

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

VIACOM INTERNATIONAL INC.,
COMEDY PARTNERS,
COUNTRY MUSIC TELEVISION, INC.,
PARAMOUNT PICTURES CORPORATION,
and BLACK ENTERTAINMENT TELEVISION
LLC,
Plaintiffs,
v.
YOUTUBE INC., YOUTUBE, LLC, and
GOOGLE, INC.,
Defendants.
Case No. 1:07-cv-02103 (LLS)
(Related Case No. 1:07-cv-03582 (LLS))
DECLARATION OF WILLIAM M.
HOHENGARTEN IN SUPPORT OF
VIACOM'S MOTION FOR
PARTIAL SUMMARY JUDGMENT

I, William M. Hohengarten, hereby declare as follows:

1. I am a partner with the law firm Jenner & Block LLP and represent the plaintiffs in the above-captioned action ("Viacom"). I submit this declaration in support of Viacom's Motion for Partial Summary Judgment on Liability and Inapplicability of the Digital Millennium Copyright Act Safe Harbor Defense. Attached to this declaration are Exhibits referenced in Viacom's Memorandum of Law and Viacom's Statement of Undisputed Facts in Support of Viacom's Motion for Partial Summary Judgment. I make this declaration based on personal knowledge, except where otherwise noted herein.

### **Fung Slip Opinion**

2. Attached as Exhibit 1 for the Court's convenience is a true and correct copy of the slip opinion in *Columbia Pictures Industries, Inc. v. Gary Fung*, No. CV 06-5578 SVW (C.D. Cal. Dec. 21, 2009).

### **Solow Declaration**

3. Attached as Exhibit 2 are the Declaration of Warren Solow in Support of Plaintiffs' Motion for Partial Summary Judgment, dated March 3, 2010, and Exhibits A-G thereto.

### **Sum of YouTube View Count Data for Viacom Clips in Suit**

4. During discovery, Viacom identified to Defendants the infringing video clips of Viacom's copyrighted works that have appeared on YouTube without authorization and that are at issue in this lawsuit ("Clips in Suit"). The Clips in Suit are listed in Exhibits F and G to the Declaration of Warren Solow, which is Exhibit 2 to this Declaration. In response to discovery requests, Defendants have produced data showing the number of times each Clip in Suit was viewed on the YouTube website ("YouTube View Count Data"). Pursuant to Fed. R. Evid. § 1006, an employee of Jenner & Block LLP, working at my direction, summed the YouTube View Count Data for all Clips in Suit and arrived at a figure of over 507 million views.

### **Documents Produced by Defendants**

5. The documents listed below in paragraphs 6 through 201 are true and correct copies of documents produced by Defendants in this action, and accordingly are marked by Defendants with a Bates number beginning with the prefix "GOO001-".

6. Attached as Exhibit 3 is a true and correct copy of a document produced by Defendants marked with the Bates range GOO001-00303096-104.

7. Attached as Exhibit 4 are a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-00011355, a true and correct copy of an associated email attachment marked with the Bates number GOO001-00011356, and a true and correct copy of an associated email attachment marked with the Bates number GOO001-00011357. These documents were introduced as Exhibit 12 at the Rule 30(b)(6) deposition of David King, Exhibit 18 at the deposition of Chris Maxcy, and Exhibit 30 at the deposition of David Eun.

8. Attached as Exhibit 5 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-02757578.

9. Attached as Exhibit 6 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-00660588. This email exchange was introduced as Exhibit 8 at the deposition of Chad Hurley and as Exhibit 15 at the deposition of Zahavah Levine.

10. Attached as Exhibit 7 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-01907664.

11. Attached as Exhibit 8 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-01424049-50.

12. Attached as Exhibit 9 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-05951723-37.

13. Attached as Exhibit 10 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-02482760. This email exchange was introduced as Exhibit 2 at the deposition of Cuong Do.

14. Attached as Exhibit 11 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-00561567-82. This document was introduced as Exhibit 12 at the deposition of Micah Schaffer.

15. Attached as Exhibit 12 are a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-00744094, and a true and correct associated email attachment produced by Defendants marked with the Bates number range GOO001-00744095-152.

16. Attached as Exhibit 13 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-00044974-82. This document was introduced as Exhibit 7 at the deposition of Heather Gillette.

17. Attached as Exhibit 14 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-07167907-08.

18. Attached as Exhibit 15 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-00504044-45.

19. Attached as Exhibit 16 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-00629095. This email exchange was introduced as Exhibit 7 at the deposition of Brent Hurley, Exhibit 1 at the deposition of Cuong Do, and Exhibit 8 at the deposition of Zahavah Levine.

20. Attached as Exhibit 17 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-00629474.

21. Attached as Exhibit 18 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-00839842-46.

22. Attached as Exhibit 19 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-00007027-29.

23. Attached as Exhibit 20 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-02403826-27.

24. Attached as Exhibit 21 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-02824049-52.

25. Attached as Exhibit 22 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-00762173-198. This document was introduced as Exhibit 13 at the deposition of Brent Hurley.

26. Attached as Exhibit 23 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-07728393-95.

27. Attached as Exhibit 24 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-00522244. This email exchange was introduced as Exhibit 5 at the deposition of Micah Schaffer.

28. Attached as Exhibit 25 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-05172407.

29. Attached as Exhibit 26 are a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-00630641, and a true and correct copy of an associated email attachment produced by Defendants marked with the Bates number GOO001-00630642. These documents were introduced as Exhibit 20 at the deposition of Brent Hurley.

30. Attached as Exhibit 27 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-03060898-904.

31. Attached as Exhibit 28 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-00558783-84.

32. Attached as Exhibit 29 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-02761607-11.

33. Attached as Exhibit 30 are a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-00420319, and a true and correct copy of an associated email attachment produced by Defendants marked with the Bates number GOO001-00420320-27.

34. There is no Exhibit 31 to this Declaration, and that exhibit number is therefore intentionally left blank.

35. Attached as Exhibit 32 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-03631419.

36. Attached as Exhibit 33 are a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-03406085, and a true and correct copy of an associated email attachment produced by Defendants marked with the Bates number GOO001-03406086.

37. Attached as Exhibit 34 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-00988969-72. This email exchange was introduced as Exhibit 15 at the deposition of Heather Gillette and as Exhibit 18 at the deposition of Kevin Donahue.

38. Attached as Exhibit 35 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-00953867-69. This email exchange was introduced as Exhibit 14 at the deposition of Heather Gillette.

39. There is no Exhibit 36 to this Declaration, and that exhibit number is therefore intentionally left blank.

40. Attached as Exhibit 37 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-01627276-79. This email exchange was introduced as Exhibit 2 at the Rule 30(b)(6) deposition of Chris Maxcy.

41. Attached as Exhibit 38 are a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-03045959, and a true and correct copy of an excerpt from an associated email attachment produced by Defendants marked with the Bates number range GOO001-03045960-8245.

42. Attached as Exhibit 39 are a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-00794737, and a true and correct copy of an associated email attachment marked with the Bates number range GOO001-00794738-58. These documents were introduced as Exhibit 15 at the deposition of David Eun, Exhibit 15 at the deposition of David Drummond, Exhibit 6 at the deposition of Eric Schmidt, Exhibit 4 at the deposition of Bhanu Narasimhan, and Exhibit 3 at the deposition of Peter Chane.

43. There is no Exhibit 40 to this Declaration, and that exhibit number is therefore intentionally left blank.

44. Attached as Exhibit 41 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-03114019. This email exchange was introduced as Exhibit 3 at the deposition of Bhanu Narasimhan.

45. Attached as Exhibit 42 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-00802317.

46. Attached as Exhibit 43 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-06555098-99. This email exchange was introduced as Exhibit 8 at the deposition of Bhanu Narasimhan.

47. Attached as Exhibit 44 are a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-00990640, and a true and correct copy of an associated email attachment marked with the Bates number GOO001-00990641. These documents were introduced as Exhibit 5 at the deposition of Eric Schmidt, Exhibit 11 at the deposition of Wendy Chang, Exhibit 14 at the deposition of David Drummond, Exhibit 2 at the deposition of Larry Page, and Exhibit 2 at the deposition of Peter Chane.

48. Attached as Exhibit 45 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-03592968-69. This email exchange was introduced as Exhibit 4 at the deposition of Peter Chane.

49. Attached as Exhibit 46 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-03594244. This email exchange was introduced as Exhibit 8 at the deposition of Peter Chane.

50. Attached as Exhibit 47 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-05084213.

51. Attached as Exhibit 48 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-00562962-65. This email exchange was introduced as Exhibit 12 at the deposition of Patrick Walker.

52. Attached as Exhibit 49 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-00566289. This email exchange was introduced as Exhibit 12 at the deposition of Peter Chane.



53. Attached as Exhibit 50 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-00495746-57. This email exchange was introduced as Exhibit 6 at the deposition of David Eun and as Exhibit 9 at the deposition of Peter Chane.

54. Attached as Exhibit 51 are a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-00496021, and a true and correct copy of an associated email attachment marked with the Bates number range GOO001-00496022-62. These documents were introduced as Exhibit 9 at the deposition of David Eun, Exhibit 9 at the deposition of Omid Kordestani, and Exhibit 13 at the deposition of Peter Chane. The email attachment was introduced as Exhibit 7 at the deposition of Bhanu Narasimhan.

55. Attached as Exhibit 52 are a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-00496614, and a true and correct copy of an associated email attachment marked with the Bates number range GOO001-00496615-47. These documents were introduced as Exhibit 8 at the deposition of Eric Schmidt, Exhibit 10 at the deposition of Omid Kordestani, Exhibit 18 at the deposition of David Drummond, Exhibit 7 at the deposition of Sergey Brin, Exhibit 16 at the deposition of Peter Chane, and Exhibit 2 at the deposition of Jonathan Rosenberg.

56. Attached as Exhibit 53 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-01495915-18.

57. Attached as Exhibit 54 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-02055019-20. This email exchange was introduced as Exhibit 35 at the deposition of David Drummond.

58. Attached as Exhibit 55 are a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-02693804, and a true and correct copy of an associated email attachment marked with Bates number range GOO001-02693808-13.

59. Attached as Exhibit 56 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-05150988.

60. Attached as Exhibit 57 are a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-04430721, and a true and correct copy of an associated email attachment produced by Defendants marked with the Bates number range GOO001-04430722-722.003. These documents were introduced as Exhibit 10 at the deposition of Peter Chane.

61. Attached as Exhibit 58 are a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-02361246, and a true and correct copy of an associated email attachment produced by Defendants marked with the Bates number range GOO001-02361247-48.

62. Attached as Exhibit 59 are a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-00496065, and a true and correct copy of an associated email attachment produced by Defendants marked with the Bates number range GOO001-00496066-94. These documents were introduced as Exhibit 8 at the deposition of David Eun and as Exhibit 13 at the deposition of Wendy Chang.

63. Attached as Exhibit 60 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-00502665-93. This document was introduced as Exhibit 10 at the deposition of David Eun and as Exhibit 5 at the deposition of Tim Armstrong.

64. Attached as Exhibit 61 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-00482516-18. This email exchange was introduced as Exhibit 13 at the deposition of Patrick Walker.

65. Attached as Exhibit 62 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-00496651-54. This email exchange was introduced as Exhibit 12 at the deposition of David Eun, Exhibit 8 at the deposition of Omid Kordestani, Exhibit 17 at the deposition of David Drummond, Exhibit 7 at the deposition of Eric Schmidt, Exhibit 3 at the deposition of Larry Page, Exhibit 5 at the deposition of Sergey Brin, and Exhibit 3 at the deposition of Jonathan Rosenberg.

66. Attached as Exhibit 63 are a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-00791569, and a true and correct copy of an associated email attachment produced by Defendants marked with the Bates number range GOO001-00791570-611. These documents were introduced as Exhibit 15 at the deposition of Wendy Chang, Exhibit 17 at the deposition of Larry Page, and Exhibit 4 at the deposition of Jonathan Rosenberg.

67. Attached as Exhibit 64 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-00563430-33. This email exchange was introduced as Exhibit 14 at the deposition of David Eun, Exhibit 19 at the deposition of David Drummond, Exhibit 6 at the deposition of Sergey Brin, Exhibit 17 at the deposition of Peter Chane, and Exhibit 5 at the deposition of Jonathan Rosenberg.

68. Attached as Exhibit 65 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-00563469-70. This email exchange was introduced as Exhibit 11 at the deposition of Patrick Walker.

69. Attached as Exhibit 66 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-00792297. According to the metadata produced by Defendants, this email exchange was produced from the files of Google co-founder Larry Page.

70. Attached as Exhibit 67 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-04736644-47.

71. Attached as Exhibit 68 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-03548410-12.

72. Attached as Exhibit 69 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-02021241-44.

73. Attached as Exhibit 70 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-01395950. This email exchange was introduced as Exhibit 22 at the deposition of Chad Hurley and as Exhibit 12 at the deposition of Eric Schmidt.

74. Attached as Exhibit 71 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-01271624-27. This email exchange was introduced as Exhibit 10 at the deposition of Heather Gillette.

75. Attached as Exhibit 72 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-03383629.

76. Attached as Exhibit 73 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-01364485. This document was introduced as Exhibit 15 at the deposition of Michael Solomon.

77. Attached as Exhibit 74 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-07155101.

78. Attached as Exhibit 75 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-00217336.

79. Attached as Exhibit 76 are a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-03037036, and a true and correct copy of an associated email attachment produced by Defendants marked with the Bates number range GOO001-03037037-65. These documents were introduced as Exhibit 3 at the deposition of Shashi Seth.

80. Attached as Exhibit 77 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-05154818.

81. Attached as Exhibit 78 are a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-05943950, and a true and correct copy of an associated email attachment produced by Defendants marked with the Bates number range GOO001-05943951-59. These documents were introduced as Exhibit 12 at the deposition of Shashi Seth.

82. Attached as Exhibit 79 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-01016844-45. This email exchange was introduced as Exhibit 4 at the deposition of Shashi Seth.

83. Attached as Exhibit 80 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-00225766-68. This email exchange was introduced as Exhibit 39 at the deposition of Wendy Chang.

84. Attached as Exhibit 81 are a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-02414976-79, and a true and correct copy of an associated email attachment marked with the Bates number GOO001-02414980. These documents were introduced as Exhibit 10 at the deposition of Shashi Seth.

85. Attached as Exhibit 82 are a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-03241189-90, and a true and correct copy of an associated email attachment marked with the Bates number range GOO001-03241191-92. These documents were introduced as Exhibit 11 at the deposition of Shashi Seth.

86. Attached as Exhibit 83 are a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-00747816, and a true and correct copy of an associated email attachment marked with the Bates number range GOO001-00747817-989. These documents were introduced as Exhibit 5 at the deposition of Shashi Seth.

87. Attached as Exhibit 84 are a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-02201131, and true and correct copies of excerpts from an associated email attachment marked with the Bates number range GOO001-02201132-132.0228.

88. Attached as Exhibit 85 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-00827503-05.

89. Attached as Exhibit 86 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-01998134-50.

90. Attached as Exhibit 87 are a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-00829227-28, and a true and

correct copy of an associated email attachment marked with the Bates number range GOO001-00829229-229.007.

91. Attached as Exhibit 88 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-00797774-77.

92. Attached as Exhibit 89 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-05942431-32.

93. Attached as Exhibit 90 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-02057400-02.

94. Attached as Exhibit 91 are a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-00984825-27, a true and correct copy of an associated email attachment produced by Defendants marked with the Bates number range GOO001-00984828-33, and a true and correct copy of an associated email attachment marked with the Bates number range GOO001-00984834-40. These documents were introduced as Exhibit 26 at the deposition of Omid Kordestani.

95. Attached as Exhibit 92 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-00746418. This email exchange was introduced as Exhibit 27 at the deposition of Chris Maxcy.

96. Attached as Exhibit 93 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-00751570-71.

97. Attached as Exhibit 94 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-00869300.

98. Attached as Exhibit 95 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-02244041-57.

99. There is no Exhibit 96 to this Declaration, and that exhibit number is therefore intentionally left blank.

100. There is no Exhibit 97 to this Declaration, and that exhibit number is therefore intentionally left blank.

101. There is no Exhibit 98 to this Declaration, and that exhibit number is therefore intentionally left blank.

102. There is no Exhibit 99 to this Declaration, and that exhibit number is therefore intentionally left blank.

103. There is no Exhibit 100 to this Declaration, and that exhibit number is therefore intentionally left blank.

104. There is no Exhibit 101 to this Declaration, and that exhibit number is therefore intentionally left blank.

105. There is no Exhibit 102 to this Declaration, and that exhibit number is therefore intentionally left blank.

106. There is no Exhibit 103 to this Declaration, and that exhibit number is therefore intentionally left blank.

107. Attached as Exhibit 104 are a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-00330654, and an associated email attachment produced by Defendants marked with the Bates number range GOO001-00330655-59. These documents were introduced as Exhibit 17 at the deposition of Wendy Chang.

108. Attached as Exhibit 105 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-05164894-927.



109. Attached as Exhibit 106 are a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-00330681, and a true and correct copy of an associated email attachment produced by Defendants marked with the Bates number range GOO001-00330682-84. These documents were introduced as Exhibit 18 at the deposition of Wendy Chang.

110. Attached as Exhibit 107 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-00633965-92.

111. Attached as Exhibit 108 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-05920388-419.

112. Attached as Exhibit 109 are a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-00763354, a true and correct copy of an associated email attachment produced by Defendants marked with the Bates number range GOO001-00763355-63, and a true and correct copy of an associated email attachment produced by Defendants marked with the Bates number range GOO001-00763364-76. These documents were introduced as Exhibit 14 at the deposition of Brent Hurley.

113. Attached as Exhibit 110 are a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-00658376-77, and a true and correct copy of an associated email attachment produced by Defendants marked with the Bates number range GOO001-00658378-84. These documents were introduced as Exhibit 16 at the deposition of Brent Hurley and as Exhibit 12 at the deposition of David Drummond.

114. Attached as Exhibit 111 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-02656593-94. This email exchange was introduced as Exhibit 9 at the deposition of David Drummond.

115. Attached as Exhibit 112 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-002338150-84.

116. Attached as Exhibit 113 are a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-02439050-52, and a true and correct copy of an associated email attachment produced by Defendants marked with the Bates number range GOO001-02439053. These documents were introduced as Exhibit 21 at the deposition of Omid Kordestani.

117. Attached as Exhibit 114 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-00255239-42. This email exchange was introduced as Exhibit 13 at the deposition of Shashi Seth.

118. Attached as Exhibit 115 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-00237661-63. This email exchange was introduced as Exhibit 22 at the deposition of Omid Kordestani.

119. Attached as Exhibit 116 are a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-01295801, and a true and correct copy of an associated email attachment produced by Defendants marked with the Bates number range GOO001-01295802. These documents were introduced as Exhibit 20 at the deposition of Omid Kordestani.

120. Attached as Exhibit 117 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-08030008-10.

121. Attached as Exhibit 118 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-00421229-34. The metadata produced by Defendants indicate this document was last modified on February 3, 2006.

122. Attached as Exhibit 119 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-02826891-95. The metadata produced by Defendants indicate this document was last modified on March 14, 2006.

123. Attached as Exhibit 120 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-00824855-59. The metadata produced by Defendants indicate this document was last modified on July 26, 2006.

124. Attached as Exhibit 121 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-02829970-74. The metadata produced by Defendants indicate this document was last modified on August 18, 2006.

125. There is no Exhibit 122 to this Declaration, and that exhibit number is therefore intentionally left blank.

126. There is no Exhibit 123 to this Declaration, and that exhibit number is therefore intentionally left blank.

127. Attached as Exhibit 124 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-07056597-603. The metadata produced by Defendants indicate this document was last modified on February 26, 2007.

128. Attached as Exhibit 125 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-01232697-703. The metadata produced by Defendants indicate this document was last modified on June 19, 2007.

129. Attached as Exhibit 126 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-02768034-35.

130. Attached as Exhibit 127 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-01027757-73.

131. Attached as Exhibit 128 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-01535521-24.

132. Attached as Exhibit 129 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-04431787-88.

133. Attached as Exhibit 130 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-00509640. This email exchange was introduced as Exhibit 48 at the deposition of Chad Hurley and as Exhibit 10 at the deposition of Kevin Donahue.

134. Attached as Exhibit 131 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-00222797-803.

135. Attached as Exhibit 132 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-02754251. This email exchange was introduced as Exhibit 3 at the deposition of Franck Chastagnol.

136. Attached as Exhibit 133 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-02027618-19. This email exchange was introduced as Exhibit 14 at the deposition of Shashi Seth.

137. Attached as Exhibit 134 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-00561601-21. This document was introduced as Exhibit 27 at the deposition of Zahavah Levine.

138. Attached as Exhibit 135 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-08643428.

139. Attached as Exhibit 136 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-02493069-74.

140. Attached as Exhibit 137 are a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-02930251-52, and a true and correct copy of an associated email attachment produced by Defendants marked with the Bates number range GOO001-02930253-82.

141. Attached as Exhibit 138 are a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-02604786-87, and a true and correct copy of an associated email attachment produced by Defendants marked with the Bates number range GOO001-02604788-91.

142. Attached as Exhibit 139 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-01950611-18. This document was introduced as Exhibit 8 at the Rule 30(b)(6) deposition of David King.

143. Attached as Exhibit 140 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-09612201.

144. Attached as Exhibit 141 are a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-03427120-21, and a true and correct copy of an associated email attachment produced by Defendants marked with the Bates number range GOO001-03427122-43. These documents were introduced as Exhibit 9 at the deposition of Vance Ikezoye and as Exhibit 24 at the deposition of Chad Hurley.

145. Attached as Exhibit 142 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-02867502-05.

146. Attached as Exhibit 143 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-02493328-37.

147. Attached as Exhibit 144 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-01511226-27. This email exchange was introduced as Exhibit 27 at the deposition of Chad Hurley, Exhibit 31 at the deposition of David Drummond, Exhibit 18 at the deposition of Eric Schmidt, Exhibit 14 at the deposition of Larry Page, and Exhibit 14 at the deposition of Sergey Brin.

148. Attached as Exhibit 145 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-02506820-28.0006. Defendants produced this document with apparent errors in the document's images.

149. Attached as Exhibit 146 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-01202238-43. This document was introduced as Exhibit 6 at the deposition of Chris Maxcy and as Exhibit 2 at the deposition of Franck Chastagnol.

150. There is no Exhibit 147 to this Declaration, and that exhibit number is therefore intentionally left blank.

151. Attached as Exhibit 148 are a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-01870875, a true and correct copy of an associated email attachment produced by Defendants marked with the Bates number range GOO001-01870876-78, a true and correct copy of an associated email attachment produced by Defendants marked with the Bates number range GOO001-01870879-81, and a true and correct copy of an associated email attachment produced by Defendants marked with the Bates number range 01870882-84.

152. Attached as Exhibit 149 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-02826036-46. This document was

introduced as Exhibit 23 at the deposition of David Drummond, Exhibit 15 at the deposition of Eric Schmidt, Exhibit 11 at the deposition of Larry Page, and Exhibit 8 at the deposition of Jonathan Rosenberg.

153. There is no Exhibit 150 to this Declaration, and that exhibit number is therefore intentionally left blank.

154. There is no Exhibit 151 to this Declaration, and that exhibit number is therefore intentionally left blank.

155. Attached as Exhibit 152 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-02874326-27.

156. Attached as Exhibit 153 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-02240369-411. This document was introduced as Exhibit 18 at the deposition of Omid Kordestani and as Exhibit 27 at the deposition of David Drummond.

157. Attached as Exhibit 154 are a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-02524911, a true and correct copy of an associated email attachment produced by Defendants marked with the Bates number range GOO001-02524912-63, and a true and correct copy of an associated email attachment produced by Defendants marked with Bates number range GOO001-02524964-5010. This document was introduced as Exhibit 28 at the deposition of David Drummond. Portions of this document were introduced as Exhibit 19 at the deposition of Omid Kordestani.

158. Attached as Exhibit 155 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-02241782-835. This document was introduced as Exhibit 5 at the deposition of Zahavah Levine.

159. Attached as Exhibit 156 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-02354601-05.

160. Attached as Exhibit 157 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-09612078-79.

161. Attached as Exhibit 158 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-05175716-18.

162. Attached as Exhibit 159 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-00889264-81.

163. Attached as Exhibit 160 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-09684557-79.

164. Attached as Exhibit 161 are true and correct copies of excerpts from a document produced by Defendants marked with the Bates number range GOO001-02276277-384.

165. Attached as Exhibit 162 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-07726987-7009.

166. Attached as Exhibit 163 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-02243231-53.

167. There is no Exhibit 164 to this Declaration, and that exhibit number is therefore intentionally left blank.

168. Attached as Exhibit 165 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-02242506-23.

169. Attached as Exhibit 166 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-02242907-24.



170. Attached as Exhibit 167 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-02392607-43. This document was introduced as Exhibit 5 at the deposition of Jim Patterson.

171. Attached as Exhibit 168 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-06176212-24.

172. Attached as Exhibit 169 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-06176368-86.

173. Attached as Exhibit 170 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-02552363-70.

174. Attached as Exhibit 171 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-00010746. This email exchange was introduced as Exhibit 21 at the deposition of Chris Maxcy and as Exhibit 3 at the deposition of Jim Patterson.

175. Attached as Exhibit 172 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-00243149-52.

176. Attached as Exhibit 173 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-09684201-21.

177. Attached as Exhibit 174 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-02338330-43.

178. Attached as Exhibit 175 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-01177848.

179. Attached as Exhibit 176 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-00508644-47. This email

exchange was introduced as Exhibit 5 at the deposition of Kevin Donahue and as Exhibit 11 at the deposition of Brent Hurley.

180. Attached as Exhibit 177 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-09531942-68.

181. Attached as Exhibit 178 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-06147947-73.

182. Attached as Exhibit 179 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-02034326-30.

183. Attached as Exhibit 180 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-06811230-34.

184. Attached as Exhibit 181 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-00827716-17.

185. Attached as Exhibit 182 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-02866493-517.

186. Attached as Exhibit 183 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-00718495-98.

187. Attached as Exhibit 184 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-06361166-79. Defendants produced this document in a format that is difficult to read. Despite Viacom's request that Defendants produce a corrected, readable version of this document, Defendants failed to do so.

188. Attached as Exhibit 185 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-01949763-65.

189. Attached as Exhibit 186 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-09684681-719. Despite repeated requests by Viacom's counsel over many months during discovery, Defendants failed to produce this document until four days before the filing of Viacom's Motion for Partial Summary Judgment.

190. Attached as Exhibit 187 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-09684647-66. Despite repeated requests by Viacom's counsel over many months during discovery, Defendants failed to produce this document until four days before the filing of Viacom's Motion for Partial Summary Judgment.

191. Attached as Exhibit 188 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-09684752-818. Despite repeated requests by Viacom's counsel over many months during discovery, Defendants failed to produce this document until four days before the filing of Viacom's Motion for Partial Summary Judgment.

192. Attached as Exhibit 189 is a true and correct copy of a document produced by Defendants marked with the Bates number GOO001-00746412.

193. Attached as Exhibit 190 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-06525907-09.

194. Attached as Exhibit 191 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-00923210-12. This email exchange was introduced as Exhibit 8 at the deposition of Patrick Walker and as Exhibit 1 at the deposition of David Eun.

195. Attached as Exhibit 371 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-01529251.

196. Attached as Exhibit 372 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-02316969-72. This document was introduced as Exhibit 1 at the deposition of Nicole Wong.

197. Attached as Exhibit 373 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-02502815-19. This document was introduced as Exhibit 16 at the deposition of Eric Schmidt, Exhibit 25 at the deposition of David Drummond, Exhibit 12 at the deposition of Larry Page, and Exhibit 11 at the deposition of Sergey Brin.

198. Attached as Exhibit 374 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-06010126-31.

199. Attached as Exhibit 375 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-06669529.

200. Attached as Exhibit 378 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-07181365-67.

201. Attached as Exhibit 382 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-08050272-75. This email exchange was introduced as Exhibit 6 at the deposition of Kent Walker.

**Instant Message Conversation Transcripts Produced by Defendants**

202. In the course of discovery, Defendants produced transcripts of instant message conversations. Like the other documents Defendants produced, these transcripts of instant message conversations are marked with Bates numbers beginning with the prefix "GOO001-".

203. Defendants produced these instant message transcripts in HTML format, which is difficult to read. An employee of Jenner & Block LLP, working at my direction, generated more easily readable versions of the instant message conversation transcripts by opening them in an ordinary Internet browser. Those versions reflect the manner in which they would be seen by the participants in the instant message conversation. This readable format does not alter the content of the instant message discussions in any way. For the Court's convenience, each exhibit listed below in paragraphs 204 through 217 that contains the transcript of an instant message conversation includes (a) the readable version of the transcript of the instant message conversation generated by a Jenner & Block LLP employee acting at my direction; and (b) the original transcript of the same instant message conversation as produced by Defendants. In order to ensure the protection of potentially private information of Defendants' employees, Jenner & Block LLP employees, at my direction, have redacted certain personal and irrelevant material from these instant message conversation transcripts.

204. Attached as Exhibit 192 is a true and correct copy of the instant message conversation transcript produced by Defendants marked with the Bates number range GOO001-00507525-32. The transcript produced by Defendants is preceded by a readable version generated in the manner described in paragraph 203 *supra*. This instant message conversation was introduced as Exhibit 3 and as Exhibit 4 at the deposition of Maryrose Dunton.

205. Attached as Exhibit 193 is a true and correct copy of the instant message conversation produced by Defendants marked with the Bates number range GOO001-00507535-40. The transcript produced by Defendants is preceded by a readable version generated in the manner described in paragraph 203 *supra*. This instant message conversation was introduced as Exhibit 5 and as Exhibit 15 at the deposition of Maryrose Dunton.

206. Attached as Exhibit 194 is a true and correct copy of the instant message conversation produced by Defendants marked with the Bates number range GOO001-00507405-07. The transcript produced by Defendants is preceded by a readable version generated in the manner described in paragraph 203 *supra*.

207. Attached as Exhibit 195 is a true and correct copy of the instant message conversation produced by Defendants marked with the Bates number range GOO001-01931840-51. The transcript produced by Defendants is preceded by a readable version generated in the manner described in paragraph 203 *supra*.

208. Attached as Exhibit 196 is a true and correct copy of the instant message conversation produced by Defendants marked with the Bates number range GOO001-07585952-93. The transcript produced by Defendants is preceded by a readable version generated in the manner described in paragraph 203 *supra*.

209. Attached as Exhibit 197 is a true and correct copy of the instant message conversation produced by Defendants marked with the Bates number range GOO001-00507331-43. The transcript produced by Defendants is preceded by a readable version generated in the manner described in paragraph 203 *supra*.

210. Attached as Exhibit 198 is a true and correct copy of the instant message conversation produced by Defendants marked with the Bates number range GOO001-01931799-811. The transcript produced by Defendants is preceded by a readable version generated in the manner described in paragraph 203 *supra*.

211. Attached as Exhibit 199 is a true and correct copy of the instant message conversation produced by Defendants marked with the Bates number range GOO001-02363217-

19. The transcript produced by Defendants is preceded by a readable version generated in the manner described in paragraph 203 *supra*.

212. Attached as Exhibit 200 is a true and correct copy of the instant message conversation produced by Defendants marked with the Bates number range GOO001-07738864-65. The transcript produced by Defendants is preceded by a readable version generated in the manner described in paragraph 203 *supra*.

213. Attached as Exhibit 201 is a true and correct copy of the instant message conversation produced by Defendants marked with the Bates number range GOO001-00829681-94. The transcript produced by Defendants is preceded by a readable version generated in the manner described in paragraph 203 *supra*. This instant message conversation was introduced as Exhibit 19 and as Exhibit 20 at the deposition of Maryrose Dunton.

214. Attached as Exhibit 202 is a true and correct copy of the instant message conversation produced by Defendants marked with the Bates number range GOO001-00829702-18. The transcript produced by Defendants is preceded by a readable version generated in the manner described in paragraph 203 *supra*. This instant message conversation was introduced as Exhibit 21 and as Exhibit 22 at the deposition of Maryrose Dunton.

215. Attached as Exhibit 203 is a true and correct copy of the instant message conversation produced by Defendants marked with the Bates number range GOO001-07169720-33. The transcript produced by Defendants is preceded by a readable version generated in the manner described in paragraph 203 *supra*.

216. Attached as Exhibit 376 is a true and correct copy of the instant message conversation produced by Defendants marked with the Bates number range GOO001-07169708-

19. The transcript produced by Defendants is preceded by a readable version generated in the manner described in paragraph 203 *supra*.

217. Attached as Exhibit 377 is a true and correct copy of the instant message conversation produced by Defendants marked with the Bates number range GOO001-07169928-43. The transcript produced by Defendants is preceded by a readable version generated in the manner described in paragraph 203 *supra*.

**Documents Produced by YouTube Co-Founder Jawed Karim**

218. In response to a subpoena issued by Viacom in this action on December 7, 2007, YouTube co-founder Jawed Karim produced documents on May 16 and 21, 2008. The documents that Karim produced are marked with Bates numbers beginning with the prefix “JK”.

219. In his deposition, Mr. Karim testified that the documents marked with the Bates prefix “JK” were “all documents produced as a result of, you know, my involvement with YouTube.” He also testified that “the e-mails, you know, any e-mails that -- that I wrote and received, those were all in my e-mail file,” and explained that the e-mails came from two accounts: “my personal e-mail kind of early on, before there was a YouTube,” and “then there also was the e-mails I used from the YouTube e-mail account.” *See* Exhibit 313 hereto (Karim Dep.) at 28:22-29:21.

220. Mr. Karim also described the process in which his personal emails were collected. As he explained, “There was a collection process at Wilson, Sonsini, I believe. And so I brought in, you know, all of my e-mails. And the person responsible for the collection, I -- I worked with him to extract the YouTube related e-mails from all those e-mails.” *See* Exhibit 313 hereto (Karim Dep.) at 30:3-14.



221. Mr. Karim also described the process by which emails from his YouTube email account were collected. As he explained, that “procedure was simply to copy, you know, sent and received e-mails in -- in all other e-mail folders.” Mr. Karim participated in this process by “transfer[ring] the data.” *See* Exhibit 313 hereto (Karim Dep.) at 30:16-31:3.

222. Attached as Exhibit 204 is a true and correct copy of a document produced by Jawed Karim marked with the Bates number range JK00009887-91.

223. Attached as Exhibit 205 is a true and correct copy of an email exchange produced by Jawed Karim marked with the Bates number range JK00009137-39.

224. Attached as Exhibit 206 is a true and correct copy of an email exchange produced by Jawed Karim marked with the Bates number range JK00004704-05. This email exchange was introduced as Exhibit 29 at the deposition of Chad Hurley and as Exhibit 24 at the deposition of Jawed Karim.

225. Attached as Exhibit 207 is a true and correct copy of an email exchange produced by Jawed Karim marked with the Bates number JK00005039. This email exchange was introduced as Exhibit 23 at the deposition of Jawed Karim.

226. Attached as Exhibit 208 is a true and correct copy of an email exchange produced by Jawed Karim marked with the Bates number JK00005043. This email exchange was introduced as Exhibit 1 at the deposition of Chad Hurley and as Exhibit 31 at the deposition of Jawed Karim.

227. Attached as Exhibit 209 is a true and correct copy of an email exchange produced by Jawed Karim marked with the Bates number range JK00009381-82. This email exchange was introduced as Exhibit 7 at the deposition of Jawed Karim.

228. Attached as Exhibit 210 is a true and correct copy of an email exchange produced by Jawed Karim marked with the Bates number JK00009383. This email exchange was introduced as Exhibit 8 at the deposition of Jawed Karim.

229. Attached as Exhibit 211 is a true and correct copy of an email exchange produced by Jawed Karim marked with the Bates number JK00005928. This email exchange was introduced as Exhibit 20 at the deposition of Jawed Karim.

230. Attached as Exhibit 212 is a true and correct copy of an email exchange produced by Jawed Karim marked with the Bates number JK00005929. This email exchange was introduced as Exhibit 33 at the deposition of Chad Hurley.

231. Attached as Exhibit 213 is a true and correct copy of an email exchange produced by Jawed Karim marked with the Bates number JK00006057. This email exchange was introduced as Exhibit 4 at the deposition of Chad Hurley and as Exhibit 17 at the deposition of Jawed Karim.

232. Attached as Exhibit 214 is a true and correct copy of an email exchange produced by Jawed Karim marked with the Bates number JK00000382. This email exchange was introduced as Exhibit 2 at the deposition of Brent Hurley and as Exhibit 45 at the deposition of Chad Hurley.

233. Attached as Exhibit 215 is a true and correct copy of an email exchange produced by Jawed Karim marked with the Bates number range JK00007416-18. The page marked with Bates number JK00007416 was introduced as Exhibit 41 at the deposition of Chad Hurley.

234. Attached as Exhibit 216 is a true and correct copy of an email exchange produced by Jawed Karim marked with the Bates number range JK00006055-56. This email exchange was introduced as Exhibit 34 at the deposition of Chad Hurley.

235. Attached as Exhibit 217 is a true and correct copy of an email exchange produced by Jawed Karim marked with the Bates number range JK00006166-69. This email exchange was introduced as Exhibit 40 at the deposition of Jawed Karim.

236. Attached as Exhibit 218 is a true and correct copy of an email exchange produced by Jawed Karim marked with the Bates number range JK00009595-96.

237. There is no Exhibit 219 to this Declaration, and that exhibit number is therefore intentionally left blank.

238. There is no Exhibit 220 to this Declaration, and that exhibit number is therefore intentionally left blank.

239. Attached as Exhibit 221 are a true and correct copy of an email exchange produced by Jawed Karim marked with the Bates number range JK00006259-60, and an associated email attachment produced by Jawed Karim marked with the Bates number range JK00006263-70. These documents were introduced as Exhibit 45 and Exhibit 46, respectively, at the deposition of Jawed Karim.

240. Attached as Exhibit 222 is a true and correct copy of an email exchange produced by Jawed Karim marked with the Bates number JK00009668. This email exchange was introduced as Exhibit 19 at the deposition of Jawed Karim.

241. Attached as Exhibit 223 is a true and correct copy of an email exchange produced by Jawed Karim marked with the Bates number range JK00006392-93. This email exchange was introduced as Exhibit 12 at the deposition of Jawed Karim.

242. Attached as Exhibit 224 is a true and correct copy of an email exchange produced by Jawed Karim marked with the Bates number range JK00006689-90. This email exchange was introduced as Exhibit 18 at the deposition of Jawed Karim.

243. Attached as Exhibit 225 is a true and correct copy of an email exchange produced by Jawed Karim marked with the Bates number range JK00006627-28.

244. Attached as Exhibit 226 is a true and correct copy of an email exchange produced by Jawed Karim marked with the Bates number range JK00009791-92.

245. Attached as Exhibit 227 is a true and correct copy of an email exchange produced by Jawed Karim marked with the Bates number range JK00007378-79.

246. Attached as Exhibit 228 is a true and correct copy of an email exchange produced by Jawed Karim marked with the Bates number range JK00007420-22. This email exchange was introduced as Exhibit 35 at the deposition of Jawed Karim and as Exhibit 5 at the deposition of Chad Hurley.

247. Attached as Exhibit 229 is a true and correct copy of an email exchange produced by Jawed Karim marked with the Bates number JK00007423. This email exchange was introduced as Exhibit 55 at the deposition of Jawed Karim.

248. Attached as Exhibit 230 is a true and correct copy of an email exchange produced by Jawed Karim marked with the Bates number JK00007479. This email exchange was introduced as Exhibit 38 at the deposition of Jawed Karim.

249. There is no Exhibit 231 to this Declaration, and that exhibit number is therefore intentionally left blank.

250. Attached as Exhibit 232 is a true and correct copy of an email exchange produced by Jawed Karim marked with the Bates number JK00008043. This email exchange was introduced as Exhibit 11 at the deposition of Chad Hurley and as Exhibit 36 at the deposition of Jawed Karim.

251. Attached as Exhibit 233 is a true and correct copy of an email exchange produced by Jawed Karim marked with the Bates number JK00008331-35.

252. Attached as Exhibit 234 is a true and correct copy of an email exchange produced by Jawed Karim marked with the Bates number JK00000824.

253. Attached as Exhibit 235 is a true and correct copy of an email exchange produced by Jawed Karim marked with the Bates number JK00000836.

254. Attached as Exhibit 236 are a true and correct copy of an email exchange produced by Jawed Karim marked with the Bates number JK00002261, and a true and correct copy of an associated email attachment produced by Jawed Karim marked with the Bates number JK00002262. These documents were introduced as Exhibits 51 and 52 at the deposition of Jawed Karim.

255. Attached as Exhibit 237 is a true and correct copy of a document produced by Jawed Karim marked with the Bates number range JK00000173-79. This document was introduced as Exhibit 47 at the deposition of Jawed Karim.

256. Attached as Exhibit 238 is a true and correct copy of an email exchange produced by Jawed Karim marked with the Bates number range JK00009130-32. This email exchange was introduced as Exhibit 29 at the deposition of Jawed Karim.

257. Attached as Exhibit 239 is a true and correct copy of an email exchange produced by Jawed Karim marked with the Bates number JK00008859.

258. Attached as Exhibit 379 is a true and correct copy of an email exchange produced by Jawed Karim marked with the Bates number range JK00004669-70.

259. Attached as Exhibit 380 is a true and correct copy of an email exchange produced by Jawed Karim marked with the Bates number JK00005597. This email exchange was introduced as Exhibit 2 at the deposition of Chad Hurley.

260. Attached as Exhibit 381 is a true and correct copy of an email exchange produced by Jawed Karim marked with the Bates number range JK00007560-61. This email exchange was introduced as Exhibit 42 at the deposition of Chad Hurley and as Exhibit 34 at the deposition of Jawed Karim.

261. Attached as Exhibit 240 is a true and correct copy of an AVI-format video file produced by Jawed Karim and given the Bates number file name JK00010387\_MVI\_0922.avi. A portion of this video file was introduced as Exhibit 12 at the deposition of Chad Hurley.

262. For the Court's convenience, and at my direction, an employee of Jenner & Block LLP created a true and correct transcript of Exhibit 240. This transcript is attached hereto as Exhibit 241.

#### **Defendants' Failure to Produce Emails of Top Executives**

263. Virtually none of the Exhibits listed above as produced by Jawed Karim (bearing JK Bates numbers) were produced by Defendants, even though YouTube co-founders Steve Chen and Chad Hurley and other YouTube employees are listed as senders and/or recipients on most of the documents preserved and produced by Mr. Karim and attached as exhibits hereto.

264. Chad Hurley testified that he "lost all" of his emails from the key time periods in this case. *See* Exhibit 312 hereto (C. Hurley Dep.) at 187:15-16. Jenner & Block LLP's review of Defendants' document production indicates that Defendants produced fewer than ten custodial Chad Hurley emails per month for August, September, and October 2005, and fewer than 25 such emails per month for November and December 2005 and January 2006.

265. Jenner & Block LLP's review of Defendants' document production indicates that Defendants did not produce a single Steve Chen custodial email from March through July 2005, and produced only one Chen custodial email from each of August and September 2005. From November 2005 through October 2006, Defendants produced fewer than ten custodial Chen emails per month.

266. At his deposition, Google CEO Eric Schmidt agreed that a search for responsive custodial Schmidt documents from June 2006 through February 2007 yielded only 19 documents. Mr. Schmidt further testified: "It was my practice to delete or otherwise cause the e-mails that I had read to go away as quickly as possible." *See* Exhibit 314 hereto (Schmidt Dep.) at 18:24-19:2. The document attached as Exhibit 242 is chart of Custodial Documents Produced by Eric Schmidt that counsel for Viacom prepared by analyzing Defendants' document production. This chart was introduced as Exhibit 1 at the deposition of Eric Schmidt.

#### **Documents Produced by Viacom**

267. Documents produced by Viacom in this action are marked with Bates numbers beginning with the prefix "VIA."

268. The documents listed in paragraphs 270 through 273 were retained by the Viacom Plaintiffs' in the course of regularly conducted business activity, collected pursuant to the Viacom Plaintiffs' discovery obligations, and produced to Defendants in this litigation.

269. There is no Exhibit 243 to this Declaration, and that exhibit number is therefore intentionally left blank.

270. Attached as Exhibit 244 is a true and correct copy of a letter sent from Viacom General Counsel Michael Fricklas to Google General Counsel Kent Walker at Mr. Walker's business address. The letter was produced by Viacom marked with the Bates number range

VIA01475465-76 and introduced as Exhibit 4 at the deposition of Kent Walker. Mr. Fricklas sent this letter on February 2, 2007 and Mr. Walker replied as shown in Exhibit 382 hereto, which is an email exchange produced by Defendants.

271. Attached as Exhibit 245 are a true and correct copy of an email exchange produced by Viacom marked with the Bates number VIA00727695, and a true and correct copy of an associated email attachment produced by Viacom marked with Bates number range VIA00727696-98. These documents were introduced by Defendants as Exhibit 5 at the deposition of Jason Witt.

272. There is no Exhibit 246 to this Declaration, and that exhibit number is therefore intentionally left blank.

273. Attached as Exhibit 383 is a true and correct copy of an email exchange produced by Viacom marked with the Bates number range VIA17716283-85.

**Documents Obtained From Publicly Accessible Portions of Defendants' Websites**

274. The following exhibits are true and correct copies of documents printed from publicly accessible portions of the Google and YouTube websites. Each exhibit referenced in paragraphs 276 through 318 below was printed from the YouTube or Google website by an employee of Jenner & Block LLP acting at my direction.

275. There is no Exhibit 247 to this Declaration, and that exhibit number is therefore intentionally left blank.

276. Attached as Exhibit 248 is a true and correct copy of a screenshot of a YouTube watch page produced by Viacom marked with the Bates number range VIA14375471-72.

277. Attached as Exhibit 249 is a true and correct copy of a screenshot of a YouTube watch page produced by Viacom marked with the Bates number range VIA14375444-45.



278. Attached as Exhibit 250 is a true and correct copy of a screenshot of a YouTube watch page produced by Viacom marked with the Bates number range VIA14375526-28.

279. Attached as Exhibit 251 is a true and correct copy of a screenshot of a YouTube watch page produced by Viacom marked with the Bates number range VIA14375557-59.

280. Attached as Exhibit 252 is a true and correct copy of a screenshot of a YouTube watch page produced by Viacom marked with the Bates number range VIA14375446-47.

281. Attached as Exhibit 253 is a true and correct copy of a screenshot of a YouTube watch page produced by Viacom marked with the Bates number VIA14375721.

282. Attached as Exhibit 254 is a true and correct copy of a screenshot of a YouTube watch page produced by Viacom marked with the Bates number VIA14375701.

283. Attached as Exhibit 255 is a true and correct copy of a screenshot of a YouTube watch page produced by Viacom marked with the Bates number range VIA14375674-75.

284. Attached as Exhibit 256 is a true and correct copy of a screenshot of a YouTube watch page produced by Viacom marked with the Bates number range VIA14375466-67. This document was introduced as Exhibit 10 at the deposition of Matthew Liu.

285. Attached as Exhibit 257 is a true and correct copy of a screenshot of a YouTube watch page produced by Viacom marked with the Bates number range VIA14375535-36.

286. Attached as Exhibit 258 is a true and correct copy of a screenshot of a YouTube watch page generated by Counsel for Viacom. This document was introduced as Exhibit 11 at the deposition of Matthew Liu.

287. Attached as Exhibit 259 is a true and correct copy of a screenshot of a YouTube search results page produced by Viacom marked with the Bates number range VIA14375204-06.

This screenshot was introduced as Exhibit 12 at the deposition of Matthew Liu and as Exhibit 11 at the Rule 30(b)(6) deposition of Varun Kacholia.

288. Attached as Exhibit 260 is a true and correct copy of a screenshot of a YouTube search results page produced by Viacom marked with the Bates number range VIA14375664-66.

289. Attached as Exhibit 261 is a true and correct copy of a screenshot of a YouTube search results page produced by Viacom marked with the Bates number range VIA14375611-13.

290. Attached as Exhibit 262 is a true and correct copy of a screenshot of a YouTube search results page produced by Viacom marked with the Bates number range VIA14375671-73.

291. Attached as Exhibit 263 is a true and correct copy of a screenshot of a YouTube search results page produced by Viacom marked with the Bates number range VIA14375620-22.

292. Attached as Exhibit 264 is a true and correct copy of a screenshot of a YouTube search results page produced by Viacom marked with the Bates number range VIA14375635-37.

293. Attached as Exhibit 265 is a true and correct copy of a screenshot of a YouTube search results page produced by Viacom marked with the Bates number range VIA14375638-40.

294. Attached as Exhibit 266 is a true and correct copy of a screenshot of a YouTube page produced by Viacom marked with the Bates number range VIA14375228-29. This screenshot was introduced as Exhibit 13 at the deposition of Matthew Liu.

295. Attached as Exhibit 267 is a true and correct copy of a screenshot of a YouTube page produced by Viacom marked with the Bates number range VIA14375363-64.

296. Attached as Exhibit 268 is a true and correct copy of a screenshot of a YouTube page produced by Viacom marked with the Bates number range VIA14375413-14.

297. Attached as Exhibit 269 is a true and correct copy of a screenshot of a YouTube page produced by Viacom marked with the Bates number range VIA14375207-08.

298. Attached as Exhibit 270 is a true and correct copy of an “Official YouTube Blog” posting dated September 12, 2005.

299. Attached as Exhibit 271 is a true and correct copy of a press release from the YouTube website dated December 15, 2005 and titled “YouTube Opens Internet Video to the Masses.”

300. Attached as Exhibit 272 is a true and correct copy of an “Official YouTube Blog” posting dated February 16, 2006.

301. Attached as Exhibit 273 is a true and correct copy of an “Official YouTube Blog” posting dated October 8, 2006 and titled “How Flagging Works.”

302. Attached as Exhibit 274 is a true and correct copy of an “Official YouTube Blog” posting dated May 16, 2008 and entitled “New Features for Search, Contacts and Inbox.” This document was introduced as Exhibit 8 in the Rule 30(b)(6) deposition of Varun Kacholia.

303. Attached as Exhibit 275 is a true and correct copy of a page on Google’s Investor Relations webpage entitled “Google Announces Fourth Quarter And Fiscal Year 2006 Results.”

304. Attached as Exhibit 276 is a true and correct copy of Google’s October 9, 2006 press release announcing Google’s acquisition of YouTube.

305. Attached as Exhibit 277 is a true and correct copy of Google’s November 13, 2006 press release announcing the closing of Google’s acquisition of YouTube.

306. Attached as Exhibit 278 is a true and correct copy of a page on “Google finance,” a website operated by Defendants showing the closing price of Google stock on November 13, 2006.

307. Attached as Exhibit 279 is a true and correct copy of a page on the YouTube website entitled “Company History.”

308. There is no Exhibit 280 to this Declaration, and that exhibit number is therefore intentionally left blank.

309. Attached as Exhibit 281 is a true and correct copy of a page on the YouTube website entitled “Content Verification Program.”

310. Attached as Exhibit 282 is a true and correct copy of a page on the YouTube website entitled “Copyright Infringement Notification.” It is linked to from the word “instructions” in the text that states “[i]ndividual notifications may be submitted by following these instructions” on the “Content Verification Program” page in Exhibit 281 attached hereto.

311. Attached as Exhibit 283 is a true and correct copy of a page on the YouTube website entitled “Solve a Problem: Video not in search.”

312. Attached as Exhibit 284 is a true and correct copy of a screenshot taken from the YouTube website and introduced as Exhibit 7 at the deposition of Cuong Do.

313. Attached as Exhibit 285 are true and correct copies of screenshots taken from the YouTube website and introduced as Exhibit 3 at the deposition of Omid Kordestani.

314. Attached as Exhibit 286 is a true and correct copy of a document printed from the YouTube website by John Browne, Counsel for Plaintiffs in the Premier League Action, and introduced as Exhibit 9 at the deposition of Suzanne Reider. *See* Exhibit 348 hereto (Reider Dep.) at 168:18-173:18 (representation from Class counsel John Browne that he printed this document from the YouTube website, and testimony from Ms. Reider about the substance of the document).

315. Attached as Exhibit 287 is a true and correct copy of Google’s 2007 Annual Report, printed from the Google website.

316. Attached as Exhibit 288 is a true and correct copy of a page from Google's website entitled "Ten ways Gmail makes email easy and efficient. And maybe even fun."

317. Attached as Exhibit 387 is a true and correct copy of a page from Google's website entitled "Google Code of Conduct."

318. Attached as Exhibit 388 is a true and correct copy of a page on the YouTube website entitled "Content ID System."

**Documents Produced by Third-Party Credit Suisse**

319. Viacom issued a subpoena *duces tecum* in this action to third-party Credit Suisse Securities USA LLC ("Credit Suisse") on December 6, 2007. In response, Credit Suisse produced documents marked with Bates numbers beginning with the prefix "CSSU." Credit Suisse acted as a financial advisor to Defendant Google in connection with Google's acquisition of YouTube. *See* Exhibit 328 hereto (Duncan Dep.) at 60:16-68:25.

320. Attached as Exhibit 289 are true and correct copies of several documents and handwritten notes produced by Credit Suisse and together introduced as Exhibit 21 at the deposition of Storm Duncan. These documents are marked with Bates number ranges CSSU 001863-66, CSSU 001868-71, and CSSU 001944-57. *See* Exhibit 328 hereto (Duncan Dep.) at 192:2 -192:9, 199:24-200:5, and 207:25-210:13 (authenticating documents).

321. Attached as Exhibit 290 are a true and correct copy of an email exchange produced by Credit Suisse marked with the Bates number range CSSU 002845-46, and a true and correct copy of an associated email attachment produced by Credit Suisse marked with the Bates number range CSSU 002847-52. These documents were introduced as Exhibit 10 at the deposition of Storm Duncan. *See* Exhibit 328 hereto (Duncan Dep.) at 67:14-68:4 (authenticating documents).

322. Attached as Exhibit 291 is a true and correct copy of an email exchange produced by Credit Suisse marked with the Bates number CSSU 002686. This email exchange was introduced as Exhibit 13 at the deposition of Storm Duncan and as Exhibit 8 at the deposition of David Drummond. *See* Exhibit 328 hereto (Duncan Dep.) at 96:6-98:24 (authenticating documents).

323. Attached as Exhibit 292 are a true and correct copy of an email exchange produced by Credit Suisse marked with the Bates number range CSSU 004069-70, and a true and correct copy of an associated email attachment produced by Credit Suisse marked with the Bates number range CSSU 004071-74. These documents were introduced as Exhibit 14 at the deposition of Storm Duncan. *See* Exhibit 328 hereto (Duncan Dep.) at 96:6-98:24 (authenticating documents).

324. Attached as Exhibit 293 are a true and correct copy of an email exchange produced by Credit Suisse marked with the Bates number CSSU 003560, and a true and correct copy of an associated email attachment produced by Credit Suisse marked with the Bates number range CSSU 003561-86. These documents were introduced as Exhibit 17 at the deposition of Storm Duncan, Exhibit 5 at the deposition of Omid Kordestani, Exhibit 6 at the deposition of David Drummond, Exhibit 2 at the deposition of Eric Schmidt, Exhibit 3 at the deposition of Sergey Brin, Exhibit 7 at the deposition Jonathan Rosenberg, and Exhibit 1 at the deposition of Larry Page. *See* Exhibit 328 hereto (Duncan Dep.) at 113:3-114:4 (authenticating documents).

325. Attached as Exhibit 294 are a true and correct copy of an email exchange produced by Credit Suisse marked with the Bates number CSSU 003326, and a true and correct copy of an associated email attachment produced by Credit Suisse marked with the Bates number range CSSU 003327-50. These documents were introduced as Exhibit 19 at the deposition of

Storm Duncan. *See* Exhibit 328 hereto (Duncan Dep.) at 124:9-125:1 (authenticating documents).

326. Attached as Exhibit 295 is a true and correct copy of an email exchange produced by Credit Suisse marked with the Bates number range CSSU 002982-86.

**Documents Produced by Venture Capital Investors in YouTube**

327. Viacom issued subpoenas in this action to third-parties Sequoia Capital Operations LLC (“Sequoia Capital”), Artis Capital Management L.P. (“Artis Capital”), and TriplePoint Capital LLC (“TriplePoint Capital). In response to the subpoenas, Sequoia Capital produced documents marked with Bates numbers beginning with the prefix “SC,” Artis Capital produced documents marked with Bates numbers beginning with the prefix “AC,” and TriplePoint Capital produced documents marked with Bates numbers beginning with “TP.” As the United States District Court for the Northern District of California noted in granting Viacom’s motion to compel the production of documents from Sequoia Capital, Artis Capital, and TriplePoint Capital, they “are venture capital firms who were involved with defendant YouTube in its initial rounds of investment and eventual acquisition by defendants Google, which was effective on November 13, 2006. All respondents received significant quantities of Google shares when Google acquired YouTube and also indemnified Google for the outcomes of copyright infringement suits.” *Viacom Int’l, Inc. v. YouTube, Inc.*, No. C 08-80129 SI, 2008 U.S. Dist. LEXIS 79777 (N.D. Cal. Aug. 18, 2008).

328. Attached as Exhibit 296 are true and correct copies of excerpts from the closing documents for YouTube’s Series A financing, which were produced by Sequoia Capital marked with the Bates number range SC008403-627. The signatures of YouTube’s co-founders appear on the pages marked with Bates numbers SC008415, SC008426, SC008466, and SC008504.

329. Attached as Exhibit 297 are true and correct copies of excerpts from the closing documents for YouTube's Series B financing, which were produced by Sequoia Capital marked with the Bates number range SC008711-984. The signatures of YouTube's co-founders appear on the pages marked with Bates numbers SC008721-722, SC008731-733, SC008777, and SC008820-822.

330. Attached as Exhibit 298 is a true and correct copy of a document produced by Sequoia Capital marked with the Bates number range SC011742-79.

331. Attached as Exhibit 299 are a true and correct copy of an email exchange produced by Sequoia Capital marked with the Bates number SC010022, and an associated email attachment produced by Sequoia Capital marked with the Bates number range SC010023-28. These documents were introduced as Exhibit 11 at the deposition of David Drummond. *See* Exhibit 327 hereto (Drummond Dep.) at 89:7-89:22 (authenticating document).

332. Attached as Exhibit 300 is a true and correct copy of a document produced by Artis Capital marked with the Bates number AC005772. This document was introduced as Exhibit 22 at the deposition of David Lamond. *See* Exhibit 384 hereto (D. Lamond Dep.) at 148:14-148:17 (authenticating document).

333. Attached as Exhibit 301 are true and correct copies of excerpts from a document produced by Artis Capital marked with the Bates number AC007823-905. When sending this document to Counsel for Plaintiffs with redactions on December 17, 2009, Defendants' counsel identified it as the final version of the YouTube, Inc. Disclosure Schedule prepared in connection with the merger between Google and YouTube.

334. Attached as Exhibit 302 is a true and correct copy of a document produced by TriplePoint Capital marked with the Bates number range TP000479-95.



335. Attached as Exhibit 303 is a true and correct copy of a document produced by TriplePoint Capital marked with the Bates number range TP000055-143. This document was introduced as Exhibit 2 at the deposition of David Drummond and as Exhibit 2 at the deposition of David Estrada. *See* Exhibit 327 hereto (Drummond Dep.) at 21:23-22:9 (authenticating document).

**Documents Produced by Third-Party Audible Magic**

336. In response to a subpoena issued by Viacom in this action on April 16, 2008, third-party Audible Magic produced documents marked with Bates numbers beginning with the prefix “AM.” Audible Magic provided digital fingerprintng services to Defendants. *See* Exhibit 141 hereto (cover email and final agreement between YouTube and Audible Magic).

337. Attached as Exhibit 304 is a true and correct copy of a document produced by Audible Magic marked with the Bates number range AM 002090-91. This email exchange was introduced as Exhibit 6 at the deposition of Vance Ikezoye. *See* Exhibit 336 hereto (Ikezoye Dep.) at 54:23-55:25 (authenticating document).

338. Attached as Exhibit 305 is a true and correct copy of an email exchange produced by Audible Magic marked with the Bates number range AM 001241-44. This email exchange was introduced as Exhibit 13 at the deposition of Franck Chastagnol. *See* Exhibit 321 hereto (Chastagnol Dep.) at 180:17-181:22 (authenticating document).

339. Attached as Exhibit 306 is a true and correct copy of an email exchange produced by Audible Magic marked with the Bates number range AM 000917-28. This email exchange was introduced as Exhibit 8 at the deposition of Vance Ikezoye. *See* Exhibit 336 hereto (Ikezoye Dep.) at 62:12-63:19 (authenticating document).

**Documents Produced by Third-Party Motion Picture Association of America**

340. In response to a subpoena issued by Defendants on January 18, 2008, third-party Motion Picture Association of America (“MPAA”) produced documents marked with Bates numbers beginning with the prefix “MPAA.”

341. Attached as Exhibit 307 is a true and correct copy of a document produced by the MPAA marked with the Bates number range MPAA012777-78. This document was introduced as Exhibit 4 at the deposition of Dean Garfield and as Exhibit 5 at the Rule 30(b)(6) deposition of David King. *See* Exhibit 333 hereto (Garfield Dep.) at 33:24-34:2 (authenticating document).

342. Attached as Exhibit 308 is a true and correct copy of a document produced by the MPAA marked with the Bates number range MPAA012806-07. This document was introduced as Exhibit 7 at the deposition of Dean Garfield and as Exhibit 12 at the deposition of Jonathan Rosenberg. *See* Exhibit 333 hereto (Garfield Dep.) at 40:25-42:17 (authenticating document).

343. Attached as Exhibit 309 is a true and correct copy of an email exchange produced by the MPAA marked with the Bates number range MPAA0011721.

344. There is no Exhibit 310 to this Declaration, and that exhibit number is therefore intentionally left blank.

345. There is no Exhibit 311 to this Declaration, and that exhibit number is therefore intentionally left blank.

**Deposition Transcripts From This Action**

346. Attached as Exhibit 312 is a true and correct copy of the transcript of the deposition of Chad Hurley taken on April 22, 2009.

347. Attached as Exhibit 313 is a true and correct copy of the transcript of the deposition of Jawed Karim taken on June 9, 2009.

348. Attached as Exhibit 314 is a true and correct copy of the transcript of the deposition of Eric Schmidt taken on May 6, 2009.

349. Attached as Exhibit 315 is a true and correct copy of the transcript of the deposition of Larry Page taken on October 1, 2009.

350. Attached as Exhibit 316 are true and correct copies of excerpts from the transcript of the deposition of Brent Hurley taken on August 26, 2008.

351. Attached as Exhibit 317 are true and correct copies of excerpts from the transcript of the deposition of Roelof Botha taken on August 5, 2009.

352. Attached as Exhibit 318 are true and correct copies of excerpts from the transcript of the deposition of Sergey Brin taken on October 15, 2009.

353. Attached as Exhibit 319 are true and correct copies of excerpts from the transcript of the deposition of Peter Chane taken on December 2, 2009.

354. Attached as Exhibit 320 are true and correct copies of excerpts from the transcript of the deposition of Wendy Chang taken on July 11, 2008.

355. Attached as Exhibit 321 are true and correct copies of excerpts from the transcript of the deposition of Franck Chastagnol taken on December 10, 2008.

356. Attached as Exhibit 322 are true and correct copies of excerpts from the transcript of the deposition of Cuong Do taken on February 13, 2009.

357. Attached as Exhibit 323 are true and correct copies of excerpts from the transcript of the Rule 30(b)(6) deposition of Cuong Do taken on September 12, 2007.

358. Attached as Exhibit 324 are true and correct copies of excerpts from the transcript of the Rule 30(b)(6) deposition of Jeremy Doig taken on September 14, 2007.

359. Attached as Exhibit 325 are true and correct copies of excerpts from the transcript of the deposition of Kevin Donahue taken on October 15, 2008.

360. There is no Exhibit 326 to this Declaration, and that exhibit number is therefore intentionally left blank.

361. Attached as Exhibit 327 are true and correct copies of excerpts from the transcript of the deposition of David Drummond taken on February 12, 2009.

362. Attached as Exhibit 328 are true and correct copies of excerpts from the transcript of the deposition of Storm Duncan taken on July 16, 2008.

363. Attached as Exhibit 329 are true and correct copies of excerpts from the transcript of the deposition of Maryrose Dunton taken on August 22, 2008.

364. Attached as Exhibit 330 are true and correct copies of excerpts from the transcript of the deposition of Alex Ellerson taken on May 22, 2009.

365. Attached as Exhibit 331 are true and correct copies of excerpts from the transcript of the deposition of David Estrada taken on December 8, 2009.

366. Attached as Exhibit 332 are true and correct copies of excerpts from the transcript of the deposition of David Eun taken on August 7, 2008.

367. Attached as Exhibit 333 are true and correct copies of excerpts from the transcript of the deposition of Dean Garfield taken on November 2, 2009.

368. Attached as Exhibit 334 are true and correct copies of excerpts from the transcript of the deposition of Heather Gillette taken on August 12, 2008.

369. Attached as Exhibit 335 are true and correct copies of excerpts from the transcript of the deposition of Michael Housley taken on October 3, 2008.

370. Attached as Exhibit 336 are true and correct copies of excerpts from the transcript of the deposition of Vance Ikezoye taken on September 10, 2009.

371. Attached as Exhibit 337 are true and correct copies of excerpts from the transcript of the deposition of Kent Walker taken on December 17, 2009.

372. Attached as Exhibit 338 are true and correct copies of excerpts from the transcript of the deposition of the Rule 30(b)(6) deposition of Varun Kacholia taken on January 8, 2010.

373. Attached as Exhibit 339 are true and correct copies of excerpts from the transcript of the deposition of David King taken on December 12, 2008.

374. Attached as Exhibit 340 are true and correct copies of excerpts from the transcript of the deposition of the Rule 30(b)(6) deposition of David King taken on January 13, 2010.

375. Attached as Exhibit 341 are true and correct copies of excerpts from the transcript of the deposition of Omid Kordestani taken on February 12, 2009.

376. Attached as Exhibit 342 are true and correct copies of excerpts from the transcript of the deposition of Zahavah Levine taken on April 2, 2009.

377. Attached as Exhibit 343 are true and correct copies of excerpts from the transcript of the deposition of Andrew Lin taken on July 2, 2009.

378. Attached as Exhibit 344 are true and correct copies of excerpts from the transcript of the deposition of Matthew Liu taken on November 13, 2009.

379. Attached as Exhibit 345 are true and correct copies of excerpts from the transcript of the deposition of Chris Maxcy taken August 28, 2008.

380. Attached as Exhibit 346 are true and correct copies of excerpts from the transcript of the deposition of Bhanu Narasimhan taken September 18, 2009.

381. Attached as Exhibit 347 are true and correct copies of excerpts from the transcript of the deposition of Patrick Walker taken on July 22, 2008.

382. Attached as Exhibit 348 are true and correct copies of excerpts from the transcript of the deposition of Suzanne Reider taken on October 3, 2008.

383. Attached as Exhibit 349 are true and correct copies of excerpts from the transcript of the deposition of Michael Robinson taken on January 15, 2010.

384. Attached as Exhibit 350 are true and correct copies of excerpts from the transcript of the deposition of Jonathan Rosenberg taken on December 4, 2009.

385. Attached as Exhibit 351 are true and correct copies of excerpts from the transcript of the deposition of Micah Schaffer taken on July 23, 2008.

386. Attached as Exhibit 352 are true and correct copies of excerpts from the transcript of the deposition of Nicholas Seet taken November 24, 2009.

387. Attached as Exhibit 353 are true and correct copies of excerpts from the transcript of the deposition of Shashi Seth taken July 16, 2009.

388. Attached as Exhibit 354 are true and correct copies of excerpts from the transcript of the deposition of Gideon Yu taken on August 14, 2009.

389. There is no Exhibit 355 to this Declaration, and that exhibit number is therefore intentionally left blank.

390. Attached as Exhibit 384 are true and correct copies of excerpts from the transcript of the deposition of David Lamond taken on April 15, 2009.

391. Attached as Exhibit 385 are true and correct copies of excerpts from the transcript of the deposition of Jim Patterson taken on December 18, 2009.

392. Attached as Exhibit 386 are true and correct copies of excerpts from the deposition of Michael Solomon taken on September 1, 2009.

**Declarations Filed in Other Actions**

393. Attached as Exhibit 356 is a true and correct copy of the January 5, 2007 Declaration of Steve Chen in Support of Defendants' Motion for Summary Adjudication of Defendant's First Affirmative Defense of DMCA Safe Harbor in *Robert Tur d/b/a Los Angeles News Service v. YouTube, Inc.*, No. CV 06-4436 FMC (C.D. Cal.). Mr. Chen's declaration in the *Tur* case was introduced as Exhibit 16 at the deposition of Micah Schaffer in this case.

394. Attached as Exhibit 357 is a true and correct copy of the January 5, 2007 Declaration of Zahavah Levine in Support of Defendants' Motion for Summary Adjudication of Defendant's First Affirmative Defense of DMCA Safe Harbor in *Robert Tur d/b/a Los Angeles News Service v. YouTube, Inc.*, No. CV 06-4436 FMC (C.D. Cal.). Ms. Levine's declaration in the *Tur* case was introduced as Exhibit 29 at Ms. Levine's deposition in this case.

395. Attached as Exhibit 358 is a true and correct copy of the September 10, 2002 Declaration of Vance Ikezoye in Support of Plaintiffs' Proposed Preliminary Injunction Order in *In re Aimster Copyright Litigation*, No. 01 C 8933 (N.D. Ill.). This declaration was introduced as Exhibit 1 at the deposition of Vance Ikezoye in this matter.

396. Attached as Exhibit 359 is a true and correct copy of the February 2, 2006 Declaration of Vance Ikezoye in Support of Plaintiffs' Motions for Summary Judgment in *Metro-Goldwyn-Mayer Studios, Inc., v. Grokster, Ltd.*, No. 01-08541 SVW (C.D. Cal.). This declaration was introduced as Exhibit 2 at the deposition of Vance Ikezoye in this matter.

### **Interrogatory Responses**

397. Attached as Exhibit 360 is a true and correct copy of Defendants' responses to Plaintiffs' First Set of Interrogatories.

398. Attached as Exhibit 361 is a true and correct copy of Defendants' responses to Plaintiffs' Second Set of Interrogatories.

### **Hearing Transcript**

399. Attached as Exhibit 362 is a true and correct copy of an excerpt from the transcript of a Rule 16(b) conference in this action that was held on July 27, 2007.

### **Other Documents**

400. Attached as Exhibit 363 is a true and correct copy of an S-3 Registration Statement filed by Defendant Google Inc. with the Securities and Exchange Commission on February 7, 2007. Counsel for Viacom retrieved this Registration Statement from the SEC's "Edgar" online search service. As of February 27, 2010, the Registration Statement is available at <http://www.sec.gov/Archives/edgar/data/1288776/000119312507022578/ds3asr.htm>.

401. Attached as Exhibit 364 is a true and correct copy of a document provided by Defendants' corporate representative Cuong Do and introduced as Exhibit 2 in the 30(b)(6) deposition of Cuong Do.

402. Attached as Exhibit 365 is a true and correct copy of the resume of YouTube co-founder Jawed Karim. The resume was introduced as Exhibit 1 in Mr. Karim's deposition, and authenticated by Mr. Karim. *See* Exhibit 313 hereto (Karim Dep.) at 7:10-8:23.

403. There is no Exhibit 366 to this Declaration, and that exhibit number is therefore intentionally left blank.



404. There is no Exhibit 367 to this Declaration, and that exhibit number is therefore intentionally left blank.

405. There is no Exhibit 368 to this Declaration, and that exhibit number is therefore intentionally left blank.

406. Attached as Exhibit 369 is a true and correct copy of a June 28, 2007 letter from Donald Verrilli, then-counsel to Viacom, to Mark Ouweleen and David Kramer, counsel for Defendants.

407. Attached as Exhibit 370 is a true and correct copy of a June 29, 2007 letter from Mark Ouweleen, then-counsel to Defendants, to Donald Verrilli, then-counsel to Viacom. This letter was emailed to Mr. Verrilli from the email address mark.ouweleen@bartlit-beck.com.

**YouTube's Distribution of Copies of Videos Onto YouTube Users' Computers**

408. When I have viewed videos on YouTube using the Internet Explorer web browser, I have found complete copies on my personal computer of the video files I viewed. Specifically, after I viewed several videos on YouTube, complete copies of those videos remained on my computer in my Temporary Internet Files folder, even after I navigated away from the YouTube site on my web browser. The complete copies of the video files left by YouTube remained on my personal computer in the Temporary Internet Files folder for periods of at least several hours (and perhaps indefinitely), even though I shut down and rebooted my personal computer during that period. I was able to play these videos on my personal computer, without returning to the YouTube site, simply by clicking on the copies of the video files left by YouTube in my Temporary Internet Files folder and opening those files in a Flash player. I was also able to move the copies of the videos from the Temporary Internet Files folder of my personal computer to other folders on my hard drive where, in my experience as a consumer

computer user, the copies would remain and be playable permanently, unless I took action to delete them.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 4<sup>th</sup> day of March 2010, at Washington, DC.

  
\_\_\_\_\_  
William M. Hohengarten