

ALSTON & BIRD LLP

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Kamran Jivani, Esq.

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November 18, 2008

VIA E-MAIL

Eric Evans, Esq.
Mayer Brown, LLP

Two Palo Alto Square
3000 El Camino Real
Palo Alto, California 94306
Email: eevans@mayerbrown.com

Re: *Viacom International, Inc., et al. v. YouTube, Inc., et al.*, CV 08-08211

Dear Eric:

I respond to your November 13 letter. The two issues identified therein are not new. On August 21, we informed Mr. Baum that BayTSP has “been instructed by Viacom to allow them to review the documents prior to production for a privilege review.” *See* August 21 email from Hemminger to Baum. BayTSP further stated on October 24, “Nevertheless, we have spoken with Viacom’s counsel and due to continued diligence by both BayTSP and Viacom, we anticipate that responsive documents will be made available to YouTube on a rolling basis beginning November 21, 2008.” *See* October 24 letter from Jivani to Baum. BayTSP then repeated on October 31, “As stated in my October 24 letter, we anticipate that Viacom will be able to complete its review of some of the over half-million documents and that these documents will be made available to YouTube on a rolling basis beginning November 21, 2008.” *See* October 31 letter from Jivani to Baum. For your convenience, the referenced communications are attached hereto.

With regard to Viacom’s specific role, Viacom is reviewing documents for privilege. This review is properly undertaken pursuant to Rule 502 of the Federal Rules of Evidence, which provides that inadvertent disclosure of privileged documents does not result in waiver if “the holder of the privilege took reasonable steps to prevent disclosure.”

Finally, BayTSP has worked diligently toward the production of responsive documents to YouTube. We have now completed our review and have identified more than 650,000 documents for production. We are currently awaiting Viacom’s conclusion

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of its privilege review and understand from Viacom that a significant number of these documents will be made available to YouTube on a rolling basis beginning November 21, 2008.

Please contact me if you wish to discuss this matter further.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kamran Jivani".

Kamran Jivani
Associate

KJ:kj

cc: Brandon Baum, Esq.
Steve Hemminger, Esq.

LEGAL02/31031890v1

From: Hemminger, Steve
Sent: Thursday, August 21, 2008 8:55 AM
To: 'Baum, Brandon'
Cc: Rowinski, Julie; Jivani, Kamran
Subject: RE: BayTSP
[Hi Brandon,](#)

I have been traveling this week. As I explained the volume of documents has been greater than anticipated and hence taken much longer to review than anticipated. We hope to have completed BayTSP's privileged review and be able to present them to you for inspection in the next several weeks. However, we have been instructed by Viacom to allow them to review the documents prior to production for a privilege review.

[Regards,](#)

Steven D. Hemminger
Alston + Bird, LLP
2 Palo Alto Sq., Suite 400
3000 El Camino Real
Palo Alto, CA 94306

Phone: 650.838.2000
Fax: 650.838.2001
e-mail: steve.hemminger@alston.com

From: Baum, Brandon [<mailto:BBaum@mayerbrown.com>]
Sent: Monday, August 18, 2008 4:06 PM
To: Hemminger, Steve
Cc: Rowinski, Julie; Baum, Brandon
Subject: RE: BayTSP

[Steve,](#)

While I'm glad you kept the case, we really need a date certain and for you to specify exactly what we'll receive on that date certain as we've been told previously (not by you, but by Maria) that we would have documents in May, and then that we would have documents in July.

[Brandon](#)

From: Hemminger, Steve [<mailto:Steve.Hemminger@alston.com>]
Sent: Monday, August 18, 2008 2:42 PM
To: Baum, Brandon
Cc: Rowinski, Julie
Subject: RE: BayTSP

[Dear Brandon,](#)

We have working diligently on the review of the documents. One of the issues we have run into is that the collection process has collected too many documents that are wholly irrelevant to the litigation, slowing down our review. We have reviewed several hundred thousand documents of the approximately 1 million processed to date. Further, the transfer to Alston has unfortunately also slowed the process.

I will provide a further update as we complete the transfer of the documents to Alston.

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Phone: 650.838.2000
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From: Baum, Brandon [<mailto:BBaum@mayerbrown.com>]
Sent: Monday, August 11, 2008 4:55 PM
To: Hemminger, Steve
Cc: Rowinski, Julie; Baum, Brandon
Subject: RE: BayTSP

Thanks Steve,

When we left off, we had been promised production in July. It is now August. Please advise regarding status.

Brandon

From: Hemminger, Steve [<mailto:Steve.Hemminger@alston.com>]
Sent: Monday, August 11, 2008 1:47 PM
To: Baum, Brandon
Cc: Rowinski, Juli t
Subject: BayTSP

Dear Brandon,

Just a quick note to let you know that I have left Akin Gump and am now a partner with Alston & Bird, LLP. BayTSP has elected to move the Youtube matter over to me at Alston & Bird. In the future please direct all communications to me using the below information.

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October 24, 2008

VIA E-MAIL

Brandon Baum, Esq.
Mayer Brown, LLP
Two Palo Alto Square
3000 El Camino Real
Palo Alto, California 94306
Email: bbaum@mayerbrown.com

Re: *Viacom International, Inc., et al. v. YouTube, Inc., et al.*, CV 08-08211

Dear Mr. Baum:

I write in response to your motion to compel to production of document by BayTSP, Inc. served on October 20, 2008.

BayTSP has expended significant effort to gather, process, and review a vast amount of potentially responsive documents. Indeed, as shown by the communications cited in your declaration in support of YouTube's motion, BayTSP has repeatedly informed you that it has continued to resolve issues arising from the excessive volume of documents requiring review. *See, e.g.*, Ex. N to Baum Decl., July 10, 2008 Ltr from Ellikinos at 2 ("In any event, because there are over 4 terabytes of electronic documents to process and nearly 1000 search terms, our vendor has informed us that it will take approximately four weeks to filter the data."); *see also*, Ex. N to Baum Decl., August 21, 2008 Email from Hemminger ("As I explained the volume of documents has been greater than anticipated and hence taken much longer to review than anticipated.").

We are surprised by YouTube's motion to compel given BayTSP's ongoing efforts to provide documents responsive to YouTube's subpoena. As you note repeatedly in the memorandum accompanying your motion, BayTSP has in good faith engaged in numerous distinct dialogues with you regarding its continued efforts, informing you of our progress. The discrete nature of these discussions is evidenced by YouTube's periods of silence at the close of each discussion. These sporadic conversations while BayTSP diligently worked do not amount to numerous meet-and-confers as claimed in YouTube's motion. Consequently, YouTube has prematurely filed its motion in violation of Local Rule 37-1 and Judge Ware's Standing Order.

Brandon Baum, Esq.

October 24, 2008

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Finally, in an additional attempt to amicably resolve any dispute YouTube may have with BayTSP, we provide the following as an update of the status of our production of documents pursuant to YouTube's subpoena. As stated on August 21, the burdensome number of documents has taken longer to review than anticipated. Nevertheless, we have spoken with Viacom's counsel and due to continued diligence by both BayTSP and Viacom, we anticipate that responsive documents will be made available to YouTube on a rolling basis beginning November 21, 2008. We therefore request that YouTube withdraw its improperly-filed motion to compel as moot and premature.

Please feel free to contact me should you wish to discuss this issue further.

Sincerely,

A handwritten signature in blue ink that reads "Kamran Jivani". The signature is fluid and cursive, with the first name being more prominent.

Kamran Jivani
Associate

KJ:kj

cc: Steve Hemminger, Esq.

LEGAL02/31007562v1

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October 31, 2008

VIA E-MAIL

Eric Evans, Esq.
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Two Palo Alto Square
3000 El Camino Real
Palo Alto, California 94306
Email: eevans@mayerbrown.com

Re: *Viacom International, Inc., et al. v. YouTube, Inc., et al.*, CV 08-08211

Dear Eric:

We are disappointed in YouTube's refusal to withdraw what we understand to be an unnecessary motion. BayTSP has worked diligently in good faith to provide the documents the parties agreed would be produced in response to YouTube's subpoena. Indeed, BayTSP and YouTube spent over seven months negotiating a plan for the production of documents. Further, as you know, BayTSP has responded to each of YouTube's status requests and has continually apprised YouTube of its progress. As stated in my October 24 letter, we anticipate that Viacom will be able to complete its review of some of the over half-million documents and that these documents will be made available to YouTube on a rolling basis beginning November 21, 2008.

In your October 28 letter, YouTube requests that BayTSP again set forth "a detailed statement of what it intends to produce" and withhold. YouTube's request is cumulative of the extended negotiations to reach an agreement as to what BayTSP would be producing. BayTSP will produce for review the documents it has agreed to produce. By way of background, BayTSP has collected and processed a data set of over one million documents. This data set was then searched for documents concerning "Viacom-related entities" (a scope requested by YouTube) using a list of over 1,000 search terms, the development of which YouTube refused to meaningfully contribute despite BayTSP's repeated request. BayTSP then reviewed these documents for privilege and excluded documents as appropriate. Finally, we have removed clearly non-responsive documents from the result set, including documents related to personal visits to websites, sensitive information regarding personal bank accounts, and documents containing personal phone numbers, etc. It is this responsive, non-privileged set of "Viacom-related entity" documents that BayTSP intends to produce. In addition to the foregoing, BayTSP will

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also produce database records and documents sufficient to show operations of its databases and CAP software.

We again request that YouTube remove its moot and premature motion to compel, which serves no purpose other than to divert third-party BayTSP's resources away from furthering efforts toward production of responsive documents.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kamran Jivani".

Kamran Jivani
Associate

KJ:kj

cc: Brandon Baum, Esq.
Steve Hemminger, Esq.

LEGAL02/31013945v2