

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

BENJAMIN LIGERI,  
Plaintiff,  
v.  
YOUTUBE, INC., *et al.*,  
Defendants.

Case No.: 08 CA 11394 DPW

**PROPOSED SCHEDULE**  
**PURSUANT TO LOCAL RULE 16.1**

Pursuant to Local Rule 16.1(D) and the Court's December 2, 2008 Order, defendants Google Inc. and YouTube LLC ("Defendants"), hereby submit the following statement:

**1. Agenda of Matters to be Discussed at the December 30, 2008 Scheduling Conference**

- a. Defendants' pending motion to dismiss or transfer;
- b. Pre-trial schedule and discovery matters;
- c. Trial by magistrate judge;
- d. Report on settlement discussion status; and
- e. Entry of a proposed stipulated protective order governing the treatment of confidential and/or proprietary materials produced in discovery.

**2. Rule 26(f) Conference**

Pursuant to Fed. R. Civ. P. 26(f) and Local Rule 16.1(B), Defendants drafted a proposed joint statement and discovery plan, which Ligeri reviewed. On December 19, 2008, Defendants' counsel and Ligeri discussed the joint statement by telephone, and Ligeri subsequently submitted

an addendum, attached as Exhibit A. This statement reports the results of that exchange, and proposes a discovery plan and pre-trial schedule as follows. Ligeri did not agree to sign this statement.

**3. Pending Motion**

Defendants filed a motion to dismiss or transfer on October 31, 2008 based on a forum selection clause in defendant YouTube's Terms of Use. Ligeri submitted a response on November 17, 2008, and Defendants filed a motion for leave to file a reply on November 24, 2008, which the Court granted on November 25, 2008. Defendants filed the reply papers on November 25, 2008. The parties agree that this unresolved motion is ripe for adjudication, and the parties are prepared to discuss the motion and the Terms of Use at the December 30, 2008 scheduling conference.

**4. Rule 26(a)(1) Initial Disclosures**

Pursuant to the Court's Order of December 2, 2008, the parties have agreed to defer scheduling an exchange of the initial disclosures required by Fed. R. Civ. P. 26(a)(1) until resolution of the pending motion. If the pending motion to dismiss/transfer is resolved in such a manner as to require initial disclosures in this Court, the parties agree to exchange initial disclosures by January 12, 2009.

**5. Subjects of Discovery**

**a. Ligeri's Proposal**

Plaintiff contends the dispute primarily involves the amount of damages defendants owe him. He further contends that YouTube's Terms of Use are invalid. Therefore, discovery will focus on the value of his content and the invalidity of the Terms of Use. Plaintiff's full proposal is attached in his addendum, Exhibit A.

## **b. Defendants' Proposal**

The pleadings demonstrate that this is primarily a legal contract dispute concerning defendant YouTube's Terms of Use, and Ligeri's acceptance of the Terms of Use.

Consequently, discovery should largely consist of issues relevant to the Terms of Use.

## **6. Limitations on Discovery**

In the event of discovery, the parties have agreed to a limit of ten (10) depositions per side (consisting of one, seven hour day each), twenty-five (25) interrogatories per party, twenty-five (25) requests to admit per party, and two (2) separate sets of production. The parties believe that no departure from the limitations set forth in Local Rule 26.1(C) is necessary in this case. Plaintiff does not see a need to limit the number of experts allowed. His additional proposals regarding experts are included in his addendum, attached as Exhibit A. Defendants do not expect that expert testimony will be necessary in this case. However, in the absence of agreement, defendants propose that one expert witness be allowed per side, and that the deposition of such expert be limited to one, seven-hour day as provided by Fed. R. Civ. P. 30(d)(1). The parties did not make any agreements on the subject of privilege and trial preparation material, but will meet and confer if the need arises.

## **7. Scheduling**

The parties agree that the initial disclosures required by Fed. R. Civ. P. 26(a)(1) should be due on or before January 12, 2009, if necessary. The parties agree that the last date to file dispositive motions and opening briefs is on or around sixty days after the close of all discovery, with thirty days allowed for a response and fifteen days allowed for a reply. The final pre-trial conference should take place thirty days after filing of said replies, subject to the Court's availability.

The proposal set forth below is subject to approval of the Court and any further motions by the parties, either jointly or individually.

- a. Joinder of other parties to close on March 1, 2009.
- b. Amendment of pleadings to close on March 1, 2009.
- c. Fact discovery to close on May 1, 2009.
- d. Expert discovery, if necessary, to close on June 30, 2009.
- e. Last date to file dispositive motions is August 31, 2009.
- f. Final pre-trial conference to take place on November 16, 2009.
- g. Trial (estimated 1-2 days) to take place in or about February 2010, at the Court's convenience.

**8. Protective Order**

The parties will request that, pursuant to Fed. R. Civ. P. 26(c), the Court enter a stipulated protective order governing the handling of confidential and/or proprietary materials produced in discovery. The parties agree to meet and confer regarding the text of a proposed order and that production of any confidential documents that would otherwise be called for in a party's initial disclosures be deferred until such order is entered.

**9. Trial by Magistrate Judge**

The parties have not reached agreement on the issue of consent to trial by a Magistrate Judge.

**10. Settlement**

Mr. Ligeri sent Defendants a written settlement proposal pursuant to Local Rule 16.1(C). Defense counsel conferred with Defendants and will respond to the proposal by the time of the scheduling conference.

11. **Certification Pursuant to Local Rule 16.1(D)(3)**

- a. Ligeri's addendum is attached hereto as Exhibit A.
- b. Defendants' certification is attached hereto as Exhibit B.

BENJAMIN LIGERI

GOOGLE, INC.; YOUTUBE LLC:  
By their attorneys

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Dated: December 22, 2008

**CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified in the Notice of Electronic Filing and paper or electronic copies will be delivered to those indicated as non-registered participants on December 22, 2008.

/s/ James Conroy  
James Conroy