

# Schapiro Exhibit 85

**From:** Steve Chen <steve@youtube.com>  
**Sent:** Tuesday, July 19, 2005 9:49 AM  
**To:** Chad Hurley <chad@youtube.com>  
**Cc:** Karim Jawed <[REDACTED]>; Pan Yu <[REDACTED]>; Solomon Mike <[REDACTED]>  
**Subject:** Re: YouTube - Some ideas from Charles  
**Attach:** Message Text.txt

---

Alright.

We keep talking about this.

Reasons for not putting up adwords:

1. it doesn't make that much money in the short term
2. our advertising feature is less than a month away
3. we are going to make design changes to get them in. 3 weeks later, we're going to take them out.
4. but most importantly -- people that use google ads really have no other choice, they get a lot of traffic, but they have to do some kind of text ad linking thing to generate revenue. we're in a unique situation with YouTube that we can deliver video ads -- we're one of the few and rare sites that allows for this. let's see where it goes before jumping on the google adwords bandwagon.

In other news, jawed, please stop putting stolen videos on the site. We're going to have a tough time defending the fact that we're not liable for the copyrighted material on the site because we didn't put it up when one of the co-founders is blatantly stealing content from another site and trying to get everyone to see it.

And please, please, please, please, please (I don't know how many times this needs to be said) stop making tweaks to the fucking UI without consulting us. Hi, nice distraction from the video playing when there's blinking text all over the place.

Thank you.

-s

On Jul 19, 2005, at 10:26 AM, Chad Hurley wrote:

some good ideas... that revenue sharing one is one that comes up often when I talk to various people... might be a good idea for us down the road. It's actually how google gets big studios to put up content on google video... but the sharing is 30% for google, 70% for the studio. maybe we could match this or beat it with 25/75? It would be interest and I think would motivate people better than a little cash prize. thoughts?

But the simplest way to start making money, is place some adwords text links on the site. We'll see what happens? Steve? :)

On Jul 19, 2005, at 7:58 AM, Steve Chen wrote:

My friend from Yahoo.

Please read this. Interesting stuff.

Yu Pan, did you know Charles Chariya from IMSA? He was class of '93 or '94. If you know him, what do you think of him?

-s

Begin forwarded message:

From: "Charles Chariya" <[REDACTED]>  
Date: July 19, 2005 6:40:19 AM PDT  
To: "Steve Chen" <steve@youtube.com>  
Subject: RE: YouTube - Some ideas from Charles

Steve,

I took a few minutes last night and jotted down some ideas that might make your overall concept even more compelling. Most aren't completely original, and some may take a lot of work to implement, but I think YouTube could be a huge step in online user generated content.

#### AD MODEL

Although it's obvious you will have video ads in the stream, I see the monetization opportunity in a few key areas:

(a) the front door - which should have the most traffic - could be exposed to advertisers for take-overs for massive one-day events.

(b) content areas - although you do use tags, I think that a human categorizer would help people navigate more easily thru the massive amounts of available video. Again, takeovers of "Autos" or "College" or even the existing "Most Popular" areas could be easy wins with advertisers.

(c) video area - so obviously, a video ad before the video, but consider breaking up videos (by a professional editor) into 4-5 minute segments to insert additional video ads. Obviously a take on what's done in

network. Also, on the right hand side, I'd suggest using an industry standard Ad Position.

(d) sponsored search results - this may be an easy fall-back, but should be considered, especially if users are doing a lot of search activity.

#### AD SALES

I assume you're already working towards getting to profitability. I'd pull a team to start selling to the agency and advertising community ASAP. Put them on a 50/50 or higher compensation plan to minimize the burn rate. I suggest senior sellers with connections in the ad community, since the budgets you are tapping will likely be traditional budgets - and a Inside Sales Organization won't really cut it for the long haul.

#### PRODUCER NETWORK

Ok, so here's the exciting concept: Why not make a profit sharing system for these content producers. A 1-5% rev share on all video ads that are served in the video stream. Some quick math:

Assume a \$5 CPM

Video Popularity	1k streams	100k st
1mil st		
Revenue	\$5	\$500
\$5k		
Rev Share	\$0.25	\$25
\$250		

Currently video ads run at \$10-15. CPMs for video ads will increase over time, as the market catches up with the supply.

Give users stats on the usage/viewership of the videos they upload. Have "All-Star" producers. Make pages dedicated to the body of art of particular producers. Hire professional/famous producers to create original content. Seek out the content that's already available and give beneficial terms (up to 10% rev share) if it's worthy (star wars movie, independent movie producers, anything else).

So that's my first stab at some major monetization and ads related content. Obviously, I've been working in the space for a while, so

feel  
free to lean on me if you have other ideas, if you need a bounce-  
board.  
I'm in Sunnyvale next week on Tues-Thurs, if you're around  
would love to  
grab dinner. Obviously, I think there's a lot of potential. Let me  
know how you think I can help.

Charles

-----Original Message-----

From: Steve Chen [<mailto:steve@youtube.com>]

Sent: Monday, July 18, 2005 3:40 PM

To [REDACTED]

Subject: YouTube

Yo Charles --

This is Steve from geno.

Giving you my e-mail address, [steve@youtube.com](mailto:steve@youtube.com). Talking to  
you now.

-s

# **Schapiro Exhibit 86**

**From:** Steve Chen <[REDACTED]>  
**Sent:** Tuesday, July 19, 2005 9:26 AM  
**To:** Jawed <[REDACTED]>  
**Cc:** Chad Hurley <chad@youtube.com>  
**Subject:** Re: GOAL

---

DUUUUUUUUUUDE

JAWED

WHAT THE FUCK

we aren't a stupid videos site. you posted 10 stupid videos last night. we want to promote personal videos. the founder of the site puts up 10 stupid videos. then goes on the most poopular video of the site and tells everyone to go look at these stupid videos. way to promote the site.

-s

On Jul 19, 2005, at 9:14 AM, Jawed wrote:

> well I was talking about VIEWERS, not views... 21,000.

>

> Jawed

>

>

> <http://www.jawed.com/>

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>

> On Tue, 19 Jul 2005, Steve Chen wrote:

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>

>> 30000 actually.

>> -s

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>> On Jul 18, 2005, at 11:10 PM, Jawed wrote:

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>>> Uh read my email below. Today we had 21,000.

>>>

>>> Jawed

>>>

>>>

>>> <http://www.jawed.com/>

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>>> On Sat, 9 Jul 2005, Jawed wrote:

>>>

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>>>

>>>> We have never really put this into precise words or numbers, but I

>>>> would

>>>> like to state our goal right here, for the next 6 months.

>>>>  
>>>> REACH 50,000 UNIQUE VIDEO VIEWERS PER DAY.  
>>>>  
>>>> It took uGoto about 9 months to scale from 0 to 70,000 unique  
>>>> visitors per  
>>>> day. The thing is, I have no idea what tactics they employed. Did  
>>>> they  
>>>> advertise? Does eBaumsworld advertise? Does big-boys.com  
>>>> advertise? Does  
>>>> collegethumor advertise?  
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>>>> Jawed  
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>>>> <http://www.jawed.com/>  
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# **Schapiro Exhibit 87**

**From:** Jawed <[REDACTED]>  
**Sent:** Tuesday, July 19, 2005 11:54 AM  
**To:** Chad Hurley <chad@youtube.com>  
**Subject:** Re: GOAL (fwd)

---

Ok, Steve apologized for overreacting ;)

Jawed

<http://www.jawed.com/>

----- Forwarded message -----  
Date: Tue, 19 Jul 2005 10:26:50 -0700  
From: Steve Chen <[REDACTED]>  
To: Jawed <[REDACTED]>  
Cc: Chad Hurley <chad@youtube.com>  
Subject: Re: GOAL

why don't i just put up 20 videos of pornography and obviously copyrighted materials and then link them from the front page.

what were you thinking.

-s

On Jul 19, 2005, at 9:14 AM, Jawed wrote:

> well I was talking about VIEWERS, not views... 21,000.

>

> Jawed

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>

> <http://www.jawed.com/>

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> On Tue, 19 Jul 2005, Steve Chen wrote:

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>> 30000 actually.

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>> On Jul 18, 2005, at 11:10 PM, Jawed wrote:

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>>> Jawed

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>>> <http://www.jawed.com/>

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>>> On Sat, 9 Jul 2005, Jawed wrote:

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>>>> REACH 50,000 UNIQUE VIDEO VIEWERS PER DAY.  
>>>>  
>>>> It took uGoto about 9 months to scale from 0 to 70,000 unique  
>>>> visitors per  
>>>> day. The thing is, I have no idea what tactics they employed. Did  
>>>> they  
>>>> advertise? Does eBaumsworld advertise? Does big-boys.com  
>>>> advertise? Does  
>>>> collegehumor advertise?  
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>>>> Jawed  
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>>>> <http://www.jawed.com/>  
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# **Schapiro Exhibit 88**

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Subject: hey  
From: "Exarhos, Tina" <EX:/O=VIACOM/OU=MTVUSA/CN=RECIPIENTS/CN=EXAROST  
>  
To: Mackall, Kevin  
Cc: Date: Sun, 05 Mar 2006 22:29:05 +0000

do you think you can search around and find some blogging, negative chatter taking place around NBC's move, taking Lazy Sunday down on YouTube? I want to make a point about not being perceived as "the man" and hopefully show that there are negative repercussions when you act web-stupid, like NBC just did.

What say?

# **Schapiro Exhibit 89**

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,	)	Case No.
	)	1:07CV02103
Plaintiffs,	)	
	)	
vs. )	)	
	)	
YOUTUBE, INC., YOUTUBE, LLC,	)	
and GOOGLE, INC.,	)	
	)	
Defendants.	)	
_____	)	

VIDEOTAPED DEPOSITION OF TOM FRESTON

New York, New York

Friday, September 11th, 2009

REPORTED BY:  
ERICA RUGGIERI, CSR, RPR  
JOB NO: 17617

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September 11, 2009

9:52 a.m.

VIDEOTAPED DEPOSITION OF TOM  
FRESTON, held at the offices of Mayer  
Brown, 1675 Broadway, New York, New York,  
pursuant to notice, before Erica L.  
Ruggieri, Registered Professional Reporter  
and Notary Public of the State of New  
York.



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A P P E A R A N C E S

FOR THE PLAINTIFFS:

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FOR THE WITNESS

KENDALL BRILL KLIEGER, LLP  
BY: RICHARD B. KENDALL, ESQ.  
10100 Santa Monica Blvd., Suite 1725  
Los Angeles, California 90067

ALSO PRESENT:

MARK C. MORRIL, ESQ., Viacom  
SALLIANNE BROWN, Videographer

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IT IS HEREBY STIPULATED AND  
AGREED, by and between the attorneys  
for the respective parties herein,  
that filing and sealing be and the  
same are hereby waived.

IT IS FURTHER STIPULATED AND  
AGREED that all objections, except as  
to the form of the question, shall be  
reserved to the time of the trial.

IT IS FURTHER STIPULATED AND  
AGREED that the within deposition may  
be sworn to and signed before any  
officer authorized to administer an  
oath, with the same force and effect  
as if signed and sworn to before the  
Court.

1 FRESTON

2 A. Hope --

3 MR. KENDALL: Just a second,  
4 just a second. Give me a second to  
5 11:17:10 get my objections in and do my job.

6 THE WITNESS: I'm sorry.

7 MR. KENDALL: It's  
8 argumentative, in addition to  
9 overbroad and vague and ambiguous and  
10 11:17:20 calling for speculation.

11 Q. Now, when you said "hopefully" a  
12 moment ago, you were smiling, right?

13 A. Yes.

14 Q. So -- but I take it that the  
15 11:17:36 nonjocular answer to the question, they  
16 wouldn't just make things up, is correct,  
17 they wouldn't just make things up, right?

18 MR. KENDALL: Well, same  
19 objections. And argumentative. Now  
20 11:17:47 you are really trying to put words in  
21 his mouth.

22 A. Well, my assumption would be  
23 that they would have done their research  
24 and not have made things up.

25 11:17:56 Q. It also says under that bullet

1 FRESTON

2 point, "Only four of the 30 most watched  
3 videos of all time on YouTube are music  
4 videos, one of which is in German."

5 11:18:15 Do you recall being informed of  
6 anything like that?

7 MR. KENDALL: Vague and  
8 ambiguous and overbroad.

9 A. Well, assuming I received this  
10 11:18:23 Powerpoint, I would have been informed of  
11 this by that very line.

12 Q. I think you mentioned earlier  
13 having watched the Saturday Night Live  
14 Lazy Sunday clip on YouTube at one point,  
15 11:18:44 correct?

16 A. Yes.

17 Q. If you look towards the bottom  
18 of this slide, does the second-to-the-last  
19 bullet point down there appear to be a  
20 11:18:57 reference to the clip that you were  
21 talking about?

22 MR. KENDALL: Calls for  
23 speculation.

24 A. It would appear so.

25 11:19:06 Q. Now, it says here, "Even the

1 FRESTON

2 much discussed SNL Lazy Sunday sketch and  
3 it's myriad spoofs have been seen more  
4 times on iFilm than on YouTube."

5 11:19:20 IFilm was a Viacom property,  
6 correct?

7 A. Yes.

8 Q. And do you have any recollection  
9 as to whether the Lazy Sunday sketch was  
10 11:19:27 available on iFilm?

11 MR. KENDALL: Lacks foundation.

12 Calls for speculation.

13 A. It was.

14 Q. And do you have any recollection  
15 11:19:35 as to whether it was authorized by NBC to  
16 be there?

17 A. I do not.

18 MR. KENDALL: Would this be a  
19 convenient time to take a short break?

20 11:19:46 MR. SCHAPIRO: You know, I'm  
21 almost at the end of a section. If I  
22 could go about five, six minutes, then  
23 it would be a perfect place, if that's  
24 okay.

25 11:19:55 MR. KENDALL: Actually, if you

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FRESTON

wouldn't mind, if I could just step  
across the hall for a minute and take  
a short break.

11:20:01 MR. SCHAPIRO: Okay.

THE VIDEOGRAPHER: The time is  
11:20 a.m. on September 11, 2009, and  
this completes tape number one.

(Whereupon, there is a recess in  
the proceedings.)

THE VIDEOGRAPHER: The time is  
11:28 a.m. on September 11, 2009, and  
this is tape number two.

Q. Mr. Freston, would you take a  
11:29:14 look at this exhibit, which we will mark  
as 10.

(Freston Exhibit 10, Tuesday,  
July 11, 2006 e-mail exchange  
between Adam Kahan, Judy McGrath and  
11:30:31 Michel Wolf, marked for  
identification, as of this date.)

(Witness reviews document.)

A. Okay.

Q. I think you had testified before  
11:30:12 the break that you have a specific

# **Schapiro Exhibit 90**

ANDREW H. SCHAPIRO  
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*Attorneys for Defendants YouTube, Inc.,  
 YouTube, LLC and Google Inc.*

**UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF NEW YORK**

-----X	
THE FOOTBALL ASSOCIATION PREMIER	:
LEAGUE LIMITED and BOURNE CO., et al., on	:
Behalf of themselves and all others similarly	:
Situated,	:
	:
Plaintiffs,	:
	:
v.	:
	:
YOUTUBE, INC., YOUTUBE, LLC and	:
GOOGLE INC.,	:
	:
	:
Defendants.	:
	:
-----X	

07 Civ. 3582 (LLS)  
 (related case no. 07 Civ. 2103 (LLS),  
 the "Viacom Action")

**DEFENDANTS' "HIGHLY  
 CONFIDENTIAL" AMENDED  
 RESPONSES AND  
 OBJECTIONS TO  
 PLAINTIFFS' FIRST SET  
 OF INTERROGATORIES**



Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure and Rules 26.3 and 33.3 of the Local Civil Rules, defendants YouTube, Inc., YouTube, LLC and Google Inc. (collectively, "YouTube") by its attorneys, hereby responds and objects to Plaintiffs' First Set of Interrogatories as follows:

#### **DEFINITION**

All definitions and rules of instructions set forth in Federal Rules of Civil Procedure 26 and 34, and the Uniform Definitions set forth in Local Civil Rules 26.3(c) and (d) shall apply herein, as well as the following additional definition:

1. "Plaintiffs" means, collectively all plaintiffs in this action and in the *Viacom* Action.

#### **GENERAL OBJECTIONS**

A. YouTube objects to each interrogatory, definition, and instruction contained in the Interrogatories to the extent that any interrogatory, definition, or instruction purports to impose obligations greater than those imposed by the Federal Rules of Civil Procedure and/or any applicable Local Rules for the Southern District of New York.

B. YouTube objects to each interrogatory to the extent that it is duplicative of Plaintiffs' document requests.

C. YouTube's response to any interrogatory is not an admission or acknowledgement that such interrogatory calls for information that is relevant to the subject matter of this action, and it is without prejudice to YouTube's right to contend at trial or in any other or subsequent proceeding in this action that such response is inadmissible, irrelevant, and/or not the proper basis for discovery.

D. YouTube objects to each interrogatory to the extent that it seeks information that neither is relevant to the claims or defenses in this action nor reasonably calculated to lead to the discovery of admissible evidence.

E. YouTube objects to each interrogatory, definition, and instruction contained in the Interrogatories to the extent that any interrogatory, definition, or instruction contains inaccurate, incomplete, or misleading descriptions of facts, persons, or events underlying this litigation.

F. YouTube objects to each interrogatory to the extent that it calls for the production of material protected from discovery by the attorney-client or attorney work-product privileges, or any other applicable evidentiary privilege. YouTube does not waive, and does not intend to waive, its attorney-client or work-product privileges in its response to these Interrogatories. To the extent that any privileged information is provided inadvertently, YouTube reserves (i) its privileges with respect to such information; (ii) its right to object to the use of such information; and (iii) its right to object to the admissibility of such information.

G. YouTube objects to each interrogatory to the extent that it calls for the production of information in the possession, custody, or control of persons or entities other than YouTube. YouTube has produced and will produce only documents and information in its possession, custody, or control.

H. YouTube objects to each interrogatory to the extent that it seeks cumulative or duplicative information.

I. YouTube objects to each interrogatory to the extent that it is overbroad, unduly burdensome, vague, ambiguous, or oppressive.

J. YouTube reserves the right to rely, at the time of trial or in other proceedings in this action, upon evidence in addition to that provided in the responses to the Interrogatories

regardless of whether, *inter alia*, any evidence is newly discovered or is currently in existence. YouTube is continuing its investigation, and the information provided is true and correct to YouTube's best knowledge at this particular time, but it is subject to correction and modification as new facts are discovered. To the extent that YouTube does discover additional information responsive to the Interrogatories, discovers that any response herein is incorrect, or discovers information that would make any of the responses herein incorrect, YouTube will supplement or amend those responses pursuant to Rules 26(e) and 33.

K. YouTube further objects to each interrogatory to the extent that it exceeds the permissible scope of discovery under Local Rule 33.3(b) (as interpreted by Plaintiffs in their responses to YouTube's interrogatories) in that it is not a "more practical method of obtaining the information sought than a request for production or a deposition," and that it seeks information other than (i) names of witnesses with knowledge of information relevant to the subject matter of the action, (ii) the computation of each category of damage alleged, and (iii) the existence, custodian, location and general description of relevant documents.

L. YouTube objects to all of the interrogatories on the ground that they seek information that: (i) is equally known and/or accessible to Plaintiffs; (ii) may not exist; or (iii) is not retrievable.

M. The foregoing general objections shall be considered as made, to the extent applicable, in response to each of the interrogatories, as if the objections were fully set forth in each response.

**SPECIFIC RESPONSES AND OBJECTIONS**

**INTERROGATORY NO. 1 (SET 1):**

Identify each Video Clip that was both (i) removed from the YouTube Website on the grounds, in whole or in part, that it infringed copyright or was uploaded without the

authorization of the owner of content, or on the grounds, in whole or in part, that it was suspected to have infringed copyright or was uploaded without the authorization of the owner of content; and (ii) removed prior to or without the receipt of a Take Down Complaint concerning the presence of the Video Clip at a particular URL.

**RESPONSE TO INTERROGATORY NO. 1 (SET 1):**

YouTube objects to this interrogatory as unduly burdensome. There are many millions of clips, out of the tens of millions that have been uploaded to the YouTube service, that have been removed from the YouTube service over the years. These removals have been effected utilizing numerous different processes, and have involved a host of different people making individualized determinations in particularized circumstances. YouTube has no means to identify all of the clips removed under the specific conditions Plaintiffs have identified for YouTube, much less to collect the various categories of additional information sought, to the extent it even exists, for all of them. The request is oppressive.

YouTube further objects to the interrogatory on the grounds that it is overbroad because of the sheer volume of clips for which information is sought, the demand for multiple categories of detailed information for each of those millions of clips, and the fact that the overwhelming majority of removed clips are not those that Plaintiffs have identified as being at issue in this case. The interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Plaintiffs' interrogatory is also vague and ambiguous, particularly in light of the multiple defined terms (and subparts within the defined terms) that it incorporates. The interrogatory is also impermissibly compound, relying on multi-part definitions and conjunctions to pose interrogatory upon interrogatory in this request.

Subject to, and without waiving the foregoing or its General Objections, YouTube responds:

In an effort to assist copyright holders in protecting their content online, (1) YouTube removed or restricted access to material on the YouTube service at least in part based on considerations of copyright, notably without regard to whether or not such material actually contained content that was authorized by a putative copyright holder to have been present on the service; and (2) removed or restricted access to such material without regard to YouTube's receipt of (i) a notice sent to YouTube under Section 512(c)(3) of the Digital Millennium Copyright Act, or (ii) other communication from a putative copyright holder contending that content at the particular URL for the material infringed its copyright. Discovery that YouTube has already provided reveals considerable evidence of such activity, although in many cases the evidence of removal or restricted access does not necessarily reference specific material by URL. As a result, and given the massive burden involved, YouTube cannot practicably identify the "Video Clips" that were ultimately removed or restricted in a given instance that might be responsive to this interrogatory.

Further, as noted in YouTube's objections, given the frequency with which YouTube has effected these removals or restrictions on behalf of content owners and the nature of the data in YouTube's possession regarding this practice, it is impossible to compile a complete list of the clips satisfying these conditions, let alone the additional detail that Plaintiffs' demand for those clips, assuming such information even exists. Nevertheless, the data contains a non-exhaustive list of URLs for more than [REDACTED] (being produced concurrently herewith as at Bates No. GOO-ROGDATA 001) that, to the best of its current knowledge, (1) YouTube removed or restricted access to on the YouTube service at least in part based on considerations of

copyright, notably without regard to whether such clips actually contained content that was not authorized by a putative copyright holder to have been present on the service; and (2) removed or restricted access to such clips without regard to YouTube's receipt of (i) a notice sent to YouTube under Section 512(c)(3) of the Digital Millennium Copyright Act, or (ii) other communication from a putative copyright holder contending that content at the particular URL for the clip infringed its copyright. The CD also contains the dates on which those clips were removed or restricted, where available. Despite the parties' agreement to limit fact discovery to January 1, 2008 in all but agreed-upon cases, YouTube has voluntarily determined to produce this information current as of June 5, 2009.

**INTERROGATORY NO. 2 (SET 1):**

Identify each Video Clip that has ever been flagged (*i.e.*, marked) by users of the YouTube Website as infringing or otherwise violating copyright laws using the Flag as Inappropriate Feature on the YouTube Website (including all versions of that feature that have ever appeared on the YouTube Website), and state whether or not the Video Clip was removed by You in response to the flag.

**RESPONSE TO INTERROGATORY NO. 2 (SET 1):**

YouTube objects to this interrogatory as vague and ambiguous for multiple reasons, including the defined terms that it incorporates (such as the term "Flag as Inappropriate Feature" which is defined in multiple ways and includes reference to a non-functional URL), and its failure to define the term "user." The interrogatory also includes statements that lack foundation and contain embedded legal conclusions. In particular, YouTube does not know how a user would know whether a clip on the service is "infringing or otherwise violating copyright laws," and does not agree that a hypothetical user would be in a position to make such a representation.

YouTube also objects to the request as overbroad to the extent it calls for information regarding clips that are not among those that Plaintiffs have identified as being at issue in this case, and unduly burdensome to the extent it calls for information regarding “all versions” of the “Flag as Inappropriate Feature” on the service. YouTube objects to the phrase “in response to the flag” as being vague and unduly burdensome. YouTube’s records do not always reflect the reasons why any particular video was removed, and even when they do, the stated reasons are often not exclusive. YouTube’s response to this interrogatory does not imply that videos no longer active on the service were disabled “in response” to any user-flagging protocol. The interrogatory is also impermissibly compound.

Subject to, and without waiving the foregoing or its General Objections, YouTube responds:

Users of the YouTube service do not, by virtue of using the “Flag as Inappropriate Feature,” identify specific clips as raising copyright considerations. Rather, a user who utilizes the functionality, and then selects “infringes my rights” and “infringes my copyright” from subsequent drop down menus, is directed to a page that explains in detail the process under the Digital Millennium Copyright Act (“DMCA”) for submitting removal requests to YouTube and that provides a convenient online form for the easy submission of such requests.

To the extent Plaintiffs seek information regarding a functionality that allowed ordinary users to identify for further review by YouTube specific clips as potentially implicating copyright considerations, such a functionality was operative on the service for a brief period in the fall of 2005. The functionality was discontinued when YouTube concluded that users were not in a position to correctly distinguish between authorized and potentially unauthorized material on the YouTube service, and in light of concerns that users would use the functionality

as a means of censorship, to seek removal of content that they found undesirable, regardless of whether it was authorized to be on the service. During the period in which the functionality was operative, YouTube has records showing that users applied it to at least 53 videos on the service as shown on Exhibit A.

**INTERROGATORY NO. 3 (SET 1):**

For each removed Video Clip identified in Your response to Interrogatories Nos. 1 and 2, state (i) whether, subsequent to the removal, You received any communications from any person claiming that the Video Clip was not a copyright violation and/or was authorized to be uploaded to YouTube, and describe those communications with specificity (including by identifying the individuals who purported to send the communication and who received them); and if so (ii) whether You subsequently restored the Video Clip to the YouTube Website and Your reasons for doing so or not doing so.

**RESPONSE TO INTERROGATORY NO. 3 (SET 1):**

Because this interrogatory builds upon the Interrogatory Nos. 1 and 2, it suffers from the same defects and is objectionable on the same grounds as they are. YouTube incorporates and restates those objections here in full.

This interrogatory is further objectionable as unduly burdensome given the millions of videos identified in response to Interrogatory No. 1. As noted, these removals and restrictions have been effected utilizing numerous different processes, and have involved a host of different people making individualized determinations in particularized circumstances. Likewise, to the extent videos have been restored on the service, they have been restored by many different people making individualized determinations in particular circumstances. YouTube has no means to identify the clips removed or restricted under the specific conditions Plaintiffs have

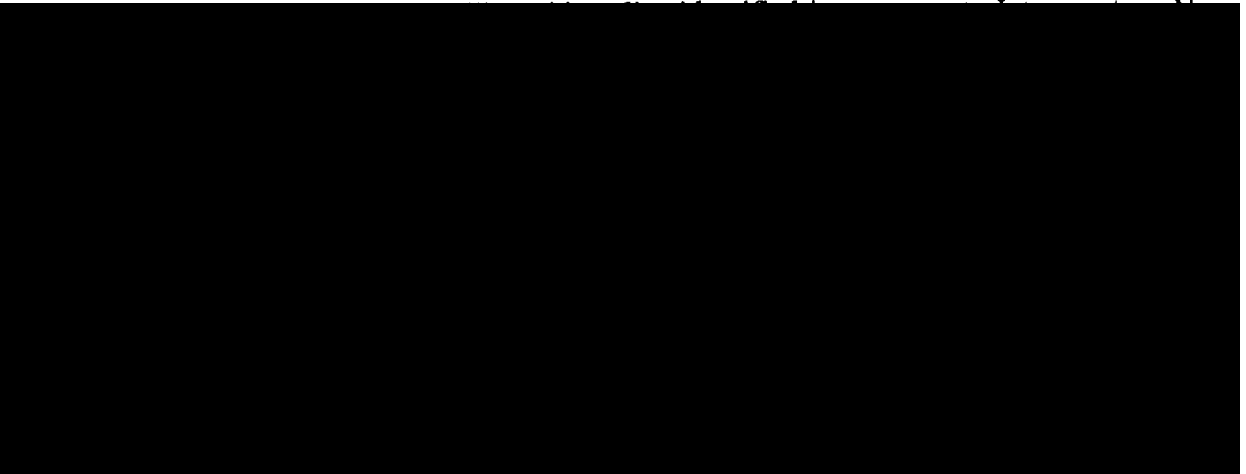


identified, much less to determine whether each of the millions of clips was restored on the service under the specific conditions specified by Plaintiffs, or to supply all of the additional information for any such video meeting all these conditions, to the extent such information even exists for them all. The request is oppressive.

YouTube further objects to the interrogatory on the grounds that it is overbroad because of the sheer volume of clips for which information is sought, the demand for multiple categories of detailed information for each of those millions of clips, and the fact that the overwhelming majority of removed clips are not those that Plaintiffs have identified as being at issue in this case. The interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Plaintiffs' interrogatory is also vague and ambiguous, particularly in light of the multiple defined terms (and subparts within the defined terms) that it incorporates. The interrogatory is also impermissibly compound, relying on multi-part definitions and conjunctions to pose interrogatory upon interrogatory in this request.


Subject to, and without waiving the foregoing or its General Objections, YouTube responds:



Moreover, YouTube does not generally track the reasons why a particular video clip may have been restored or why restrictions on a given video may have been lifted on the YouTube service, other than in circumstances in which it receives a formal counter-notification under the DMCA.

YouTube has provided in discovery evidence of instances in which YouTube was notified or otherwise learned of information indicating that videos that were removed or restricted on the service based upon copyright considerations should not have been removed or should not have been subject to the restrictions. That evidence, however, does not necessarily reference the specific material involved, or allow YouTube to determine whether the material involved was within the universe of clips that YouTube identified in response to Interrogatory Nos. 1 and 2.

Dated: 1/11/10  
New York, NY

  
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*Attorneys for Defendants YouTube, Inc.,  
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### VERIFICATION

I, Micah Schaffer, have read the foregoing Amended Responses and Objections to Plaintiffs' First Set of Interrogatories. I am informed and believe that the answers therein are true and correct to the best of my knowledge, information and belief, based on information currently available to me, and on that ground verify them.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Dated: January 10, 2010



Micah Schaffer

## Exhibit A

VIDEO ID	DATE
XaEZx4GM5nE	2005-09-12
XaEZx4GM5nE	2005-09-12
7zFXq7umHEk	2005-09-12
7CXUV3FXGSs	2005-09-12
zr853v bXkU	2005-09-13
s0SSA2JDpTo	2005-09-13
s0SSA2JDpTo	2005-09-13
dDzbdF6-Cmw	2005-09-14
5SNiRZ5KOGA	2005-09-16
YDzyC1RjrGc	2005-09-17
7CXUV3FXGSs	2005-09-18
CtYnfo-1Qz4	2005-09-18
o4rvYUJ80Vw	2005-09-19
h67STeyQHhk	2005-09-19
DxS1ny1ZZKQ	2005-09-19
FVA84sHIIdQQ	2005-09-19
oaZ4blN Xhs	2005-09-20
4D2lBd2t48M	2005-09-20
3d2OapilW14	2005-09-20
7XtJZ9YKqwo	2005-09-20
CJ42gp-1Tzy	2005-09-21
aim4MCDJDOo	2005-09-21
ds-Ogq0Izno	2005-09-21
IZ28MDgku2E	2005-09-21
OI OB5Nqkk	2005-09-23
08tgta8dEBk	2005-09-23
mUKJN5w6bsM	2005-09-23
nkrWriI649c	2005-09-23
kliH84ZomMc	2005-09-23
zrHkvQ3qMmA	2005-09-24
apDu 3WiKwo	2005-09-24
IxKCFsR h-o	2005-09-24
PqcZ8 QzT Q	2005-09-24
UHYZhbsDZhc	2005-09-24
1aEJoEDs7s0	2005-09-24
Z3CXQ3ZZMGU	2005-09-25
4G70Y9wWX2k	2005-09-25
Bet6HRAfAtk	2005-09-25
LUfZjZn7prs	2005-09-25
5Fflpe2P7A8	2005-09-25
MzS02ecGtCQ	2005-09-26

\*\* HIGHLY CONFIDENTIAL \*\*

<b>VIDEO ID</b>	<b>DATE</b>
L9erhKqFK9U	2005-09-26
nvlg8ysQv5I	2005-09-26
vWaW1YPZrgk	2005-09-26
j9ZZ-co6G6c	2005-09-26
uekHuFSZucE	2005-09-26
wwW0 ADwCwQ	2005-09-26
mGo2KOHDPUM	2005-09-26
0xL6FCtBfOU	2005-09-27
UEBOItnl6OY	2005-09-27
0 WS2O5lOqs	2005-09-27
0nbgoyzTBWc	2005-09-27
zTwq5XyE-Ls	2005-09-28

**\*\* HIGHLY CONFIDENTIAL \*\***