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FILED UNDER SEAL

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

VIACOM INTERNATIONAL 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	)	ECF Case
similarly situated,	)	
	)	Civil No. 07-CV-3582 (LLS)
Plaintiffs,	)	
v.	)	
	)	
YOUTUBE, INC., ET AL.,	)	
	)	
Defendants.	)	
	)	

**DECLARATION OF CHAD HURLEY SUPPORT OF DEFENDANTS’ OPPOSITION TO  
PLAINTIFFS’ MOTIONS FOR PARTIAL SUMMARY JUDGMENT**

CHAD HURLEY, pursuant to 28 U.S.C. § 1746, hereby declares as follows:

1. I am one of the three founders of YouTube (along with Steve Chen and Jawed Karim) and YouTube’s Chief Executive Officer. I submit this declaration in support of Defendants’ opposition to plaintiffs’ motions for partial summary judgment.

2. As explained in my March 3, 2010 declaration submitted in support of YouTube’s motion for summary judgment, YouTube was not founded with an intent to in any way encourage or foster copyright piracy. Our intent was to create a site for personal videos created by users.

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3. Early on, Steve Chen, Jawed Karim, and I debated the role of so-called “stupid” or “viral” videos on YouTube. We generally used this as a shorthand for “prank” or “stunt” videos (like a person drinking an entire gallon of milk). It was not a shorthand for network television shows or feature films. What we referred to as stupid videos were amateur videos that we understood to have been created as something to be circulated virally around the Internet. At the time we started YouTube, there were a few other video websites (including bigboys.com, stupidvideos.com, and filecabi.net) that were focusing on those kinds of videos. While stupid videos seemed to have the potential to be popular, they did not represent the kind of user-created, personal videos that I wanted YouTube to attract and build a community around. Steve, Jawed, and I had many discussions about what policies we should have for these kinds of “stupid videos” and we expressed different views at different times. But those debates were about our vision for YouTube, whether it should be only about personal videos or whether we should be more willing to have some “stupid videos” on the site as well. These debates were not about copyright infringement. None of us wanted videos on YouTube that were infringing a copyright or that the creators of those videos did not want on the site.

4. Steve, Jawed and I agreed we should reject videos due to concerns about copyright. Although I had no idea whether professional-looking videos on YouTube were authorized or unauthorized, I wanted to remove them because I didn’t want our users to get the wrong impression that YouTube was intended for uploading videos they did not create or were not authorized to upload. As I wrote in a June 2005 email, saying we should remove videos that appeared to be from a network TV show, “the key to our success is personal videos” and “We are not another ‘StupidVideos’ or

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'Bittorrent'." In the same email, I said that "viral videos are fine" but not something that comes from "a network or movie." See Ex. A hereto, a true and correct copy of a 6/26/05 email chain among me, Steve Chen, and Jawed Karim.

5. One example of our internal debates about stupid videos is an email exchange that Steve, Jawed, and I had in July 2005, in which Jawed advocated allowing "stupid videos" on YouTube, which he estimated "will be 1% of our videos." I responded, "yup, we need the views. i'm a little concerned with the recent supreme court ruling on copyright material though." I then proposed allowing users to select among various descriptors when uploading videos (including "personal" and "viral"). My thinking was that if "viral" videos ever did become a source of copyright problems, this mechanism would allow YouTube to more easily remove them. See Ex. B hereto, a true and correct copy of an email chain among me, Steve Chen, and Jawed Karim.

6. In my March 3, 2010 declaration, I also discussed a number of emails among Steve, Jawed, and I where we discussed our vision for YouTube and how we put that vision into practice by rejecting users' videos that looked like professionally produced material that we thought may not be authorized. Some more examples of this include the following:

- a. I proposed a "rule of thumb" under which videos with "obvious network branding" would be rejected. See Ex. C hereto, a true and correct copy of a 6/28/05 email I wrote to Steve and Jawed.
- b. On July 2, 2005, I sent an email to Jawed telling him an account name of a user with music videos to be removed. See Ex. D hereto, a true and correct copy of a 7/2/05 email I wrote to Jawed.

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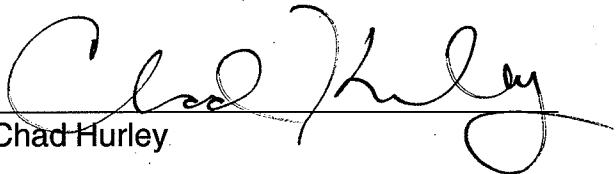
- c. On July 4, 2005, I exchanged email with Jawed about rejecting music videos and footage from Major League Baseball. See Ex. E hereto, a true and correct copy of a 7/4/05 email string among me, Steve, and Jawed.
- d. On July 16, 2005, Jawed sent me and Steve an email about rejecting clips from the movie *Initial D*. See Ex. F hereto, a true and correct copy of a 7/16/05 email string among me, Steve, and Jawed.
- e. On August 1, 2005, I emailed Jawed about rejecting videos that appeared to be clips from the television show Family Guy and Jawed replied "reject, definitely." See Ex. G hereto, a true and correct copy of a 8/1/05 email string including me and Jawed.

7. After Viacom took down approximately 100,000 videos from YouTube in February 2007, YouTube's traffic increased. I expected this would happen, as I did not think a takedown of Viacom content would affect YouTube. See Ex. H hereto, a true and correct copy of an email chain including me and Omid Kordestani. Third party web site reporting data released shortly thereafter confirmed my expectations, showing that visits to YouTube actually surged, rather than decreased after Viacom's takedown. See Ex. I, hereto, a true and correct copy of a 2/27/07 email copied to me. YouTube's data also shows increased video views in the post-February 2007 time frame. For example, according to data I have reviewed, YouTube's average daily views in January 2007 were approximately 252 million. By May 2008, YouTube's average daily views had increased to approximately 1.1 billion. Since then, YouTube's average daily views have

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continued to increase, and have now nearly doubled since May 2008, to approximately 2 billion daily views.

I certify under penalty of perjury under the laws the United States that the foregoing is true and correct. Signed this 29<sup>th</sup> day of April, 2010 at San Bruno, California.

  
Chad Hurley

## **C. Hurley Exhibit A**

**From:** Steve Chen <[REDACTED]>  
**Sent:** Sunday, June 26, 2005 11:05 AM  
**To:** Chad Hurley <chad@youtube.com>  
**Cc:** Karim Jawed <[REDACTED]>  
**Subject:** Re: crappy videos

---

I think we should reject them. I agree.

I agree with your stance. We have to look at each of them carefully but the uploading of an entire season of shows is just stupid.

-s

On Jun 26, 2005, at 12:03 PM, Chad Hurley wrote:

> Yo guys,  
>  
> This user, TheOCRox311, is uploading crappy videos... like the  
> entire season finale of "Charmed" in 5 parts.  
>  
> I really want to start rejecting copyrighted material now. I think  
> the key to our success is personal videos. If we are going to build  
> this service, I think we should do it right and start enforcing  
> this rule. We are not another "StupidVideos" or "Bittorrent".  
>  
> Viral videos are fine, like the airplane videos you found on the  
> web or funny commercials people upload. But when it blatantly comes  
> from a network or movie, we shouldn't mess around... we are going  
> to be big and will perhaps someday even offer premium content, so I  
> don't want to get sued or piss anyone off.  
>  
> What do you think? Do you care if I reject all of "TheOCRox311's"  
> crap right now?  
>  
> -Chad  
>

## **C. Hurley Exhibit B**



**From:** Chad Hurley <chad@youtube.com>  
**Sent:** Sunday, July 10, 2005 10:42 AM  
**To:** Steve Chen <[REDACTED]>  
**Cc:** Jawed <[REDACTED]>  
**Subject:** Re: unique visitors

---

yup, we need views. i'm a little concerned with the recent supreme court ruling on copyrighted material though. perhaps, when we add the video type drop down, we do add "viral videos", so it's easier to take out later if it is a problem.

Video Type:  
-Personal  
-Blog  
-Viral  
-"For Sale"

It would also really give us a chance to customize the fields on upload for each.

???

On Jul 10, 2005, at 4:45 AM, Steve Chen wrote:

> I agree.

>

> -s

>

> On Jul 9, 2005, at 6:03 PM, Jawed wrote:

>

>

>> Look at their sites, and their ad rates:

>>

>> <http://www.logicstart.com/advertising/>

>>

>> Guys, I care mostly about how many unique visitors we get.

>>

>> Let's do the hotornot thing.. let's allow stupid videos, I'm not concerned

>> because I think in the long run, stupid videos will be 1% of our videos.

>> But it gets the initial visitors. After a while, they will start

>> uploading

>> other interesting clips.

>>

>> Jawed

>>

>>

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

>>

>>

>>

>>

>

>

v

## **C. Hurley Exhibit C**

**From:** Chad Hurley <chad@youtube.com>  
**Sent:** Tuesday, June 28, 2005 7:28 AM  
**To:** Chen Steve <[REDACTED]>; Karim Jawed <[REDACTED]>  
**Subject:** a copyright rule

---

so last night, i was try to think of a good way to decide if something is rejected or not....

and I thought this was a good rule of thumb, simply look for obvious network branding... like the Major League Baseball logo or a new channel watermark, like ABC or NBC.

is there a way for me to review the old approved videos and reject them? or can we build this by adding check boxes and a reject button on the admin\_allvideos page?

## **C. Hurley Exhibit D**

**From:** Jawed <[REDACTED]>  
**Sent:** Saturday, July 2, 2005 10:38 AM  
**To:** Chad Hurley <chad@youtube.com>  
**Cc:** Chen Steve <[REDACTED]>  
**Subject:** Re: more vids to remove

---

ya, all videos added to admin.

Jawed

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

On Sat, 2 Jul 2005, Chad Hurley wrote:

> this guy has a ton of music videos that need to be removed..  
>  
> [http://www.youtube.com/profile\\_videos.php?user=slvgdvg](http://www.youtube.com/profile_videos.php?user=slvgdvg)  
>  
> -chad  
>  
>

## **C. Hurley Exhibit E**

**From:** Jawed [REDACTED]  
**Sent:** Monday, July 4, 2005 2:53 PM  
**To:** Chad Hurley <chad@youtube.com>  
**Cc:** Steve Chen <[REDACTED]>  
**Subject:** Re: commercials

---

ok I did ORB and MLB.

Jawed

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

On Mon, 4 Jul 2005, Chad Hurley wrote:

> can you also add all of those "orb" music videos back to the list  
> too... maybe do a search for music or mtv and add all of music videos  
> back to admin... then I'll go through them.

>  
> also search for MLB... i think some baseball videos are still on the  
> site.

>

>

>

>

> On Jul 4, 2005, at 12:59 PM, Jawed wrote:

>

>> I added a shitload of commercial videos BACK into admin.

>>

>> please review and reject... most of them. I think with all the great  
>> videos we are getting, we should kill these stupid TV ads. They are so  
>> lame compared to genuine personal videos.

>>

>> Jawed

>>

>>

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

>>

>>

>>

>>

>>

>

>

>



## **C. Hurley Exhibit F**

**From:** Jawed <[REDACTED]>  
**Sent:** Saturday, July 16, 2005 6:36 AM  
**To:** Chad Hurley <chad@youtube.com>; Steve Chen <[REDACTED]>  
**Subject:** copyright

---

someone uploaded a shitload of "Initial D-" stuff. "Clip from the Hong Kong film Initial D."

I think we should reject all that shit.

Jawed

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

## **C. Hurley Exhibit G**

**From:** Jawed <[REDACTED]>  
**Sent:** Monday, August 1, 2005 9:42 AM  
**To:** Chad Hurley <chad@youtube.com>  
**Cc:** YouTube Group <[REDACTED]>  
**Subject:** Re: koolkeith500

---

reject, definitely.

Jawed

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

On Mon, 1 Aug 2005, Chad Hurley wrote:

> This user is starting to upload tons of "Family Guy" copyrighted  
> clips... I think it's time to start rejecting some of them. Any  
> objections?  
>  
> -Chad  
>  
>  
>  
>

## **C. Hurley Exhibit H**

To: "Omid Kordestani" <[REDACTED]>  
From: "Chad Hurley" <hurley@google.com>  
Cc:  
Bcc:  
Received Date: 2007-02-01 21:13:21 GMT  
Subject: Re: What I sent to Viacom...

---

Excellent, I like how this is moving along... I don't feel the take downs will effect us.

-Chad

On 2/1/07, Omid Kordestani <[REDACTED]> wrote:

>  
> This is what I sent to Viacom this morning. Adam called Tim to inform him  
> that they are going to the big take-down (and they realize that they will  
> suffer big traffic loss). This is typical of them trying to see if they can  
> get a different answer by talking to other senior points of contact at  
> Google. We have all the leverage...let's stick to this communication and see  
> how things roll out.  
>  
> Thanks,  
>  
> Omid  
>  
> ----- Forwarded message -----  
> From: Omid Kordestani <[REDACTED]>  
> Date: Feb 1, 2007 9:22 AM  
> Subject: Re: Thank you and data  
> To: "Cahan, Adam" <Adam.Cahan@mtvn.com>  
> Cc: "Dooley, Tom" <TED@viacom.com>  
>  
> Tom and Adam,  
>  
> Thank you for the call yesterday and the follow-up email. I immediately  
> followed up with my Google and YT teams on both the partnership terms as  
> well as your potential request for a significant Viacom content "take-down"  
> request.  
>  
> Regarding the partnership proposal, we believe that we had made a lot of  
> progress on the framework but that the financial terms are very one-sided,  
> especially when we consider our active partnerships, trials and learnings  
> over the past few months. We are absolutely interested in doing a deal and  
> we think Viacom deserves a premium because of all the advantages of your  
> content that we all know about. So the push-back here isn't that you are  
> seeking a significant financial commitment and sales control; it's that  
> Google isn't getting what we should for that money, and we are now convinced  
> of that given all our learnings and the more flexible approach other  
> partners are taking with us. I'd like to suggest that we re-engage the core  
> teams on both sides and try to get to a place that is more balanced.  
>  
> Since you want a decision in a few days and you are concerned about the  
> distribution of your content through our network, we would like to be  
> responsive to you especially if the above discussions take more time, which  
> they always seem to do. I have checked with our operations teams, and the  
> good news is that we have significantly improved our mass takedown tool.  
> So, provided you gives us the specific URLs where your videos are

> displayed, we probably could get all 100K+ down within a few hours. If you  
> only give us search terms or program names, it would be a longer process as  
> we'd be reviewing individual videos to try and make the assessment as to  
> whether it's your content or a fair use of your content, etc. Importantly,  
> once a video is removed, it can be very hard to re-upload it (because of the  
> hashing function that we use to block re-uploading). So, if you decide to  
> remove your content, but later change your mind, that might be difficult or  
> at least time consuming.

>  
> We are prepared to move on both fronts simultaneously. In fact, it may be  
> most productive to take this approach as we would learn a lot from the  
> impact of the content removal (more accurate estimate of impact of traffic  
> for both Viacom and Google/YT, more accurate measure of ad inventory, etc.)

>  
> My global management team is in town for an all day planning meeting, I am  
> booked today through the evening. I can call you briefly during the lunch  
> break or respond to your email.

>  
> Please advise on how you would like to proceed.

>  
> Regards,

>  
> Omid

>  
> On 1/31/07, Cahan, Adam <Adam.Cahan@mtvn.com> wrote:

>>  
>> Omid -

>>  
>> Appreciate the call today and thank you for making time on such short  
>> notice especially before Google earnings. As Tom mentioned on the call,  
>> since our last discussion we have had an opportunity to begin our crawl of  
>> YouTube with tools we created.

>>  
>> On prior takedowns we have removed 12,472 videos representing 77,890,383  
>> views across our franchises. Based on our new crawl and review process we  
>> have identified 103,626 unique video assets representing 1,143,083,212 views  
>> currently at YouTube. Happy to provide greater detail if needed, but to  
>> give you a sense of our connection with this audience, and the value we  
>> bring as a unique partner:

>>  
>> - 7,625 Nickelodeon Avatar Videos; 5,461 Comedy Central South Park  
>> videos; 4,075 The-N Degrassi videos...  
>> - 57M views of South Park, 50M views of Chappelle, 26M views of  
>> Real World...

>>  
>> We believe this represents a small fraction of the content, and  
>> potential here given these counts are without promotion, do not include  
>> prior takedowns, and are greatly limited by our current capability to crawl,  
>> review and identify individual videos.

>>  
>> Please let me know how I can be helpful.

>>  
>> Best - Adam

>>  
>> \_\_\_\_\_

>>  
>> \*\*\*Adam Cahan\*

>> MTV Networks - EVP, Strategy and Business Development





# **C. Hurley Exhibit I**

To: "Eric Schmidt" [REDACTED] "Omid Kordestani" [REDACTED],  
"Joan Braddi" [REDACTED], "Tim Armstrong" <tim@google.com>  
From: "David Eun" <deun@google.com>  
Cc: "Hurley Chad" <hurley@google.com>  
Bcc:  
Received Date: 2007-02-27 20:43:19 CST  
Subject: Fwd: [Harappa-bd] from hitwise - YT traffic increases after viacom takedown

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Interesting to note...

----- Forwarded message -----

From: David Lee <davidlee@google.com>  
Date: Feb 26, 2007 2:41 PM  
Subject: [Harappa-bd] from hitwise - YT traffic increases after viacom takedown  
To: Harappa-bd [REDACTED]

YouTube Traffic Surges without  
Viacom <<http://newteevee.com/2007/02/26/youtube-traffic-surges-without-viaco=/>>  
Written by Paul  
Kapustka <<http://newteevee.com/author/kaps/>>- Posted Monday, February 26,  
2007 at 4:00 AM PT

It's still early in the game, to be sure, but so far it looks like YouTube can keep calling Viacom's bluff <<http://newteevee.com/2007/02/05/youtube-should-call-viacoms-bluff/>>1, especially since early research shows that YouTube traffic has surged, not suffered, since Viacom demanded the takedown <<http://newteevee.com/2007/02/02/viacom-demands-youtube-pull-its-clips/>>2 of 100,000 purportedly purloined video clips.

According to research from the fine folks at Hitwise, YouTube visits are up 14 percent <[http://weblogs.hitwise.com/leeann-prescott/2007/02/youtube\\_traff=c\\_up\\_14\\_since\\_vi.html](http://weblogs.hitwise.com/leeann-prescott/2007/02/youtube_traff=c_up_14_since_vi.html)> 3 since Viacom's cease-and-desist order, showing that maybe it's not just people watching Daily Show and Colbert clips after all. Who needs that Audi=le Magic stuff <<http://www.siliconvalley.com/mld/siliconvalley/16765219.htm>>4, anyway?

Hitwise's LeeAnn Prescott goes on to report that during early February YouTube traffic also "surged above the combined traffic to all of the television network websites," albeit with some caveats. The figure doesn't include web pages for things like American Idol, The Simpsons and sports =97 or in other words, just about everything that matters on mainstream TV.

Still, the numbers show that there's pressure not only on YouTube <<http://newteevee.com/2007/02/15/big-media-piles-on-youtube-for-now/>> 5 but on the major content players as well, since they can't really afford to be off the YouTube traffic train.

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David Lee  
Principal | New Business Development  
Google Inc. | 1600 Amphitheatre Pkway, Mountain View, CA 94043  
[REDACTED]

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Harappa-bd mailing list

<https://mailman.corp.google.com/mailman/listinfo/harappa-bd>

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David Eun

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