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9 Attorneys for Defendant  
10 VEOH NETWORKS, INC.

11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA  
13 SAN JOSE DIVISION

14 IO GROUP, INC.

15 Plaintiff,

16 vs.

17 VEOH NETWORKS, INC.

18 Defendant.

Case No. C 06-3926 HRL

19 **DECLARATION OF TED DUNNING IN**  
**SUPPORT OF DEFENDANT VEOH**  
**NETWORKS, INC.'S MOTION FOR**  
**SUMMARY JUDGMENT**

Date: September 4, 2007  
Time: 10:00 a.m.  
Place: Courtroom 2

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

1 I, Ted Dunning, declare under penalty of perjury under the laws of the United States of  
2 America that the following statements, made from personal knowledge, are true and correct:

3 1. I am employed as Chief Scientist for Defendant Veoh Networks, Inc. ("Veoh"), and  
4 have been so employed by Veoh since its inception. My responsibilities at Veoh include  
5 responsibility for the development and management of Veoh's technology projects. I have also had a  
6 lead role in implementing Veoh's policies relating to copyright infringement.

7 **A. Veoh's Video Sharing Service and the Automated Publication Process**

8 2. Veoh was founded to provide a forum for users to share user created video content on  
9 the Internet. Veoh consists of two principal components: (i) the Veoh.com website where, among  
10 other things, one can share and browse videos available through Veoh, create a user account and  
11 profile, and interact with content providers and viewers; and (ii) an optional Veoh Player software  
12 application, which allows uploading and delivery of videos, and provides additional benefits, such as  
13 allowing users to subscribe to certain programming.

14 3. Veoh began distributing the first beta version of its Veoh Player software in August  
15 of 2005, and Veoh's website became operational in February 2006.

16 4. The video content available on Veoh is submitted by Veoh users. In order to upload  
17 video content to Veoh, a user must first register with Veoh at Veoh.com by providing a user name,  
18 email address, and password. A true and correct copy of Veoh's registration form soliciting this  
19 information is attached as Exhibit A.

20 5. When a user uploads a new video to Veoh, a user provides information about the  
21 video to help other users locate the video, such as a title of the user's choosing and tags (keywords)  
22 to describe the video, and selects appropriate categories that best describe the video. Attached  
23 hereto as Exhibits B and C are true and correct copies of print-outs from Veoh's website reflecting  
24 these fields from June 13, 2006 and of the current comparable page.

25 6. After a user uploads a new video to Veoh, the Veoh system then automatically  
26 publishes the new video, making it available to other users of Veoh. Absent a failure in the

1 computer system, publication is an entirely automated process. As part of the publication process,  
2 Veoh utilizes third party software to convert each user-submitted video into the Flash format for  
3 compatibility purposes, because the vast majority of Web users have software that can play videos in  
4 the Flash format. The conversion to Flash format is an entirely automated process.

5 **B. Veoh's Implementation of its Copyright Policies**

6 7. Veoh strictly enforces its policies prohibiting infringing content.

7 8. On August 15, 2005, Veoh designated its Chief Executive Officer, Dmitry Shapiro, as  
8 its agent to receive notifications of claimed infringement by filing an Interim Designation of Agent  
9 to Receive Notification of Claimed Infringement. On June 30, 2006, Veoh filed an Amended  
10 Interim Designation of Agent to Receive Notification of Claimed Infringement. A true and correct  
11 copy of these forms are attached as Exhibit D.

12 9. Veoh has always promptly terminated access to allegedly infringing content upon  
13 receiving notice of such content. Veoh responds to DMCA notices promptly, often the very same  
14 day that Veoh receives the notice, or within a day or two of notice. Veoh also investigates informal  
15 complaints, such as those that come through Veoh's "flag" feature, which allows users to "flag"  
16 video content available on Veoh as inappropriate. A true and correct copy of a printout from the  
17 Veoh website showing the flag feature is attached as Exhibit E.

18 10. Moreover, if Veoh receives notice that a user has uploaded infringing content after  
19 that user has already received a first warning, that user's account is promptly automatically  
20 terminated.

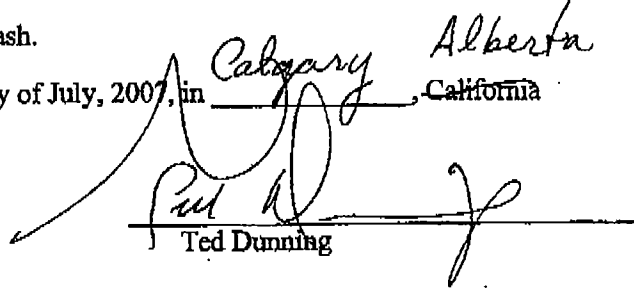
21 11. When Veoh terminates a user's account, all content provided by that user is disabled  
22 (unless that content was also published by a non-terminated user, and is content for which Veoh has  
23 not otherwise received a DMCA notice), that user id no longer allows access to Veoh, or uploading  
24 of content to Veoh, and the user's email address is added to a black list so that user cannot register  
25 for a new user id with that email address.

26 12. To date, Veoh has terminated a total of 1,742 users, 1,096 users for repeat copyright

1 violations, and the remainder for other terms of service related violations.

2 13. Finally, Veoh would accommodate and not interfere with any standard technical  
3 measures used by copyright owners to identify or protect copyrighted works. In addition, Veoh has  
4 adopted a means of generating a unique fingerprint (called a "hash") of a video file, and once Veoh  
5 receives notice that a file is alleged to be infringing, Veoh's system automatically checks any newly  
6 submitted videos and rejects any new files with the identical hash, and also terminates user access to  
7 any existing files with the identical hash.

8 Executed this 28<sup>th</sup> day of July, 2007, in Calgary, Alberta, California

  
Ted Dunning

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# EXHIBIT A

Search Videos

## Need to sign up? It's easy and free!

### Register Here

Username

Email

Password

Confirm Password

Sign me up for the Veoh Vision newsletter.

### Register

By clicking Register, you agree to our [terms of service](#).

## Already Have an Account?

### Log in Here

Username

Password

[Forgot your password?](#)  
[Forgot your Username?](#)



### Get VeohTV BETA

Find and watch everything from prime-time shows to viral video, all in one full-screen application. Watch video on demand or record it your hard drive to watch later - it's like a free DVR for web video. [Learn More](#)



### Watch videos you really like

Veoh's 'crazy math' recommendation engine serves up suggestions based on your viewing habits and preferences.



### Share videos with your friends

Send videos to your friends, rate and review videos, create your own list of favorites. Create a customized channel of your favorite videos that you've discovered on Veoh and publish it to the world.



### Reach your audience

Upload videos of any size, length, or resolution. Automatically syndicate your to other websites. Charge for videos.

Want to learn more?

## Take the Veoh

Enter your email to get featured videos in your inbox

[FAQ](#) | [Help Forums](#) | [Veoh Blog](#) | [About Us](#) | [Developers \(Beta\)](#) | [Advertise With Us](#) | [Jobs at Veoh](#) | [Contact Veoh](#) | [Download Veoh](#)

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# EXHIBIT B





Home | My Veoh | Channels | Friends

SEARCH

**UPLOAD (STEP 1 OF 2)**

Title:

Description:

Tags:

*Enter one or more tags, separated by commas. Tags are simply keywords used to describe your video so they are easily searched and organized. Separate multiple tags by commas.*

Categories:

<input type="checkbox"/> Animation	<input type="checkbox"/> Arts	<input type="checkbox"/> Autos
<input type="checkbox"/> Comedy	<input type="checkbox"/> Documentary	<input type="checkbox"/> Drama
<input type="checkbox"/> Entertainment	<input type="checkbox"/> Family	<input type="checkbox"/> Food
<input type="checkbox"/> Hobbies	<input type="checkbox"/> Instructional	<input type="checkbox"/> Music
<input type="checkbox"/> News	<input type="checkbox"/> People	<input type="checkbox"/> Pets
<input type="checkbox"/> Politics	<input type="checkbox"/> Religion	<input type="checkbox"/> Short Features
<input type="checkbox"/> Sports	<input type="checkbox"/> Technology	<input type="checkbox"/> Travel
<input type="checkbox"/> Videoblogging	<input type="checkbox"/> Weborama	<input type="checkbox"/> Miscellaneous

*Select between one to four categories that best describe your video. It helps to use relevant categories so that others can find your video!*

Content Rating:

As a open Internet Television Network, Veoh contains a wide range of content that may not be considered appropriate by all users. In order to ensure that users see only the content they feel is appropriate we ask publishers to identify potentially offensive or inappropriate contents when uploading their videos.

Suitable for all audiences

Contains inappropriate language, violence or adult situations

Contains nudity or sexually explicit content

All content published on Veoh must conform to our Terms of Use and Acceptable Use policies; Veoh reserves the right to remove any inappropriately identified videos or change its content filter.

Publish Without Size Restriction

**Perfect for:**

- Full screen, TV-quality content
- Longer form shows and movies
- Managing uploads when you have connections issues over the web

Download the Veoh Client now

Have a RSS Feed?

Use our RSS integration to automatically publish to Veoh using RSS!

Publish via RSS now

Content Filter: Off

FAQ | Help Forums | Veoh Blog | About Us | Jobs | Press | Terms of Use | Privacy Policy | Contact Veoh | Download Veoh

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# EXHIBIT C

Videos Series Channels People

Search Videos

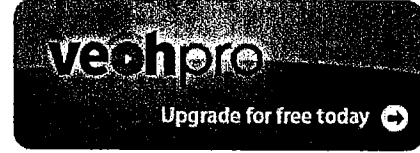
Upload My Videos My Series My Channels Syndicate

### Upload a Video: Step 1 of 3

Enter information to help viewers find your video.

**Tips:**

- We accept AVI, MPEG, Quicktime, and Windows Media Video
- There are no file size restrictions
- For large files (larger than 100 MB), we recommend uploading with the Veoh Player
- Veoh Pro publishers can automatically upload existing RSS feeds through our RSS Integration



**Required Information**

Title

Description

Tags

**Enter up to 6 tags, separated by commas.**

Tags are simply keywords used to describe your video so they are easily searched and organized. Separate multiple tags by commas.

Category

Country of Origin:

**Video Content** Rating your videos correctly will help to ensure that they are discovered and viewed by the appropriate audience. Is there violence in this video?

Yes  No

Is there explicit language in this video?

Yes  No

Does this video contain nudity or sexual situations?

Yes  No

What is the primary language spoken in this video?

What is the primary language of subtitles in this video? (Leave this blank if the video has no subtitles.)

Click "Continue" to upload your video.

**Continue**

Enter your email to get featured videos in your inbox

**Submit**

[FAQ](#) | [Help Forums](#) | [Veoh Blog](#) | [About Us](#) | [Developers \(beta\)](#) | [Advertise With Us](#) | [Jobs at Veoh](#) | [Contact Veoh](#) | [Download VeohTV](#)

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# EXHIBIT D

**Interim Designation of Agent to Receive Notification  
of Claimed Infringement**

**Full Legal Name of Service Provider:** Veoh Networks, Inc

**Alternative Name(s) of Service Provider (including all names under which the service provider is doing business):** \_\_\_\_\_

**Address of Service Provider:** 3211 Caminito Eastbluff, Suite 7, San Diego, CA, 92037

**Name of Agent Designated to Receive Notification of Claimed Infringement:** Dmitry Shapiro

**Full Address of Designated Agent to which Notification Should be Sent (a P.O. Box or similar designation is not acceptable except where it is the only address that can be used in the geographic location):**  
3211 Caminito Eastbluff, Suite 7  
San Diego, CA 92037

**Telephone Number of Designated Agent:** (619) 602-3305

**Facsimile Number of Designated Agent:** (360) 933-2111

**Email Address of Designated Agent:** copyright-notice@veoh.com

**Signature of Officer or Representative of the Designating Service Provider:** \_\_\_\_\_  
**Date:** August 15, 2005

**Typed or Printed Name and Title:** Dmitry Shapiro, CEO

**Note: This Interim Designation Must be Accompanied by a \$30 Filing Fee Made Payable to the Register of Copyrights.**

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COPYRIGHT OFFICE



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**Amended Interim Designation of Agent to Receive Notification of Claimed Infringement**

Full Legal Name of Service Provider: Veoh Networks Inc

Alternative Name(s) of Service Provider (including all names under which the service provider is doing business): \_\_\_\_\_

Address of Service Provider: 7220 Trade Street, Ste 115  
San Diego CA 92121

Name of Agent Designated to Receive Notification of Claimed Infringement: Dmitry Shapiro

Full Address of Designated Agent to which Notification Should be Sent (a P.O. Box or similar designation is not acceptable except where it is the only address that can be used in the geographic location):  
7220 Trade Street Ste 115  
San Diego CA 92121

Telephone Number of Designated Agent: \_\_\_\_\_

Facsimile Number of Designated Agent: 858-695-6828

Email Address of Designated Agent: copyright-notice@veoh.com

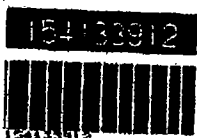
Identify the Interim Designation to be Amended, by Service Provider Name and Filing Date, so that it may be Readily Located in the Directory Maintained by the Copyright Office: Veoh Networks, Inc. August 15, 2006

Signature of Designating Service Provider: \_\_\_\_\_  
Date: 0-30-06

Typed or Printed Name and Title: Dmitry Shapiro, CEO

SCANNED 07 31 - 2006

Note: This Amended Interim Designation Must be Accompanied by a \$30 Filing Fee Made P: \_\_\_\_\_ rights.



**RECEIVED**

JUL 31 2006 200628

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# EXHIBIT E

Online Video: McCain Movie Night | Veoh Video Network - Microsoft Internet Explorer

File Edit View Favorites Tools Help

Back Forward Stop Refresh Home Search Favorites

Address http://www.veoh.com/videos/v827804w3nWJg5A7cmpTag=browsefeature1

Google

00:35 / 02:16

Rate it Caps

**Flag It!**

If you are the copyright owner of this video and believe the video has been uploaded without your permission, please follow these directions to submit a copyright infringement notice:

Why:

(Select a reason)

(Select a reason)

Should be featured on Veoh

Content is misrated (mature).

This video contains obscene or sexually explicit content

This video contains offensive or inappropriate content

**killmor**

**Flag Video**

Comments

1 Comment

Go Here

Comment

Supporters of John McCain gather in New Hampshire to volunteer their time to the campaign.

**Download Video** **Send to a Friend**

**This Computer** ▶ More download options

**JohnMcCain** : Subscribe to Publisher  
 Added: 6 days ago Category: News  
 Country of Origin: United States  
 Language: English  
 Tags: john mccain , new hampshire , volunteers

Posted to:  
 Size: 31.94 MB  
 Views: 212 | Downloads: 8

Embed this Video  
 <embed src="http://www.veoh.com/vi...>

Permalink  
 http://www.veoh.com/vi...

**Publisher:**  
**JohnMcCain 's videos**  
 35 videos 3 subscribers

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**Similar Videos**

John McCain vs. John...  
 by: bravenewf...

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Internet