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9 Attorneys for Defendant GOOGLE INC.

10 UNITED STATES DISTRICT COURT  
 11 CENTRAL DISTRICT OF CALIFORNIA

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

15 *Plaintiff,*

16 vs.

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

19 *Defendants.*

20 AND COUNTERCLAIM

CASE NO. CV 04-9484 AHM (SHx)

**DISCOVERY MATTER**

**DECLARATION OF BRADLEY R.  
 LOVE IN SUPPORT OF GOOGLE  
 INC.'S STATEMENT REGARDING  
 THE STATUS OF DMCA-  
 RELATED DISCOVERY ISSUES IN  
 P10'S MOTION FOR  
 EVIDENTIARY AND OTHER  
 SANCTIONS**

Hon. Stephen J. Hillman

Date: None Set  
 Time: None Set  
 Crtrm.: 550

Discovery Cutoff: None Set  
 Pretrial Conference Date: None Set  
 Trial Date: None Set

1 I, Bradley R. Love, declare as follows:

2 1. I am a member of the bar of the State of California and an associate at  
3 Quinn Emanuel Urquhart & Sullivan, LLP, counsel for Defendant Google Inc.  
4 ("Google") in this action. I make this declaration of my personal and firsthand  
5 knowledge, and if called and sworn as a witness, I could and would testify  
6 competently thereto.

7 2. Attached as Exhibit A is a true and correct copy of excerpts of the  
8 transcript of the January 15, 2010 hearing before this Court.

9 3. Attached as Exhibit B is a true and correct copy of this Court's January  
10 27, 2010 Order (Dkt. No. 759).

11 4. Attached as Exhibit C is a true and correct copy of excerpts of the  
12 transcript of the April 5, 2010 hearing before Judge Matz.

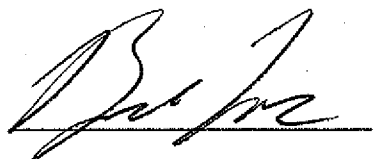
13 5. Attached as Exhibit D is a true and correct copy of excerpts of the  
14 transcript of the May 10, 2010 hearing before Judge Matz.

15 6. I attended the April 5, 2010 and May 10, 2010 hearings before Judge  
16 Matz. Google's DMCA Motions were discussed at both hearings. At neither  
17 hearing did Perfect 10, Inc. ("P10") ask Judge Matz to delay ruling on the DMCA  
18 Motions until (1) it received additional DMCA-related discovery or (2) it received a  
19 final ruling on its Sanctions Motion. Nor did P10 request that P10 be allowed to  
20 submit additional briefing on the DMCA Motions prior to the Court's issuance of a  
21 ruling on same.

22 7. Attached as Exhibit E is a true and correct copy of an email my  
23 colleague Rachel Herrick Kassabian sent to P10's counsel Jeffrey Mausner on May  
24 29, 2010, requesting that P10 agree to additional meet and confer on P10's DMCA-  
25 related discovery demands following issuance of Judge Matz's final order on  
26 Google's DMCA Motions. Mr. Mausner declined by email on May 30, 2010, which  
27 is also included in Exhibit E.

28

1 I declare under penalty of perjury under the laws of the United States of  
2 America that the foregoing is true and correct. Executed June 1, 2010 at San  
3 Francisco, California.



Bradley R. Love

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# **EXHIBIT A**

RECEIVED

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1  
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2  
3 UNITED STATES DISTRICT COURT  
4 CENTRAL DISTRICT OF CALIFORNIA  
5 WESTERN DIVISION

6 PERFECT 10, INC., )  
7 )  
8 PLAINTIFF, )  
9 VS. ) CASE NO. CV 04-9484-AHM(SHX)  
10 )  
11 GOOGLE, INC., ET AL., ) LOS ANGELES, CALIFORNIA  
12 ) JANUARY 15, 2010  
13 ) (10:08 A.M. TO 12:44 P.M.)  
14 DEFENDANTS. ) (1:08 P.M. TO 1:51 P.M.)  
15 )

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

19 APPEARANCES: SEE NEXT PAGE  
20 COURT REPORTER: RECORDED; COURT SMART  
21 COURTROOM DEPUTY: SANDRA BUTLER  
22 TRANSCRIBER: DOROTHY BABYKIN  
23 COURTHOUSE SERVICES  
24 1218 VALEBROOK PLACE  
25 GLENDORA, CALIFORNIA 91740  
(626) 963-0566

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

## 1 APPEARANCES: (CONTINUED)

2 FOR THE PLAINTIFF: LAW OFFICES OF JEFFREY N. MAUSNER  
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## 8 FOR GOOGLE:

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16 QUINN EMANUEL URQUHART OLIVER &  
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23 QUINN EMANUEL URQUHART OLIVER &  
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17 FOR AMAZON.COM,  
18 ALEXA INTERNET:

19 TOWNSEND TOWNSEND & CREW  
20 BY: MARK JANSEN  
21 ATTORNEY AT LAW  
22 TWO EMBARCADERO CENTER  
23 8TH FLOOR  
24 SAN FRANCISCO, CALIFORNIA 94111

## 20 ALSO PRESENT:

21 DR. NORMAN ZADA  
22 PRESIDENT, PERFECT 10  
23  
24 MELANIE POBLETE  
25 LEGAL ASSISTANT, PERFECT 10

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I N D E X

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

JANUARY 15, 2010

PROCEEDINGS:

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

1 INTERRUPTING.

2 THE COURT: I DO.

3 MS. KASSABIAN: CAN I RESPOND?

4 THE COURT: YES.

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

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

21 THE COURT: WELL, BUT --

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

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



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

3 MS. KASSABIAN: ABSOLUTELY NOT, YOUR HONOR.

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

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

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

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

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

1 BECAUSE BLOGGER WAS ALWAYS IN THE CASE FOR SEARCH.

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

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

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

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

13 AND, THEN --

14 THE COURT: BUT ANSWER MY QUESTION.

15 MR. MAUSNER: YES.

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

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

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

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

1 YOU'RE SAYING --

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

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

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

11 MS. KASSABIAN: NO, YOUR HONOR.

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

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

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

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

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

23 MR. MAUSNER: OKAY.

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

1 PARTICULAR MOTION.

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

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

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

14 THE COURT: I KNOW.

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

16 THE COURT: I KNOW.

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

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

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

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

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

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

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

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

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

25 THERE IS NOT ONE SINGLE DOCUMENT REQUEST EVER

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

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

9 MS. KASSABIAN: YOUR HONOR, IT SAYS:

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

18 THESE DOCUMENTS --

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

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

22 THEY ASKED FOR THE LOG.

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

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

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

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

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

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

9 THE COURT: WHERE DID YOU ASK FOR THAT?

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

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

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

14 THE COURT: OR A LOG.

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

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

19 MR. MAUSNER: YES.

20 THE COURT: -- ALL THE NOTICES.

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

23 MR. MAUSNER: LET ME --

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

1 OF THE LOG. HERE YOU GO.

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

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

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

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

8 THE COURT: WELL, WAS IT MISLEADING?

9 DR. ZADA: BUT, YOUR HONOR --

10 MS. KASSABIAN: WE WILL PRODUCE THE NOTICES.

11 THE COURT: ALL OF THEM?

12 MS. KASSABIAN: IN 2006 --

13 DR. ZADA: NO.

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

17 DR. ZADA: YOUR HONOR --

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

19 THE COURT: WELL, HERE'S WHAT I'M COMING BACK TO.

20 THE MORE I HEAR THE LESS COMFORTABLE I WOULD BE TODAY  
21 RECOMMENDING VERY SERIOUS -- EXTREMELY SERIOUS SANCTIONS --  
22 EVIDENTIARY SANCTIONS.

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



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

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

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

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

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

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

25 THE COURT: APRIL '04.

1 THAT COLLOQUY THE SAME WAY.

2 ALL RIGHT.

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

5 THE COURT: YES, SPEAK.

6 MS. KASSABIAN: IF I MAY APPROACH --

7 THE COURT: SURE.

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

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

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

23 (GOOGLE COUNSEL BRIEFLY CONFERRING.)

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

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

3 THE COURT: LET ME ASK YOU THIS.

4 MR. MAUSNER: YOU'RE GOING --

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

6 MR. MAUSNER: OKAY.

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

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

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

19 THE COURT: BUT WAIT A SECOND.

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

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

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

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

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

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

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

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

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

16 MR. MAUSNER: YOUR HONOR --

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

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

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

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

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

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

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

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

16 MS. KASSABIAN: AND THEN THEY DID NOTHING.

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

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

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

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

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

6 THE COURT: BUT --

7 DR. ZADA: WELL, YOUR HONOR --

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

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

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

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

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

1 WITH SERVICES AT ISSUE IN THE CASE, GOOGLE HAS PRODUCED THAT  
2 INFORMATION.

3 IF THEY WANTED BLOGGER LOGS OR BLOGGER NOTICES, WHY  
4 DIDN'T THEY JUST ASK. WHY DIDN'T THEY --

5 DR. ZADA: BECAUSE WE DIDN'T KNOW THEY EXISTED.

6 MS. KASSABIAN: SIR, IF I CAN FINISH.

7 WHY DIDN'T THEY JUST SERVE A REQUEST. WHY ARE THEY  
8 TRYING TO SHOEHORN A 2006 ORDER INTO SOMETHING THAT IT'S NOT,  
9 AN ORDER ON CLAIMS THAT WEREN'T EVEN IN THE CASE AT THAT  
10 TIME. I MEAN, THAT WOULD REQUIRE PSYCHIC ABILITIES ON  
11 GOOGLE'S BEHALF TO KNOW THAT IT WAS OBLIGED TO PRODUCE  
12 DOCUMENTS REGARDING VARIOUS SERVICES THAT IT OFFERED THAT AT  
13 THE TIME WERE NOT IN THE CASE.

14 MR. MAUSNER: YOUR HONOR --

15 MS. KASSABIAN: THERE ARE OTHER SERVICES AS WELL  
16 THAT ARE NOT CURRENTLY IMPLICATED. WE'RE NOT OBLIGED TO  
17 PRODUCE THOSE DOCUMENTS EITHER AND CERTAINLY NOT OBLIGED TO  
18 PRODUCE DOCUMENTS THAT HAVEN'T BEEN REQUESTED.

19 AND ONE MORE POINT, YOUR HONOR, I WANT TO MAKE  
20 CLEAR. REQUEST 51 CALLED FOR A LOG. GOOGLE HAS PRODUCED ITS  
21 BLOGGER LOG. THERE IS NO PREJUDICE HERE WHATSOEVER.

22 EVEN IF PERFECT 10 IS RIGHT, AND IT'S NOT, THE MAY  
23 2008 ORDER THAT SAID, GOOGLE MUST PRODUCE ITS DMCA LOG  
24 APPLIED TO BLOGGER. EVEN THOUGH BLOGGER WASN'T IN THE CASE.  
25 EVEN THOUGH GOOGLE HAD NO NOTICE THAT THAT'S WHAT PERFECT 10

1 THOUGHT THAT THAT REQUEST MEANT.

2 GOOGLE PRODUCED ITS BLOGGER LOG IN AUGUST, A COUPLE  
3 OF MONTHS LATER AND ONLY ONE MONTH AFTER PERFECT 10 WAS  
4 GRANTED LEAVE TO ADD ITS BLOGGER CLAIMS AND BEFORE PERFECT 10  
5 EVEN REQUESTED IT. THERE'S BEEN NO DISCOVERY ORDER VIOLATION  
6 HERE.

7 THE COURT: I JUST, YOU KNOW -- I GET CONCERNED  
8 BECAUSE I DON'T -- I REALLY WANT --

9 MS. KASSABIAN: BUT THEY'VE GOT IT, YOUR HONOR.

10 THE COURT: NO, I KNOW.

11 MS. KASSABIAN: THEY'VE GOT THE LOG.

12 THE COURT: NO, NO, I'M JUST -- I WANT TO MAKE SURE  
13 THAT I FEEL THE RESULT IS FAIR, THE RESULTS ON THESE  
14 REMAINING TWO MOTIONS ARE FAIR.

15 IT'S JUST INCONCEIVABLE FROM WHAT I KNOW ABOUT THE  
16 CASE THAT PRIOR TO BLOGGER BEING FORMALLY ADDED TO THE CASE,  
17 THAT GOOGLE WAS ON ANY KIND OF NOTICE THAT ANYTHING OTHER  
18 THAN GOOGLE'S SEARCH WAS THE NATURE OF THE CASE.

19 MS. KASSABIAN: THAT IS EXACTLY RIGHT, YOUR HONOR.

20 MR. MAUSNER: IT WAS GOOGLE'S --

21 MS. KASSABIAN: YOU ARE EXACTLY RIGHT. AND THAT'S  
22 THE END OF IT. THAT IS THE EXACT ARGUMENT THAT WE'VE  
23 PRESENTED IN THESE BRIEFS, AND YOU'VE GOT IT RIGHT.

24 MR. MAUSNER: OKAY. GOOGLE'S SEARCH INCLUDES  
25 BLOGGER WEBSITES. EVERY BLOGGER WEBSITE IS INCLUDED IN



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C E R T I F I C A T E

I CERTIFY THAT THE FOREGOING IS A CORRECT  
TRANSCRIPT FROM THE ELECTRONIC SOUND RECORDING OF THE  
PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

DOROTHY BABYKIN

*Dorothy Babykin*

FEDERALLY CERTIFIED TRANSCRIBER

DOROTHY BABYKIN

2/20/10

*2/20/10*

DATED

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# **EXHIBIT B**

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 04-9484-AHM (SHx)	Date	January 27, 2010
Title	<u>Perfect 10 Inc., v. Google Inc., et al.,</u>		

Present: The Honorable	Stephen J. Hillman
------------------------	--------------------

Sandra L. Butler

Deputy Clerk

Court Reporter / Recorder

Tape No.

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

N/A

N/A

**Proceedings:** (IN CHAMBERS)

A telephonic conference at this juncture would be useless. Counsel shall meet and confer regarding Perfect 10's Sanctions Motion as soon as practicable for all counsel, and then each side shall file a two page statement setting forth the status of the matter. Statements shall be filed within 2 business days following conclusion of the meet and confer process. The court will then determine whether to hold a telephonic conference.

Whether viewed as a potential Rule 56(f) issue (notwithstanding Perfect 10's disavowal of intent to seek Rule 56(f) relief), or instead as a Motion to Compel compliance with earlier court orders, the precise issues set forth by Perfect 10 are not complicated. While the court reiterates its tentative conclusion that Evidentiary Sanctions are not appropriate at this juncture, the court may ultimately decide that the documents sought could be material to Perfect 10's opposition to the pending Motions for Summary Judgment.

cc: Judge Matz  
Magistrate Judge Hillman  
Parties of Record

Initials of Preparer

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: \_\_\_\_\_  
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# **EXHIBIT C**

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION  
HONORABLE A. HOWARD MATZ, U.S. DISTRICT JUDGE

- - -

**COPY**

PERFECT 10, INC., A CALIFORNIA	)	
CORPORATION,	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	No. CV04-09484-AHM(SHx)
	)	
GOOGLE, INC., ET AL.,	)	
	)	
DEFENDANTS.	)	
_____	)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS  
LOS ANGELES, CALIFORNIA  
MONDAY, APRIL 5, 2010

---

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SAN FRANCISCO, CA 94111  
415-875-6330

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1 MR. MAUSNER: Yes.

2 THE COURT: You're just trying to make my task  
3 simpler by giving me a selected composite, right?

4 MR. MAUSNER: Yes.

5 THE COURT: And what about Handout 2?

6 MR. MAUSNER: Handout 2 deals with repeat infringer,  
7 and it takes information that's already in the motion. There's  
8 one page that was in the motion, but we did an updated version  
9 of it so the Court could see. That's page 13.

10 And the only difference on Page 13 is that the mouse  
11 was taken and put over one of the images so you could see all  
12 the information that you could get from the actual notice,  
13 because when we gave them the notice, it had the links in  
14 there; you could just put your mouse over the image, and you  
15 would get all the information that's shown in that pop-up box  
16 there.

17 We submitted Exhibit 13 without the pop-up box.

18 This is what it looks like with the pop-up box  
19 (indicating).

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

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

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

1 MR. MAUSNER: We've asked them to meet and confer  
2 with us. We want to have a telephone conversation with them,  
3 and we have not been able to have a telephone conversation with  
4 them yet.

5 THE COURT: Because of why?

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

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

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

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

17 MR. MAUSNER: Thank you.

18 THE COURT: Mr. Zeller, I want you to go to the  
19 lectern, and I want to talk to you about Blogger and Blogspot.

20 MR. ZELLER: If Mr. Love may address that. I think  
21 he can better address those questions.

22 THE COURT: All right. A little unusual.

23 What's your name?

24 MR. LOVE: Brad Love, Your Honor.

25 THE COURT: Love, L-O-V-E?



1 MR. MAUSNER: From cooperating with RapidShare to  
2 allow people to find infringing materials.

3 RapidShare is basically a hundred percent infringing.  
4 It's one of the most --

5 THE COURT: Yes, I know. The German court so said.  
6 You keep telling me.

7 MR. MAUSNER: Yes.

8 THE COURT: Okay. I think I've run out of not only  
9 time, but questions.

10 Tell me, though, Mr. Zeller, what does Google do for  
11 RapidShare?

12 MR. ZELLER: Well, the short answer is I'd have to  
13 investigate to know the specifics of like what's on whose  
14 server and the like.

15 Google does provide, as an open-source matter,  
16 technology, so just because of the fact that RapidShare is  
17 doing certain things does not mean that Google participates in  
18 it. But I would also add, of course, that --

19 THE COURT: When you say open-share or open-market  
20 technology, does Google get compensated for that?

21 MR. ZELLER: Not that I'm aware of, Your Honor. I  
22 believe it makes tools available for all manner of people.

23 I mean, I am sure there are different segments but,  
24 again, I don't know enough about RapidShare or, frankly, even  
25 understand enough about what Perfect 10's complaints have been

1 about it.

2 To date, it has been apparently just simply that  
3 Google has any kind of links whatsoever to what they call these  
4 massively infringing websites, which, of course, runs directly  
5 counter to the Court's holdings that you can't just simply take  
6 down all links to an entire website. That would suppress free  
7 speech.

8 And, certainly, Perfect 10 has it within its power to  
9 provide URLs to any RapidShare pages that it believes are  
10 infringing.

11 And to the extent that there are -- it also, of  
12 course, could send --

13 THE COURT: Or to take on RapidShare.

14 MR. ZELLER: I'm sorry?

15 THE COURT: Or to take on RapidShare.

16 MR. ZELLER: Correct.

17 THE COURT: Google doesn't own RapidShare?

18 MR. ZELLER: I can't be a hundred percent certain,  
19 but I'd be very surprised. I can certainly investigate it if  
20 it's important to the Court.

21 THE COURT: Well, I don't want any further  
22 submissions.

23 I will take this motion under submission. I may get  
24 around to the pending summary judgment motions first. I will  
25 try to do this on a timely basis.

1 I know that you think, Mr. Mausner, that there is a  
2 great urgency and that's why injunctive relief is necessary,  
3 and I am considering that as well.

4 Now, I'm ordering the parties to order a transcript  
5 and to split the cost. I will benefit from an opportunity to  
6 review your answers, and I'll take the matter under submission.

7 *(Proceedings concluded.)*

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CERTIFICATE

I hereby certify that pursuant to Section 753,  
Title 28, United States Code, the foregoing is a true and  
correct transcript of the stenographically reported  
proceedings held in the above-entitled matter and that the  
transcript page format is in conformance with the  
regulations of the Judicial Conference of the United States.

Date: APRIL 9, 2010

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Cindy L. Nirenberg, CSR No. 5059

# **EXHIBIT D**

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION  
HONORABLE A. HOWARD MATZ, U.S. DISTRICT JUDGE

- - -

**COPY**

PERFECT 10, INC., A CALIFORNIA	)	
CORPORATION,	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	No. CV04-09484-AHM(SHx)
	)	
GOOGLE, INC., ET AL.,	)	
	)	
DEFENDANTS.	)	
_____	)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS  
LOS ANGELES, CALIFORNIA  
MONDAY, MAY 10, 2010

---

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1 LOS ANGELES, CALIFORNIA; MONDAY, MAY 10, 2010

2 10:00 A.M.

3 - - - - -

4 THE CLERK: Calling Item Number 1, CV04-9484, Perfect  
5 10, Inc. versus Google, Inc., et al.

6 Counsel, state your appearances, please.

7 MR. MAUSNER: Jeff Mausner for the plaintiff Perfect  
8 10. May Melanie Poblete sit at counsel table with me?

9 THE COURT: Yes, she may. Sure.

10 MR. MAUSNER: Thank you.

11 MR. ZELLER: Good morning, Your Honor. Mike Zeller  
12 and Brad Love for Google.

13 THE COURT: Okay. Good morning to both of you.

14 We're here for a hearing on the summary adjudication  
15 motions that Google filed long ago that have already been the  
16 subject of some discussion at previous hearings. I circulated  
17 to the parties last week a 22-page, single-spaced draft order,  
18 very much draft.

19 At the end of this hearing, make sure that you return  
20 that order to Mr. Montes. It is not final, and it is not to be  
21 distributed or used for any purpose until I issue a final  
22 order.

23 As is my practice that I think counsel are familiar  
24 with, I invite you to address any factual errors that may have  
25 crept into this draft or material omissions that reflect or



1 would consist of facts that should have been included, and then  
2 we can talk about the legal analysis.

3           So why don't you start, Mr. Mausner, from the  
4 lectern, please.

5           MR. MAUSNER: Thank you, Your Honor.

6           We prepared a binder for this, which I would like to  
7 hand up to the Court (indicating).

8           THE COURT: Have you given this to Mr. Zeller?

9           MR. MAUSNER: Yes, Your Honor.

10          THE COURT: What's in this binder?

11          MR. MAUSNER: The binder contains -- the first tab is  
12 a narrative of what I would say in case we do not have time to  
13 go through all of that, and I expect that we will not. And  
14 then the second tab contains samples of evidence supporting  
15 what's stated in the first tab, the narrative.

16          There are a number of misstatements in the tentative  
17 that Perfect 10 believes have to be brought to the Court's  
18 attention.

19          THE COURT: All right. So start with those, please.

20          MR. MAUSNER: Okay. As the Court I'm sure is aware,  
21 Perfect 10 has sent Group C notices to Google in various sizes.  
22 For example, some of Perfect 10's Group C notices like the  
23 October 16th, 2009 contain just one image.

24          THE COURT: Okay. Here's what you should do. If you  
25 want to be as effective as ideal, then you tell me what page

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CERTIFICATE

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proceedings held in the above-entitled matter and that the  
transcript page format is in conformance with the  
regulations of the Judicial Conference of the United States.

Date: MAY 13, 2010

---

Cindy L. Nirenberg, CSR No. 5059

# **EXHIBIT E**

## Brad R. Love

---

**From:** Jeffrey Mausner [jeff@mausnerlaw.com]  
**Sent:** Sunday, May 30, 2010 12:23 AM  
**To:** Rachel Herrick Kassabian  
**Cc:** Michael T Zeller; Brad R. Love  
**Subject:** RE: Meet and confer

Rachel,

As Perfect 10 has repeatedly informed Google, Perfect 10 is entitled to receive the documents that are the subject of its pending Motion for Evidentiary and Other Sanctions immediately, before any ruling by Judge Matz on Google's pending summary judgment motions. Accordingly, we are unwilling to wait until after Judge Matz's ruling to receive those documents. Please produce these documents now, before any ruling by Judge Matz. Regards, Jeff

---

**From:** Rachel Herrick Kassabian [mailto:rachelkassabian@quinnemanuel.com]  
**Sent:** Saturday, May 29, 2010 3:44 PM  
**To:** 'jeff@mausnerlaw.com'  
**Cc:** Michael T Zeller; Brad R. Love  
**Subject:** Meet and confer

Dear Jeff,

I write to further meet and confer with Perfect 10 regarding its DMCA-related discovery demands. As we have previously stated, Google would prefer to work these issues out on an agreed basis, to avoid any further burden to the Court. Accordingly, we propose that the parties meet and confer by telephone within ten days of issuance of Judge Matz's DMCA Order, to discuss what further DMCA-related discovery (if any) is necessary and can be agreed to by the parties. Please let us know whether Perfect 10 is willing to pursue such further meet and confer efforts.

Regards,

**Rachel Herrick Kassabian / Partner**  
**Quinn Emanuel Urquhart & Sullivan LLP**  
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