

UNITED STATES DISTRICT COURT
FOR THE DISTRICT COURT OF MASSACHUSETTS

BENJAMIN LIGERI,

Plaintiff

v.

YOUTUBE, INC., *et al.*,

Defendants.

Case No.: 08 CA 11394 DPW

**LEAVE TO FILE GRANTED
ON NOVEMBER 25, 2008**

**REPLY DECLARATION OF LANCE KAVANAUGH
IN SUPPORT OF DEFENANTS' MOTION TO DISMISS OR TRANSFER**

I, Lance Kavanaugh, declare as follows:

1. I am an employee of defendant Google Inc. ("Google"). Defendant YouTube, LLC ("YouTube") is a wholly-owned subsidiary of Google. I am Product Counsel for YouTube. Except where otherwise noted, I have personal knowledge of the facts set forth herein and, if called as a witness, could and would testify competently thereto.

2. To upload videos or view restricted content, users of the YouTube website must set up a YouTube account. The process for setting up a YouTube account requires users to agree to the YouTube Terms of Use ("Terms of Use"), and has required this agreement since at least March 2006.

3. Attached hereto as Exhibit A is the code used to generate the YouTube account creation webpage displayed in March 2006, when Mr. Ligeri created his "Bennybaby" YouTube account. Attached hereto as Exhibit B is the code used to generate the YouTube account creation webpage displayed in March 2007, when Mr. Ligeri created his "ProfessorCarlton" YouTube account. The code attached as Exhibits A and B was taken from the document revision history system at YouTube used to store past versions of web page code.

4. The code for the account creation pages as of March 2006 and March 2007 provides a link to the then-existing Terms of Use. The Terms of Use are linked to from the phrase "terms of use" on the account creation page. As shown by Exhibit A and B, both the March 2006 and March 2007 account creation pages expressly require the account holder to "agree to the terms of use and privacy policy" in order to create a YouTube account, as is the case with the account creation process today.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration is executed the 20th day of November, 2008, at San Bruno, California.



LANCE KAVANAUGH