REPLY TO DEFENDANT GOOGLE
INC.’S RESPONSE TO PERFECT 10’S
STATEMENT REGARDING THE
STATUS OF ITS MOTION FOR
EVIDENTIARY AND OTHER
SANCTIONS; REQUEST TO STRIKE
RESPONSE**

**[DECLARATION OF JEFFREY N.
MAUSNER IN SUPPORT THEREOF
SUBMITTED SEPARATELY
HEREWITH]**

Date: None Set

Time: None Set

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

1 **I. GOOGLE’S IMPROPER AND UNTIMELY RESPONSE SHOULD BE**
2 **STRICKEN.**

3 Defendant Google Inc. (“Google”) has filed a Response to Perfect 10, Inc.’s
4 Statement Regarding the Status of Perfect 10’s Motion for Evidentiary and Other
5 Sanctions (Docket No. 856, publicly filed version) (the “Response”), that is
6 untimely, improper, and incorrect. This Court’s January 27, 2010 Minute Order
7 (Docket No. 759) required the parties to telephonically meet and confer regarding
8 Perfect 10’s pending Motion for Evidentiary and Other Sanctions (the “Sanctions
9 Motion”), and ordered “each side [to] file a two page statement setting forth the
10 status of the matter ... within 2 business days following conclusion of the meet and
11 confer process.”

12 The parties finally met and conferred on April 19, 2010.¹ Perfect 10
13 thereafter timely filed its two page Statement Regarding the Status of its Motion for
14 Evidentiary and Other Sanctions (Docket No. 854) (“Perfect 10’s Statement”) on
15 April 21, 2010. Google did not comply with the Court’s January 27, 2010 Minute
16 Order, however. Instead, on April 23, 2010, four business days after the meet and
17 confer, Google filed its Response – a five-page document, accompanied by a
18 separate declaration of counsel, plus exhibits, totaling 26 additional pages (Docket
19 No. 856 and attachments thereto).

20 Accordingly, this Court should strike Google’s overlong and untimely
21 Response, as well as the accompanying declaration, for failure to comply with the
22 Court’s January 27, 2010 Order. At the very least, if the Court chooses to consider
23 Google’s Response, it should also consider Perfect 10’s reply to the Response, set
24 forth below. As explained below, Google’s Response is replete with misstatements
25

26
27 ¹ Google’s delay in meeting and conferring is discussed in the Second Status
28 Report, Docket Nos. 851, 851-1, 851-2, 851-3, 851-4; and in the Reply, Docket No.
853.

1 and demonstrably incorrect representations.² None of Google’s incorrect
 2 representations, however, undermines the fact that Google admittedly has not
 3 produced documents that are the subject of the Sanctions Motion. For this very
 4 reason, the Court should immediately schedule a telephonic status conference so that
 5 it may order Google to produce these documents.

6 **II. GOOGLE, AND NOT PERFECT 10, HAS MISREPRESENTED THE**
 7 **SUBSTANCE OF THE MEET AND CONFER PROCESS.**

8 Google mistakenly asserts that Perfect 10 “claims that during the parties’
 9 April 19 telephonic meet and confer, Google’s counsel admitted that Google did not
 10 produce a number of categories of documents and violated various discovery
 11 orders.” Response at 1.³ Google misstates the language of Perfect 10’s Statement.
 12 Perfect 10’s Statement actually reads as follows: “*Google has conceded during the*
 13 *meet-and-confer process that it has not produced numerous documents.*” Perfect
 14 10’s Statement at 1 (emphasis added). There is no mention of the April 19
 15 telephonic meet and confer in this sentence. In fact, Google’s concessions are found
 16 in the February 16, 2010 letter from Google attorney Rachel Herrick Kassabian to
 17 Perfect 10 attorney Jeffrey N. Mausner (the “February 16 Letter”).⁴ Google also
 18 conceded at the January 15, 2010 hearing on Perfect 10’s Sanctions Motions that it
 19 had not produced a large number of documents. Two of Google’s concessions,
 20 made in the February 16 Letter, are explained below:

21 **1) Google concedes that it has not produced all notices of termination:**

22
 23 ² Perfect 10 does not intend to address every incorrect representation set forth in
 24 Google’s Response. Rather, Perfect 10 focuses on certain critical misstatements.

25 ³ Google attempts to make an issue of the fact that the representations set forth in
 26 Perfect 10’s Statement were “unsupported by any declaration.” Response at 1.
 Perfect 10 did not submit a declaration with Perfect 10’s Statement because the
 Court’s January 27, 2010 Minute Order specifically limited both sides’ submissions
 to a two-page status report.

27 ⁴ The February 16 Letter is attached as Exhibit A to the Declaration of Jeffrey N.
 28 Mausner in support of this Reply, submitted separately herewith (the “Mausner
 Decl.”). The February 16 Letter is also found at Docket No. 851-2, at 4-8.

1 In its May 22, 2006 Order, this Court ordered Google to produce “[a]ll notices of
2 termination issued by Google as a result of alleged intellectual property violations.”
3 (Docket No. 163, at 5:15-20, concerning Document Request Nos. 26 and 27, as
4 modified). Even though this Court ordered Google to produce *all* such notices
5 almost four years ago, the February 16 Letter states that: (1) Google need not
6 “supplement its prior production of DMCA termination notices for AdSense”
7 because production of such notices is “unnecessary at this stage;” (2) Google does
8 not have to produce termination notices for Blogger because production of such
9 documents “would be unnecessarily duplicative of Google’s production of DMCA
10 processing spreadsheets;” and (3) Google need not produce termination notices
11 pertaining to additional Google products and services because such documents are
12 “irrelevant.” February 16 Letter at 3. *Google thus admits that it possesses*
13 *responsive documents which it has not produced;* it simply contends that it need
14 not produce such documents, notwithstanding this Court’s May 22, 2006 Order.

15 Google’s prior submissions further confirm that it has failed to produce “[a]ll
16 notices of termination issued by Google as a result of alleged intellectual property
17 violations.” First, many of the documents identified by Google as “termination
18 notices” are either Perfect 10 DMCA notices (*see, e.g.*, Bates Nos. GGL 4818-4824
19 and GGL 4906-4908, 4910), error messages (*see, e.g.*, Bates Nos. GGL 4836-4838,
20 4843, and 4847-4849), or reinstatement notices (*see, e.g.*, Bates Nos. GGL 52438
21 and 52472). *See* Mausner Decl. ¶4, Exh. C. Second, none of the documents
22 identified by Google as “termination notices” are actually termination notices dated
23 after May 2006. If Google has not issued any actual termination notices after May
24 2006, any contention that Google has implemented a repeat infringer policy is
25 simply false. Third, none of the documents identified by Google as “termination
26 notices” resulted from DMCA notices submitted to Google by **third parties** other
27 than Perfect 10. Consequently, Google cannot possibly have produced all notices of
28 termination as ordered by the Court. Mausner Decl. ¶4, Exh. C.

1 It is far too late in this action for Google to raise the assertions set forth in the
2 February 16 Letter. This Court ordered Google to produce *all* notices of termination
3 almost four years ago. “All” means “all.” This Court should not allow Google to
4 continue to withhold notices of termination, as evidenced by its February 16 Letter
5 discussed above. Instead, this Court should order Google to immediately produce
6 “all notices of termination issued by Google as a result of alleged intellectual
7 property violations,” as Google was ordered to do almost four years ago.

8 **2) Google concedes that it has not produced all third-party DMCA**
9 **notices:** Google represented, both in its response to Request for Production No. 196
10 and in its opposition to a motion to compel brought by Perfect 10, that it had
11 produced “all notices received by Google regarding intellectual property violations.”
12 Although Google made this representation more than three years ago, Google now
13 concedes, in the February 16 Letter, that it has failed to produce all such notices.
14 Instead, Google asserts that: (1) it need not produce additional third-party DMCA
15 notices for Web Search, Image Search, AdWords, and AdSense because further
16 production “is unnecessary at this stage;” (2) it need not produce third-party DMCA
17 notices for Blogger because production of such documents “would be unnecessarily
18 duplicative of Google’s production of DMCA processing spreadsheets;” and (3) it
19 need not produce third-party DMCA notices pertaining to other Google products and
20 services because such documents are “irrelevant.” February 16 Letter at 3. In fact,
21 such documents would be highly relevant if they do not match other disjointed
22 documents (which Google inaccurately describes as spreadsheets) that Google has
23 produced and described as “complete.”

24 Google cannot properly assert that it need not be required to produce all third-
25 party DMCA notices where, as here, *Google previously represented that it had*
26 *already produced all notices it received regarding intellectual property violations.*
27 Here, as with the termination notices discussed above, “all” means “all.” This Court
28 should order Google to immediately produce “all notices received by Google

1 regarding intellectual property violations” – including all third-party DMCA notices
2 – as Google promised in its response to Request for Production No. 196.

3 That Google admittedly has failed to produce documents responsive to Court
4 Orders regarding discovery is further demonstrated by Google’s own contentions in
5 the Response itself. *Google now asserts that any additional “DMCA-related*
6 *documents” that Google would produce “are merely cumulative of categories of*
7 *documents Google previously produced.”* Response at 4:28-5:1 (emphasis added).
8 This assertion constitutes a startling admission – Google now concedes that it
9 possesses documents that it has *not produced* that are responsive to categories of
10 documents requested by Perfect 10 for which Google already has produced
11 documents. If Google has produced some responsive documents, why has it failed
12 to produce *all* such responsive documents? Moreover, why has Google misled both
13 Perfect 10 and this Court into believing that all such responsive documents had been
14 produced?

15 The existence of what Google describes as “cumulative” documents is
16 particularly relevant to the question of whether Google has properly terminated
17 repeat infringers. In fact, “cumulative” documents are the very crux of this issue. If
18 Google has received only one or two DMCA notices regarding an alleged infringer
19 such as Rapidshare, then Rapidshare may not be a repeat infringer. By contrast, if
20 Google has received 20 notices regarding Rapidshare, the cumulative total of such
21 notices, and Google’s failure to act upon them, would clearly establish that
22 Rapidshare is a repeat infringer, and that Google is ineligible for DMCA safe harbor
23 because it did not terminate Rapidshare. According to Google’s perverse logic,
24 however, it need not produce all of the DMCA notices it has received regarding
25 repeat infringers such as Rapidshare because such notices are “merely cumulative.”
26 Google’s outrageous admission that it has failed to produce documents responsive to
27 Perfect 10’s requests for production and this Court’s discovery orders, because such
28 documents are “merely cumulative,” thus provides a further basis for the Court to

1 immediately order Google to comply with its discovery obligations.

2 **III. THE TESTIMONY OF DR. ERIC SCHMIDT, GOOGLE’S CEO, IS**
3 **HIGHLY RELEVANT TO THE SANCTIONS MOTION AND**
4 **GOOGLE’S FAILURE TO COMPLY WITH COURT-ORDERED**
5 **DISCOVERY.**

6 Google further asserts, without evidence or support, that the testimony of
7 Google CEO Eric Schmidt in the lawsuit brought against Google and YouTube by
8 Viacom (the “Viacom Action”), including testimony that Dr. Schmidt’s practice was
9 to delete or otherwise cause the emails he had read to go away as quickly as
10 possible, has no relevance here. Response at 2. Perfect 10 has already explained
11 how Dr. Schmidt’s testimony is relevant to various issues in this case, including:
12 (i) Google’s completely inadequate response to Requests for Production Nos. 128-
13 131, which mention Dr. Schmidt by name and are the subject of Judge Matz’s May
14 13, 2008 Order; and (ii) the contradiction between Dr. Schmidt’s testimony and the
15 Declaration of Kris Brewer, Google’s in-house counsel, upon which this Court
16 relied in denying Perfect 10’s Motion for a Document Preservation Order. *See*
17 Perfect 10’s Statement at 2. Moreover, documents from the Viacom Action,
18 released as recently as April 2010, demonstrate, among other things, that Google
19 was aware of the value of pirated content and that Google contemplated “relaxing its
20 copyright standards” to increase its revenues. *See, e.g.*, Mausner Decl. ¶3, Exh. B
21 (“YouTube’s business model is completely sustained by pirated content. They are at
22 the mercy of companies not responding with DMCA requests.”); *id.* (“Potential
23 results of changing copyright enforcement policies.” . . . “Higher traffic, higher
24 profile as destination site.”).

25 These recently revealed documents were responsive to multiple requests for
26 production propounded to Google by Perfect 10. Nevertheless, Google has never
27 produced any such documents to Perfect 10 in this action.
28

1 **IV. GOOGLE’S RESPONSE INCLUDES NUMEROUS OTHER**
2 **INCORRECT STATEMENTS.**

3 The incorrect statements set forth in Google’s Response are not limited to
4 those discussed in Sections II and III, above. Rather, the Response is replete with
5 demonstrably incorrect statements, three of which are addressed below:

6 1) Google incorrectly asserts that, at the April 5, 2010 hearing on Perfect
7 10’s Motion for Preliminary Injunction, Judge Matz “confirmed that while he was
8 aware of the dispute, he did not intend to defer resolution of the DMCA Motions
9 pending a ruling on P10’s sanctions motion.” Response at 4:1-4. In support of this
10 incorrect assertion, Google cites to the transcript of the April 5, 2010 hearing, at
11 25:15-16. *Id.* As may be seen by a review of this portion of the hearing transcript,
12 ***Judge Matz said no such thing.*** Rather, in response to a question from Perfect 10’s
13 counsel as to whether Judge Matz wanted to be provided with a copy of the
14 correspondence showing that Google had refused to meet and confer with Perfect
15 10, Judge Matz said that he did not:

16 THE COURT: All right. What's the status of your discovery disputes
17 over obtaining the DMCA notices?

18 MR. MAUSNER: It's still pending before Judge Hillman.

19 THE COURT: No, but isn't it supposed to be worked out in good faith
20 between the two sides?

21 MR. MAUSNER: We've asked them to meet and confer with us. We
22 want to have a telephone conversation with them, and we have not been
23 able to have a telephone conversation with them yet.

24 THE COURT: Because of why?

25 MR. MAUSNER: Because they won't talk to us on the telephone,
26 basically. They keep sending e-mails. They canceled a telephone
27 conference we set up. We tried to call them, left messages and never
28 got a call back.

1 THE COURT: Well, let me just put it this way. Judge Hillman will be
2 very pleased to hear that.

3 MR. MAUSNER: Yeah, we submitted – as one of the exhibits, I've
4 submitted the correspondence that's taken place between us regarding
5 this. Do you want me to get you that?

6 THE COURT: No, I don't. I don't. All right. Have a seat, please.

7 Mausner Decl. ¶5, Exh. D (Transcript of April 5, 2010 Hearing at 24:20 - 25:16).
8 Google's assertion regarding Judge Matz's intentions are thus unsupported and
9 incorrect.

10 2) Google incorrectly asserts that Judge Matz informed the parties at the
11 hearing on April 5, 2010 that "he wants no further submissions" on Google's
12 DMCA Summary Judgment Motions. Response at 4, *citing* Transcript of April 5,
13 2010 Hearing at 51:21-25. Once again, Google is wrong. A review of the transcript
14 demonstrates that Judge Matz's statement that "I don't want any further
15 submissions" referred to Perfect 10's Motion for Preliminary Injunction and, in
16 particular, to Google's counsel, Mr. Zeller, submitting information regarding the
17 relationship between Google and Rapidshare in connection with the Preliminary
18 Injunction Motion. Mausner Decl. ¶5, Exh. D (Transcript of April 5, 2010 Hearing
19 at 51:18-22). Indeed, Judge Matz's very next words were that "I will take this
20 motion [for Preliminary Injunction] under submission." Mausner Decl. ¶5, Exh. D
21 (Transcript of April 5, 2010 Hearing at 51:23).

22 Furthermore, the April 5, 2010 hearing was a hearing only on Perfect 10's
23 Motion for Preliminary Injunction; it was not a hearing on Google's DMCA
24 Summary Judgment Motions. *See* Minute Order dated April 5, 2010 (Docket No.
25 850) ("Proceedings: Plaintiff's Motion for Preliminary Injunction Against Google
26 [772] (non-evidentiary)"; and attached Memorandum from Judge Matz re: "*Perfect*
27 *10 v. Google*, CV 04-9484—Questions for Hearing on Perfect 10's Motion for a
28 Preliminary Injunction." Neither the Minute Order nor Judge Matz's Memorandum

1 states that the April 5, 2010 hearing is on Google’s DMCA Summary Judgment
2 Motions. (*See* Docket No. 850.) Google’s assertion, once again, has no support.

3 Google’s incorrect assertion arises from the fact that Google is afraid of
4 producing the documents that it has failed to produce, which are the subject of the
5 Sanctions Motion, before Judge Matz rules on its DMCA Summary Judgment
6 Motions. Those documents, including the “cumulative” DMCA notices, will
7 disprove Google’s right to an affirmative defense under the DMCA, because they
8 will establish that Google did not suitably implement a repeat infringer policy and
9 did not expeditiously remove or disable access to infringing materials. Judge Matz
10 certainly would not reject the submission of clearly relevant documents which have
11 been suppressed to this very date by Google.

12 3) Google mistakenly asserts that Perfect 10 “completely disavow[s] any
13 claim to relief under Fed. R. Civ. P. 56(f)” in connection with Google’s pending
14 DMCA Motions. Response at 3. Once again, Google is wrong. Perfect 10 has
15 specifically reserved the right to seek relief under Rule 56(f), to the extent that such
16 relief is necessary or proper. *See* Statement of Clarification of Perfect 10’s Position
17 Regarding Applicability Of Rule 56(f) To Pending Motions for Summary Judgment
18 and Motion for Evidentiary and Other Sanctions (Docket No. 787).

19 **V. CONCLUSION.**

20 Google’s incorrect assertions throughout its Response cannot obscure the fact
21 that it admittedly has not produced the documents set forth in the Motion for
22 Sanctions. Accordingly, this Court should order Google to produce those
23 documents forthwith. Perfect 10 also requests that the Court re-examine the
24 Sanctions Motion, decide the extent to which Google has violated Court Orders, and
25 impose appropriate sanctions. Only by imposing such relief will this Court prevent
26 Google from continuing to disobey Court Orders, resulting in a breakdown of the
27 discovery process.

1 Dated: April 27, 2010

LAW OFFICES OF JEFFREY N. MAUSNER

2 By: Jeffrey N. Mausner

3 Jeffrey N. Mausner

4 Attorney for Plaintiff Perfect 10, Inc.

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Exhibit F

FILE COPY

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9 CENTRAL DISTRICT OF CALIFORNIA
10

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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.
23

Case No. CV04-9484 NM (CWx)

**DEFENDANT GOOGLE INC.'S
RESPONSE TO PLAINTIFF'S
FIRST SET OF
INTERROGATORIES**

24 PROPOUNDING PARTY:

PLAINTIFF PERFECT 10, INC.

25 RESPONDING PARTY:

GOOGLE INC.

26 SET NUMBER:

ONE

1 Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, defendant
2 and counterclaimant Google Inc. ("Google") hereby responds to Plaintiff Perfect 10,
3 Inc.'s ("Plaintiff's") First Set of Interrogatories as follows.

4 **GENERAL OBJECTIONS**

5 Google expressly incorporates the following General Objections as if set forth
6 fully in response to each of the following individual interrogatories.

7 1. Google objects to the definition of "GOOGLE" "YOU" and "YOUR" as
8 overly broad to the extent it seeks information from other entities that is outside
9 Google's possession, custody or control.

10 2. Google objects to each interrogatory as unduly burdensome and
11 oppressive to the extent that it purports to require Google to inquire of Google
12 employees other than those employees that would reasonably be expected to have
13 responsive information. Google's responses are based upon (1) a reasonable search,
14 given the time allocated to Google to respond to the interrogatories, of files that
15 could reasonably be expected to contain responsive information, and (2) inquiries of
16 Google employees and/or representatives who could reasonably be expected to
17 possess responsive information.

18 3. Google objects to each interrogatory to the extent that it purports to
19 impose any requirement or discovery obligation on Google other than those set forth
20 in the Federal Rules of Civil Procedure and the applicable rules of this Court.

21 4. Google objects to each interrogatory to the extent that it seeks
22 documents that are protected by the attorney-client privilege, the work product
23 privilege and/or any other applicable privilege. Such information will not be
24 disclosed. Any inadvertent disclosure of such information shall not be deemed a
25 waiver of the attorney-client privilege, the attorney work product doctrine, or any
26 other applicable privilege or immunity recognized by statute or case law.

27 5. Google objects to each interrogatory to the extent that it purports to
28 require Google to disclose information in violation of a legal or contractual

1 obligation of nondisclosure to a third party. Google will not provide such
2 information without either the consent of the relevant third party or a court order
3 compelling production.

4 6. Google generally objects to each and every interrogatory to the extent
5 that it seeks information protected by a constitutional right of privacy or applicable
6 privacy law.

7 7. Google objects generally to each interrogatory to the extent it seeks
8 information not reasonably related to the claims or defenses in this matter.

9 8. Google objects to the instruction set forth in paragraph 10 of Perfect 10's
10 DEFINITIONS AND INSTRUCTIONS instructing that "[i]f A DOCUMENT *is*
11 *available in electronic form, it should be produced in that electronic form, even if it*
12 *is also available in hard copy*" and to the instruction set forth in paragraph 1 of
13 Perfect 10's Instructions, as overly broad, unduly burdensome and duplicative.
14 Google reserves the right to produce documents in either hard copy or electronic
15 form.

16 9. Google objects generally to requests that call for extensive electronic
17 production as overly broad, unduly burdensome, and oppressive. Additionally,
18 where appropriate, Google reserves the right to seek cost-shifting for costs associated
19 with electronic production of data stored in inaccessible or difficult or costly to
20 access formats.

21 10. Google objects to the definition of "BASE URL" as vague, ambiguous,
22 incomprehensible, and argumentative.

23 11. Google objects to the definition of the term "IDENTIFY" when used in
24 connection with a website, as vague, ambiguous, overly broad and unduly
25 burdensome and as seeking information equally available to Plaintiff and not in the
26 possession or control of Google to the extent that it seeks the name, address, and
27 telephone number of the webmaster for the website.

28

1 12. Google objects to the definition of the term "IDENTIFY" when used in
2 connection with an "ENTITY" as vague and ambiguous and overly broad and unduly
3 burdensome to the extent it requires Google to identify "each ENTITY believed by
4 YOU to own or control any such ENTITY."

5 13. Google objects to the definition of the term "GOOGLE AFFILIATED
6 WEBSITE" as vague, ambiguous and incomprehensible.

7 14. Google objects to the definition of the term "GOOGLE AFFILIATED
8 ENTITY" as vague, ambiguous and incomprehensible.

9 15. Google objects to the definition of the term "GOOGLE AFFILIATE
10 APPLICATION FORM" as overly broad, unduly burdensome, oppressive and as
11 seeking documents outside the scope of permissible discovery in that it seeks
12 information that is not relevant to the subject matter of this action and is not
13 reasonably calculated to lead to the discovery of admissible evidence.

14 16. Google objects to the definition of the term "TERMINATE" because it
15 is not possible for Google to know all the URLs that a given ENTITY "owns or
16 controls."

17 17. Google objects to the definition of the term "DISABLE" as vague,
18 ambiguous and incomprehensible.

19 18. Google objects to each request to the extent it purports to require
20 Google to disclose trade secret or other confidential information.

21 19. Google objects to Plaintiff's First Set of Interrogatories generally on the
22 ground that they are compound and exceed 25 in number. Plaintiff seeks to
23 circumvent the numerical limit by asking compound questions and by asking
24 questions about distinct subjects as subparts. By one reasonable reading of Plaintiff's
25 First Set of Interrogatories, Plaintiff has asked thousands of distinct questions. *See*
26 *Safeco of America v. Rawstron*, 181 F.R.D. 441, 445 (C.D. Cal. 1998)(holding that "a
27 strong presumption that each underlying request for admission constitutes a
28 separately countable subpart should be adopted.") As an accommodation to Plaintiff,

1 and without waiving this General Objection, Google has responded to interrogatories
2 1 through 11, which, when construed in a light favorable to Plaintiff, equal or exceed
3 the 25 interrogatory maximum provided by the Federal Rules of Civil Procedure.
4 Google has done so as a courtesy and without waiving any objections to
5 interrogatories relating to their numerousness and their compound nature.
6

7 INTERROGATORY NO. 1

8 Please IDENTIFY the BASE URLS for all GOOGLE AFFILIATED
9 WEBSITES that since 2001, used keywords or metatags that contained the names of
10 one or more CELEBRITIES, PERFECT 10 MODELS, or the terms "Perfect 10" or
11 perfect10.com; the keyword, or metatag used; the beginning and ending dates of the
12 affiliation of the website with Google; the type of affiliation (e.g., Adwords, Adsense,
13 etc.); and the amount of money received by Google in connection with that website
14 for each year of that affiliation. Please provide that information in electronic format
15 on CD.

16 RESPONSE TO INTERROGATORY NO. 1

17 Google objects to this interrogatory as compound and containing at least nine
18 distinct subparts because it bundles at least three different requests with three different
19 fact patterns. Google objects to this interrogatory as hopelessly and fatally vague,
20 ambiguous and incomprehensible. Google objects to the undefined terms "keywords"
21 and "metatags" as vague and ambiguous. Google objects to this interrogatory as
22 overly broad, unduly burdensome and oppressive. Google objects to this interrogatory
23 as seeking information outside the scope of permissible discovery in that it seeks
24 information that is not relevant to the subject matter of this action and is not
25 reasonably calculated to lead to the discovery of admissible evidence insofar as it
26 seeks information regarding CELEBRITIES. Google objects to this interrogatory as
27 seeking information that is outside Google's possession, custody or control.
28

1 INTERROGATORY NO. 2

2 Please IDENTIFY all ENTITIES that owned or controlled the websites or
3 BASE URLS identified in your response to interrogatory No. 1, by specifying the
4 BASE URL, the beginning and ending date of the affiliation, the type of affiliation
5 (e.g., Adwords, Adsense, etc.) and the name and address of the ENTITY that owned
6 or controlled that BASE URL according to YOUR records. Please provide that
7 information in electronic format on CD.

8 RESPONSE TO INTERROGATORY NO. 2

9 Google objects to this interrogatory as vague, ambiguous and incomprehensible.
10 Google objects to this interrogatory as overly broad, unduly burdensome and
11 oppressive. Google objects to this interrogatory as seeking information outside the
12 scope of permissible discovery in that it seeks information that is not relevant to the
13 subject matter of this action and is not reasonably calculated to lead to the discovery
14 of admissible evidence. Google objects to this interrogatory as seeking information
15 that is outside Google's possession, custody or control, or equally available to Plaintiff
16 and Google via public sources.

17 Without waiving, and subject to its General and specific objections, Google
18 responds as follows: no websites or BASE URLS have been identified in response to
19 interrogatory No. 1.

20
21 INTERROGATORY NO. 3

22 Please IDENTIFY all GOOGLE AFFILIATED WEBSITES whose BASE
23 URLS have contained the terms "celeb", "pass", "hack", or "scan", or the name of any
24 CELEBRITY by specifying the BASE URL, the beginning and ending date of the
25 affiliation, the type of affiliation (e.g., Adwords, Adsense, etc.) and the name and
26 address of the ENTITY which owned or controlled that BASE URL according to
27 YOUR records. Please provide that information in electronic format on CD.

1 RESPONSE TO INTERROGATORY NO. 3

2 Google objects to this interrogatory as compound. Google objects to this
3 interrogatory as vague, ambiguous and incomprehensible. Google objects to this
4 interrogatory as overly broad, unduly burdensome and oppressive. Google objects to
5 this interrogatory as seeking information outside the scope of permissible discovery in
6 that it seeks information that is not relevant to the subject matter of this action and is
7 not reasonably calculated to lead to the discovery of admissible evidence.

8
9 INTERROGATORY NO. 4

10 Please explain in detail why, in some instances, an image displayed through
11 Google's Image Search can be viewed by a user, but upon clicking that image, the
12 URL from which the image purportedly derives cannot be accessed.

13 RESPONSE TO INTERROGATORY NO. 4

14 Google objects to this interrogatory as vague and ambiguous as to the phrase
15 "an image displayed through Google's Image Search" and the term "user." Google
16 further objects to this interrogatory as hypothetical, overbroad, and seeking
17 information that is outside Google's possession, custody or control.

18 Without waiving, and subject to its General and specific objections, Google
19 responds as follows:

20 When a person using a web browser submits a search query at the site
21 images.google.com, Google returns a "search result page" that, by default, includes
22 links to up to twenty search results. Those links are indicated by "thumbnail" images,
23 below which typically is listed information such as the file names of the linked-to
24 images, the resolution and size of the images, and the URLs or excerpts of the URL of
25 the linked-to images. If that person then "clicks" on a thumbnail in the search results,
26 their web browser will request a web page from Google that has what is known as a
27 "frameset." The frameset includes two "frames." The top frame is relatively short,
28 includes the thumbnail image again, and ends with the statement, "Below is the image

1 in its **original context** on the page:” followed by the URL or an excerpt of the URL of
2 the page on which the image was originally found by Google’s “crawler.” The bottom
3 frame, which typically will fill most of the web browser window, contains the content
4 of the web page as it currently exists. Due to the nature of the Internet and the world
5 wide web in particular, that content may differ from the content of that page when
6 Google’s crawler last visited the page. The content of the page, as is true of any web
7 page, may include HTML code intended to trigger the appearance of an image.
8 Typically, a web browser will, without further action by the person using the web
9 browser, request the image file from the appropriate server, and cause that image to be
10 displayed in the web browser window. There are any number of reasons why the “in
11 context” image may not appear in the lower frame that a web browser will display
12 after a person clicks on a thumbnail in Google Image Search results. For example, the
13 website that Google previously visited may be temporarily or permanently
14 inaccessible, in which case the lower frame will not display any content.
15 Alternatively, the website may be accessible, but the specific page may not be, which
16 will lead to the same result; the page may be accessible, but may have changed no
17 longer to include HTML code referring to the image in question; or the image file
18 itself may have been removed from the server or may otherwise be inaccessible.

19
20 INTERROGATORY NO. 5

21 Please explain in detail the process (referred to by Google as “caching”) by
22 which Google archives copies of web pages corresponding to URLs available through
23 Google’s Web Search, including a description of the range of lengths of time for
24 which such pages are typically archived and what determines how long each such
25 page is archived.

26 RESPONSE TO INTERROGATORY NO. 5

27 Without waiving, and subject to its General objections, Google responds as
28 follows: Google takes a “snapshot” of each page examined as it “crawls” the web.

1 Google updates its entire index automatically on a regular basis. The cached content
2 for a page is updated when that page is re-crawled. The period of time between
3 crawls for a given web page varies based on a variety of factors. Some web sites may
4 be regularly crawled many times a day, while others may be crawled far less
5 frequently. A typical web site might be crawled approximately once a month.

6
7 INTERROGATORY NO. 6

8 Please state in detail all facts supporting the contention made in YOUR Answer
9 that Perfect 10's claims are barred by the doctrine of fair use.

10 RESPONSE TO INTERROGATORY NO. 6

11 Google objects to this interrogatory as seeking information that is protected by
12 the attorney-client privilege, and/or the work product privilege. Google further
13 objects to this contention interrogatory as premature as discovery is in the earliest
14 stages.

15
16 INTERROGATORY NO. 7

17 Please state in detail all facts supporting your contentions in paragraph 58 of
18 YOUR Counterclaim, including but not limited to a description of the of the [sic]
19 system or network Google purports to control (including whether it is a system, a
20 network or both), the central hub(s) and cities this system or network connects, the
21 materials this system or network is made out of, and the number of connections there
22 are within this system or network.

23 RESPONSE TO INTERROGATORY NO. 7

24 Google objects to this interrogatory as vague, ambiguous, compound, and
25 argumentative. Google objects to this interrogatory as seeking documents that are
26 protected by the attorney-client privilege, and/or the work product privilege. Google
27 objects to this interrogatory as overly broad, unduly burdensome and oppressive.

28 Google objects to this interrogatory as seeking information outside the scope of

1 permissible discovery in that it seeks information that is not relevant to the subject
2 matter of this action and is not reasonably calculated to lead to the discovery of
3 admissible evidence. Google further objects to this interrogatory as premature as
4 discovery is in the earliest stages. Subject to and without waiving the foregoing
5 objections and its General Objections, Google responds as follows. Google operates a
6 large network and system of computer servers that assist it in providing web search
7 and image search to a variety of users around the globe. The servers are under
8 Google's ownership and control. Google further objects to the interrogatory insofar as
9 it seeks detailed information about any hubs, any materials, any cities connected by
10 Google's network, or the number of connections because that information is Google's
11 trade secret, is not relevant to the subject matter of the action, and is not reasonably
12 calculated to lead to the discovery of admissible evidence.

13
14 INTERROGATORY NO. 8

15 Please state in detail all facts supporting your contentions in paragraph 59 of
16 YOUR Counterclaim, including but not limited to a description of Google's system or
17 network upon which the material purportedly resides, the material Google purports to
18 store, the duration of time for which Google purportedly stores such material, and the
19 manner in which users direct Google to store such material.

20 RESPONSE TO INTERROGATORY NO. 8

21 Google objects to this interrogatory as vague, ambiguous, compound,
22 redundant, overly broad, unduly burdensome and oppressive. Google objects to this
23 interrogatory as seeking documents that are protected by the attorney-client privilege,
24 and/or the work product privilege. Google objects to this interrogatory as seeking
25 information outside the scope of permissible discovery in that it seeks information that
26 is not relevant to the subject matter of this action and is not reasonably calculated to
27 lead to the discovery of admissible evidence. Google further objects to this
28 interrogatory as premature as discovery is in the earliest stages. Subject to the

1 foregoing objections and its General Objections, Google responds as follows. Many
2 persons who wish to attract attention to their web sites use Google for a variety of
3 purposes. Some use search optimization techniques in an attempt to guide Google to
4 place their material into Google's search indexes, and they use Google for the purpose
5 of referring searchers to their material. Others use Google to deliver advertising
6 material that will lead other Google users to them. In both cases Google stores
7 material at their direction on its system or network, whether it consists of material
8 from web sites or advertising material. There is no definite period during which
9 Google stores the material.

10
11 INTERROGATORY NO. 9

12 Please explain in detail what efforts, if any (and if so, give the dates those
13 efforts were made), that GOOGLE has made to ensure that Perfect 10's copyrighted
14 images would not appear in Google's Image Search, or on archived (referred to by
15 Google as "cached") URLs found through Google's Web Search.

16 RESPONSE TO INTERROGATORY NO. 9

17 Google objects to this interrogatory as argumentative, vague, ambiguous, and
18 compound. Without waiving, and subject to its General and specific objections,
19 Google responds as follows:

20 Google responds to notices of alleged infringement that are substantially in
21 compliance with 17 U.S.C. Section 512. Google's policy for responding to such
22 notices is publicly available at www.google.com/dmca.html.

23
24 INTERROGATORY NO. 10

25 Please explain in detail Google's procedures over the last five years, and give
26 the dates if any when such procedures were changed, for dealing with GOOGLE
27 LISTED WEBSITES and/or GOOGLE AFFILIATED ENTITIES that are the subject
28 of repeat notices of infringement.

1 RESPONSE TO INTERROGATORY NO. 10

2 Google objects to this interrogatory as compound. Google objects to this
3 interrogatory as vague, ambiguous, and incomprehensible. Without waiving, and
4 subject to its General and specific objections, Google responds as follows:

5 Google responds to notices of alleged infringement that are substantially in
6 compliance with 17 U.S.C. Section 512. Google's policy for responding to such
7 notices is publicly available at www.google.com/dmca.html.

8 Given the ambiguity in the interrogatory as currently worded, Google cannot
9 provide a further response to this interrogatory.

10
11 INTERROGATORY NO. 11

12 Please explain why in a June 27, 2001 email, YOU stated that "Without
13 administrator cooperation, we cannot exclude material available on the Internet from
14 our index," and "there is nothing that Google can do to remove the offending content
15 without the cooperation of the site administrator," and whether that is still true today,
16 and if not, why not.

17 RESPONSE TO INTERROGATORY NO. 11

18 Google objects to this interrogatory as compound. Google objects to this
19 interrogatory because it is unduly burdensome and harassing. Google receives untold
20 numbers of emails every day, and has many thousand employees. Absent further
21 context, it is unreasonable to request that Google offer an explanation for two out-of-
22 context quotes allegedly taken from a three and a half year old email that is identified
23 only by date, with no indication of who the email was from, to, what else was sent in
24 the email, and what if anything the email was in response to. Without waiving, and
25 subject to its General and specific objections, Google responds as follows:
26 investigation by Google on this point is ongoing.

1 INTERROGATORY NO. 12

2 Please describe in detail what actions YOU took with regard to each of the
3 notices of infringement YOU received from Perfect 10 in 2001 and 2004, including by
4 detailing YOUR actions with respect to each URL involved in each such notice and
5 the date when YOU took such action. Please specify what each action consisted of
6 and whether that action consisted of DISABLING all URLs containing a given BASE
7 URL, or just removing the specific URLs in each notice of infringement.

8 RESPONSE TO INTERROGATORY NO. 12

9 Google objects to this interrogatory as exceedingly compound. Google objects
10 to this interrogatory as vague and ambiguous. Among other points, Google has
11 repeatedly requested (prior to and after the filing of the complaint in this action) that
12 Perfect 10 provide copies of the purported notices that were sent in 2001, but Perfect
13 10 has declined to do so. Inasmuch as it is unclear what Perfect 10 means by "notices
14 of infringement," Google cannot respond to this interrogatory as written. Google
15 further objects to this interrogatory as overly broad, unduly burdensome and
16 oppressive.

17 Google further objects to this interrogatory because Plaintiff has exceeded the
18 25 interrogatory maximum, including subparts, provided by the Federal Rules of Civil
19 Procedure, generously construed by Google in a light favorable to Plaintiff; as a
20 consequence, Google will not provide a substantive response to this interrogatory.

21
22 INTERROGATORY NO. 13

23 Please list all images by URL that you have deleted from your servers as a
24 result of notices received from Perfect 10 and the date that each such image was
25 deleted. Please provide this information in electronic format on CD.

1 RESPONSE TO INTERROGATORY NO. 13

2 Google objects to this interrogatory as vague and ambiguous as to the terms
3 "servers," "images by URL," and "notices." Google further objects to this
4 interrogatory as overly broad, unduly burdensome and oppressive.

5 Google further objects to this interrogatory because Plaintiff has exceeded the
6 25 interrogatory maximum, including subparts, provided by the Federal Rules of Civil
7 Procedure, generously construed by Google in a light favorable to Plaintiff; as a
8 consequence, Google will not provide a substantive response to this interrogatory.
9

10 INTERROGATORY NO. 14

11 Please IDENTIFY all images of models listed in Exhibit 2 attached hereto that
12 Google stored or saved on its servers, and the length of time during which these
13 archived images were available on Google servers. Please provide this information in
14 electronic format on CD.

15 RESPONSE TO INTERROGATORY NO. 14

16 Google objects to this interrogatory as vague and ambiguous as to what
17 constitutes "images of models listed in Exhibit 2" and "available on Google servers."
18 Google further objects to this interrogatory as overly broad, unduly burdensome, and
19 oppressive.

20 Google further objects to this interrogatory because Plaintiff has exceeded the
21 25 interrogatory maximum, including subparts, provided by the Federal Rules of Civil
22 Procedure, generously construed by Google in a light favorable to Plaintiff; as a
23 consequence, Google will not provide a substantive response to this interrogatory.
24

25 INTERROGATORY NO. 15

26 Please IDENTIFY the fifty most frequently used search terms in Google's Web
27 Search in order of use, and the fifty most frequently used search terms in Google's
28 Image Search in order of use, for each of the years 2001 through 2004, and for each

1 such term, state the percentage of all Google Web searches and the percentage of all
2 Google Image searches during each of those years that contained that term.

3 RESPONSE TO INTERROGATORY NO. 15

4 Google objects to this interrogatory as compound. Google objects to this
5 interrogatory as overly broad, unduly burdensome and oppressive. Google objects to
6 this interrogatory as seeking information outside the scope of permissible discovery in
7 that it seeks information that is not relevant to the subject matter of this action and is
8 not reasonably calculated to lead to the discovery of admissible evidence. Google
9 objects to this interrogatory as vague and ambiguous as to the term "search terms."

10 Google further objects to this interrogatory because Plaintiff has exceeded the
11 25 interrogatory maximum, including subparts, provided by the Federal Rules of Civil
12 Procedure, generously construed by Google in a light favorable to Plaintiff; as a
13 consequence, Google will not provide a substantive response to this interrogatory.

14
15 INTERROGATORY NO. 16

16 Please state in detail all facts supporting YOUR contentions in paragraph 63 of
17 YOUR Counterclaim and please IDENTIFY all persons who have or who you believe
18 have any knowledge or information supporting or contradicting those contentions and
19 describe all documents that relate to or support those contentions, whether or not
20 currently in existence.

21 RESPONSE TO INTERROGATORY NO. 16

22 Google objects to this interrogatory as seeking documents that are protected by
23 the attorney-client privilege, and/or the work product privilege. Google objects to this
24 interrogatory as vague and ambiguous. Google objects to this interrogatory as
25 compound. Google further objects to this interrogatory as premature as discovery is in
26 the earliest stages.

27 Google further objects to this interrogatory because Plaintiff has exceeded the
28 25 interrogatory maximum, including subparts, provided by the Federal Rules of Civil

1 Procedure, generously construed by Google in a light favorable to Plaintiff; as a
2 consequence, Google will not provide a substantive response to this interrogatory.
3

4 INTERROGATORY NO. 17

5 Please IDENTIFY any ENTITIES that have been TERMINATED as a
6 consequence of notices sent by Perfect 10, all BASE URLs DISABLED, and the dates
7 when such actions were taken.

8 RESPONSE TO INTERROGATORY NO. 17

9 Google objects to this interrogatory as compound. Google objects to this
10 interrogatory as vague, ambiguous and unintelligible.

11 Google further objects to this interrogatory because Plaintiff has exceeded the
12 25 interrogatory maximum, including subparts, provided by the Federal Rules of Civil
13 Procedure, generously construed by Google in a light favorable to Plaintiff; as a
14 consequence, Google will not provide a substantive response to this interrogatory.
15

16 INTERROGATORY NO. 18

17 Please explain in detail the “extraction” process used to present images via
18 Google’s Image Search as referred to in paragraph 18 of YOUR Counterclaim,
19 including but not limited to how the images are degraded from the originals.

20 RESPONSE TO INTERROGATORY NO. 18

21 Google objects to this interrogatory because Plaintiff has exceeded the 25
22 interrogatory maximum, including subparts, provided by the Federal Rules of Civil
23 Procedure, generously construed by Google in a light favorable to Plaintiff; as a
24 consequence, Google will not provide a substantive response to this interrogatory.
25
26
27
28

1 INTERROGATORY NO. 19

2 Please explain in detail your policies and actions, if any (and if so, when), that
3 GOOGLE has implemented so that usernames and passwords to perfect10.com do not
4 appear on google.com.

5 RESPONSE TO INTERROGATORY NO. 19

6 Google objects to this interrogatory as compound. Google further objects to
7 this interrogatory because Plaintiff has exceeded the 25 interrogatory maximum,
8 including subparts, provided by the Federal Rules of Civil Procedure, generously
9 construed by Google in a light favorable to Plaintiff; as a consequence, Google will
10 not provide a substantive response to this interrogatory.

11
12 INTERROGATORY NO. 20

13 Please state in detail all facts supporting your contention that Perfect 10's
14 Alleged Notices of Infringement in 2001 and 2004 failed to materially meet the
15 requirements of 17 U.S.C. § 512(c)(3).

16 RESPONSE TO INTERROGATORY NO. 20

17 Google objects to this interrogatory as compound. Google objects to this
18 interrogatory as seeking documents that are protected by the attorney-client privilege,
19 and/or the work product privilege.

20 Google further objects to this interrogatory because Plaintiff has exceeded the
21 25 interrogatory maximum, including subparts, provided by the Federal Rules of Civil
22 Procedure, generously construed by Google in a light favorable to Plaintiff; as a
23 consequence, Google will not provide a substantive response to this interrogatory.

24
25 INTERROGATORY NO. 21

26 Please describe in detail the process which GOOGLE undertakes, or has
27 undertaken in the past, to review any content on any GOOGLE AFFILIATED
28

1 WEBSITE, and what efforts GOOGLE has made to ensure that such websites do not
2 contain infringing materials, specifying the dates when Google has made such efforts.

3 RESPONSE TO INTERROGATORY NO. 21

4 Google objects to this interrogatory as vague, ambiguous, argumentative, and
5 compound.

6 Google further objects to this interrogatory because Plaintiff has exceeded the
7 25 interrogatory maximum, including subparts, provided by the Federal Rules of Civil
8 Procedure, generously construed by Google in a light favorable to Plaintiff; as a
9 consequence, Google will not provide a substantive response to this interrogatory.

10
11 INTERROGATORY NO. 22

12 Please state in detail all facts supporting each of the Affirmative Defenses
13 raised in YOUR Answer to the Amended Complaint and please IDENTIFY all person
14 who have or who you believe have any knowledge or information supporting or
15 contradicting each of those defenses.

16 RESPONSE TO INTERROGATORY NO. 22

17 Defendant objects to this interrogatory on the ground that it is compound and
18 contains numerous distinct subparts. Google objects to this interrogatory as
19 duplicative of interrogatory number 6. Google objects to this interrogatory as seeking
20 documents that are protected by the attorney-client privilege, and/or the work product
21 privilege.

22 Google further objects to this interrogatory because Plaintiff has exceeded the
23 25 interrogatory maximum, including subparts, provided by the Federal Rules of Civil
24 Procedure, generously construed by Google in a light favorable to Plaintiff; as a
25 consequence, Google will not provide a substantive response to this interrogatory.

1 INTERROGATORY NO. 23

2 For each response to Requests for Admission that is not an unqualified
3 admission, state all facts upon which you base YOUR response.

4 RESPONSE TO INTERROGATORY NO. 23

5 Defendant objects to this interrogatory on the ground that it is compound.
6 Without waiving, and subject to its General and specific objections, Google responds
7 as follows:

8 Google further objects to this interrogatory because Plaintiff has exceeded the
9 25 interrogatory maximum, including subparts, provided by the Federal Rules of Civil
10 Procedure, generously construed by Google in a light favorable to Plaintiff; as a
11 consequence, Google will not provide a substantive response to this interrogatory.

12
13
14 Dated: April 18, 2005

WINSTON & STRAWN LLP

Andrew P. Bridges

Andrew P. Bridges
Michael S. Brophy
Jennifer A. Golinveaux
Attorneys for Defendant and
Counterclaimant Google Inc.

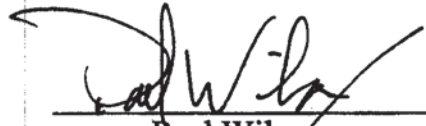
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VERIFICATION

I, Paul Wilcox, declare:

I am Online Operations Coordinator of Defendant Google Inc. I have read the attached **RESPONSE TO PLAINTIFF'S FIRST SET OF INTERROGATORIES** and the matters set forth therein are true to the best of my knowledge, information and belief.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 18th day of April, 2005.



Paul Wilcox

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

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA)
3 COUNTY OF SAN) SS
4 FRANCISCO)

5 I am a resident of the State of California, over the age of eighteen years, and
6 not a party to the within action. My business address is Winston & Strawn LLP,
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 INTERROGATORIES**

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,
13 mailed a copy to the interested party(ies) in this action by placing a true
14 copy thereof enclosed in sealed envelop(s) addressed to the parties listed
15 below.

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

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

21 by sending it via Overnight mail.

22 See Attached Service List

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

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

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


Eva M. Franko

Service List

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Russell J. Frackman
Jeffrey D. Goldman
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Los Angeles, CA 90064-1683

Jeffrey N. Mausner
BERMAN, MAUSNER & RESSER
11601 Wilshire Boulevard, Suite 600
Los Angeles, CA 90025-1742

Daniel J. Cooper
PERFECT 10, INC.
72 Beverly Park Drive
Beverly Hills, CA 90210

Exhibit G

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

1 WINSTON & STRAWN LLP
Andrew P. Bridges (SBN: 122761)
2 Jennifer A. Golinveaux (SBN: 203056)
101 California Street, Suite 3900
3 San Francisco, CA 94111-5894
Telephone: 415-591-1000
4 Facsimile: 415-591-1400

5 Attorneys for Defendant
GOOGLE INC.

6
7
8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

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

12 Plaintiff,

13 vs.

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

16 Defendants.

Master File No. CV 04-9484 AHM (SHx)

**GOOGLE INC.'S RESPONSE TO
PERFECT 10'S REVISED
INTERROGATORIES**

17 **AND COUNTERCLAIM**

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

20 Plaintiff,

21 vs.

22 AMAZON.COM, INC., a corporation;
23 A9.COM, INC., a corporation; and
24 DOES 1 through 10, inclusive;

25 Defendants.

26 PROPOUNDING PARTY: PLAINTIFF PERFECT 10, INC.

27 RESPONDING PARTY: GOOGLE INC.

28 SET NUMBER: ONE

1 Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, defendant
2 and counterclaimant Google Inc. ("Google") hereby responds to Plaintiff Perfect 10,
3 Inc.'s ("Plaintiff's") Revised Interrogatories as follows.

4 **GENERAL OBJECTIONS**

5 Google expressly incorporates the following General Objections as if set forth
6 fully in response to each of the following individual interrogatories.

7 1. Google objects to the definition of "GOOGLE" "YOU" and "YOUR" as
8 overly broad to the extent it seeks information from other entities that is outside
9 Google's possession, custody or control.

10 2. Google objects to each interrogatory as unduly burdensome and
11 oppressive to the extent that it purports to require Google to inquire of Google
12 employees other than those employees that would reasonably be expected to have
13 responsive information. Google's responses are based upon (1) a reasonable search,
14 given the time allocated to Google to respond to the interrogatories, of files that
15 could reasonably be expected to contain responsive information, and (2) inquiries of
16 Google employees and/or representatives who could reasonably be expected to
17 possess responsive information.

18 3. Google objects to each interrogatory to the extent that it purports to
19 impose any requirement or discovery obligation on Google other than those set forth
20 in the Federal Rules of Civil Procedure and the applicable rules of this Court.

21 4. Google objects to each interrogatory to the extent that it seeks
22 documents that are protected by the attorney-client privilege, the work product
23 privilege and/or any other applicable privilege. Such information will not be
24 disclosed. Any inadvertent disclosure of such information shall not be deemed a
25 waiver of the attorney-client privilege, the attorney work product doctrine, or any
26 other applicable privilege or immunity recognized by statute or case law.

27 5. Google objects to each interrogatory to the extent that it purports to
28 require Google to disclose information in violation of a legal or contractual

1 obligation of nondisclosure to a third party. Google will not provide such
2 information without either the consent of the relevant third party or a court order
3 compelling production.

4 6. Google generally objects to each and every interrogatory to the extent
5 that it seeks information protected by a constitutional right of privacy or applicable
6 privacy law.

7 7. Google objects generally to each interrogatory to the extent it seeks
8 information not reasonably related to the claims or defenses in this matter.

9 8. Google objects to the instruction set forth on pages two and three of Perfect
10 10's DEFINITIONS AND INSTRUCTIONS instructing that "[i]f information or a
11 document is available in electronic form, it should be produced in that electronic
12 form, even if it is also available in hard copy," as overly broad, unduly burdensome
13 and duplicative. Google reserves the right to produce documents in either hard copy
14 or electronic form.

15 9. Google objects generally to requests that call for extensive electronic
16 production or analysis of data as overly broad, unduly burdensome, and oppressive.
17 Additionally, where appropriate, Google reserves the right to seek cost-shifting for
18 costs associated with electronic production of data stored in inaccessible or difficult
19 or costly to access formats.

20 10. Google objects to the definition of the term "IDENTIFY" when used in
21 connection with a website, as vague, ambiguous, overly broad and unduly
22 burdensome and as seeking information equally available to Plaintiff and not in the
23 possession or control of Google to the extent that it seeks the name, address, and
24 telephone number of the webmaster for the website.

25 11. Google objects to the definition of the term "IDENTIFY" when used in
26 connection with an "ENTITY" as vague and ambiguous and overly broad and unduly
27 burdensome to the extent it requires Google to identify "each ENTITY believed by
28 YOU to own or control any such ENTITY."

RESPONSE TO REVISED INTERROGATORIES

INTERROGATORY NO. 24 (previously 15):

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.

RESPONSE TO INTERROGATORY NO. 24 (previously 15):

Google objects to this interrogatory as compound. Google objects to this interrogatory as overly broad, unduly burdensome and oppressive. Google objects to this interrogatory as seeking information outside the scope of permissible discovery in that it seeks information that is not relevant to the subject matter of this action and is not reasonably calculated to lead to the discovery of admissible evidence. Google objects to this interrogatory as vague and ambiguous as to the term "search terms."

Without waiving, and subject to its General and specific objections, Google responds as follows: Google will further respond to this interrogatory in compliance with Judge Hillman's order at the February 23, 2006 discovery hearing on Plaintiff's Revised Motion to Compel Google To Answer Interrogatories, to the extent that Google can respond based upon currently existing reports. Google will respond in either narrative form, or by producing responsive documents.

INTERROGATORY NO. 25 (previously 11):

Please explain why in a June 27, 2001 email, YOU stated that "Without administrator cooperation, we cannot exclude material available on the Internet from our index," and "there is nothing that Google can do to remove the offending content without the cooperation of the site administrator," and whether that is still true today, and if not, why not.

RESPONSE TO INTERROGATORY NO. 25 (previously 11):

1 Google objects to this interrogatory as assuming facts not known to Google that
2 Google has not been able to verify. Google further objects to this interrogatory as
3 argumentative.

4 **INTERROGATORY NO. 26 (previously 9):**

5 Please explain in detail what efforts, if any (and if so, give the dates those
6 efforts were made), that GOOGLE has made to ensure that Perfect 10's copyrighted
7 images would not appear in Google's Image Search, or on archived (referred to by
8 Google as "cached") URLs found through Google's Web Search.

9 **RESPONSE TO INTERROGATORY NO. 26 (previously 9):**

10 Google objects to this interrogatory as compound. Google further objects to
11 this interrogatory as vague and ambiguous and argumentative. Without waiving, and
12 subject to its General and specific objections, Google responds as follows:

13 Upon receiving a notice of alleged infringement that substantially conforms
14 with the requirements of 17 U.S.C. Section 512(c)(3), Google expeditiously removes
15 or disables access to the material. Google does this by flagging the URL or URL
16 pattern for which Google has received notice so that page or file will no longer appear
17 in search results. For Web Search, the page URL is suppressed; for Image Search, the
18 image file URL is suppressed. Google's policy for responding to such notices is
19 publicly available at www.google.com/dmca.html. Google followed the same
20 procedure outlined above in responding to notices of alleged infringement received
21 from Plaintiff where Plaintiff provided sufficient information for Google to process
22 the notices. Pursuant to Fed. R. Civ. P. 33(d), Google will further respond to this
23 interrogatory by producing documents sufficient to reflect which URLs Google has
24 suppressed from appearing in search results in response to notices of alleged
25 infringement received from Plaintiff.

26 **INTERROGATORY NO. 27 (previously 19):**

27
28

1 Please explain in detail YOUR policies and actions, if any (and if so, when),
2 that GOOGLE has implemented so that usernames and passwords to perfect10.com do
3 not appear on google.com.

4 **RESPONSE TO INTERROGATORY NO. 27 (previously 19):**

5 Google objects to this interrogatory as compound. Google objects to this
6 interrogatory as vague and ambiguous and argumentative. Without waiving, and
7 subject to its General and specific objections, Google responds as follows:

8 Google has no obligation to ensure that usernames and passwords to
9 perfect10.com do not appear on google.com. Google notes that Judge Matz has ruled
10 that Plaintiff has failed to demonstrate “that it has any copyright interest in the two
11 strings of characters that *other* individuals select when registering as members on
12 perfect10.com.” *See Perfect 10 v. Google Inc.*, Case No. CV 04-9484 AHM (SHx),
13 February 21, 2006 Order Granting in Part and Denying in Part Perfect 10’s Motion for
14 Preliminary Injunction Against Google. Although Google had no obligation to do so,
15 Google did suppress certain URLs in response to claims by Plaintiff that the
16 associated web page contained usernames and/or passwords to Perfect 10, and Google
17 will produce documents sufficient to reflect all such URLs.

18 **INTERROGATORY NO. 28 (previously 16):**

19 Please state in detail the factual basis for YOUR contentions in paragraph 63 of
20 YOUR Counterclaim and please IDENTIFY the persons most knowledgeable
21 regarding the factual basis for such contentions, and describe all documents that relate
22 to such contentions, whether or not currently in existence.

23 **RESPONSE TO INTERROGATORY NO. 28 (previously 16):**

24 Google objects to this interrogatory as compound. Google objects to this
25 interrogatory as overly broad, unduly burdensome and oppressive. Google objects to
26 this interrogatory as seeking information outside the scope of permissible discovery in
27 that it seeks information that is not relevant to the subject matter of this action and is
28 not reasonably calculated to lead to the discovery of admissible evidence. Without

1 waiving, and subject to its General and specific objections, Google responds as
2 follows:

3 Paragraph 63 of Google's Counterclaim states that "[t]o the extent Google has
4 any 'subscribers' or 'account holders,' Google has adopted and reasonably
5 implemented, and informs any such subscribers and account holders of Google's
6 system or network or, a policy that provides for the termination in appropriate
7 circumstances of any subscribers and account holders of Google's system who are
8 repeat infringers." Google's AdSense Online Standard Terms and Conditions,
9 specifically prohibits the "display [of] any Ad(s), Link(s), or Referral Button(s) . . . on
10 any chat page, in any email, or on any Web page or any Web site that contains any
11 pornographic, hate-related, violent, or illegal content;" and states that "[y]ou
12 acknowledge that any attempted participation or violation of any of the foregoing is a
13 material breach of this Agreement and that we may pursue any and all applicable legal
14 and equitable remedies against You, including an immediate suspension of Your
15 account or termination of this Agreement, and the pursuit of all available civil or
16 criminal remedies." In accordance with its policy, Google terminates participation in
17 AdSense in appropriate circumstances, including when Google becomes aware that a
18 participant may be a repeat infringer under the copyright laws. Documents that
19 related to the contentions set forth in paragraph 63 of Google's counterclaim include
20 Google's AdSense Online Standard Terms and Conditions, and termination notices
21 sent by Google to AdSense participants. The person most knowledgeable regarding
22 the factual basis for such contentions is Heraldo Botelho, an employee of Google Inc.
23 who should be contacted only through Google's counsel of record at Winston &
24 Strawn.

25 **INTERROGATORY NO. 29 (previously 14):**

26 Please IDENTIFY all images which have been available as potential search
27 results at images.google.com for a search on any model name listed in Exhibit 2, and
28

1 the time period during which such images were available. Please provide this
2 information in electronic format on CD.

3 **RESPONSE TO INTERROGATORY NO. 29 (previously 14):**

4 Google objects to this interrogatory as overly broad, unduly burdensome, and
5 oppressive for the reasons set forth in detail in Google's Position Regarding Revised
6 Interrogatory No. 29 in the REVISED JOINT STIPULATION RE PLAINTIFF
7 PERFECT 10, INC.'S MOTION TO COMPEL DEFENDANT GOOGLE INC. TO
8 ANSWER INTERROGATORIES, FILED PURSUANT TO ORDER OF JUDGE
9 HILLMAN.

10 **INTERROGATORY NO. 30 (previously 18):**

11 Please explain in detail the "extraction" process used to present images via
12 Google's Image Search as referred to in paragraph 18 of YOUR Counterclaim,
13 including but not limited to how the images are degraded from the originals.

14 **RESPONSE TO INTERROGATORY NO. 30 (previously 18):**

15 Pursuant to Fed. R. Civ. P. 33(d), Google will respond to this interrogatory by
16 producing documents sufficient to answer this interrogatory.

17 **INTERROGATORY NO. 31 (previously 21):**

18 Please describe in detail the process which GOOGLE undertakes, or has
19 undertaken in the past, to review any content on any website that participated in the
20 Adwords or AdSense programs, and what efforts GOOGLE has made to ensure that
21 such websites do not contain infringing materials, specifying the dates when Google
22 has made such efforts.

23 **RESPONSE TO INTERROGATORY NO. 31 (previously 21):**

24 Google reserves the right to review content on websites that participate in
25 Google's AdWords and AdSense advertising programs to ensure that those websites
26 comply with the Terms and Conditions and Program Policies for those programs.
27 When someone submits ads in Google's AdWords programs, Google conducts an
28 initial automated review of the ad and linked to web page to confirm compliance with

1 the relevant Terms and Conditions and Program Policies. If the automated review
2 indicates a potential violation, the ad or linked to web page will then be reviewed by a
3 person. Google will also reactively review ads and linked to web pages upon
4 notification of a possible violation of Google policy or Terms and Conditions. When
5 Google discovers ads or linked to web pages that violate its Terms and Conditions or
6 Program Policies, it will typically disable those ads or linked to web pages. Google
7 also does a human review of all sites that are reported by external parties via email to
8 adwords-support@google.com. When someone applies for Google's AdSense
9 programs, Google conducts an initial automated review of the designated website to
10 confirm compliance with the relevant Terms and Conditions and Program Policies. If
11 the automated review indicates a possible violation of the Terms and Conditions or
12 Program Policies, the website will then be reviewed by a person. Google also
13 conducts spot quality reviews of websites that participate in AdSense on an ongoing
14 basis, utilizing the same two staged review process, first automated and then, where
15 indicated, utilizing human review, as described above. Google also does a human
16 review of all sites that are reported by external parties via email to [adsense-](mailto:adsense-support@google.com)
17 support@google.com or adsense-abuse@google.com. When Google discovers
18 websites that violate its AdSense Terms and Conditions or Program Policies, it will
19 typically disable ad serving to the website, and where appropriate, terminate the
20 identified owner of the website from the AdSense program. Google has utilized this
21 general process since the AdWords and AdSense programs were first implemented in
22 2000 and 2003, respectively, although in the beginning, all review was done by a
23 person, rather than utilizing automated review.

24 **INTERROGATORY NO. 32 (previously 12):**

25 Please describe in detail what actions YOU took in response to notices of
26 infringement YOU received from Perfect 10.

27 **RESPONSE TO INTERROGATORY NO. 32 (previously 12):**

28

1 Google objects to this interrogatory as compound. Google objects to this
2 interrogatory as vague and ambiguous and argumentative. Without waiving, and
3 subject to its General and specific objections, Google responds as follows:

4 Upon receiving a notice of alleged infringement that substantially conforms
5 with the requirements of 17 U.S.C. Section 512(c)(3), Google expeditiously removes
6 or disables access to the material. Google does this by flagging the URL or URL
7 pattern for which Google has received notice so that page or file will no longer appear
8 in Search results. For Web Search, the page URL is suppressed; for Image Search, the
9 image file URL is suppressed. Google's policy for responding to such notices is
10 publicly available at www.google.com/dmca.html. Google followed the same
11 procedure outlined above in responding to notices of alleged infringement received
12 from Plaintiff where Plaintiff provided sufficient information for Google to process
13 the notices. Pursuant to Fed. R. Civ. P. 33(d), Google will further respond to this
14 interrogatory by producing documents sufficient to reflect which URLs Google has
15 suppressed from appearing in search results in response to notices of alleged
16 infringement received from Plaintiff.

17 **INTERROGATORY NO. 33 (previously 13):**

18 Please list all images by URL that YOU have deleted from your servers as a
19 result of notices received from Perfect 10 and the date that each such image was
20 deleted. Please provide this information in electronic format on CD.

21 **RESPONSE TO INTERROGATORY NO. 33 (previously 13):**

22 Google objects to this interrogatory as compound. Google objects to this
23 interrogatory as vague and ambiguous and argumentative. Without waiving, and
24 subject to its General and specific objections, Google responds as follows:

25 Google responds to notices of alleged infringement that substantially conform
26 with the requirements of 17 U.S.C. Section 512(c)(3). Google does not delete images
27 from its servers in response to notices of alleged infringement, but rather suppresses
28 URLs for which it receives proper notification of infringement from appearing in its

1 search results. Upon receiving a notice of alleged infringement that substantially
2 conforms with the requirements of 17 U.S.C. Section 512(c)(3), Google expeditiously
3 removes or disables access to the material. Google does this by flagging the URL or
4 URL pattern for which Google has received notice so that page or file will no longer
5 appear in Search results. For Web Search, the page URL is suppressed; for Image
6 Search, the image file URL is suppressed. Google's policy for responding to such
7 notices is publicly available at www.google.com/dmca.html. Google followed the
8 same procedure outlined above in responding to notices of alleged infringement
9 received from Plaintiff where Plaintiff provided sufficient information for Google to
10 process the notices. Pursuant to Fed. R. Civ. P. 33(d), Google will further respond to
11 this interrogatory by producing documents sufficient to reflect which URLs Google
12 has suppressed from appearing in search results in response to notices of alleged
13 infringement received from Plaintiff.

14 **INTERROGATORY NO. 34 (previously 17):**

15 Please IDENTIFY any ENTITIES that Google has terminated as a consequence
16 of notices sent by Perfect 10, the nature of the termination, and the date of such
17 termination.

18 **RESPONSE TO INTERROGATORY NO. 34 (previously 17):**

19 Pursuant to Fed. R. Civ. P. 33(d), and pursuant to agreement of counsel, Google
20 will respond to this interrogatory by producing documents sufficient to reflect which
21 entities Google has terminated as a consequence of notices sent by Perfect 10, and,
22 where available, the nature of the termination, and the date of such termination.

23 **INTERROGATORY NO. 35 (previously 1 and 2):**

24 Please IDENTIFY all Adwords or Adsense websites which have appeared as a
25 result of a Google Image Search or Google Web Search on the name of any
26 CELEBRITY, PERFECT 10 MODEL, or the terms "Perfect 10" or perfect10.com; the
27 search term used; whether the search term is used as a keyword for that website; the
28 beginning and ending dates of the affiliation of the website with Google; the type of

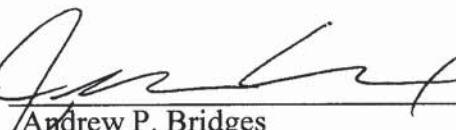
1 affiliation (e.g., Adwords, Adsense, etc.); and the amount of money received by
2 Google in connection with that website or the Adwords or Adsense affiliate of that
3 website for each year of that affiliation. Please provide that information in electronic
4 format on CD.

5 **RESPONSE TO INTERROGATORY NO. 35 (previously 1 and 2):**

6 Google objects to this interrogatory as compound and containing at least nine
7 distinct subparts because it bundles at least three different requests with three different
8 fact patterns. Google objects to this interrogatory as hopelessly and fatally vague,
9 ambiguous and incomprehensible. Google objects to the undefined terms "keywords"
10 and "metatags" as vague and ambiguous. Google objects to this interrogatory as
11 overly broad, unduly burdensome and oppressive. Google objects to this interrogatory
12 as seeking information outside the scope of permissible discovery in that it seeks
13 information that is not relevant to the subject matter of this action and is not
14 reasonably calculated to lead to the discovery of admissible evidence insofar as it
15 seeks information regarding CELEBRITIES. Google objects to this interrogatory as
16 seeking information that is outside Google's possession, custody or control.

17
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23 DATED: February 23, 2006

WINSTON & STRAWN LLP

24
25 By 
26 Andrew P. Bridges
27 Jennifer A. Golinveaux
28 Attorneys for GOOGLE INC.

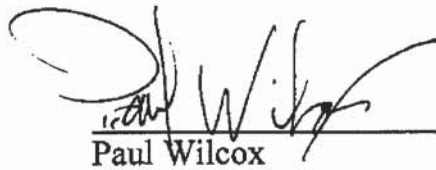
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VERIFICATION

I, Paul Wilcox, declare:

I am Online Operations Coordinator of Defendant Google Inc. I have read the attached **GOOGLE INC.'S RESPONSE TO PLAINTIFF'S REVISED INTERROGATORIES** and the matters set forth therein are true to the best of my knowledge, information and belief.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 24 day of February, 2006.



Paul Wilcox

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

SF:124277.2

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 February 24, 2006, I
served the within documents:

7 **DEFENDANT GOOGLE INC'S RESPONSE TO PERFECT 10'S REVISED**
8 **INTERROGATORIES**

9
10 I sent such document from facsimile machine 415-591-1400 on February
11 24, 2006. I certify that said transmission was completed and that all
12 pages were received and that a report was generated by facsimile machine
13 415-591-1400 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.

14 by placing the document(s) listed above in a sealed envelope with postage
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.

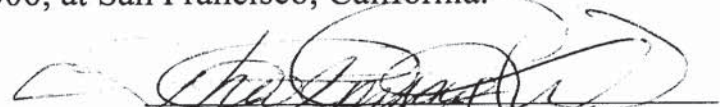
17 by sending it via Overnight mail.

18
19 See Attached Service List

20 I am readily familiar with the firm's practice of collection and processing
21 correspondence for mailing. Under that practice it would be deposited with the
22 U.S. Postal Service on that same day with postage thereon fully prepaid in the
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 I declare that I am employed in the office of a member of the bar of this
24 court whose direction the service was made.

25 Executed on February 24, 2006, at San Francisco, California.

26 
27 Theresa Impang-Lozada
28

Service List

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Beverly Hills, CA 90210

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Mark T. Jansen
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2 Embarcadero Center, 8th Floor
San Francisco, CA 94111

Exhibit H

1 QUINN EMANUEL URQUHART
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2 Michael T. Zeller (Bar No. 196417)
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4 Los Angeles, California 90017-2543
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555 Twin Dolphin Drive, Suite 560
9 Redwood Shores, California 94065-213

10 Attorneys for Defendant and Counterclaimant
11 GOOGLE INC.

12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**

14 PERFECT 10, INC., a California
15 corporation

16 Plaintiff,

17 vs.

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

19 Defendants.

20 **AND COUNTERCLAIM**

21 PERFECT 10, INC., a California
22 corporation,

23 Plaintiff,

24 vs.

25 AMAZON.COM, INC., a corporation;
A9.COM, INC., a corporation; and
26 DOES 1 through 10, inclusive,

27 Defendants.

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

DEFENDANT GOOGLE INC.'S
RESPONSES TO PLAINTIFF
PERFECT 10, INC.'S SECOND SET
OF INTERROGATORIES

1 PROPOUNDING PARTY: PLAINTIFF PERFECT 10, INC.

2 RESPONDING PARTY: DEFENDANT GOOGLE INC.

3 SET NO.: TWO

4

5 Pursuant to Rule 33 of the Federal Rules of Civil Procedure, Defendant
6 Google Inc. ("Google") hereby responds to the Second Set of Interrogatories from
7 Plaintiff Perfect 10, Inc. ("Perfect 10") ("Perfect 10's Second Set of
8 Interrogatories"), as follows:

9

GENERAL OBJECTIONS

10 The following general objections apply to each and every request set forth in
11 Perfect 10's Second Set of Interrogatories, and are expressly incorporated by
12 reference into each of the following responses as if fully set forth therein.

13 1. Google objects generally to Perfect 10's Second Set of Interrogatories,
14 on the basis that each and every Interrogatory exceeds the twenty-five interrogatory
15 limit set forth in Fed. R. Civ. P. 33(a). Perfect 10 has not sought leave of court to
16 propound interrogatories in excess of twenty-five as Rule 33(a) requires, and thus,
17 Perfect 10's Second Set of Interrogatories to Google are improper, harassing, and
18 oppressive. In Perfect 10's First Set of Interrogatories, Perfect 10 propounded 23
19 interrogatories, many of which had numerous discrete subparts—thereby asking
20 hundreds of distinct questions regarding distinct subjects—including but not limited
21 to Perfect 10's Interrogatory No. 23. *See Benas v. Baca*, 2003 WL 21697750, *2
22 (C.D. Cal. July 16, 2003) (affirming Magistrate Judge Hillman's ruling that an
23 interrogatory asking for the facts supporting responses to 20 requests for admission
24 "contain[ed] 20 discrete subparts because it requires factual responses to all 20 of"
25 the requests for admission); *Safeco of America v. Rawstron*, 181 F.R.D. 441, 445
26 (C.D. Cal. 1998) (when an interrogatory asks for the facts supporting responses to
27 requests for admission, there is "a strong presumption that each underlying request

28

1 for admission constitutes a separately countable subpart”). Thus, Perfect 10 has
2 drastically exceeded the twenty-five interrogatory limit of Rule 33(a), since it served
3 214 Requests for Admission contemporaneously with its First Set of Interrogatories
4 (which included Interrogatory No. 23), and a total of 687 Requests for Admission as
5 of this writing. Google objects to and is under no obligation to respond to Perfect
6 10’s Second Set of Interrogatories, because they are unauthorized and improper
7 under Rule 33(a). *See, e.g., Willingham v. Ashcroft*, 226 F.R.D. 57, 60 (D.D.C.
8 2005) (holding that responding party was not required to respond to any
9 interrogatories after the first fifteen, where the propounding party had “in fact
10 propounded 25 interrogatories” considering their discrete subparts).

11 2. Google objects to the definitions and instructions provided with the
12 Plaintiff’s Interrogatories and to each Interrogatory to the extent they seek the
13 production of documents protected from disclosure by the attorney-client privilege,
14 work product doctrine, or any other evidentiary privilege. Such information will not
15 be provided in response to the Interrogatories, and any inadvertent disclosure thereof
16 shall not be deemed a waiver of any privilege with respect to such information or of
17 any work product doctrine that may attach thereto.

18 3. Google objects generally to the definitions and instructions provided
19 with Perfect 10’s Second Set of Interrogatories to the extent those definitions seek to
20 impose obligations and demands on Google greater than those imposed by the
21 Federal Rules of Civil Procedure.

22 4. Google objects to the definitions of “GOOGLE,” “YOU” and “YOUR”
23 on the grounds that they are overbroad, unduly burdensome and purport to place
24 discovery obligations upon Google that exceed those required by the Federal Rules
25 of Civil Procedure. Google submits these responses on its own behalf and does not
26 speak for other entities or persons.

27 5. Google objects to the definition of “DOCUMENT” and
28 “DOCUMENTS” to the extent they exceed the limitations of Federal Rule of Civil

1 Procedure 33. Google further objects to the definition of "DOCUMENT" and
2 "DOCUMENTS" as unintelligible, vague and ambiguous with respect to a "third
3 party webmaster or website."

4 6. Google objects to the definition of "IDENTIFY" on the grounds that it
5 is overly broad and unduly burdensome, and purports to place discovery obligations
6 upon Google that exceed those required by the Federal Rules of Civil Procedure.

7 7. Google objects to each interrogatory as unduly burdensome and
8 oppressive to the extent that it purports to require Google to inquire of Google
9 employees other than those employees that would reasonably be expected to have
10 responsive information. Google's responses are based upon (1) a reasonable search,
11 given the time allocated to Google to respond to the interrogatories, of files that
12 could reasonably be expected to contain responsive information, and (2) inquiries of
13 Google employees and/or representatives who could reasonably be expected to
14 possess responsive information.

15 8. Google objects to each Interrogatory to the extent it is overbroad,
16 unduly burdensome, oppressive, cumulative, redundant and harassing.

17 9. Google objects to each Interrogatory to the extent it seeks information
18 that is neither relevant nor reasonably calculated to lead to the discovery of
19 admissible evidence.

20 10. Google objects to the instruction set forth on page three of Perfect 10's
21 DEFINITIONS AND INSTRUCTIONS instructing that "[i]f information or a
22 document is available in electronic form, it should be produced in that electronic
23 form, even if it is also available in hard copy," as overly broad, unduly burdensome,
24 duplicative, and improper under Rule 33.

25 11. Google objects to each Interrogatory to the extent it is vague,
26 ambiguous or unintelligible.

27 12. Google objects to each Interrogatory to the extent it may require the
28 disclosure of private and confidential information of non-parties whose privacy is

1 protected by the United States Constitution; the California Constitution, Art. 1, Sec.
2 1 (and/or all other state constitutions); the Electronic Communications Privacy Act,
3 18 U.S.C. §§ 2510-2522, 2701-2711; and all other applicable federal and state
4 privacy laws. Google is not authorized to and cannot waive third parties' statutory
5 and constitutional privacy rights and will not respond to any Interrogatory
6 implicating such rights.

7 13. Google objects to each Interrogatory to the extent it may require
8 disclosure of confidential, proprietary, or trade secret business information of
9 Google or a non-party. Google will only respond to such Interrogatories pursuant to
10 the parties' stipulated protective order and expressly reserves the right to seek any
11 further relief it deems necessary.

12 14. Google objects generally to the Interrogatories that call for extensive
13 electronic production as overly broad, unduly burdensome and oppressive. Google
14 further objects to each Interrogatory to the extent it may seek inaccessible
15 electronically-stored information as that information is presumptively non-
16 discoverable under Fed. R. Civ. P. 26(b)(2). Additionally, where appropriate,
17 Google reserves the right to seek cost-shifting for expenses associated with the
18 production of costly or inaccessible electronically-stored information.

19 15. Any objection by Google does not constitute a representation or
20 admission that such information and/or documents do in fact exist or are known to
21 Google, or that Google will produce any such information and/or documents.
22

23 RESPONSES TO INTERROGATORIES

24 INTERROGATORY NO. 36:

25 Please IDENTIFY the employees who were responsible for implementing
26 GOOGLE's repeat infringer policy (17 U.S.C. Section 512(i)) in each of the years
27 2001 through the present.
28

1 **RESPONSE TO INTERROGATORY NO. 36:**

2 Google objects to this interrogatory on the basis that Perfect 10 has exceeded
3 the twenty-five interrogatory maximum, including subparts, provided by the Federal
4 Rules of Civil Procedure, construed in a light favorable to Perfect 10. As a
5 consequence, Google will not provide a substantive response to this interrogatory or
6 any interrogatory in Perfect 10's Second Set of Interrogatories. *See, e.g.,*
7 *Willingham v. Ashcroft*, 226 F.R.D. 57, 60 (D.D.C. 2005) (holding that responding
8 party was not required to respond to **any** interrogatories after the first fifteen where
9 the propounding party had "in fact propounded 25 interrogatories" considering their
10 discrete subparts).

11 Google further objects to this interrogatory as overly broad, unduly
12 burdensome and oppressive. Google further objects to this interrogatory to the
13 extent it calls for the disclosure of privileged attorney-client communications and/or
14 work product. Google further objects to this interrogatory as vague and ambiguous,
15 especially with respect to the terms "responsible" and "implementing." Google
16 further objects to this interrogatory as calling for a legal conclusion as to what
17 constitutes a "repeat infringer policy" under 17 U.S.C. § 512(i).

18
19 **INTERROGATORY NO. 37:**

20 For each notice from Perfect 10 which complained about GOOGLE's
21 infringement of Perfect 10's copyrights, from 2001 to the present (which GOOGLE
22 has in its possession), please list the date of the notice, and IDENTIFY the employee
23 who first received that notice, each employee who reviewed that notice, each
24 employee who processed that notice, the approximate number of links in Google
25 search results that were removed as a result of that notice, and the dates that such
26 actions occurred.

27
28

1 **RESPONSE TO INTERROGATORY NO. 37:**

2 Google objects to this interrogatory on the basis that Perfect 10 has exceeded
3 the twenty-five interrogatory maximum, including subparts, provided by the Federal
4 Rules of Civil Procedure, construed in a light favorable to Perfect 10. As a
5 consequence, Google will not provide a substantive response to this interrogatory or
6 any interrogatory in Perfect 10's Second Set of Interrogatories. *See, e.g.,*
7 *Willingham v. Ashcroft*, 226 F.R.D. 57, 60 (D.D.C. 2005) (holding that responding
8 party was not required to respond to **any** interrogatories after the first fifteen where
9 the propounding party had "in fact propounded 25 interrogatories" considering their
10 discrete subparts).

11 Google further objects to this interrogatory as overly broad, unduly
12 burdensome and oppressive. Google further objects to this interrogatory as
13 compound. Google further objects to this interrogatory to the extent it calls for the
14 disclosure of privileged attorney-client communications and/or work product.
15 Google further objects to this interrogatory as vague and ambiguous, especially with
16 respect to the terms and phrases "notice" and "GOOGLE's infringement." Google
17 further objects to this interrogatory as calling for a legal conclusion to the extent
18 "notice" is defined to mean a DMCA-compliant notification.

19
20 **INTERROGATORY NO. 38:**

21 For each Perfect 10 notice which GOOGLE received from any third party,
22 including Yahoo!, Earthlink.net, Amazon.com, Comcast.net, and AOL, please list
23 the date of the notice, and IDENTIFY each employee who reviewed that notice,
24 each employee who processed that notice, the approximate number of links in
25 GOOGLE search results that were removed as a result of that notice, and the dates
26 that such actions occurred.

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1 **RESPONSE TO INTERROGATORY NO. 38:**

2 Google objects to this interrogatory on the basis that Perfect 10 has exceeded
3 the twenty-five interrogatory maximum, including subparts, provided by the Federal
4 Rules of Civil Procedure, construed in a light favorable to Perfect 10. As a
5 consequence, Google will not provide a substantive response to this interrogatory or
6 any interrogatory in Perfect 10's Second Set of Interrogatories. *See, e.g.,*
7 *Willingham v. Ashcroft*, 226 F.R.D. 57, 60 (D.D.C. 2005) (holding that responding
8 party was not required to respond to **any** interrogatories after the first fifteen where
9 the propounding party had "in fact propounded 25 interrogatories" considering their
10 discrete subparts).

11 Google further objects to this interrogatory as overly broad, unduly
12 burdensome and oppressive. Google further objects to this interrogatory as
13 compound. Google further objects to this interrogatory to the extent it calls for the
14 disclosure of privileged attorney-client communications and/or work product.
15 Google further objects to this interrogatory as vague and ambiguous, especially with
16 respect to the term "notice." Google further objects to this interrogatory as calling
17 for a legal conclusion to the extent "notice" is defined to mean a DMCA-compliant
18 notification.

19
20 **INTERROGATORY NO. 39:**

21 For each of the following models, and for each of the years 2004, 2005, 2006,
22 2007, and 2008, please give the number of clicks on images that appeared in Google
23 Image Search results on the name of that model: Amy Weber, Aria Giovanni, Irina
24 Voronina, Luba Shumeyko, Marisa Miller, Marketa Belonoha, Monika Zsibrita,
25 Sasha Brinkova, and Veronika Zemanova.

1 **RESPONSE TO INTERROGATORY NO. 39:**

2 Google objects to this interrogatory on the basis that Perfect 10 has exceeded
3 the twenty-five interrogatory maximum, including subparts, provided by the Federal
4 Rules of Civil Procedure, construed in a light favorable to Perfect 10. As a
5 consequence, Google will not provide a substantive response to this interrogatory or
6 any interrogatory in Perfect 10's Second Set of Interrogatories. *See, e.g.,*
7 *Willingham v. Ashcroft*, 226 F.R.D. 57, 60 (D.D.C. 2005) (holding that responding
8 party was not required to respond to **any** interrogatories after the first fifteen where
9 the propounding party had "in fact propounded 25 interrogatories" considering their
10 discrete subparts).

11 Google further objects to this interrogatory as overly broad, unduly
12 burdensome and oppressive. Google further objects to this interrogatory as
13 compound. Google further objects to this interrogatory as it seeks information that
14 is neither relevant nor reasonably calculated to lead to the discovery of admissible
15 evidence. Google further objects to this interrogatory to the extent it calls for
16 inaccessible electronically-stored information. Google further objects to this
17 interrogatory as vague and ambiguous, especially with respect to the term "clicks."
18 Google further objects to this interrogatory as it requires production of confidential,
19 proprietary, or trade secret business information. Google further objects to this
20 interrogatory to the extent it may require the production of private and confidential
21 information of non-parties whose privacy is protected by the United
22 States Constitution; the California Constitution, Art. 1, Sec. 1 (and/or all other state
23 constitutions); the Electronic Communications Privacy Act, 18 U.S.C. §§ 2510-
24 2522, 2701-2711; and all other applicable federal and state privacy laws. Google is
25 not authorized to and cannot waive third parties' statutory and constitutional privacy
26 rights and will not respond to any interrogatory implicating such rights.

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DATED: April 2, 2008

Respectfully submitted,

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21 Attorney for Plaintiff PERFECT 10, INC.

22 UNITED STATES DISTRICT COURT

23 CENTRAL DISTRICT OF CALIFORNIA

24 PERFECT 10, INC., a California
25 corporation,

26 Plaintiff,

27 vs.

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

30 Defendants.

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

PROOF OF SERVICE

31 AND COUNTERCLAIM

32 PERFECT 10, INC., a California
33 corporation,

34 Plaintiff,

35 vs.

36 AMAZON.COM, INC., a corporation;
37 A9.COM, INC., a corporation; and
38 DOES 1 through 100, inclusive,

Defendants.

