

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

BENJAMIN LIGERI,

Plaintiff,

v.

YOUTUBE, LLC.,
GOOGLE INC.,

Defendants.

Case No.: 08 CA 11394 DPW

**DECLARATION OF LANCE KAVANAUGH IN SUPPORT OF DEFENDANTS'
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. YouTube was officially launched in December 2005. YouTube allows people to easily upload and share video clips on www.YouTube.com and across the Internet.

3. YouTube allows anyone to see videos on the YouTube website. However, 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 (and thus being able to submit videos on YouTube) requires users to agree to the YouTube Terms of Use ("Terms of Use").

4. Based on my review of YouTube's document revision history for the Terms of Use, the attached Exhibit A represents the Terms of Use in effect as of December 2005, when YouTube launched. Attached hereto as Exhibit B are the Terms of Use in effect as of August 7, 2008. Based on my review of YouTube's revision history for the Terms of Use, both of these versions of the Terms of Use, and all intermediate versions of the Terms of Use, provide that "Any claim or dispute between you and YouTube that arises in whole or in part from the YouTube Website shall be decided exclusively by a court of competent jurisdiction located in San Mateo County, California."

5. The online sign-up process for a YouTube account begins at <http://www.youtube.com/signup?next=/>. In the process of creating an account at YouTube's website, users are presented with a link to the Terms of Use. A copy of the "Create your YouTube Account" page is attached hereto as Exhibit C. As shown, before a user's account will be activated, the user must click a box stating, "I agree to the Terms of Use and Privacy Policy." The account will not be activated absent electronic acceptance of the Terms of Use and Privacy Policy.

6. In addition, each time a user uploads a video on YouTube, the user is reminded of the Terms of Use by a warning stating, "By clicking 'Upload Video' you are representing that this video does not violate YouTube's Terms of Use." This warning includes a link to the Terms of Use.

7. YouTube offers an opportunity for YouTube users to apply for the YouTube Partner Program ("Partner Program"). The Partner Program requires that applicants have a YouTube account and thus that they have agreed to the Terms of Use. In addition, the Partner Program application process specifically affirms that uploaded videos are subject to the Terms of Use. A copy of the introduction page for the Partner Program is attached hereto as Exhibit D.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration is executed the 30th day of October, 2008, at San Bruno, California.



LANCE KAVANAUGH