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10 Attorneys for Plaintiff Perfect 10, Inc.

11 UNITED STATES DISTRICT COURT
 12 CENTRAL DISTRICT OF CALIFORNIA

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

15 Plaintiff,

16 v.

17 GOOGLE INC., a corporation,

18 Defendants.

Case No. CV 04-9484 AHM (SHx)

Before Honorable Stephen J. Hillman

**DECLARATION OF DAVID N.
 SCHULTZ IN SUPPORT OF
 PLAINTIFF PERFECT 10, INC.'S
 RESPONSE TO DEFENDANT
 GOOGLE INC.'S STATEMENT
 REGARDING THE STATUS OF
 DMCA-RELATED DISCOVERY
 ISSUES IN PERFECT 10'S MOTION
 FOR EVIDENTIARY AND OTHER
 SANCTIONS**

Discovery Cut-Off Date: None Set
 Pretrial Conference Date: None Set
 Trial Date: None Set

1 **DECLARATION OF DAVID N. SCHULTZ**

2 I, David N. Schultz, declare as follows:

3 1. I am a member of the State Bar of California and admitted to practice
4 before this Court. I am a counsel of record for Plaintiff Perfect 10, Inc. (“Perfect
5 10”) in this action. All of the matters stated herein are of my own personal
6 knowledge, except where otherwise stated, and if called as a witness, I could and
7 would testify competently thereto. I make this declaration in support of Perfect 10’s
8 Response To Defendant Google Inc.’s Statement Regarding The Status Of DMCA-
9 Related Discovery Issues In Perfect 10’s Motion For Evidentiary And Other
10 Sanctions, submitted separately herewith.

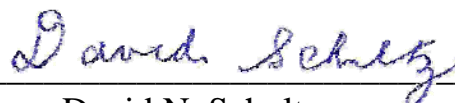
11 2. Attached hereto as Exhibit A are true and correct copies of excerpts
12 from the transcript of the January 15, 2010 hearing before this Court on Perfect 10’s
13 Motion for Evidentiary and Other Sanctions Against Defendant Google Inc. and/or
14 for the Appointment of a Special Master. Portions of the transcript are highlighted
15 in yellow.

16 3. Attached hereto as Exhibit B is a true and correct copy of this Court’s
17 January 27, 2010 Order (Docket No. 759). Portions of the Order are highlighted in
18 yellow.

19 4. Attached hereto as Exhibit C are true and correct copies of excerpts
20 from the transcript of the May 10, 2010 hearing before Judge Matz on Google’s
21 DMCA Summary Judgment Motions. Portions of the transcript are highlighted in
22 yellow.

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

25 Executed on June 8, 2010 in Los Angeles County, California.

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28 _____
David N. Schultz

Exhibit A

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

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

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

APPEARANCES: SEE NEXT PAGE
COURT REPORTER: RECORDED; COURT SMART
COURTROOM DEPUTY: SANDRA BUTLER
TRANSCRIBER: DOROTHY BABYKIN
COURTHOUSE SERVICES
1218 VALEBROOK PLACE
GLENORA, CALIFORNIA 91740
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PROCEEDINGS RECORDED BY ELECTRONIC SOUND RECORDING;
TRANSCRIPT PRODUCED BY TRANSCRIPTION SERVICE.

1 APPEARANCES: (CONTINUED)
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FOR AMAZON.COM,
ALEXA INTERNET: TOWNSEND TOWNSEND & CREW
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ALSO PRESENT: DR. NORMAN ZADA
PRESIDENT, PERFECT 10

MELANIE POBLETE
LEGAL ASSISTANT, PERFECT 10

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I N D E X

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

JANUARY 15, 2010

PROCEEDINGS:

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

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

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

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

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

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

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

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

25 DR. ZADA: YOUR HONOR --

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C E R T I F I C A T E

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

DOROTHY BABYKIN

2/20/10

FEDERALLY CERTIFIED TRANSCRIBER

DATED

DOROTHY BABYKIN

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 | Perfect 10 Inc., v. Google Inc., et al., | | |

| | |
|------------------------|--------------------|
| 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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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

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| 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

CINDY L. NIRENBERG, CSR 5059
U.S. Official Court Reporter
312 North Spring Street, #438
Los Angeles, California 90012
www.cindynirenberg.com

1 APPEARANCES OF COUNSEL:

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1 construe him to be saying is one of a huge number of photos
2 where the copyright is included in the photo and the image is
3 available and the URL identification is pretty precise. What
4 more does he have to do?

5 MR. ZELLER: It has to point us to the copyrighted
6 work. By definition, if he is pointing to an infringing site,
7 he's already telling us that's infringed. That does not
8 identify the copyrighted work.

9 THE COURT: Even if the copyright is on it and even
10 if the cover letter in the accompanying certifications as to
11 ownership are compliant?

12 MR. ZELLER: Right. And also what Mr. Mausner --

13 THE COURT: And I find that to be imposing. I'm
14 inclined to find that to be imposing and an unnecessary burden
15 on a copyright holder.

16 MR. ZELLER: Your Honor, Mr. Mausner specifically
17 said in order to verify that, to find out that is the
18 identified copyrighted work, you have to go to the Perfect 10
19 site. That's what he said. That's clearly not proper under
20 the DMCA.

21 THE COURT: I'm not sure that's what he said. He
22 said you could go there if there were any lingering doubt, but
23 why is there a presumptive doubt as to the adequacy and
24 completeness of notice, assuming that it takes on the kind of
25 dimension that Page 1 of his Tab 2, which apparently is Exhibit

1 33, Page 2, of this mass of material we have contains? It says
2 "Copyright 2001, Perfect 10, Inc.," and it presents the
3 necessary specific information as to the place on the web where
4 it's improperly appearing as evidence of infringement. I don't
5 know what more should be necessary.

6 MR. ZELLER: Their identification of the copyrighted
7 work. And I don't agree that that's sufficient.

8 For example, Your Honor, that means he could
9 literally send just simply these images, these URLs, to 10
10 million pages and say, "Everything that's reflected there is
11 mine." That cannot be compliant with the DMCA. It just can't
12 be.

13 THE COURT: If there were a declaration that said,
14 "Everything on there is mine. All 10 million pages is mine" --

15 MR. ZELLER: No.

16 THE COURT: -- that wouldn't be complying?

17 MR. ZELLER: No.

18 THE COURT: Why?

19 MR. ZELLER: Because the statute requires
20 identification of a copyrighted work claimed to be infringed.
21 And simply saying that one can surmise from a copyright notice
22 that -- on the face of a copyright notice that that means
23 that's the identification of the copyright work to be infringed
24 I don't think is compliant.

25 THE COURT: But, Mr. Zeller, what I'm asking you --

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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: MAY 13, 2010

Cindy L. Nirenberg, CSR No. 5059