

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

VIACOM INT'L INC., ET AL.,

Plaintiffs,

v.

YOUTUBE, INC., ET AL.,

Defendants

ECF Case  
Civil No. 07-CV-2103 (LLS)

THE FOOTBALL ASSOCIATION  
PREMIER LEAGUE LIMITED, ET AL.,  
on behalf of themselves and all others  
similarly situated,

Plaintiffs,

v.

YOUTUBE, INC., ET AL.,

Defendants.

ECF Case  
Civil No. 07-CV-3582 (LLS)

DECLARATION OF MICHAEL SOLOMON IN SUPPORT OF  
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

I, Michael Solomon, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am currently a Senior Staff Engineer at YouTube, Inc. ("YouTube"). I first began working on the development of what would become the YouTube.com website after being approached in early 2005 by Steve Chen, a former colleague of mine at PayPal. My work on YouTube began in May 2005 as help with software development and general operations work, and I was formally hired by YouTube as a software engineer in October 2005. I continued to assist with the development of the YouTube.com website up to and after its acquisition by Google Inc. in October 2006. I

have personal knowledge of the facts set forth herein and, if called as a witness, I could and would testify competently to them.

### How Users Upload Videos to YouTube

2. YouTube operates a website located on the Internet at <http://www.youtube.com>, where users around the world can upload videos free of charge to computer servers owned or leased by YouTube. YouTube's systems are capable of simultaneously playing millions of these authorized, user uploaded videos at the same time to YouTube users around the world. The process of uploading a video to YouTube is initiated by YouTube users. As has always been the case since I began working on the YouTube service, the series of events that is triggered by a user's decision to upload a video to YouTube and ends with the user's video being made playable on YouTube is fully automated and does not involve the intervention or active involvement of YouTube personnel.

3. Before being able to upload a video to YouTube, a user must first register and create an account with the service. Once that one-time registration process has been completed and the user is signed-in to his YouTube account, the first step a user takes to upload a video involves navigating to the upload portion of the YouTube website. The user then selects a video file to upload to the YouTube system from the selection available on the user's personal computer, webcam, mobile phone, or other storage device, depending on how the user is accessing the service. Having selected the video he wishes to upload, the user then instructs the YouTube system to upload that video by clicking on a virtual upload "button."

4. When a user uploads a video, the user also provides a title of his own making for the video and chooses "tags," or keywords, that the user believes describe the video. For instance, a surfing video might be tagged with "surfing," "water," and "waves," and be titled "Sarah's 30th Birthday." Like the title the user provides for the

video, the choice of tags is completely up to the user. Similarly, the user selects a category from the broad selection of categories presented by the YouTube system that the user believes fits the uploaded video. The selection of category is entirely within the user's discretion.

5. I have confirmed that each one of the video clips at issue in this lawsuit was uploaded to YouTube by a user of the service in a process similar to the one I just described.

#### **Storing & Transcoding User's Videos**

6. YouTube users are able to upload video files in a number of common and widely-used file formats, including Windows Media Video (.WMV), .3GP, .AVI, .MOV, .MP4, .MPEG, and Flash (.FLV). Because most Internet browsers are not able to easily play video files in all of these formats, a user's video upload prompts the YouTube system to convert the user's video into the Flash file format, which is a more common file format that most Internet browsers can play. This conversion process is known as "transcoding," and it occurs automatically and without any human intervention.

7. In light of the increasing popularity of using mobile phones and other consumer electronics devices to view Internet content, the YouTube system began allowing users to view videos from mobile phones and other consumer electronics devices, in addition to their personal computers. These devices typically have different file format requirements than personal computer-based Internet browsers and often cannot play Flash files. Using an automated transcoding process similar to the one used to convert user-uploaded videos into Flash, the YouTube system now transcodes user-uploaded videos into several other file formats supported by a variety of viewing devices. One such example is the transcoding of user-uploaded video files into the H.264 format, which is playable on Apple's iPhone. Adopting new encoding

formats is an example of YouTube's efforts to remain current and compatible with evolving technology, enabling the user uploaded videos it stores to be accessible to the largest number of users in the most efficient manner.

8. After a user uploaded video has been transcoded, the original video file and any transcodes are stored by YouTube on its network of computers and servers. As a part of this process, the YouTube system makes more than one copy of the stored version of the user's video files in order to increase the utility and reliability of the service for YouTube's users. This process also ensures that users' uploaded videos can remain playable in instances where any single storage device fails, and enables YouTube to efficiently distribute the load of storing millions of videos and speeding their playback in response to requests coming from users across the globe.

#### Viewing Users' Stored Videos

9. Anyone with Internet access and standard Internet browsing software can view for free the videos that other users have stored on YouTube. As noted above, YouTube users can also access the YouTube service from mobile or other consumer electronics devices. Users initiate video playback of a YouTube video by visiting YouTube and selecting the video that they wish to view. Like the choice of whether and which video to upload to YouTube, the decision of which video to view is made entirely by the user.

10. The YouTube system allows users to view videos stored on YouTube's servers through a process known as "streaming." The streamed files can begin playing on a user's computer before the complete video file has been fully transmitted. In response to a playback request, the YouTube system automatically streams a copy of the requested video from one of its video servers to the user's personal computer (or other device, such as an iPhone), where it plays for the user to watch. In almost all cases, YouTube prohibits users from downloading videos off the site, and does not

offer that functionality to users. In the context of viewing YouTube videos on a personal computer, for example, streaming differs from downloading because during streaming a complete copy of the video being streamed is not stored on the end user's computer before viewing can begin.

**Searching for User's Stored Videos on YouTube**

11. Users may search the YouTube website for videos of interest by entering a query consisting of terms the user deems relevant into search fields provided on various pages throughout the site. In response to the query, the service automatically returns a results page that shows the user a page or pages containing single reduced-size still images ("thumbnails") of the video clips that the search algorithm identifies as being responsive to the user's query, accompanied by a portion of the text the user who uploaded the video provided to describe the video. A video can be viewed by clicking on its corresponding thumbnail image and visiting the "watch page" for that clip.

**Production of YouTube videos in connection with YouTube's Motion for Summary Judgment**

12. The YouTube videos submitted in connection with YouTube's Motion for Summary Judgment were obtained by having an internal engineering team write a computer script that authenticated with an internal video server, then pulled specific YouTube videos based on a list of Video IDs we were provided by counsel. The videos that were pulled from YouTube's system were then transferred to counsel.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration is executed the 3rd day of March 2010, at Palo Alto, California.

  
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Michael Solomon