

As well as to increase the monetization that they share with these corporations who are enjoying the traffic originally aggregated by the independent content creators and Laborers such as Plaintiff. YouTube additionally kicks the independent content creator (who lives and breathes the YouTube motto and proclamation "Broadcast Yourself") to the curb in place of mega entertainment corporations in order to stave off litigation from these mega corporations who are now forced to provide their content to YouTube--since YouTube pirating users were giving it away free anyway--in order to split revenue with YouTube. And so, Plaintiff and his creative content labors bear the brunt of this intentional "business debacle" of Defendants' and their YouTube.com.

(d) This also goes to show that any time YouTube could be responsible for promoting Plaintiff, rather than the other way around, YouTube finds a way to put a stop to it. After the surge of traffic for Plaintiff's Video died down, Plaintiff's Video found its way back to the first page for the search terms "Girlfriend Avril Lavigne"--where it could be found just recently, but today (July 4, 2008) is not listed whatsoever under said search terms.

11.7 YouTube clearly manipulates their search results, as videos entitled "Lesbians Having Sex xxx Porn" and "xxx porn xxx" show up in the search results for the terms "Avril Lavigne Girlfriend" yet Plaintiff's Video, an Avril Lavigne Girlfriend parody, thoroughly tagged as such, does not. Further, the video entitled "xxx porn xxx" has only the following tags (keywords) listed: "PORN anal sex oral ass tit fuck get fucked cunt dick pussy porno fucking naked lingerie horny milf hot " yet comes up under a search for "Avril Lavigne Girlfriend".

11.8 By manipulating their search results, Defendants control the view count of the content found through a search on YouTube.com, which lends further credence to Plaintiff's allegations that the content he aggregated to YouTube.com was had mostly by his own efforts,

as well as to the allegation that YouTube cultivates and predestines its own Partners, rather than rewarding the naturally "top-drawing" as they have agreed and promulgated to do.

11.9 A month after Plaintiff's Video was originally removed by Defendants, RCA Records released another popular Avril Lavigne music video and Plaintiff's Girlfriend video began to garner hundreds of views again.

11.10 At that point, Plaintiff's same Girlfriend video was immediately removed again by YouTube, allegedly at the request of RCA once again, who were allegedly once again claiming that Plaintiff's Video violated their copyright, even though YouTube told Plaintiff a month prior that RCA had stated that their DMCA claim against Plaintiff's Video was made in error and that they had retracted it. Also, and reportedly by YouTube, RCA Records had filed DMCA claims against several other of Plaintiff's videos and, according to Heather and YouTube copyright, those DMCA claims by RCA were retracted as well, and those videos restored to Plaintiff's accounts as well.

11.11 After YouTube removed Plaintiff's Video a second time, in violation of the DMCA, Plaintiff sent YouTube copyright the email that defendant Heather sent him the month prior which stated that RCA Records had made an error in their copyright claim with respect to Plaintiff's Video and had thereby retracted their claim against Plaintiff's Video.

11.12 Defendant Harry replied to Plaintiff with a *form* response that provided a link to the DMCA counter-notification process. Harry completely ignored the email that Plaintiff forwarded to Harry which was sent to Plaintiff a month prior from defendant Heather--who is believed to be Harry's boss--and which cleared Plaintiff on RCA's 'mistaken' DMCA claim.

11.13 Plaintiff re-replied to Harry re-explaining the issue once again, yet Harry sent Plaintiff the exact same email, word for word, once again. And so Plaintiff was forced to file

another DMCA counter notification.

11.14 Harry emailed Plaintiff telling him that the DMCA counter process takes between 10 to 14 days, which is the proper and maximum amount of time afforded by the DMCA.

(THE DIGITAL MILLENNIUM COPYRIGHT ACT OF 1998, "[U]nless the copyright owner files an action seeking a court order against the subscriber, the service provider must put the material back up within 10-14 business days after receiving the counter notification.")

11.15 Twenty-one days after Plaintiff filed his second DMCA counter notification, and over two months since Plaintiff had been cleared by YouTube and the DMCA on this exact same video, Harry wrote back to Plaintiff, stating that Plaintiff's video content was being restored "*in accordance with the DMCA*".

11.16 YouTube had no DMCA right to remove Plaintiff's Video, especially after the already-completed DMCA process restored said Video a month earlier. Harry and YouTube were in clear and grossly cavalier violation of the DMCA.

11.17 Plaintiff emailed YouTube copyright asking what had happened, why the "mistake" was made twice and what could be done to prevent it in the future, or would Plaintiff have to file a DMCA counter notification on a monthly basis. Plaintiff never heard back from Harry at all, or anyone else at GooTube on this matter whatsoever, despite Plaintiff's numerous emails.

11.18 Plaintiff's Video was taken down and restored a second time, not in accordance with the DMCA, but in direct accordance with the opening popularity of RCA's new Avril Lavigne video, and in direct assault of the DMCA. And also because Plaintiff's Video may have served to detract from the views and record sales of YouTube's Partner, RCA Records, as Plaintiff's video was a pretty sharp criticism of RCA's and was received well by [once] Avril fans.

XII. YOUTUBE'S DECEPTIVE CONTESTS AND PROMOTIONS

12.1 TurboTax sponsored a contest on YouTube calling for the "Best Tax Rap" music video to be voted on by YouTube users with a cash prize of \$25,000 to go to the winner.

12.2 Plaintiff thought he had a good chance of winning the contest only if YouTube users were the ones voting--as it would be a parody, of course--so he set out to make a music video for the contest. TurboTax, by and through YouTube, denied Plaintiff's music video entry into the contest, against YouTube's contest terms. Plaintiff appealed to YouTube who deleted Plaintiff's video. See a further account of these allegations in the "YOUTUBE EMAIL DIGEST".

12.3 Around June of 2007, YouTube hosted the "YouTube Sketches Contest" which called for anyone in the United States to enter a 3-minute sketch and YouTube users would vote for the winner--who would receive \$25,000 cash and some other promotional offer as well.

12.4 Plaintiff didn't expect a lot of competitive sketches to be entered into the contest, so he created a low-budget version of a high concept sketch that he had written a few years earlier. It didn't come out nearly as good as Plaintiff had wanted, he didn't quite have the tools to actualize a complex skit like this, but he entered it anyway and felt it had a good chance of winning. Since Plaintiff's family was in this sketch, he had them enter the sketch as their entry, and Plaintiff entered another video from his own YouTube account as his entry.

12.5 Neither of Plaintiff's sketches were selected by YouTube as the top 20 semi-finalists that YouTube users would then be allowed to vote for the winner from.

12.6 However, YouTube did select some pretty unfunny sketches as semi-finalists. But since "unfunny" is an opinion, YouTube figured they could get away with controlling the outcome of this [contest] too. Here's how YouTube worked it: they chose a few of their top-drawing

Partners with fair sketches as semi-finalists, and then chose a bunch of even less amusing sketches to remove the competition for their Partners and thereby see their predestined user to victory.

12.7 'Awkward Pictures', a YouTube Partner selected as a semi-finalist in the contest (who would later go on to win the contest) additionally had their contest entry featured on the home page of YouTube.com, so that their sketch--the sketch that YouTube clearly wanted to win--would get over a hundred thousand views; whereas, most of the other semi-finalists were lucky to get a few thousand views. And since you won the contest by the number of votes you received, it was only simple math that the entry by Awkward Pictures would win.

12.8 A YouTube Partner 'TokenBlackChic' states in her video entitled "Sketchies", *"I think a lot of people notice this: when you enter a contest on YouTube, it's usually the person that has the most subscribers that will win."* Having the most views is substantially the same leverage, so YouTube's featuring of the video they want to win essentially guarantees the victory.

12.9 In addition, YouTube made it almost impossible for YouTube users to vote for the semi-finalist entrants, further eliminating competition for their predestined winner -- this fact is made self-evident by the unusually low number of views that the other sketches garnered when the voting was advertised on the homepage of YouTube.com. Plaintiff personally spent hours trying to find out where to vote or even find the semi-finalists, and that was after clicking the 'VOTE HERE' link on YouTube's homepage. Plaintiff additionally emailed YouTube for instructions on where to vote, an email which YouTube never answered.

12.10 Further, while the entry by 'Awkward Pictures' wasn't a bad joke or anything, it was merely a 20-second "knock knock" type joke and the YouTube contest terms called for a "3-minute sketch."

12.11 To reiterate, the whole YouTube Sketchies Contest was an obvious fraud, perpetrated by Defendants, and the winner was effectually pre-chosen by YouTube, in violation of YouTube's contest terms to have YouTube users select the winner, as well as contrary to YouTube's promulgation of the nature of the contest.

12.12 Without faulting YouTube, Plaintiff emailed YouTube to alert them to a fraud in their Sketchies Contest, and received a reply signed by Mike from "YouTube, LLC" asking, "*What is the nature of the fraud you allege?*" Plaintiff believes that this email from Mike was being posed to garner any information that Plaintiff might have to prove the nature of the contest fraud that they were already aware of. Plaintiff replied generally, wanting to establish communication before opening up too much; however, Mike never responded, nor did anyone else from YouTube.

XIII. THE YOUTUBE "PARTNER PROGRAM"

13.1 Plaintiff applied to the YouTube "Partner Program" (hereinafter "Program") over a year ago through various means such as emailing his request to YouTube, filling out forms that YouTube staff had directed him with links to, such as the aforementioned advertising request form. In one email, Plaintiff told YouTube that he would be airing his content on TV and he would only be able to direct viewers to his YouTube webpages if he could share in revenue for that effort. Plaintiff never heard back on that proposal.

13.2(a) On June 28, 2007, Plaintiff received an email from YouTube signed by defendant Kavitha, which stated:

Hi there, Thanks for your email. We appreciate your interest in working with YouTube. The quickest way to speak with us about forming a content partnership is to enter your information at <http://www.youtube.com/advertise>. Someone will get in touch with you shortly once you've done that. Hope this helps," [signed] Kavitha, The YouTube Team.

13.2(b) Plaintiff filled out that form (located at <http://www.youtube.com/advertise>) again, but didn't hear back shortly on it, nor did he ever hear back on it. Plaintiff emailed Kavitha back again, telling her that he had already filled out that form awhile ago. And she wrote back,

"Please be patient, someone will get in touch with you shortly."

13.3 Plaintiff never heard back on the status of this, his original application to the Program, despite his numerous followup correspondences to YouTube on the matter.

13.4 **Eight months later**, on February 26, 2008, Plaintiff received an email from YouTube which had a link to a new and improved Partner Program application and which stated:

*"Hi there,
As you may have heard, we're expanding the YouTube Partner Program and we thought you may be a good candidate.
Becoming a partner will enable you to participate in ad revenue sharing and new syndication opportunities.
Here's what you'll need to do:"*

[followed by a link to a new and improved Partner Program application located at the URL: <http://www.YouTube.com/Partners>]

13.5 Plaintiff completed this new Partner application and attached seven other accounts in an area that allowed you to add multiple accounts to be considered altogether for the Program.

13.6(a) Several days after re-applying for the Program on this new Partner application, Plaintiff visited the application page and it showed his completed application and where it once said "Apply now", it now said, "Your Application is Processing."

13.6(b) Every day or two, Plaintiff revisited the application page and each time it said "Your Application is Processing." However, on March 10, 2008, about two weeks after filling out this new application, Plaintiff revisited the application page again, but instead of it saying "Your Application is Processing", it reverted back to saying "Apply now."

13.7 Plaintiff emailed YouTube about the application form reverting from stating "Your Application is Processing" back to stating "Apply now" and defendant Evelyn responded telling Plaintiff that she couldn't find his application and that he should try applying again if he was seeing the "Apply now" button.

13.8 Plaintiff re-applied, but the form was still saying "Apply now", so Plaintiff copied the completed application and emailed it to Evelyn who responded to Plaintiff, telling him that she now saw the application and that the "screening team" should get to it soon.

13.9 About a week later, with still no reply from YouTube on the status of Plaintiff's application to the Program, Plaintiff emailed Evelyn asking for a non-precise estimate of how long it might take: *"Ya know, a ballpark (1 to 6 weeks), whatever, I'm not looking for a precise answer."*

13.10 About another week later, with still no reply from YouTube on the status of Plaintiff's application to the Program, nor a reply on a ballpark time frame estimate, Plaintiff wrote Evelyn, stating *"What normally happens with Youtube and I is some nice lady like yourself puts in these requests and then I never hear back. This has been going on for years..."*

13.11 The next day, on March 27, 2008, over a month after this new re-application to the Program, and most likely due to Plaintiff's rigorous followup, Plaintiff received an email response to his Program application (hereinafter "Denial Letter") from YouTube, which stated:

"Dear BennyBaby,

Thank you for your interest in the YouTube Partner Program. Our goal is to extend invitations to as many partners as we can. Unfortunately we are unable to accept your application at this time. Advertisers on YouTube are currently looking to advertise against family safe content.

Applications are reviewed for a variety of criteria, including but not limited to the size of your audience, country of residence, quality of content, and consistency with our Community Guidelines and Terms of Use. Please review the program qualifications (<http://www.youtube/partners>) for a complete list of our criteria.

As we continue to expand the program we hope to be able to accept a broader group of partners. We have registered your interest in the program and will continue to monitor your account for potential future acceptance into the program.

*Thank you for your understanding.
The YouTube Team"*

13.12 And so now, about a year after Plaintiff's original applications to the Program, and a month after his latest application to the Program, Plaintiff finally receives an answer on his application to the Program: that he is being denied on the grounds that his content isn't "family safe" enough for these "advertisers" who are looking to advertise against it. Or at least that's how Plaintiff interpreted YouTube's meaning in their Denial Letter. It was somewhat vague.

13.13 And since it was vague, Plaintiff replied to the Denial Letter several times with several different inquiries about the Program and requesting further clarification on the denial grounds. Defendant Evelyn eventually replied with an indirect email that at least gave Plaintiff an answer to an inquiry that he didn't actually query: a confirmation of what the general reason for the denial was. Plaintiff did not hear back on his other queries regarding the Program and the specifics of his denial. The following is the full text of the email that Plaintiff received from Evelyn:

*Hi Ben,
As mentioned before, as we continue to expand the program we hope to be able to accept a broader group of partners. We have registered your interest in the program and will continue to monitor your account for potential future acceptance into the program. Unfortunately we are unable to accept your application at this time as advertisers on YouTube are currently looking to advertise against family safe content.
[signed] Sincerely, Evelyn*

The last sentence of the above email contained the confirmation that the original Denial Letter wasn't 100% clear on: that a lack of "family safe" content was the reason (though completely unfounded) for Defendants' denial of Plaintiff's application to the Program.

13.14(a) The winged Denial Letter lists a set of criteria used to accept or deny applicants into the revenue-sharing Program. One of these criterion is subjective: "quality of content", the others are substantially objective: "size of audience", "country of residence", and consistency with YouTube's "Community Guidelines" and "Terms of Use." Plaintiff is not given any of these reasons as the reasons for denial, nor is he given any subjective reason at all. He is given the somewhat objective reason that his content wasn't "family safe" enough for advertisers to be willing to advertise against. A denial reason that isn't even one of the denial reasons.

13.14(b) On the Program application page (www.youtube.com/partners), the qualifications are: *"To become a partner, you need to meet these criteria:"* 1, *"You **create original videos** suitable for online streaming";* 2, *"You **own the copyrights...**";* and 3, *"You regularly upload videos that are viewed by thousands of YouTube users."* Plaintiff met all of these criteria, and, additionally, he was not given failure to meet any of these criteria as the reasons for his denial to the Program anyway. He was given the not-having-"family safe"-content reason for denial.

13.15 This "family safe" reason for denial, also somewhat objective, is completely bogus and fraudulent on its face and there is **too much** proof of the falsity of this claim by YouTube. For one, "Ads by Google" (Google being a popular advertiser on YouTube) are regularly placed on adult content--or content that isn't family safe by any conventional standards--and the Google ads often themselves advertise adult content. On YouTube.com, Ads by Google appear alongside Playboy videos on Playboy's YouTube Partner account.

13.16(a) *The term "family safe", when **quoted** herein this Complaint, is used to explain what YouTube considers suitable for families by illustrating the content that they have deemed "family safe" by their admission of said content--and the user who generated it--into their Partner Program, and/or by the practice of allowing Partner videos with non-family safe content to remain in their Partner accounts. The term "family safe" will also be used to expose YouTube's fraudulent Denial Letter in denying Plaintiff entry into the revenue-sharing Partner Program on the grounds of not having "family safe" content for advertisers to advertise against. And so the term will be used to illustrate content that is not actually family safe or that is in fact less family safe than Plaintiff's content, by YouTube's standards. In other words, "family safe" when quoted herein, doesn't necessarily mean family safe, it means "family safe" by YouTube policy and/or practice.*

13.6(b) In TokenBlackChic's aforementioned "sketchies" video, Jamie attempts to have you look up her ultra mini-skirt. Not surprisingly, this "upskirt video" is Jamie's highest viewed video--and possibly her highest-quality video as well--with the exception of her e-Valentine video which was more highly viewed because it was featured and promoted by YouTube. Jamie also uses the phrase, "...throwing his entire cock into a prostitute" in another one of her YouTube-deemed "family safe" videos.

13.17 The #19 Most Viewed YouTube Partner of all time, the infamous 'LonelyGirl15' has "family safe" content consisting of teen soap operas--which use sexual allure to attract young viewers--starring a girl who was 16 at the time she aired her first video in her YouTube serial. The thumbnails for many of her videos feature a close up shot of her breasts. Some of the more "family safe" titles include "Boy Tied Up", "Girl Tied Up", "Getting Wet", "Stiff", "Groping in the Dark", "Playing with Wood", "4 Girls, 2 Guys" (with 1.6 million views), "Cant' Sleep... with Me",

"xxKissKissxx", and "Deep Throat." Plaintiff reminisces similar "family safe" titles while once scanning the DVD's listed in an internet porn movie catalog.

13.18 The more sexually-based a video by 'LonelyGirl15' appears, the more views it normally has. For example, LonelyGirl's video entitled "Bullet to the Head"--which features a video thumbnail of a dressed man--only has about 24,000 views, compared with her video entitled "Girl Tied Up"--which features a video thumbnail close up of LonelyGirl's breasts--and has over 11 million views.

13.19 YouTube Partner 'raz0rsex' has a "family safe" video where she, 'raz0rsex', a young lady, goes around asking adult men what their favorite sexual position is.

13.20 Plaintiff doesn't know of anyone who would call "50Cent" family friendly, including the music ratings board which places "EXPLICIT LYRICS" warnings on his albums. 50 Cent is not considered by anyone to be a comedian, and in 50 Cent's latest video, he states, "*I hold a grudge. I'll shoot you. I'll stab you. I'll kill you. Or maybe you'll just disappear.*" and in an uncensored music video, 50 Cent raps the YouTube-deemed "family safe" lyrics "*Let her ass drop, like my '64. ... I dismiss a hoe, Bitch leave me now, I fuck when I want, I do what I like...I give her something to suck...*"

13.21 YouTube Partner 'PerezHilton' has a "family safe" video entitled "He Stuck His Finger Up His...!" where he uses such "family safe" phrases as "*suck cock*", an actor who "*blew his load*" and "*came*", and how he'd like to have his "*hole*" "*fingered*". An ad for 'EarthKeepers' is overlaid *on* the video--and to the right of the video--by YouTube. Clearly, this 'EarthKeepers' sponsor doesn't mind being advertised against non-family safe content.

13.22 'PerezHilton' also has a video entitled "Warning: Nudity In This Video"--with a Hewlett-Packard ad overlaid *on* the video and to the right--where 'Perez' drops his pants at the end of the video. To his credit, PerezHilton does have a video entitled, "You Tube Doesn't Care About You" where he likens YouTube to an "inconsiderate boyfriend" and ends the video with *"Fuck You YouTube! Fuck You!!"* Of course he made this video after becoming a Partner.

13.23 PerezHilton also has a "family safe" music video called "Wild Thing" with girls in g-strings gyrating their butts at the camera and a lot of other "family safe" references.

13.24 YouTube Partner 'Zzx4k' has a "family safe" video where a man shoots himself in the head.

13.25 YouTube Partner 'Montagraph' has a video entitled "Blow It Out Your ASS" where he repeatedly uses such YouTube-deemed "family safe" phrases as *"fuck you"*, *"motherfuckers"*, *"rub dicks"*, *"jerk off"*, and *"blow it out your fucking ass!"*

13.26 YouTube Partner 'College Humor' has a "family safe" video that takes place at a boozing college party where a kid talks about putting his teeth around a girl's nipple and pulls his head out from a passed-out girl's shirt.

13.27 YouTube Partner 'BarelyPolitical' has a "family safe" video entitled "She Wants My ... Stimulus PACKAGE", the operative sexual word being "package", and features a girl in a bikini rubbing her breasts on a man's face.

13.28 YouTube Partner "TheRealParis" has a "family safe" video featuring Chris Crocker in very skimpy underwear with his legs spread wide open and his crotch aimed at the camera. TheRealParis' first two videos feature an [underage?] girl in just a bra.