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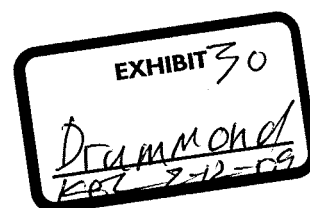
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G00001-02826791

  
**NBC UNIVERSAL**

**RICHARD COTTON  
EXECUTIVE VICE PRESIDENT and GENERAL COUNSEL  
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**To: Mr. David Drummond**

**Fax:**

**Telephone:**

**Date: February 12, 2007**

**Pages being sent including transmittal sheet: 7**

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**GO0001-02826792**



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February 12, 2007

**WITHOUT PREJUDICE**

**Via Fax and FedEx**

David Drummond  
Senior Vice President, Corporate Development  
Kent Walker  
Vice President and General Counsel  
Google, Inc.  
1600 Amphitheatre Parkway  
Mountain View, California 94043

Zahavoh Levine  
General Counsel and Vice President, Business Affairs  
YouTube, Inc.  
1000 Cherry Ave.  
San Bruno, CA 94066

Re: NBC Universal/YouTube

Dear Mr. Drummond, Mr. Walker and Ms. Levine:

I am writing to request your urgent attention, and prompt action on your part, to address the persistent infringement of NBC Universal ("NBCU") copyrighted content on the YouTube.com website. As discussed in greater detail below, the status quo simply does not work as an ongoing proposition for conduct of business by our respective companies, either independently or in prospective partnership, and it must change. We urgently request that YouTube immediately take all necessary steps, including deployment of a preventive filtering system for copyrighted content across its platform, that will effectively and pro-actively prevent the constant, endlessly repetitive appearance of wholesale amounts of NBCU copyrighted content on YouTube which NBCU has not authorized.

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As you know, NBCU has entered into a variety of agreements with YouTube authorizing the exhibition of a variety of NBCU content. Those arrangements have worked to our mutual benefit. What does not work to our mutual benefit – and indeed damages NBCU greatly and irreparably – is the constant appearance on the YouTube site of NBCU content that NBCU has *not* authorized. NBCU executives have repeatedly discussed with YouTube personnel the absolute need for YouTube to take pro-active steps to screen out unauthorized NBCU content, as opposed to its current enunciated practice of posting and exhibiting vast volumes of copyrighted material unless and until it receives a notice to remove it. In YouTube's situation, where it both knows of the huge volume of infringing material and benefits financially from the traffic this illegal content drives to the site, it must do more.

Indeed, we write this letter now because YouTube has been stating for months that it *would* do more. For instance, YouTube publicly announced that "[b]y the end of the year [2006], YouTube would provide "sophisticated tools to help content owners identify their content on the site" and "[a]utomated audio identification technology to help prevent works previously removed from the site at the request of the copyright owner from reappearing on the site." (Press Release, Sept. 25, 2006, <[http://youtube.com/press\\_room\\_entry?entry=CtO5EcMt2yM](http://youtube.com/press_room_entry?entry=CtO5EcMt2yM)>.) But YouTube has not provided such tools to prevent infringement.

For many months, NBCU has been incurring the burden and expense of regularly attempting to locate video clips from copyrighted works owned by NBCU entities and sending "takedown notices" to YouTube to remove from its site thousands of such clips. Yet, in what has become an "evergreen" cycle of infringement, the same content frequently reappears on YouTube's site almost as quickly as it is removed. In addition, there is a constant stream of new unauthorized uploads of other NBCU works that YouTube copies to its servers and displays. Each scenario offers fresh opportunities for YouTube to attract viewers and garner advertising income using NBCU's content, without benefit of a license. Indeed, despite NBCU's substantial efforts at sending takedown notices on a daily basis, the infringing clips on which NBCU sent notices in January 2007 alone had generated more than 28 million page views on YouTube.

A few concrete examples will demonstrate why the status quo is untenable and why YouTube's current system is wholly inadequate to prevent continuous, rampant infringement:

- Episode 12 of NBC's hit television program "Heroes" aired on January 22, 2007. By no later than the next day, YouTube began hosting and streaming at least three separate and complete copies of Episode 12. Although these clips were removed in response to NBCU notices, YouTube continued to host and stream complete copies of that same episode, as it was uploaded multiple times within that one week period alone, specifically on January 24, 25, 26 and 29. Indeed, over the course of the same period, YouTube hosted and streamed complete copies of almost the entire season of "Heroes" despite having received numerous prior notices of infringement concerning that title.

- Universal Studios released the motion picture "American Pie 5: The Naked Mile" ("American Pie") for home video on December 19, 2006. By the following day, YouTube was hosting and streaming a complete copy of "American Pie" in twelve segments. The YouTube subscriber who uploaded these videos tagged them simply as "AP," presumably to frustrate copyright monitoring based on key word searches. Available filtering technology, which does not depend on key words, would have been able to identify this video before it was uploaded. The infringing "American Pie" videos have to date generated more than 1.5 million page views from YouTube's servers. Many users presumably found the videos through pirate link sites, such as Flickpeek.com, which index complete TV episodes and motion pictures available on YouTube and elsewhere. Flickpeek, like many pirate sites, does not charge its users any fee but rather generates revenue through Google AdSense. In other words, YouTube and Google are not only both generating revenue for themselves from the 1.5 million plus views of "American Pie," but are also enabling pirate sites such as Flickpeek to earn advertising income. At the same time, YouTube and Google are providing no compensation to NBCU for unauthorized use of its content.
- Although YouTube claims to terminate users who are repeat infringers, its policies and/or practices regarding repeat infringers are inadequate and go unimplemented. For example, "hakabish," a user who has been the subject of multiple notices, continues to upload complete episodes of "Heroes" as well as Warner Bros.' "Smallville." Indeed, the YouTube home page for this user announces that he will upload "Heroes" every Tuesday (the day after it airs on NBC) as well as episodes of "Smallville" on Fridays. Hakabish has a Director's Account, which appears to allow him to exceed the 10-minute clip limit that YouTube claims applies to regular user accounts. Hakabish has indicated in comments readily viewable on YouTube that he may create a private channel on YouTube (viewable only upon invitation of the channel owner) to avoid monitoring by copyright owners.

While we could continue to give examples illustrating the deficiencies of YouTube's current "notice-and-takedown" processes, we think it best to quote a YouTube subscriber who posted the following comment after the removal of Episodes 12 and 13 of "Heroes": *"[F]or god SAKE someone else UPLOAD 12 AND 13 AGAIN and if they take it off SOMEONE ELSE DO IT AGAIN , they cant take it off the second u upload it FFS. USE UR HEAD PEOPLE!"* Regrettably, but unsurprisingly, YouTube continues to host and stream complete and unauthorized copies of Episodes 12 and 13 of "Heroes" even as of today. Indeed, its business model now seems designed to benefit from traffic generated by these infringements and the many thousands more like them.

For several reasons, we firmly believe that the DMCA affords YouTube and Google no protection under these circumstances. YouTube's purported status as a mere passive "service provider" offering "storage at the direction of a user" is completely eviscerated by its

employment of technology to copy, reformat and index the uploaded video on its servers for easier viewing, its display of advertising alongside the video while it is viewed, its sorting of videos into numerous categories, and its distribution of the video, among the many other active steps it takes to enhance its viewers' experience and draw them to its website. As such, YouTube is responsible for the massive infringements occurring on its own site, and its refusal to employ systems to prevent that infringement is legally indefensible.

Many months of operating experience have conclusively demonstrated that paper policies against infringement, combined with a "notice and remove" system, are futile means to address the massive amount of copyright infringement taking place on YouTube. This trail of experience unequivocally calls for affirmative measures to prevent copyright infringement on YouTube using available means, whether technological or human. More specifically, YouTube can and should at a minimum take the following steps:

- YouTube should promptly deploy "fingerprint"-based filtering technology, such as Audible Magic, to screen all uploaded video against a database of copyrighted works and prevent upload and/or display of unauthorized video, both as to full copies of works and clipped excerpts. The content fingerprint database should be populated over time not only by NBCU and other copyright owners, but also by YouTube itself using video clips that YouTube has removed due to copyright infringement. YouTube should work cooperatively with whichever technology vendor it selects, and with content owners, to fine tune the filtering system and improve its performance, especially as hackers attempt to circumvent it. Again, we will be pleased to work cooperatively with you to that end, as we are doing with MySpace, which has announced a plan to roll out Audible Magic filtering on its site to prevent copyright violations. In addition to Audible Magic, we note that Philips, GraceNote and Guba have all developed filtering solutions that establish the feasibility of technologically detecting and excluding unauthorized content.
- While the technological filtering solution is being ramped up, YouTube should use human filtering to prevent uploading and/or display of video that is identifiable as copyrighted and unauthorized, just as it apparently does now for pornography, hate speech and other inappropriate material.
- When YouTube receives a takedown notice or otherwise obtains knowledge of a clip that has eluded the filtering system, it should immediately remove not only the clip (or full work) in question, but all other versions or excerpts of the same copyrighted programming identified in the notice, in addition to "hashing" and "fingerprinting" the copyrighted work to prevent future unauthorized uploads as discussed above.
- YouTube should also actively monitor its site, including private channels, for additional unauthorized copies of NBCU's copyrighted works using keywords, tags, and other information we provide to you, and remove them when they are located without waiting for a specific notice.

- YouTube should notify users who have uploaded clips that are subsequently removed, as well as those whose attempted uploads are turned back by the filtering system, that their uploads violated copyright law and YouTube's own Terms of Use, rather than just a notice asserting that the content has been removed at the request of the copyright owner.
- YouTube should immediately implement an effective system to terminate the user accounts of repeat infringers, including a process for preventing their resubscription under new user accounts.
- YouTube should implement procedures to block the use of YouTube to host "hidden" copyrighted content for pirate link sites such as Flickpeek discussed above. These procedures should include a means, such as a designated YouTube e-mail account, for copyright owners to notify YouTube of such pirate link sites.

We harbor no unrealistic expectations that such means would be 100% effective at all times. But we do expect implementation of available preventive steps to address wholesale infringements of this magnitude, especially because these infringements are a direct by-product of the way YouTube is designed to operate. Since technological means are currently available to reduce radically the amount of infringing material that reaches YouTube users, there is no excuse not to adopt them.

Deployment of such preventive measures cannot be conditioned on first reaching a commercial agreement. Other user-generated content sites both large and small — including MySpace, Revver and Guba — have taken significant steps to prevent copyright infringement on their sites without such a prerequisite. Indeed, YouTube's commercial offer indicates that, as a technological matter, YouTube is fully capable of identifying our copyrighted material on an automated basis. But despite its previously declared intention to do more to prevent copyright infringement, YouTube now seems to be taking the position that it will not deploy such technology to meet legal obligations, but will only offer it to copyright owners that submit to YouTube's commercial demands. While we are happy to work with you on the technological and legal fronts in developing a filtering system that meets our respective needs and those of other content owners, meeting your legal obligations must be completely independent of any business discussions.

In this connection, although much of this information is already available to you, as a first step in the process we will shortly provide you with a list of NBCU's copyrighted works, as well as a list of the authorized user accounts from which NBCU content may be uploaded to YouTube. Each of those will be a living document that we intend to update regularly, and we expect that they will be used as part of a preventive program. In the meantime, we will continue to send takedown notices, but for the reasons discussed above that simply cannot be regarded as an acceptable solution to the current state of affairs.

David Drummond, et al.

February 12, 2007

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It is our sincere hope that both the business and filtering discussions can and will proceed toward a common goal of a mutually beneficial business relationship that recognizes the value and copyrighted nature of NBCU's content. Both of these discussions have now been ongoing for extended periods of time. From our point of view, we are quickly approaching a crossroads. By the close of this week, we ask for the following: (i) a commitment and plan for rapid deployment of a system and procedure to prevent uploading and display of *unauthorized* content, and, (ii) to the extent both parties seek to *authorize* substantial NBCU content on YouTube, an agreement in principle on a commercial deal that clearly delineates the scope and terms for carriage of such authorized NBCU content.

I suggest we talk on Friday, February 16<sup>th</sup>, to determine where we are on both questions.

The foregoing is not intended to be a complete statement of the facts, rights or claims relating to this matter. NBC Universal expressly reserves all of its rights, claims and remedies with respect to the issues addressed in this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Dick Cotton", with a stylized flourish at the end.

Richard Cotton

cc: Jeff Zucker  
Beth Comstock

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