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May 13, 2008

BY ELECTRONIC MAIL ONLY

Maria Ellinikos  
Akin Gump Strauss Hauer & Feld LLP  
580 California Street, Suite 1500  
San Francisco, California 94104

**Re: *Viacom International, Inc. v. Youtube, Inc.*  
No. 1:07-cv-2103 (S.D.N.Y.):  
Subpoena to BayTSP**

Dear Maria:

I write to confirm our May 12, 2008 teleconference.

**Production of Proprietary Database Contents and Related Documents:** You clarified that BayTSP would not produce its proprietary databases in native form, but preferred instead to export the responsive records in those databases to a standard delimited format. That format will include or be accompanied by a header file identifying the fields contained therein, which you indicated would be equivalent to the database schema. We have significant reservations about this approach in two respects. First, we are concerned that relevant metadata called for by the subpoena will be lost as the data is translated from its native format. Second, given your representations that BayTSP's production will omit nonresponsive records, interpreting those data without the database's actual schema may pose a substantial problem, even if the production includes all fields for any responsive record, as you suggest. We ask you to revisit these positions once again.

Additionally, based on our previous discussions, we understand that records will be deemed responsive if they relate to any of the Viacom entities and UGC properties described in the lists attached to your February 21, 2008 letter, even if such records might also relate to other BayTSP clients. You have agreed to attempt to produce the responsive database records no later than May 19, 2008, but if you cannot meet that deadline, you have agreed to produce sample records with headers by May 19, 2008 so that we can make preparations to use the records upon receipt, with the complete production to follow during the week of May 26, 2008 when you return from holiday.

You also have agreed to produce documents sufficient to show the operation and organization of BayTSP's proprietary databases and other software, which, as we have previously agreed, is without prejudice to further meet and confer after these documents are produced and have been reviewed, and if necessary, to a further subpoena seeking code.

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**Keyword Searches:** You agreed to provide BayTSP's list of search terms no later than Wednesday, May 14, 2008, conditioned on our agreement that providing that list would not, standing alone, waive any privilege or work product protection. You represented that BayTSP intends this list to be comprehensive, including abbreviations and other naming conventions, and that BayTSP requests that we review the list to confirm its adequacy or propose additions. You also agreed, to the extent that we propose additional terms, you would ensure that the searches to be run would capture BayTSP's abbreviations or other naming conventions for those additional terms. You confirmed that the keyword searches are to be run against BayTSP's documents stored outside its proprietary databases, including electronic mail messages, standard office documents (word processing, presentations, spreadsheets, etc.), Acrobat PDFs, and the like.

**Confidentiality Concerns of Viacom:** You have represented that BayTSP is contractually required to notify Viacom of BayTSP's proposed production of communications between BayTSP and Viacom, so that Viacom may file a motion to quash or modify the subpoena prior to production. We responded that Viacom's legitimate confidentiality interests already are protected by the protective order to which Viacom has stipulated.<sup>1</sup> In order to assess any contractual provisions that would seek to override Rule 45 of the FRCP, we requested that any agreements between BayTSP and Viacom entities already called for by the subpoena be produced now, so that we can assess the merits of any such claim. You suggested that the agreements were not "at your fingertips," but could be located easily, and we reiterate the request that they be produced now.

**Cost of Production:** You also have requested that YouTube bear the cost of BayTSP's document production, and in particular, the conversion of the files to a different format. We have repeatedly represented that we would prefer to receive production of BayTSP's documents in native format, as they have been kept in the ordinary course of business. Although we may be willing to accept production in alternative formats as a courtesy to BayTSP if we are given assurances that no relevant metadata is lost, we are not aware of any rationale under which YouTube should bear the cost of that conversion. However, we have agreed to table this issue pending our review of the BayTSP-Viacom agreements which may provide for reimbursement of

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<sup>1</sup> As we noted, the parties have stipulated to a second amended protective order, which is intended to address third-party confidentiality concerns. A copy of the proposed order, as well as a redline against the existing order, is attached.

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such costs. This is another reason why production of these agreements should be made now, before May 19, 2008 when you leave for holiday.

Have a safe and pleasant vacation,

/s/

Brandon Baum

BB/jmm

Enclosures