

Contains Material Designated Confidential and Highly Confidential Pursuant to Protective Order

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

THE FOOTBALL ASSOCIATION
PREMIER LEAGUE LIMITED, BOURNE
CO. (together with its affiliate MURBO
MUSIC PUBLISHING, INC.), CHERRY
LANE MUSIC PUBLISHING
COMPANY, INC., CAL IV
ENTERTAINMENT LLC, ROBERT TUR
d/b/a LOS ANGELES NEWS SERVICE,
NATIONAL MUSIC PUBLISHERS'
ASSOCIATION, THE RODGERS &
HAMMERSTEIN ORGANIZATION,
STAGE THREE MUSIC (US), INC.,
EDWARD B. MARKS MUSIC
COMPANY, FREDDY BIENSTOCK
MUSIC COMPANY d/b/a BIENSTOCK
PUBLISHING COMPANY, ALLEY
MUSIC CORPORATION, X-RAY DOG
MUSIC, INC., FÉDÉRATION
FRANÇAISE DE TENNIS, THE MUSIC
FORCE LLC, and SIN-DROME
RECORDS, LTD. on behalf of themselves
and all others similarly situated,

Plaintiffs,

v.

YOUTUBE, INC., YOUTUBE, LLC and
GOOGLE, INC.,

Defendants.

Case No. 07 Civ. 3582 (LLS)

**CLASS PLAINTIFFS' STATEMENT
OF UNCONTROVERTED
MATERIAL FACTS IN SUPPORT
OF THEIR MOTION FOR PARTIAL
SUMMARY JUDGMENT**

Redacted Pursuant to
Protective Order at
Request of Defendants

	<p><i>Sports</i> = [REDACTED]... <i>News</i> = [REDACTED] (emphasis added) (GOO001-02519869)</p> <p>Ellerson Ex. 9 (GOO001-03065453-306467) (Tab 21) (Ellerson: "Attached is the recommendation that we made to Dave [Eun]... Potential Target... English Premier League.")</p> <p>C. Hurley Ex. 41 (JK00007416) (Tab 47) ("take down whole movies. take down entire TV shows. take down XXX stuff. everything else keep including <i>sports</i>, commercials, news, etc.") (emphasis added)</p> <p>Zameczkowski Ex. 13 (GOO001-02341604-09) (Tab 126) (Premier League was "world's biggest and most recognized sporting leagues" and "already popular" on GV and YouTube.) (GOO001-02341605)</p> <p>Zameczkowski Ex. 18 (GOO001-00716143-45) (Tab 130) (Redic: "We are working on estimating the potential value of various sports content to YouTube. This requires us to estimate the number of video views that we could potentially experience if the content of certain content providers was on the site. For example, if we had UEFA [Union of European Football Associations] in 2008, what would be the potential number of views that we could see.") (GOO001-00716143)</p> <p>Zameczkowski Ex. 19 (GOO001-01655883-84.0003) (Tab 131) ("Premier League" is listed as a Tier 1 content partner, part of "Sporting organizations and clubs with international recognition.") (GOO001-01655883)</p> <p>Patrick Walker Ex. 9 (Tab 117) (Bill Kipp: "Authoritative 3rd party data sources for movie titles, song lists, etc... Patrick [Walker] create a nice list of sports-related content providers and subjects to help us with our search for unauthorized content... Soccer (Football) Most Followed Leagues (use both league/competition names and team/club names)... English Premier League... German Bundesliga... Scottish Premier League... Tennis... Top Competitions: Wimbledon, US Open, Australian Open, Roland Garros (French Open)...") (GOO001-00313643-</p>
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	<p>00313646)</p> <p>Walker Ex. 19 (GOO001-00922380-81) (Tab 119) (“FAPL Opportunity... Why do the deal?... <i>avoiding possible litigations for copyright infringements...</i> Proposed deal terms... Estimate license fee: between 5 to 10% of the International TV rights (•20 million [sic] over 3 years.”) (GOO001-00922380) (emphasis added)</p> <p>Ellerson Ex. 9 (GOO001-03065453-306467) (Tab 21) (Ellerson: “Attached is the recommendation that we made to Dave [Eun]...Potential Target...English Premier League.”)</p>
<p>20. YouTube has been repeatedly informed that sports content is being exploited on YouTube without authorization.</p>	<p>Zameczkowski Ex. 16 (GOO001-00221953) (Tab 128) (German Football League, Bundesliga, indicated to Defendant’s employee Anthony Zameczkowski that it may join the class action lawsuit)</p> <p>Zameczkowski Ex. 17 (GOO001-02339707-13) (Tab 129) (La Liga (Spanish football) threatened litigation due to the presence of unlicensed content on YouTube) (GOO001-02339710)</p> <p>King Ex. 13 (12/12/08) (GOO001-01519154-55) (Tab 71) (Adam Coates emails: “I just had an interesting meeting with Ligue 1 who are considering joining the Premiership class action to sue YouTube.”) (GOO001-01519154)</p> <p>Scottish Premier League (First Amended Complaint ¶ 33) (Tab 137)</p>
<p>21. Defendants concluded that Premier League was a sports entity with content on YouTube that could be exploited financially for YouTube’s benefit.</p>	<p>Zameczkowski Ex. 13 (GOO001-02341604-09) (Tab 126) (“FAPL [Football Association Premier League] and YouTube... Why Do the Deal?... Prime content with which we can test and improve advertising in various geographies... Running models now. Aim for roughly \$40MM over three years – which is what we believe is roughly in range of competitive bids.”) (GOO001-02341605; GOO001-02341609)</p> <p>Walker Ex. 19 (GOO001-00922380-81) (Tab 119) (See above)</p> <p>Zameczkowski Ex. 14 (GOO001-00214966-67) (Tab</p>

	<p>127) (Walker: “[...] there’s a deadline mid next week to put in a proposal for English Premier League rights globally and we’re trying to run some commercial models to gauge [sic] value based on video usage in the categories listed below... [which] might become a recurring need... For the following terms:</p> <ol style="list-style-type: none"> 1. soccer 2. football 3. Premier League (sp?) <p>...what are:</p> <ol style="list-style-type: none"> a. # searches for the above done on YT daily b. # titles with tagged with the above c. # tales with the above in the title text”) <p>(GOO001-00214966)</p> <p>Zameczkowski Ex. 18 (GOO001-00716143-45) (Tab 130) (YouTube estimations of Premier League video views in excess of 30 million.) (GOO001-00716143; GOO001-00716145) (See above)</p> <p>Ellerson Ex. 10 (GOO001-02519867-73) (Tab 22) (See above)</p>
<p>22. YouTube did not license Premier League content despite knowledge that videos of Premier League footage on YouTube were unauthorized.</p>	<p>Molnar Ex. 19 (GOO001-01211705-14) (Tab 92) (Zameczkowski: “Dear Paul and Phil, I am working with Patrick Walker in the YouTube/Google Video EMEA team. According to the ITT you sent us on January 24th, the bidding form was supposed to be supplied 7 days after the date of issue of this ITT but we didn’t receive it. Are you able to send us the bidding form shortly?”)</p> <p>(GOO001-01211707)</p> <p>P. Walker Tr. 227:10-228:14 (Tab 123) (YouTube “decided not to make a bid for these rights.”)</p> <p>Zameczkowski Ex. 14 (GOO001-00214966-67) (Tab 127) (YouTube personnel requested searches for Premier League materials.)</p> <p>Levine Ex. 21 (GOO001-00707313) (Tab 85) (“millions of Football goals on YouTube.”)</p> <p>GOO001-00923351-52 (Tab 152) (P. Walker: “I’ll be attending a seminar on Wednesday (tomorrow) in Dublin with heads of several major sports teams and leagues. I would be much appreciated if you could have</p>

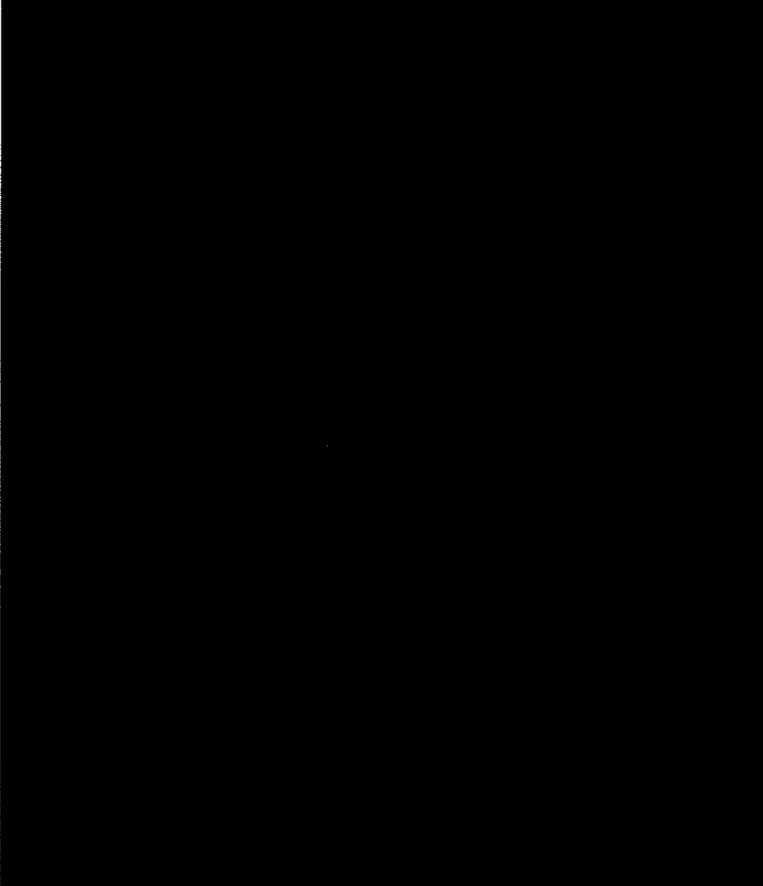
	<p>a quick look through the index and post on the sparrow page/take down any clearly infringing, official broadcast footage that you notice from these right holders below... Liverpool Football FC... Chelsea Football FC... Manchester United Football Club... Arsenal Football Club... Sky Sports.”) (GOO001-00923351)</p>
<p>23. By their own analysis of content, including infringing content, on YouTube, Defendants recognize professionally-produced music as among the array of content attracting substantial viewership.</p>	<p>Ellerson Ex. 10 (GOO001-02519867-73) (Tab 22) (Ellerson: “Our opinion – based in particular on the recent analysis... done on query stream data... is that Chad’s initial conclusion [that ‘users... don’t want to watch professionally produced content’] is not correct. This data suggests that our users do want to watch professional content, but we either haven’t yet licensed the content that they’re looking for, or, for content that we have licensed, we are not doing the best job that we can to surface that content for users. Of the Top 100 Playback Queries... Music = ██████████... Non –Music Premium = ██████████ Of ‘Premium’ content queries: ... Sports = ██████████... News = ██████████) (GOO001-02519869) (emphasis added)</p> <p>King Ex. 2 (GOO001-01403792-93) (Tab 66) (Tony Lee, Technical Product Manager: “Music content is a key element to Youtube’s success. Premium music content is the most watched genre of content on YouTube. Thus, it is imperative that we acquire, and allow content owners to claim, as much content as possible to promote the growth and success of YouTube.”) (GOO001-01403792)</p> <p>Eun Ex. 25 (GOO001-00986823-26; GOO001-00986825-997) (Tab 24) (Seth: “Top 10K queries... “Searches do reflect popularity pretty well... Fresh content is being searched for consistently... Music, TV Shows, Movies, Celebrities, Sports, etc, are definitely our top categories to attack... beckham, rooney (wayne), christiano ronaldo, steven gerrard, fernando torres.”) (GOO001-00986823)</p> <p>B. Hurley Ex. 18 (GOO001-01016964-86) (Tab 41) (Content Lead Discussion – June 26, 2007: “users are searching for lots of things, but primarily for premium content... Music Videos ██████████”) (GOO001-01016969)</p> <p>King Ex. 4 (GOO001-01404022) (Tab 67) (King:</p>

	<p>“From a copyright perspective, clearing music inventory is our most important initiative, so it is highly unfortunate if this does not coincide with our monetization capabilities.”)</p> <p>Karim Ex. 25 (JK00009933-34) (Tab 62) (Karim: “I’d just remove the obviously copyright infringing stuff... “none of the most favorited videos are movies or tv shows. we’re ok cracking down on this content. we’ll leave <i>music videos</i>, news clip and comedy shows for now.”) (JK00009933) (emphasis added)</p> <p>[REDACTED]</p> <p>GOO001-00021120 (Tab 149) (“So the Cherry Lane thing sucks. Had we been in touch and they still sued? I’m just wondering if we should be devoting the entire team’s time to just publishers (and big indies) to try to stem litigation?”)</p>
<p>24. Defendants were aware that the exploitation of music requires the execution of licenses with multiple entities, including publishers, record labels, and performance societies.</p>	<p>King Ex. 18 (GOO001-01905256-64) (Tab 72) (Music Copyright – March 2007 – David King: “Right type: Reproduction, Performance, Distribution, Synchronization... Label – Sound Recordings... Publisher – Compositions... Complex ownership and administration arrangements, and constant movement between publishers...” (GOO001-01905259)</p> <p>K. Walker Tr. 71:24-72:7 (Tab 115) (“music content is perhaps uniquely legally complex because of the number of overlapping and sometimes inconsistent rights associated with it. There are a wide number of different rights that are owned by the performer, the creator, the -- the publishers, the labels, the collecting societies in Europe, et cetera, and each of those entities can own multiple rights, which sometimes align and sometimes do not.”)</p> <p>GOO001-01027023-44 (Tab 154) (“Copyright 101 for YouTube Partners,” to “get permission” when “using</p>

	<p>other people's property", with the presentation notes indicating that "ASCAP, BMI and SESAC are excellent resources for identifying the copyright holder for a particular piece of music [sic]." (GOO001-01027036)</p> <p>Levine Ex. 3 (GOO001-03424419) (Tab 83) (Levine: "need to discuss YouTube's protection against lawsuits from publishers")</p> <p>GOO001-01609294-95) (Tab 158) (Chastagnol: "Music publishing reporting: meeting notes... Priority: 1. Get publisher data from all 4 US labels 2. Setup business relationship with HFA. Eng should be involved to make sure contract terms related to YT/HFA integration make sense.") (GOO001-01609294)</p> <p>King Tr. 215:24:-217:7 (Tab 76) (King: "publisher data was publicly accessible through a variety of websites.")</p> <p>GOO001-01609294-95 (Tab 158) (Chastagnol: "Publisher aggregators: who are they? - HFA is one (Harry Fox) -any other"; setup business relationship with HFA. Eng should be involved to make sure that contract terms related to YT/HFA integration make sense.") (GOO001-01609294) (10/29/2007)</p> <p>GOO001-00053573-74 (Tab 150) ("Where is the universal database of all the copyrights and trickled down ownership splits? should someone in the industry create/ allow self-population of such a universal database. and then maybe someone even serve as a third-party clearinghouse... should 'we' (google/youtube) do it?") (GOO001-00053573)</p> <p>GOO001-00980438-39 (Tab 153) (Chastagnol: In the risks I would add: business may not succeed having Music Labels agreeing to provide us with music publisher data... bueins may not succeed in getting a 3d party (such as Harry Fox) to collaborate with us to clear remaining music publishing rights.") (11/12/2007)</p> <p>Levine Tr. 19:6-12 (Tab 88) [Levine believed the Harry Fox "represented... somewhere between 65 and 75 percent [of the market]."]</p> <p>Zahavah Levine Tr. 13-14, 18 (Tab 87) (Levine's prior</p>
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	<p>work experience at Real Networks)</p> <p>Zahavah Levine Ex. 1 (GOO001-01040767-70) (Tab 82) (Resume: “Managed all aspects of domestic and international digital music licensing for all company music products and services, including Rhapsody Subscription Service RadioPass (webcasting service), SuperPass (video content Subscription service), RealPlayer Music Store (download store) and Music Videos... Negotiated all major label agreements & managed negotiation of indie label agreements... Negotiated all publishing agreements and managed relations with Harry Fox Agency, ASCAP, BMI & SESAC.” (GOO001-01040767)</p> <p>Karim Ex. 22 (JK00004969) (Tab 61) (Chen: “for these mixed videos with music backgrounds, will we get in trouble for them because the music is copyrighted?”)</p> <p>GOO001-1315683-85 (Tab 175) (Shiva Rajaraman: “There should be no zero rate house ads on Partner Watch. Only zero rate blockers should be Music Partners inventory on the regions we cannot monetize due to music publisher agreements that need to be negotiated.”) (GOO001-01315685)</p> <p>King Ex. 2 (GOO001-01403792-93) (Tab 66) (Tony Lee, Technical Product Manager: “Thus, it is imperative that we acquire, and allow content owners to claim, as much content as possible to promote the growth and success of YouTube... YouTube cannot monetize content that does not have publisher data, as we have no way to report to and pay publishers, who share ownership of songs with music labels; currently, only music label data is available to us. By opening up our systems to ingest publisher data as well as label data per song, content on YouTube can then be claimed and monetized. In addition, the ingestion of audio files will allow us to match against audio portions of videos, thus giving content owners the ability to claim more content... Reporting / Collection societies (Owner) need to report to the collection societies # of views for songs, and the collection societies will handle payment to the publishers (EMEA) / Publisher (Owner) will get information on # of views, and will be paid directly Aggregator Labels (Owner) will get reporting</p>
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	<p>information by publisher and # of views.”) (GOO001-01403792)</p>
<p>25. Defendants refused to negotiate and secure licenses from music rights owners whose works appear on YouTube without authorization, in situations where the specific content owner represents only a “small market share.”</p>	<p>Hauprich Tr. 274:24-275:12 (Tab 36) (Chris Maxcy informed Cherry Lane’s Vice President of Business Affairs Keith Hauprich that YouTube would not enter into license negotiations because Cherry Lane represented a “small market share”.)</p> <p>GOO001-00021120 (Tab 149) (“So the Cherry Lane thing sucks. Had we been in touch and they still sued? I’m just wondering if we should be devoting the entire team’s time to just publishers (and big indies) to try to stem litigation?”)</p>
<p>26. By their own analysis of content, including infringing content, on YouTube, Defendants recognized professionally produced news and other programming as among the array of content attracting substantial viewership.</p>	<p>B. Hurley Ex. 7 (GOO001-00629095) (Tab 40) (Brent Hurley: “music videos and news programs are fine to approve.”) (“take down XXX stuff. everything else keep including sports, commercials, news, etc.”)</p> <p>C. Hurley Ex. 38 (GOO001-01424047-48) (Tab 46) (Karim “Re: monitoring videos...let’s keep short news clips for now. we can become stricter over times, just [sic] not overnight.”) (GOO001-01424047)</p> <p>Karim Ex. 25 (JK00009933-34) (Tab 62) (referencing news content)</p>
<p>27. Movies and TV shows are other examples of premium content that</p>	<p>Schaffer Ex. 8 (GOO001-00840004-06) (Tab 106) (YouTube chart for tracking entertainment content</p>

<p>Defendants exploit without authorization on YouTube.</p>	<p>proactively on the site.) Ellerson Ex. 10 (GOO001-02519867-73) (Tab 22) Eun Ex. 25 (GOO001-00986823-26; GOO001-00986825-997) (Tab 24)</p>
<p>Defendants Restricted Use of Technical Measures to Avoid Knowledge of Infringing Content</p>	
<p>28. YouTube designed systems and databases, including Claim Your Content (“CYC”), to monitor, manage, and monetize infringing content, but only made these tools available to favored, select counterparties.</p>	<p>Sony BMG (“SME”) (GOO001-0968681-09684719) (Tab 172) (“Schedule 2: Content Identification, Claiming and Blocking... It is the intent of the parties that these content identification claiming and blocking services will enable SME to easily identify audio and audiovisual materials that are owned or controlled by SME and enable SME to elect to either <i>license</i> it in connection with the Video Service on the terms and conditions prescribed in the Online Video MOU in which case the applicable audiovisual materials will be deemed User Generated Video under the Online Video MOU or remove it from the Video Service.”) (emphasis added)</p> 

WMG Productions, LLC (GOO001-02250887-02250904) (Tab 167) (4.3. “Content Management Tools and User Video Matches. The Content Management Tools will compare User Videos against the ID Files and apply the Usage Policies assigned by Provider to any matches. The Content Management Tools may also provide Provider the capability to perform text searches for User Videos that may contain the Works and assign Usage Policies for such materials. Provider shall select the Monetize, Track, or Block Usage Policy for each match, or’ other usage policies as Google may make available from time to time... Definitions. ‘Monetize’ means the Usage Policy available to Provider in the Content Management Tools for Provider to license to Google in the Territories pursuant to this Agreement a User Video matching an ID File or claimed by Provider using the search functionality that may be offered by the Content ManagementTools.”)

Google-SESAC Agreement (March 25, 2008) (GOO0001-02245062-02245067) (Tab 166) (Paragraph 2b: The term ‘Composition’ is defined to mean ‘all of the musical works for which SESAC is authorized to license the public performance right... Paragraph 5 – Music Usage Reports: (“LICENSEE will report, on a calendar quarterly basis using the metadata available to he LICENSEE, all streams to users in the Territory of content that LICENSEE has identified as incorporating

	<p>Compositions.”) (GOO001-02245063-2245064)</p> <p>SonyATV (GOO001-09684819-850) (Tab 170) (2(a): “The Content Identification Solution. YouTube shall promptly after the execution hereof implement within the Covered Services a content identification and filtering solution at least as good as the industry standard solution for similar services that shall be designed to identify User Generated Videos embodying... Publisher Compositions... (b) Solution must include each of the following functionalities (i) Audio fingerprinting... [to] determine, based on the metadata, whether not... the Compositions embodied herein [are] authorized for exploitation... (ii) Search and Claim. The Content Identification Solution shall include text-based searches defined by Publisher in its sole discretion if any of User-Generated metadata for User-Generated Videos Publisher Keywords to match the titles of Publisher Compositions, Relevant Master Recordings, songwriter or artist names, or other keywords designated by Publisher to identify Relevant User-Generated Videos (“the Tool”)... Hash Comparisons. YouTube shall regularly compare all User Generated Videos... against a library of ‘hashes’ of video files that have previously been removed, filtered or blocked...”)</p> <p>EMI Music Marketing (GOO001-01907142-7190) (Tab 161) (Schedule 2: “utilize audio fingerprinting;” employ audio fingerprinting of all sound recordings submitted by EMI as well as user-generated videos that EMI claimed as embodying EMI content; YouTube agreed to submit existing “legacy” videos through the fingerprint reference files; adhere to a list of “blocked content” provided by EMI and to remove all videos that matched the reference files of those fingerprinted sound recordings... Schedule 2(c) – “Text & Tag Searching. For EMI content not identified by Video Hashing or Audio Fingerprinting, YouTube shall on EMI’s behalf, at least once a day, run text-based searches in the User-inputted metadata for videos uploaded to the Video Service to locate matches for titles of EMI Sound Recordings and EMI Videos, or artist names, or other key words designated by EMI and designed to detect Blocked Content (“EMI Keywords”).</p> <p>GOO001-02241782-1835 (Universal) (Tab 164)</p>
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GOO001-03424742-78 (Warner) (Tab 171)

GOO001-01523629-30 (Tab 156) (“on the policy backend, we imported music publisher information from UMG, giving us a complete license picture of their catalog... All of this information is stored within the label claim... As the license information is completed is completed, we now have an automated process that exports a build list to Audible Magic.”) (GOO001-01523629)

GOO001-01905862-65 (Tab 160) (“consolidate publisher rights... We will receive fractional ownership information from publishers. We must consolidate this information to produce a Y/N decision on track rights. This is the barebones ability to manage publisher rights... Store publisher metadata... Publishers will send us lists of blocked artists, metadata and split information. We must be able to store this data without overwriting information received from other sources such as labels. This a more full-featured ability to manage publisher rights using data provided by publishers, and mapping those views back to label data.”) (GOO001-01905863; GOO001-01905865)

GOO001-01179621 (Tab 157) (“more publisher questions... We will most definitely receive conflicting information about the same song from various sources. I think the best way to manage this is to ‘add’ rather than to ‘update’ information as it comes in. Much of the data ends up serving reporting needs so as long as you give people back the same garbage they provided, it is ok to have discrepancies... *Multiple policies for the same song. I assume that a label could set policy on a song to be ‘rev share’ and then a publisher could upload info about this song and set policy to ‘block’ in which case, the policy for the song will just become block.* Unfortunately, it only takes one block to screw up everyone else’s rev share, but we should still keep the info we got from everyone in case we can convince the one blocking partner to change their mind.”) (emphasis added)

King Ex. 6 (GOO001-01517864) (Tab 68) (“actually we don’t want to turn on fingerprint matching for music partners [in April 2007], because we don’t have clear

	<p>licenses for them (publisher issue).”)</p> <p>GOO001-01053199-205 (Tab 155) (“met up with EMI to explain our ID service, and the option of using Audible Magic within our platform. Also walked them through our needs of licensing information, and particular need for music publisher information to fully clear their catalog. This was our chance to talk to the technical leadership of EMI, and make our case. Hopefully this unlocks their catalog.”) (GOO001-01053201)</p> <p>Chastagnol Ex. 12 (GOO001-01676559-62) (Tab 9) (“(Audible Magic) “suggested we check [fingerprints] against their entire reference database and then have flags for the Warner content (ignore other matches). This is not only a hassle but probably violates DMCA safe harbors.”) (GOO001-01676559)</p> <p>Ikezoye Ex. 16 (AM001620-22) (Tab 51) (“would you be able to populate the live DB but ‘wire-off’ matches for Sony and Universal ? because I’m thinking another strategy would be to populate the DB with Warner+ Sony+Universal. At launch, return matches only on Warner content. Then at some point in time wire-on Universal content, then Sony.... please for now only include Warner catalog.”) (AM001620)</p> <p>GOO001-02910519-02910523 (Tab 182) (Maxcy: “I thought we weren’t allowing co’s to use UGC as reference material... King: the guidelines are, only give the feature to partners that ask for it (we can toggle the feature off in admin).”)</p>
<p>29. When financially beneficial to Defendants in relationships with favored, select counterparties, the Defendants offer certain content owners technical measures, commonly known as “fingerprinting,” to match sound or video reference files with copyrighted content on YouTube.</p>	<p>Ikezoye Tr. 15:10-16:11 (Tab 52) (“Q: We’ll obviously be talking more about this as the day goes on, but can you describe, in a very general sense, what it is Audible Magic does for its digital media customers when you’ve said ‘identify copyrighted content’? A: We use a technology called fingerprinting, and what fingerprinting is, is a mechanism to uniquely identify a piece of copyrighted content. There are -- these fingerprints are measurements of the content that become unique to a sound recording or to a soundtrack or to a -- an image, and so we work with copyright</p>

holders to register their works so we know what known content is. We take these measurements, and then we put these measurements into a database. Then with our customers, the UGC sites, we give them software to take measurements of unknown content, and when -- after they take these measurements, then we can compare it to our database of known references and identify and match the content. The way we provide services to the Web 2.0 customers is, they do have software. Users may upload content to these sites, and they use our services to -- to identify the -- the -- the copyrighted content using our services.”).

K. Walker Tr. 71:23-72:16 (Tab 114) (“There’s another distinction as well, which is, music content is perhaps uniquely legally complex because of the number of overlapping and sometimes inconsistent rights associated with it. There are a wide number of different rights that are owned by the performer, the creator, the - - the publishers, the labels, the collecting societies in Europe, et cetera, and each of those entities can own multiple rights, which sometimes align and sometimes do not. As a result of that, there are complexities associated with that, which I believe the Audible Magic system had been optimized for, both in terms of the technological operation of the system and the assembly of a database, which was designed to track all of the -- the complex music rights associated with it. As the name Audible Magic itself suggests, it was a music tool, at least that was my understanding.”)

Chastagnol Ex. 9 (GOO001-00174229-30) (Tab 7)
(Discussion of Audible Magic, Gracenote and Shazam as fingerprinting services) (GOO001-00174229-30)

Oliver Weingarten (12/16/09) Tr. 246:1-247:2 (Tab 124) (“Q”: Did you understand that -- let me ask it this way: Did YouTube tell Premier League that, in order to participate in the trial of the video fingerprinting technology, that it would need to license content to YouTube?... A: They did at a meeting prior to this date. Q: They said what? A: They said that the technology was being offered to those who they had commercial partnerships with... Q: I am talking specifically about the YouTube video fingerprinting technology that was the subject of some of these e-mails?... A: That, to me,

is the video, which is still digital fingerprint technology. *Q: So the question is, did YouTube ever tell Premier League that the video fingerprinting technology would only be available to Premier League if Premier League licensed content to YouTube? A: Yes.*) (emphasis added)

Hauprich (9/24/09) Ex. 6 (GOO-CH-0001-07) (Tab 33) (YouTube emailed a draft “Content ID & Management Agreement” with instructions to sign and return it to YouTube.)

Hauprich (9/24/09) Ex. 7 (GOO-CH-0008-09) (Tab 34) (After finally receiving a draft Content Identification & Management Agreement in February 2008 (three months after his initial inquiry), Mr. Hauprich submitted questions and comments on the draft in April 2008.)

Hauprich (9/24/09) 95:3-13 (Tab 37) Q. When did Cherry Lane first become aware of YouTube's fingerprinting technology? A. I believe I found something that I submitted my interest in the form of an E-mail or a click here, maybe in October of 2007. It was a link I found that said click here for your -- you know, if you are interested in video identification services on YouTube.

Hauprich (9/24/09) Tr. 107:19-108:3 (Tab 38) – Q: Did YouTube ever tell that is was non-negotiable? A: Pursuant to their actions of ignoring my letter dated April 23rd until January of 2009, by their failure to negotiate this with me in good faith for more than two years, their performance has certainly told me it is non-negotiable.

Drummond Ex. 31 (GOO001-01511226-27) (Tab 13) (February 15, 2007 – “*Our CYC tools are now live as well and are only offered to partners who enter into a revenue deal with us...*” “The new CYC system has... 3) Advanced text search tool. Enables partners to enter in any number of search terms or strings. Partners can send these terms to YouTube in an XML feed or enter them manually. Searches can be narrowed or broadened and all searches can be saved. YouTube will ‘push’ search results to the partner in the form of a daily email showing and matches. Partner gets a nice admin

	<p>interface showing all the matches. Partner is responsible for reviewing the matches and per the DMCA identifying their content. If the partner identifies content they are given the choice to either license or block the content. Any content the partner identifies is automatically audio fingerprinted and placed in the Audible Magic database so the entire process gets smarter over time.”) (GOO001-01511226-27)</p> <p>King Ex. 13 (12/12/08) (GOO001-01519154-55) (Tab 71) (Sathya Sen writes: The best that I can suggest, the same as Canal +, is 3 business days, with a cap on the number of claims (for Canal + it was a max of 10 over 3 days) they can make... We don't want them using the test period to take down every piece of content they think violates copyright. We want to minimize the number of requests. <i>If they want to use our tools to help them monitor copyright content and claim them, they will have to work with us as a partner.</i>”) (emphasis added) (GOO001-01519154)</p>
<p>30. Rather than avail itself of existing third party technology, Google’s strategy was to develop its own proprietary fingerprinting technology to create a product it could license to third parties, even though that both limited and delayed copyright protection tools for content owners.</p>	<p>Chastagnol Ex. 9 (GOO001-00174229-30) (Tab 7) (Doig: “I think this is core technology we need to build and control ourselves. So the current approach is to only use AM as little as possible and proceed with building our own database at the same time. This would require us either getting all the source files (preferred) or distributing fingerprinting tools which content providers use.”) (GOO001-00174229)</p> <p>King Ex. 23 (12/12/08) (GOO001-02191925-27) (Tab 74) (King: “our position has been that we first want to have a pilot with [G]oogle video fingerprinting” and that by “remaining ignorant of the intricacies of industry solutions,” [Defendants could] “proceed untainted by others IP.”) (GOO001-02191925)</p> <p>King Ex. 2 (12/12/08) (GOO001-01403792-93) (Tab 66) (Tony Lee, Technical Product Manager: “Audio Fingerprinting is the YouTube’s next step in allowing music copyright owners to claim and monetize content. Currently, Audible Magic, a 3rd party matching service, allows YouTube to conduct audio matching of content. However, this service is imprecise, and YouTube has to pay a fee to use the service. <i>Thus it is vital that YouTube develop its own audio matching service, along with the requisite reference database.</i>”) (GOO001-01403792)</p>

King Ex. 21 (12/12/08) (GOO001-01613336-38) (Tab 73) (Kyle Harrison to King: “The purpose of this project is to explore opportunities to open Video Identification API to third party UGC sites... Why would third party UGC sites use such a service? The problems this service could solve for them include: Identification. We could identify copyrighted content across their site and within new uploads... Basic Requirements and Timing... To offer the core service of Identification, the following items in place: Fingerprint Generator. Partners need to be able to generate fingerprints of their content to deliver to YouTube. We cannot expect to require them to give us their original content.”) (GOO001-01613336-37)

David King (12/12/08) Tr. 229:17- 231:5 (Tab 77) (“Q: Okay. Before we get into this document in any depth, Mr. King, are you aware of discussions internally at YouTube/Google to turn any of the content identification systems or technology into products that YouTube/Google licensed to third party websites?”) MR. HART: Could license to third parties.... THE WITNESS: *I think our video identification platform is a -- is a platform that we're proud of, and we have considered making it available to third-party websites.*”) (emphasis added)

Ikezoye Ex. 10 (AM000836-844) (Tab 50) (Chastagnol: “By owner I meant which media company represents the artist (Warner, Sony, Viacom,...). Initially, we will ask you to populate the reference fingerprint DB with the catalog of only one of those companies. (BTW, I assume this is something you can do, correct?) But as we sign new contracts, we will add catalogs from other companies. So from fingerprint match API response, we would need a way to tell if it is a match for a Warner item, a Sony item, etc...”) (AM000836-837)

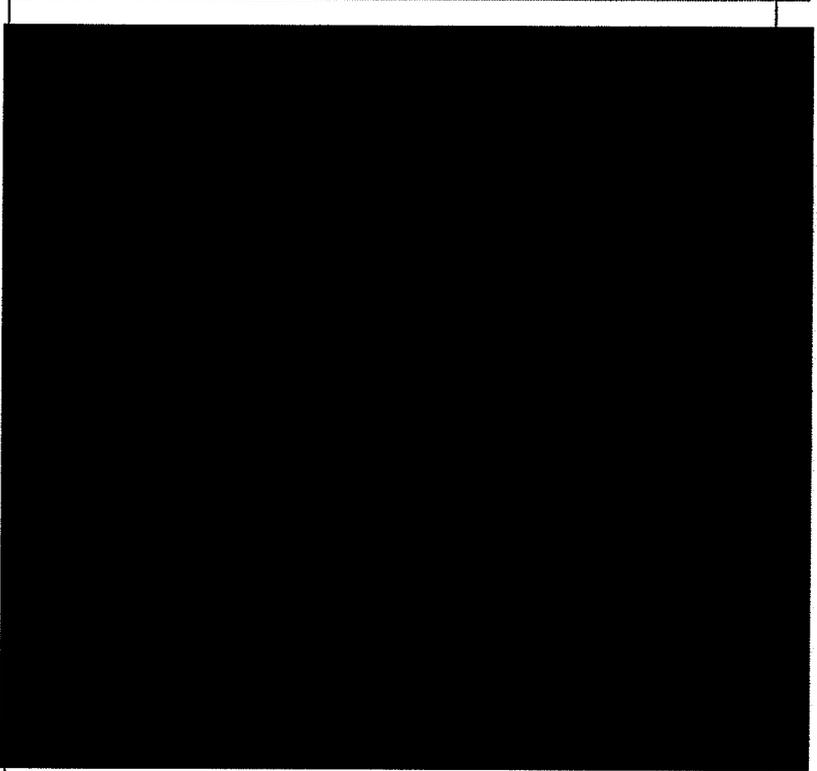
Ikezoye Tr. 81:7-24 (Tab 53) (Q. “So your understanding of the arrangement -- is it your understanding of the arrangement that as YouTube signed new contracts with content owners, YouTube would then request that that content owners’ fingerprints be put into the YouTube custom database?... A: That was my understanding, and yes. Q: Okay. Is that -- is that

	<p>hypothetical, or is that actually what happened, if you know?...A: <i>I know, in general, that the database was a subset. I don't know if every piece of content in there was related to a company that had a licensing agreement.</i>") (emphasis added)</p> <p>Chastagnol Ex. 11 (AM002946-53) (Tab 8) (Jim Schrempp of Audible Magic to Chastagnol: "you will remember that the business side of YouTube wanted an extremely cheap – really, really, really cheap – deal from us. They were willing to cut out all kinds of features to get the price lower.") (AM002946)</p> <p>King (1/13/10) Ex. 6 (GOO001-00981006-10) (Tab 69) (Jim Schrempp of Audible Magic: "For your application a reference fingerprint should come from an offset of 0 and a duration of 60. You may remember that we had discussed doing a more expensive search of the YT database, but that was decided to be out of scope.") (GOO001-00981008)</p>
<p>Defendants Capitalized on Infringing Content Rather Than Remove It</p>	
<p>31. In situations where it advances their financial interests, Defendants have a practice of offering licenses to favored, selected licensors of content, both in the United States and in other territories.</p>	<p>SonyATV (GOO001-09684819-850) (Tab 170) EMI Music Marketing (GOO001-01907142-7190) (Tab 161) Universal (GOO001-02241782-1835) (Tab 164) Warner (GOO001-03424742-78) (Tab 171) SESAC (GOO001-02245062-02245067) (Tab 166)</p> <p>MCPS-PRS (GOO001-02242093-02242149) (Tab 165) (2.1 Grant of Licence: Subject to and conditional upon compliance with the terms... MCPS grants the Licensee a non-exclusive licence during the Term, to reproduce (including by way of synchronization) Repertoire Works... for the sole purpose of transmitting the same to Users... in the UK by means of the Licensed Services.")</p> <p>GEMA (GOO001-02240224-36) (Tab 163) (2.1 Licensor grants Licensee and its Affiliates a license to (a) reproduce Repertoire Works... including by way of synchronization, (b) communicate Repertoire Works... to the public in particular by transmitting or making available to the public and to authorise to transmit or make available to the Public Repertoire Works.")</p>

	<p>Ellerson Ex. 10 (GOO001-02519867-73) (Tab 22) (Ellerson: “Minimum Guarantees Recommendation Memo... paying guarantees could provide an incentive for some of these potential partners to do deals more quickly... by failing to provide content for our users who are searching for it (see data re premium content searching attached), we may lose customers.”) (GOO001-02519870)</p>
<p>32. Defendants did not seek licenses for certain content despite knowledge that they were exploiting it on YouTube.</p> <p><i>See also</i> <i>SUF</i> ¶ 28</p>	<p>P. Walker Tr. 227:10-228:14 (Tab 123) (YouTube “decided not to make a bid for these rights.”)</p> <p>Maxcy Tr. 201:24-202:15 (Tab 90) (“a record label might know that they have – that they pass us information about who the artist is and the track of a particular sound recording, and they may or may not know who the various publishers are, the composers of that particular song...”)</p> <p>Maxcy Tr: 233:21-234:2 (Tab 91) - “I recall having a conversation [with Mr. Hauprich] and explaining that we were working with major record labels, and that we were trying to work with those labels to clear synchronization rights for our music and that we were trying to rely on the record labels to clear the synchronization with the publishers, but what we were running into was two issues. One was incomplete data and, two, historical acrimony between music publishers and record labels, and so it was very difficult to identify who the publishers were to even work with them, but the premise of the conversation was that we were relying on the record labels to clear the synchronization rights that we needed for publishers.”</p> <p>Hauprich (11/4/08) Tr. 274:24-275:12 (Tab 36) – “I made it apparent to Mr. Maxcy that Cherry Lane represented 60,000 copyrights. I gave him names of certain of the clients within our catalog. I told him we were willing and eager to engage in a strategic alliance, and that I would welcome any proposal YouTube wanted to make, and I would consider any proposal that YouTube wanted to make. I was summarily told that YouTube had no interest in Cherry Lane given its small market share.”</p>

	<p>King Tr. at 151:12-24 (Tab 75) (“Do you have any idea what that statement means, we don’t have publishing for certain videos as a way to keep them live on YouTube?... “what this would be referring to is, at times, for specific sound recordings where the – the publishing has not been identified”)</p> <p>King Ex. 7 (GOO001-01998280-81) (Tab 70) (“Offer UMG the ad-inventory for the videos that we don’t have publishing (we would have to run this by compliance) as a way to keep them live on YT (Block embeds)”) (GOO001-01998280)</p> <p>GOO001-00980438-39 (Tab 153) (Chastagnol: In the risks I would add: business may not succeed having Music Labels agreeing to provide us with music publisher data... business may not succeed in getting a 3d party (such as Harry Fox) to collaborate with us to clear remaining music publishing rights.”) (11/12/2007)</p> <p>Levine Ex. 3 (GOO001-03424419) (Tab 83) (Levine: “need to discuss YouTube’s protection against lawsuits from publishers”)</p> <p>GOO001-01609294-95) (Tab 158) (Chastagnol: “Music publishing reporting: meeting notes... Priority: 1. Get publisher data from all 4 US labels 2. Setup business relationship with HFA. Eng should be involved to make sure contract terms related to YT/HFA integration make sense.”) (GOO001-01609294)</p> <p>CH00050892 (Tab 147) (Attorney for Cherry Lane – Marc Jacobson: “rather than assert a claim of infringement in this letter, our clients asked us to contact you with regard to developing an innovative strategy where rights can be exploited, revenue generated and an appropriate division of that revenue be accomplished.”)</p> <p>CH00001663-CH00001669 (Tab 144) (Follow up letter attached disc of musical compositions owned or controlled by Cherry Lane and another exhibit with some exemplar URLs.)</p> <p>CH00017947-48 (Tab 145) (DMCA takedown notice – March 27, 2007)</p>
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	<p>CH00035504-08 (Tab 146) (DMCA takedown notice – May 17, 2007)</p>
<p>33. YouTube indexes its inventory of videos by, among other things, a title and certain descriptives provided by users (“metadata”), and uses that metadata a variety of purposes, including associating advertising with particular videos.</p>	<p>Defendants’ Highly Confidential Responses and Objections to Plaintiffs Second Set of Interrogatories, No. 5 (1/11/10): “... in addition to the information YouTube collects from its users upon registration and at various other times and places during their use of the YouTube service, YouTube has collected the following unverified information from general registered users upon the upload of videos... keywords... title... description... 1-3 video categories (e.g. ‘autos,’ ‘how tos’)... private.” (Tab 140)</p> <p>SonyATV (GOO001-09684819-850) (Tab 170) (3(a): “The Content Identification. YouTube shall promptly after the execution hereof implement within the Covered Services a content identification and filtering solution at least as good as the industry standard solution for similar services.... (b)(ii) Search and Claim. The Content Identification Solution shall include text-based searches defined by Publisher in its sole discretion, if any, of User-Generated metadata for User-Generated Videos (“Publisher Keywords”) to match the titles of Publisher Compositions, Relevant Master Recordings, songwriter or artist names, or other key words designated by Publisher to identify Relevant User-Generated Videos (“the Tool”)”</p> <p>EMI Music Marketing (GOO001-01907142-7190) (Tab 161) EMI Music Marketing: Schedule 2(c) – “Text & Tag Searching. For EMI content not identified by Video Hashing or Audio Fingerprinting, YouTube shall on EMI’s behalf, at least once a day, run text-based searches in the User-inputted metadata for videos uploaded to the Video Service to locate matches for titles of EMI Sound Recordings and EMI Videos, or artist names, or other key words designated by EMI and designed to detect Blocked Content (“EMI Keywords”). (GOO001-01907181)</p>

	
	
	<p>Drummond Ex. 31 (GOO001-01511226-27) (Tab 13) (February 15, 2007 – “The new CYC system has... 3) <i>Advanced text search tool. Enables partners to enter in any number of search terms or strings.</i> Partners can send these terms to YouTube in an XML feed or enter them manually. Searches can be narrowed or broadened and all searches can be saved. YouTube will ‘push’ search results to the partner in the form of a daily email showing and matches. Partner gets a nice admin interface showing all the matches. Partner is responsible for reviewing the matches and per the DMCA identifying their content. If the partner identifies content they are given the choice to either license or block the content. Any content the partner identifies is automatically audio fingerprinted and placed in the Audible Magic database so the entire process gets smarter over time.”)</p>
34. YouTube internally	Dunton Ex. 21 (GOO001-00829702-18) (Tab 16) (Matt

<p>acknowledged that providing a tool that would alert a copyright owner that an uploaded video contained a specified keyword associated with the copyright owner “isn’t hard” to provide, but “hate[d] making it easier” for copyright owners.</p>	<p>Rizzo explained that setting up that tool “isn’t hard” and would only “take another day or w/e [weekend].” But Dunton said “[I] hate this feature. I hate making it easier for these aholes” – referring to copyright owners – and directed the engineer “to forget about this.” As she explained, “we’re just trying to cover our asses so we don’t get sued.”) (GOO001-00829704)</p>
<p>35. Defendants refer to videos on YouTube as “inventory” for purpose of selling to advertisers and otherwise monetizing.</p>	<p>King Ex. 4 (GOO001-01404022) (Tab 67) (YouTube wanted more “sports content to monetize... From a copyright perspective, clearing music inventory is our most important initiative...”.)</p> <p>Reider Ex. 3 (GOO001-00305115-52) (Tab 97) (“Advertising with YouTube” Presentation, March 2007)... Professional inventory available across YouTube content categories.” (GOO001-00305135) “Premium UGC inventory meets acceptability standards and contains no potentially infringing content” (3051356) “YouTube Premium content inventory increases daily as new partners create channels and upload videos” (305137) “Advertisers can purchase inventory run-of or by category (premium content not sold by-brand or partner name)” (GOO001-00305137)</p> <p>July 16, 2009 – Fair Disclosure Wire – Q2 2009 Google Earnings Conference Call – Final (Tab 142) (“HEATH TERRY: And in terms of being able to monetize the non-professional side of that inventory? ERIC SCHMIDT: It has not been our focus. It is probably possible to do so, but the fact of the matter is that the majority of the non-professional content has a relatively small number of viewers. It is difficult to target it accurately. There is too much variation and so forth, whereas the professional here, and remember, professional here just doesn't mean big studios. It also means smaller studios, new entrants, startups who are professional quality, and you can tell a professional quality video from a user-generated one. It is easy enough. You can tell the difference between the two.”) (p. 10)</p> <p>Chang Ex. 37 (GOO001-01004547-49) (Tab 5) (Chang:</p>

	<p>“Also, content partners are an essential part of YT business, as they provide monetizable inventory for our ad sales team to sell against. Given copyright concerns, we don't monetize against user generated content. We want to be able to close these big partnerships and hopeful that higher rev share will ease that slightly.” (GOO001-01004547)</p> <p>Kordestani Ex. 22 (GOO001-00237661-63) (Tab 80) (Hoffner: “This means BOTH monetizable via partners and user unmonetizable. (There is a third bucket down below we need to attack aggressively as well). We need this to get more inventory so that the search numbers continue to go up (concept of unlimited choice rings through here) and more watch pages occur... Another way to get more monetizable inventory in the index is to aggressively expand our torso efforts to online sign-up.”) (GOO001-00237661)</p> <p>Drummond Ex. 9 (GOO001-02656593-94) (Tab 12) (“for legal reasons [...] all ads/monetization on the watch pages for user generated content will need to come down. This will have a tremendous impact on inventory.”) (GOO001-02656593)</p>
<p>36. Defendants sell advertising in connection with videos, including contents that infringe the rights of Class Plaintiffs. Those ads are displayed both on the pages where the videos are viewed (“watch pages”) and on the search pages that list the videos generated by a user search (“search result pages.”) The advertising is contextually targeted to these videos by subject, title and other metadata associated with the videos.</p>	<p>Exhibits 1-8, Declaration of Robert F. Tur (Tab 113) (C.D. Cal. November 14, 2006) (screenshots of YouTube watch pages displaying advertising)</p> <p>Drummond Ex. 9 (GOO001-02656593-94) (Tab 12) (“for legal reasons [...] all ads/monetization on the watch pages for user generated content will need to come down. This will have a tremendous impact on inventory.”) (GOO001-02656593)</p> <p>Chang Ex. 36 (GOO001-00375061-65) (Tab 4) (“User uploads, which make up >95% of the playbacks, are ad-free in order to maintain our DMCA safe harbor.”) (GOO001-00375065)</p> <p>Chang Ex. 37 (GOO001-01004547-49) (Tab 5) (Chang: “Given copyright concerns, we don’t monetize against user generated content.”) (GOO001-01004547)</p> <p>CH00117359 (Tab 35) (Watch page for “Thank God</p>

	<p>I'm a Country Boy" with advertising)</p> <p>Screenshots of Search Pages from YouTube generated on March 3, 2010 (Tab 183-187) (Search terms are associated with the named Class Plaintiffs.)</p>
<p>37. YouTube concluded that tying advertisements to the videos on search result pages is the most profitable because users are drawn to YouTube in the first instance to search for so-called "premium" content .</p>	<p>Eun Ex. 27 (GOO001-00238624-25) (Tab 25) (June 26, 2007: "Our preliminary analysis indicates that anywhere from ~40% to as high as ~70% of search queries may involve premium terms. While the playbacks evidence a far smaller percentage of premium clips (as far as we can tell without digging too much under the hood), <i>it seems that premium content/brands are an important element to bringing people into the YT house. My guess is that once they're in, they decide to stay a while.</i> I've asked to see if there's a difference in total views for people who come in through search vs. browsing vs. links in email; and whether there's a difference for those who have searched for premium terms.") (GOO001-00238624) (emphasis added)</p> <p>Kordestani Ex. 20 (GOO001-01295801-02) (Tab 79) ("Inventory... From a monetization perspective, the largest opportunity for revenue resides on the YouTube Search pages.") (GOO001-01295802)</p> <p>Reider Ex. 11 (GOO001-00907818-19) (Tab 100) (Reider: "we believe search will be stronger than watch (for now)- simply because it will take such a long time for all the watch content to be claimed and (for inventory levels to get huge - today all watch page inventory that can be sold is less than 20 million impressions/month so even at a \$10 cpm that is \$200,000 - split 70/30 among all partners.") (GOO001-00907818)</p> <p>Gillette Ex. 9 (GOO001-00951481-83) (Tab 29) (Michelle Schlachta to YouTube -All: "In many cases, the very existence of YouTube is the reason why users are creating their content in the first place. <i>Many people admittedly started using YouTube just to watch some of the copyrighted stuff,</i> but were very drawn into the community aspect - and that's what makes them want to stic= [sic] around as dedicated Tubers today. When asked what keeps them here, this = s [sic] what some users told us.") (GOO001-00951482)</p>

<p>38. YouTube’s business model was and is to create a substantial inventory of videos, including those with infringing content, in order to attract users for advertising and other monetization.</p>	<p>April 16, 2009 – Fair Disclosure Wire – Q1 2009 Google Q&A Session – Final (Tab 141) (Jonathan Rosenberg: “what we’re hearing from both viewers and advertisers is that they want premium content and the premium viewing experience.”) (p. 4)</p> <p>Schmidt Tr. 109:20-21 (Tab 111) (“our policy from acquisition was to grow the user base.”)</p> <p>Dunton Ex. 4 (GOO001-00507525-32) (Tab 14) (Chen: “concentrate all of our efforts in building up our numbers as aggressively as we can through whatever tactics, however evil.”) (GOO001-00507526)</p> <p>Karim Ex. 9 (JK00009871-72) (Tab 60) (Karim: “Our goal is to use funding to pursue a two-phased approach. First we will further grow our audience and reach to secure our position as the #1 place for personal videos on the internet. Then we will monetize the audience we have acquired by hosting video ads.”) (JK00009871)</p> <p>C. Hurley Ex. 33 (JK00005929) (Tab 45) (Commercials drive traffic to YouTube and prepared users for YouTube’s eventual introduction of advertising)</p> <p>King Ex. 7 (GOO001-01998280-81) (Tab 70) (“Offer UMG the ad-inventory for the videos that we don’t have publishing (we would have to run this by compliance) as a way to keep them live on YT (Block embeds)”) (GOO001-01998280)</p> <p>King Ex. 2 (GOO001-01403792-93) (Tab 66) (Tony Lee, Technical Product Manager: “Music content is a key element to Youtube’s success. Premium music content is the most watched genre of content on YouTube. Thus, it is imperative that we acquire, and allow content owners to claim, as much content as possible to promote the growth and success of YouTube... In addition, the ingestion of audio files will allow us to match against audio portions of videos, thus giving content owners the ability to claim more content.”) (GOO001-01403792)</p> <p>Chastagnol Ex. 8 (GOO001-01529251) (Tab 6) (“the only thing I would be concerned is if we open the tool</p>
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	<p>and they use it only for takedown without signing a deal with youtube to upload some of their content. because then just facilitate take downs.”)</p> <p>Chang Ex. 32 (GOO001-00059035) (Tab 3) (“As agreed upon last week, we will also employ a sliding scale on rev shares for deals in which partner does <i>*not*</i> sell, with increases between 52 and 70% being based on the following subjective criteria:... <i>Willingness to ‘claim’ all user uploads unless they have not been cleared for online distribution.</i>”) (emphasis added)</p> <p>Chastagnol Ex. 19 (GOO001-00103004-06) (Tab 10) (Chastagnol writes: “I’m trying to get to the business the hardware and maintenance cost of adding 1 hour of video to the reference fingerprint database. <i>The idea is that we may bill some of the companies wanting to block content on YT. And we would use this per hour cost for as price tag...</i> Assumption is 300,000 lookup daily, with 5 min long lookup videos.”) (GOO001-00103004)</p> <p>Ellerson Ex. 7 (GOO001-02875707-19) (Tab 20) (“We will <i>*not*</i> generate ref fingerprint upon claiming by partner of UGC > video thru desc search. The reason we will no longer allow this feature [is] because we are going to open up CYC to non-partners who we do not think [we] can trust to review the content carefully enough. CYC should have the [same] level of functionality for partners and non-partners.”) (GOO001-02875707)</p> <p>King Ex. 13 (12/12/08) (GOO001-01519154-55) (Tab 71) (Sathya Sen writes: “The best that I can suggest, the same as Canal +, is 3 business days, with a cap on the number of claims (for Canal + it was a max of 10 over 3 days) they can make. The reasons for this, even though it is a test setup, any claims they make will have to be processed and considered as a valid take down request. We don’t want them using the test period to take down every piece of content they think violates copyright. We want to minimize the number of requests.”) (GOO001-01519154)</p>
<p>39. YouTube edits, reviews, promotes and distributes its inventory of videos across multiple media</p>	<p>Seth Ex. 14 (GOO0001-02027618-02027619) (Tab 112) (“We are being very proactive at this time and reaching out to users - however, we have to be very cautious and</p>

<p>platforms.</p>	<p>make sure that users in this program know about copyright laws and obey them to the fullest extent possible. That is the tricky part. We provide online training, as well as use technology (Video Identification) and some human review.”)</p> <p>YouTube Help Center ‘Uploading... Promoting Videos... (“Tag definition’... Tags are keywords that describe videos. For example, a surfing video might be tagged with ‘surfing,’ ‘water,’ and ‘waves.’ Users who enjoy watching surfing videos can then search for any of those terms and the video associated with these tags will show up in their search results. Tags help you label videos you upload so that other people can find them more easily... “Spotlight Videos”... YouTube's members rate videos they like, and we pluck out some highly-rated and recent videos for consideration in the “Spotlight Videos” section of the home page and the spotlight videos on the “Categories” page. In addition, our programming team takes suggestions from users at editor@youtube.com and is always on the lookout for videos of interest.”) (Tab 143)</p> <p>Dunton Tr. 29:23-30:6 (Tab 17): Q: Okay. And I’m asking what the people – what were the duties of the people who you referred to as ‘content editors’? A: They were responsible for interacting with the community. They were generally the voice to the community. They were also responsible for choosing videos that would be featured on the YouTube.com Homepage.</p> <p>Dunton Tr. 94:9-14 (Tab 19): (A: Featured videos are videos on the YouTube.com Homepage that are selected from our -- from our base of videos. Q: Selected for what purpose? A: To highlight, to show entertaining, relevance, content for our community.”)</p> <p>Patterson Tr. 15:6-9 (Tab 95) (“Q: One category of partners to whom YouTube syndicates content are wireless carriers and mobile handset device manufacturers, right? A: That’s correct.”)</p> <p>Patterson Tr. 18:18-19:4 (Tab 96) (“When did YouTube first begin syndicating content to partners in the devices that connect to televisions space? A: So in the most</p>
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	<p>liberal interpretation, which would be a PC that can connect to a television, it would be when we started allowing YouTube videos to be embedded in other websites. Q: Okay. A: Or actually even just when we launched the YouTube service 'cause you can connect to a PC that has a browser. Q: If we exclude PCs from the equation – A: Okay. Q: -- and we are talking about things like set top boxes and gaming consoles and devices of that category. When did YouTube begin syndicating content to partners in that space? A: I believe the first partnership of that sort was also with Apple, and it was around Apple TV, and it may have been the exact same agreement that -- through which we made YouTube service available on iPhone.”)</p> <p>Kacholia Tr. 49:11-16 (Tab 55): (“Q: How does the search engine identify duplicates?...A: Based on a fingerprint of the video.”)</p> <p>Kacholia Tr. 163:16-19 (Tab 56) (“But the functionality does omit duplicate copies of videos that are returned in response to a query; is that correct? A That’s correct.”)</p> <p>Kacholia Tr. 165:3-11 (Tab 57) (“Q Okay. Would you explain then in lay terms how it is that the search functionality determines which among the duplicates to display in response to a query? A Search functionality only displays one video. It filters out all the rest of the duplicates. And the video which is selected to be displayed is the highest-ranking video based on how this search function -- the algorithms that had ordered them.”)</p> <div data-bbox="664 1378 1478 1719" style="background-color: black; width: 100%; height: 150px; margin-top: 10px;"></div>
<p>40. Defendants generate revenue from the sale of advertising space on search result pages by matching keywords from searches with the metadata of the videos in YouTube’s</p>	<p>Chang Ex. 36 (GOO001-00375061-65) (Tab 4) (“Revenue will be generated from ads primarily on Search pages (40%) ... The most popular queries are for head content -- Music, Movies, TV, Celebrities, and Sports – whose rights holders require negotiated</p>

inventory. By selling advertising space that is tied to key words, advertising is thus targeted to the videos being searched on YouTube, including videos that infringe the rights of Class Plaintiffs.

partnerships for us to obtain... “Head, torso, and top user content also drive YouTube's monetary success two-fold. First, more partnerships means more content, which means more user searches. Searches command top ad CPMs (data here), and YouTube retains all Search revenue. Second, partnerships, especially with attractive media brands, bolster ad sales packages and and also create inventory for ads via their playbacks. Advertising potential is a deal priority in every region, particularly in EMEA and APLA.” (GOO001-00375065)

GOO001-00798356-57 (Tab 151) (Eun: “Preliminary analysis suggests that: users don't pay that much attention to what's in the chrome; as attractive as potential for display and other ads are for watch pages on YT, *ads on search results can be significantly more lucrative* (so arguing over rev shares of in-display [sic] or contextual ads with content owners is much ado about relatively little when compared to our 100% of search results).”) (GOO001-00798356)

Kordestani Ex. 20 (GOO001-01295801-02) (Tab 79) (“Inventory... From a monetization perspective, the largest opportunity for revenue resides on the YouTube Search pages.”) (GOO001-01295802)

Kordestani Tr. 71:16-22 (Tab 81) Q. And that's AdSense for content. There's also something called "AdSense for search." How does that work? A It's similar to searches on Google. So if a site has a web search where a user is searching on a different, let's say, Ask.com, then ads are triggered based on search terms.

GOO001-02816985-88 (Tab 169) (Chen: “I was hoping to do something quick to monetize that search results page in the mean time but not at all excluding future opportunities to further segment and target.”) (GOO001-02816986)

Reider Ex. 11 (GOO001-00907818-19) (Tab 100) (Reider: “we believe search will be stronger than watch (for now)- simply because it will take such a long time for all the watch content to be claimed and (for inventory levels to get huge - today all watch page inventory that can be sold is less than 20 million

impressions/month so even at a \$10 cpm that is \$200,000 - split 70/30 among all partners.”) (GOO001-00907818)

GOO001-07165570-7165572 (Tab 174) (Matthew Liu: “Here at YT we have a very high priority in monetizing YT search pages. YT search is fundamentally different from Google.com, in that keywords are not always the best proxy for what a user may be interested in (it’s less of a seek for information/products as a looser browse experience in many cases). Throw in some additional business/legal policy, we decided to roll forward with targeting search verticals instead of keywords. Basically, we wanted to have a keyword to vertical mapping system to bucket search queries into marketable categories that advertisers can purchase.”) (GOO001-07165570)

GOO001-02816985-2816988 (Tab 169) (Byrne: “We bundle inventory (site-wide category-targeted video ads / banners) or approve Category targeting in Search ... I believe we can figure out a way to do this without violating safe harbor... Chad’s idea of using how the individual videos on the results page are categorized to project a Category for the entire Search Results page makes the most sense to me... (I have a hard time understanding how we can target by Category on Watch Pages, but not in Search)”) (GOO001-02816985)

GOO001-02737286-87 (Tab 168) (Walk: “If Partner Monetization is the focus should we work less on monetizing the site for ourselves (search page monetization) and focus those efforts on making money for partners? Take that 300x250 slot and put it below the promoted videos?”) (GOO001-02737286)

Chang Ex. 29 (GOO001-00500181-85) (Tab 2) (“The one caveat I would issue is that if we are able to open up watch pages to monetization through video fingerprinting and user-partner type programs, the monetization potential of watch changes significantly. Ultimately I think we will solve these problems, but these projections stand under current conditions.”) (GOO001-00500181)

Reider Ex. 9 (“YouTube Video Ads”) (Tab 99)

“Benefits... • Search and Category pages present content related to user interests at the moment of relevance, creating an attractive, contextually-relevant placement...

• Target placements on Search pages by selecting from among YouTube’s hundreds of content categories, triggered by relevant user keyword queries”

Armstrong Ex. 18 (GOO001-00906824-52) (Tab 1)
(Category-Based Sales Approach – Targeting...
Music... Sports) (GOO001-00906837)

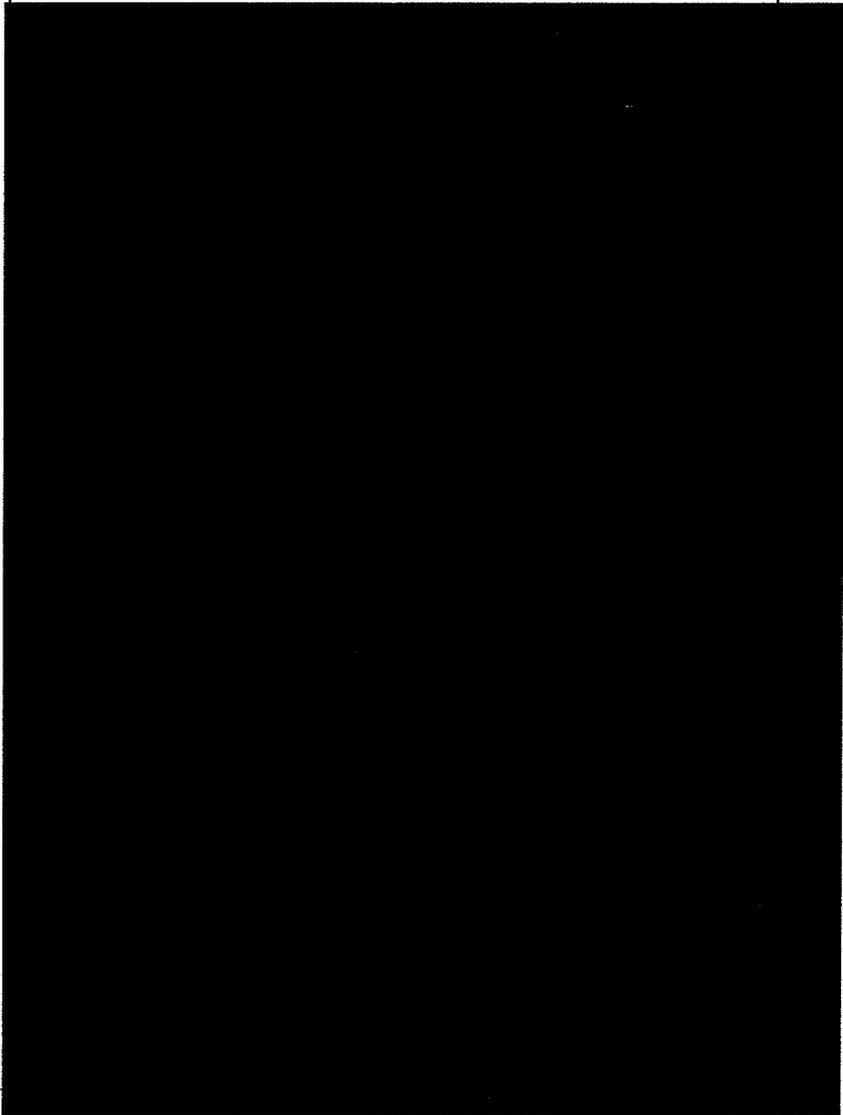
GOO001-01644802-03 (Tab 159) (“YT Custom Taxonomy/Mapping* - Continuing efforts with Santa Monica office to create a new taxonomy and automated classification of search query terms and videos - Interested parties are core product for community and ads targeting for monetization - joint effort - New YT categories/subcategories to defined by next meeting”) (GOO001-01644803)

GOO001-06510250-06510252 (Tab 181) (Liu: “Updating Targeting Methodology for YouTube Search... YouTube will take the search query and ping the CAT2 vertical server to return an ad vertical (e.g. ‘nba’ query maps to Sports/Basketball’ vertical”)

Reider Tr. 33:7-17 (Tab 104) (“Q: And does YouTube still engage with remnant networks today, or is that something that YouTube only did in the past? A: Today we have one. I believe one network, and that's the AdSense network. Q: What is AdSense? A: AdSense is – it’s a Google -- it's a Google product. It’s – it’s a -- I don’t even know how to describe what it is. Q: What does it do? A It serves ads.”)

P. Walker Tr. 200:8-22 (Tab 120) (“Is AdSense applied to designating which ads appear on YouTube content? A: AdSense is an advertising system where text ads, currently text ads, might appear against certain types of content. Q: It’s applicable to YouTube? A: We do use AdSense on YouTube. Q: Is there any other system or technology that’s used for matching ads with the YouTube content?... AdSense provides ads currently in text form against certain types of content. We also have in-video ads. It’s a different system.”)

Kordestani Tr. 68:21-69:14 (Tab 81) (“Q How exactly does Adsense work? Can you describe the process to me? A: It's basically a website identifies an area on their website where they like to have ads appear, and ads are either targeted based on keywords, if they have a search page, or if they have content on their page, we have a system that identifies relevant ads to the content on that page. Q: So, for example, if you go to the last page of this Exhibit 2 that I've put in front of you, in the middle of page it says, 'AdSense for content automatically crawls the content of your pages and delivers text and image ads that are relevant to your audience and your site content.' A: Yes. Q: Is that what you were describing, it crawls the content? A: Yes.”



	<p>G00001-01332719-01332722 (Tab 179) (Chan: "Even if the intent/explanation doesn't hold true - there are certain DMCA limitations which don't allow us to monetize against certain keywords (e.g., if we find out South Park is heavily searched, we wouldn't necessarily be able to monetize that keyword in search)").</p> <p>G00001-07220441 (Tab 180) ("A new ad tag (e.g. you.results/blacklistterm) will be used so that the frequency of blacklisted terms can be tracked.")</p>
<p>41. Defendants sold advertisements that appear on search result pages that display and link users to unauthorized copyrighted content of the named Class Plaintiffs.</p>	<p>Reider Ex. 13 (Tab 101) ("English Premier League 2008" results) Reider Ex. 14 (Tab 102) ("manchester united" results with suggestions) Reider Ex. 15 (Tab 103) ("English Premier League 2008" results)</p> <p>Screenshots of Search Pages from YouTube generated on March 3, 2010 (Tab 183-187) (Search terms are associated with the named Class Plaintiffs.)</p>

Dated: New York, New York
March 15, 2010

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