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

VIACOM INT'L INC., ET AL.,)	
)	
Plaintiffs,)	ECF Case
v.)	Civil No. 07-CV-2103 (LLS)
)	
YOUTUBE, INC., ET AL.,)	
)	
Defendants)	
THE FOOTBALL ASSOCIATION)	
PREMIER LEAGUE LIMITED, ET AL.,)	
on behalf of themselves and all others)	
similarly situated,)	ECF Case
)	Civil No. 07-CV-3582 (LLS)
Plaintiffs,)	
v.)	
)	
YOUTUBE, INC., ET AL.,)	
)	
Defendants.)	
)	

**DECLARATION OF DAVID KING IN FURTHER SUPPORT OF
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

I, DAVID KING, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I work at Google as a Product Manager for YouTube's Content ID system. On March 1, 2010, I executed a declaration in support of YouTube's motion for summary judgment in this case. On April 29, 2010, I executed a declaration in support of YouTube's opposition to plaintiffs' summary judgment motions. My previous declarations discussed YouTube's content-management systems, including "Claim Your Content" (CYC) and Content ID. I understand in opposing YouTube's motion for summary judgment, Viacom has made certain assertions about

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YouTube's policies for assigning copyright "strikes" to users whose videos were "blocked" using CYC. I have first-hand knowledge of YouTube's policies in this area, and I submit this declaration to respond to Viacom's assertions.

2. For a brief period following the roll-out of YouTube's new CYC platform in February 2007, videos blocked using the tools available to rights holders using that platform did not result in copyright "strikes" under YouTube's repeat-infringer policy. There were two reasons for that. First, as a policy matter, when CYC launched, it was an untested system that for the first time gave right holders the ability to block the upload of videos automatically, often without anyone looking at those videos and without the submission of a formal DMCA notice. CYC was a powerful tool, and we were concerned about it being misused. Thus, we wanted to make sure the system was being used properly before taking the step of issuing strikes to users' accounts. Second, at a technology level, CYC was a complex and novel undertaking that relied in large part on a third-party service provider, Audible Magic. Linking up CYC to our existing system for tallying copyright "strikes" introduced an additional layer of engineering complexity. It took us some time to develop that additional functionality and to ensure that when we actually linked up the two systems, strikes would be tallied accurately.

3. During the period when CYC was not yet linked to YouTube's strike system, copyright owners were always free to send regular DMCA notices (via mail, fax, or email) or to use YouTube's Content Verification Program, which allowed rights holders to transmit automated takedown notices with the click of a button.

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Takedowns processed through the regular DMCA process or CVP resulted in a strike to the account of the user who had posted the video, in accordance with YouTube standard practices.

4. In the summer of 2007, just a few months after CYC launched, we completed the task of linking it up with our strike-tallying system. From then on, when rights holders submitted a “block” request using the manual “claiming” functionality that was available via CYC, YouTube assigned a strike to the account of the user who had uploaded the video, just as if it were an ordinary DMCA notice. At the same time, we decided that when a block resulted exclusively from an automated match using fingerprinting technology—rather than from a claim manually submitted by the rights holder after it actually reviewed the video in question—that a strike should not be assigned. The reason for that has to do with the nature of an automated fingerprinting block.

5. YouTube’s policy is to assign strikes to users who post videos that a copyright owner identifies in a DMCA notice as allegedly using its copyrighted material in an unauthorized way. A DMCA notice includes a statement from the rights holder made under penalty of perjury. But when a video is identified and blocked using YouTube’s fingerprinting technology, that is not like a DMCA notice. In that situation, the fingerprinting system identifies some portion of the uploaded video as matching some portion of a reference file submitted by a copyright owner who has designated a policy of “block” for videos that match its reference. The video is blocked automatically. The copyright owner has never looked at the blocked

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video and has not provided a sworn statement to YouTube that the video is using its copyrighted material in an unauthorized way.

6. YouTube's policy is to assign strikes where the copyright owner makes an affirmative representation to YouTube that a video is infringing its copyright based on a human review of a particular video. But YouTube does not believe it appropriate to assign strikes to a user when the user uploads a video that is blocked in an entirely automated process without human confirmation from the rights holder that the video is an alleged infringement

7. YouTube's policy of not assigning strikes based on entirely automated blocks using our fingerprinting tools is not a secret. It is explained to rights holders who sign up for YouTube's content-management tools. To my knowledge, no copyright owner has objected to it. When we launched Content ID in October 2007, I participated in a press conference to describe the technology and how it worked. I remember explaining to reporters that videos automatically blocked using Content ID would not result in a strike for the user who posted the video.

Dated: San Bruno, California
June 2, 2010


David King