

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))
ECF Case
DECLARATION OF SUSAN J.
KOHLMANN IN SUPPORT OF
VIACOM'S OPPOSITION TO
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT

I, Susan J. Kohlmann, 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 Memorandum of Law in Opposition to Defendants' Motion for Summary Judgment. Attached to this declaration are Exhibits referenced in Viacom's Memorandum of Law and Viacom's Counter-Statement in Response to Defendants' Local Rule 56.1 Statement and in Viacom's Supplemental Counter-Statement in Response to Facts Asserted in Defendants' Summary Judgment Memorandum of Law but Omitted from Defendants' Local Rule 56.1 Statement. I make this declaration based on personal knowledge, except where otherwise noted herein.

Wilkins Declaration

2. Attached as Exhibit 1 is the Declaration of Scott B. Wilkins in Support of Viacom's Memorandum of Law in Opposition to Defendants' Motion for Summary Judgment, dated April 28, 2010, and Exhibits 1-47 thereto.

Documents Produced by Defendants

3. The documents listed below in paragraphs 4 through 53 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-".

4. Attached as Exhibit 1 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-00005708-GOO001-00005721.

5. Attached as Exhibit 2 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-00035137-GOO001-00035138. This email exchange was introduced as Exhibit 6 at the deposition of Franck Chastagnol.

6. Attached as Exhibit 3 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-00040895-GOO001-00040897.

7. Attached as Exhibit 4 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-00189308-GOO001-00189312. This email exchange was introduced as Exhibit 10 at the Rule 30(b)(6) deposition of David King.

8. Attached as Exhibit 5 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-00241143.

9. Attached as Exhibit 6 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-00241682.

10. Attached as Exhibit 7 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-00448911-GOO001-00448913.

11. Attached as Exhibit 8 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-00499589-GOO001-00499595. This email exchange was introduced as Exhibit 25 at the deposition of Omid Kordestani.

12. Attached as Exhibit 9 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-00515280.

13. Attached as Exhibit 10 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-00561391.

14. Attached as Exhibit 11 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-00561394.

15. Attached as Exhibit 12 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-00607526.

16. Attached as Exhibit 13 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-00707687-GOO001-00707689.

17. Attached as Exhibit 14 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-00730943-GOO001-00730975, and a true and correct copy of an associated email attachment produced by Defendants marked with the Bates number range GOO001-00730944-GOO001-00730975. This email exchange was introduced as Exhibit 8 at the deposition of Christopher Maxcy.

18. Attached as Exhibit 15 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-00744627.

19. Attached as Exhibit 16 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-00751570-GOO001-00751571.

20. Attached as Exhibit 17 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-00797743-GOO001-00797746.

21. Attached as Exhibit 18 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-00830262-GOO001-00830263.

22. Attached as Exhibit 19 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-00833914-GOO001-00833916. This email exchange was introduced as Exhibit 6 at the deposition of Varun Kacholia.

23. Attached as Exhibit 20 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-00839838-GOO001-00839841.

24. Attached as Exhibit 21 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-00943107-GOO001-00943108.

25. Attached as Exhibit 22 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-01506851.

26. Attached as Exhibit 23 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-01984461-GOO001-01984467, and a true and correct copy of an associated email attachment produced by Defendants marked with the Bates number range GOO001-01984464-GOO001-01984467.

27. Attached as Exhibit 24 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-02299635-GOO001-02299638, and a true and correct copy of an associated email attachment produced by Defendants marked with the Bates number range GOO001-02299636-GOO001-02299638.

28. Attached as Exhibit 25 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-02302174-GOO001-02302181.

29. Attached as Exhibit 26 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-02302195-GOO001-02302203.

30. Attached as Exhibit 27 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-02463138-GOO001-02463141. This email exchange was introduced as Exhibit 25 at the deposition of Thomas Donohue.

31. Attached as Exhibit 28 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-02604740-GOO001-02604745. This email exchange was introduced as Exhibit 5 at the deposition of Franck.

32. Attached as Exhibit 29 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-02826791, and a true and correct copy of an associated email attachment produced by Defendants marked with the Bates number range GOO001-02826792-GOO001-02826798. This email exchange was introduced as Exhibit 30 at the deposition of David Drummond, Exhibit 19 at the deposition of Eric Schmidt, Exhibit 16 at the deposition of Larry Page, and Exhibit 16 at the deposition of Sergey Brin.

33. Attached as Exhibit 30 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-02925393-GOO001-02925418.

34. Attached as Exhibit 31 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-02975607-GOO001-02975608.

35. Attached as Exhibit 32 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-03419774-GOO001-03419778.

36. Attached as Exhibit 33 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-03630988. This email exchange was introduced as Exhibit 30 at the deposition of Jawed Karim.

37. Attached as Exhibit 34 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-03676696-GOO001-03676717.

38. Attached as Exhibit 35 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-04731508.

39. Attached as Exhibit 36 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-04945320.

40. Attached as Exhibit 37 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-05311155-GOO001-05311159.

41. Attached as Exhibit 38 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-05639863-GOO001-05639865.

42. Attached as Exhibit 39 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-06674342-GOO001-06674347.

43. Attached as Exhibit 40 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-09603446-GOO001-09603455.

44. Attached as Exhibit 41 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-00850320-GOO001-00850323.

45. Attached as Exhibit 42 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-00850304-GOO001-00850305.

46. Attached as Exhibit 43 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-04500216-GOO001-04500217.

47. Attached as Exhibit 44 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-01620064-GOO001-01620087, and true and correct copies of associated email attachments produced by Defendants marked with the Bates number ranges GOO001-01620065-GOO001-01620070 and GOO001-01620071-GOO001-01620087.

48. Attached as Exhibit 45 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-09612404-GOO001-09612405.

49. Attached as Exhibit 46 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-06072619-GOO001-06072622.

50. Attached as Exhibit 47 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-05944464 -GOO001-05944480.

51. Attached as Exhibit 48 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-00515036.

52. Attached as Exhibit 49 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-01519246 -GOO001-01519251.

53. Attached as Exhibit 50 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-05611423 -GOO001-05611426.

54. Defendants have produced over 800 email messages sent between YouTube and Palisades Media Group. Arthur Chan appeared as a sender, recipient, or cc'd recipient on approximately 250 of those email messages.

Documents Produced by YouTube Co-Founder Jawed Karim

55. 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 listed below in paragraphs 56 through 63 are true and correct copies of documents produced by Jawed Karim and are marked with Bates numbers beginning with the prefix “JK.” See Hohengarten Decl. ¶¶ 218-221.

56. Attached as Exhibit 51 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range JK00004875-JK00004876.

57. Attached as Exhibit 52 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number JK00008527. This email exchange was introduced as page 1 of Exhibit 30 at the deposition of Jawed Karim.

58. Attached as Exhibit 53 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number JK00008555. This email exchange was introduced as page 2 of Exhibit 30 at the deposition of Jawed Karim.

59. Attached as Exhibit 54 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number JK00008591. This email exchange was introduced as page 3 of Exhibit 30 at the deposition of Jawed Karim.

60. Attached as Exhibit 55 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number JK00008595.

61. Attached as Exhibit 56 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number JK00008614. This email exchange was introduced as page 5 of Exhibit 30 at the deposition of Jawed Karim.

62. Attached as Exhibit 57 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number JK00008621. This email exchange was introduced as page 7 of Exhibit 30 at the deposition of Jawed Karim.

63. Attached as Exhibit 58 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number JK00008631. This email exchange was introduced as page 10 of Exhibit 30 at the deposition of Jawed Karim.

Documents Produced by Viacom

64. The documents listed below in paragraphs 65 through 70 are true and correct copies of documents produced by Viacom in this action, and accordingly are marked with Bates numbers beginning with the prefix "VIA."

65. The documents listed in paragraphs 66 through 70 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.

66. Attached as Exhibit 59 is a true and correct copy of an email exchange produced by Viacom marked with the Bates number range VIA00258309-VIA00258310.

67. Attached as Exhibit 60 is a true and correct copy of an email exchange produced by Viacom marked with the Bates number range VIA00378149-VIA00378150.

68. Attached as Exhibit 61 is a true and correct copy of an email exchange produced by Viacom marked with the Bates number range VIA00613146-VIA00613147.

69. Attached as Exhibit 62 is a true and correct copy of an email exchange produced by Viacom marked with the Bates number range VIA01108775-VIA01108808.

70. Attached as Exhibit 63 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number VIA12603576.

Documents Produced by Third-Party Fanscape

71. In response to a subpoena issued by Defendants in this action on October 30, 2008, third-party Fanscape produced documents marked with Bates numbers beginning with the prefix "FS."

72. Attached as Exhibit 64 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range FS043563-FS043567. This email exchange was introduced as Exhibit 56 at the deposition of John Eddow.

Deposition Transcripts From This Action

73. Attached as Exhibit 65 are true and correct copies of excerpts from the transcript of the deposition of Roelof Botha taken on August 5, 2009.

74. Attached as Exhibit 66 are true and correct copies of excerpts from the transcript of the deposition of Adam Cahan taken on December 19, 2009.

75. Attached as Exhibit 67 are true and correct copies of excerpts from the transcript of the deposition of Thomas Donohue taken on October 30, 2009.

76. Attached as Exhibit 68 are true and correct copies of excerpts from the transcript of the deposition of Maryrose Dunton taken on August 22, 2008.

77. Attached as Exhibit 69 are true and correct copies of excerpts from the transcript of the deposition of John Eddow taken on November 12, 2009.

78. Attached as Exhibit 70 are true and correct copies of excerpts from the transcript of the deposition of Tina Exarhos taken on February 23, 2009.

79. Attached as Exhibit 71 are true and correct copies of excerpts from the transcript of the deposition of Tom Freston taken on September 11, 2009.

80. Attached as Exhibit 72 are true and correct copies of excerpts from the transcript of the deposition of Michael Fricklas taken on September 22, 2009.

81. Attached as Exhibit 73 are true and correct copies of excerpts from the transcript of the deposition of Michelena Hallie taken on December 10, 2009.

82. Attached as Exhibit 74 are true and correct copies of excerpts from the transcript of the deposition of Mark Ishikawa taken on January 14, 2010.

83. Attached as Exhibit 75 are true and correct copies of excerpts from the transcript of the deposition of Jawed Karim taken on June 9, 2009.

84. Attached as Exhibit 76 are true and correct copies of excerpts from the transcript of the deposition of David King taken on January 13, 2010.

85. Attached as Exhibit 77 are true and correct copies of excerpts from the transcript of the deposition of Andrew Lin taken on July 2, 2009.

86. Attached as Exhibit 78 are true and correct copies of excerpts from the transcript of the deposition of Judy McGrath taken on July 29, 2009.

87. Attached as Exhibit 79 are true and correct copies of excerpts from the transcript of the deposition of Courtney Nieman taken on December 16, 2009.

88. Attached as Exhibit 80 are true and correct copies of excerpts from the transcript of the deposition of Micah Schaffer taken on July 23, 2008.

89. Attached as Exhibit 81 are true and correct copies of excerpts from the transcript of the deposition of Warren Solow taken on December 18, 2009.

90. Attached as Exhibit 82 are true and correct copies of excerpts from the transcript of the deposition of Tamar Teifeld taken on February 18, 2009.

91. Attached as Exhibit 83 are true and correct copies of excerpts from the transcript of the deposition of Kristina Tipton taken on October 29, 2009.

92. Attached as Exhibit 84 are true and correct copies of excerpts from the transcript of the deposition of Megan Wahtera taken on December 4, 2009.

93. Attached as Exhibit 85 are true and correct copies of excerpts from the transcript of the deposition of Michael Wolf taken on April 17, 2009.

94. Attached as Exhibit 86 are true and correct copies of excerpts from the transcript of the deposition of Franck Chastagnol taken on December 10, 2008.

95. Attached as Exhibit 87 are true and correct copies of excerpts from the transcript of the deposition of Scott Hurwitz taken on September 10, 2008.

96. Attached as Exhibit 88 are true and correct copies of excerpts from the transcript of the deposition of Chad Hurley taken on April 22, 2009.

Interrogatory Responses

97. Attached as Exhibit 89 is a true and correct copy of Defendants' supplemental responses to Plaintiffs' Second Set of Interrogatories, served on Viacom on April 28, 2010.

Documents Obtained From Publicly Accessible Portions of Defendants' Websites

98. 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 99 through 100 below was printed from the YouTube or Google website by an employee of Jenner & Block LLP acting at my direction.

99. Attached as Exhibit 90 is a true and correct copy of an "Official YouTube Blog" posting dated November 14, 2007.

100. Attached as Exhibit 91 is a true and correct copy of the Copyright Infringement Notification page on the YouTube website.

Other Documents

101. Attached as Exhibit 92 is a true and correct copy of a white paper produced by the Electronic Frontier Foundation entitled “Peer-to-Peer File Sharing and Copyright Law: A Primer for Developers.”

102. Attached as Exhibit 93 is a true and correct copy of a letter dated June 9, 2009 from Defendants to the Court waiving an advice of counsel defense.

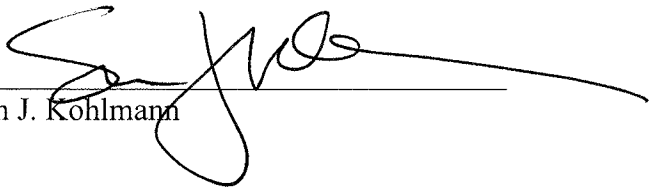
Community Guidelines

103. I navigated to the YouTube homepage by entering “www.youtube.com” in my Internet browser. At the bottom of that page in small font was a link called “Copyright.” I clicked on that link, and on the left side of the resulting page was a link to YouTube’s “Community Guidelines.” I clicked on that link and was taken to YouTube’s “Community Guidelines” page.

Copyright Tips

104. To arrive at the “Copyright Tips” page, I first performed the three steps that took me to YouTube’s “Community Guidelines” page. *See supra* ¶ 103. I then clicked on a link called “Copyright Tips.”

I declare under penalty of perjury that the foregoing is true and correct. Executed this 30th day of April, 2010, at New York, N.Y.



Susan J. Kohlmann