

Contains Material Designated Confidential and Highly Confidential Pursuant to Protective Order

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

<p>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 &amp; 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,</p> <p style="text-align: right;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>YOUTUBE, INC., YOUTUBE, LLC and GOOGLE, INC.,</p> <p style="text-align: right;">Defendants.</p>	<p>Case No. 07 Civ. 3582 (LLS)</p> <p><b>DECLARATION OF ELIZABETH ANNE FIGUEIRA IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT</b></p>
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I, Elizabeth Anne Figueira, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am an attorney at Proskauer Rose LLP, proposed class counsel for the prospective class along with co-counsel Bernstein Litowitz Berger & Grossman LLP.

2. I submit this Declaration in Opposition to Defendants' Motion for Summary Judgment. For the convenience of the Court, I refer back to my Declaration that was submitted with class plaintiffs' Motion for Partial Summary Judgment on March 5, 2010, which attached Tabs 1-188. This Declaration will continue with the Tab 189.

3. Attached hereto are true and correct copies of the following documents. Documents with the following bates prefixes were produced by the following party or non-party in this action:

- Documents with the bates prefix "GOO001" were produced by YouTube.
- Documents with the bates prefix "AM" were produced by non-party Audible Magic pursuant to a subpoena.
- Documents with the bates prefix "BC" were produced by class plaintiff Bourne Co.
- Documents with the bates prefix "CH" were produced by class plaintiff Cherry Lane.
- Documents with the bates prefix "CSSU" were produced by non-party Credit Suisse pursuant to a subpoena.
- Documents with the bates prefix "JK" were produced by non-party Jawed Karim pursuant to a subpoena.
- Documents with the bates prefix "PL" were produced by class plaintiff Premier League.
- Documents with the bates prefix "XD" were produced by class plaintiff X-Ray Dog Music.
- Documents with the bates prefix "SC" were produced by non-party Sequoia Capital pursuant to a subpoena.

- Documents with the bates prefix “ST” were produced by class plaintiff Stage Three Music.
  - Documents with the bates prefix “RH” were produced by class plaintiff Rodgers & Hammerstein.
4. Attached hereto at Tab 189 is a true and correct copy of GOO001-07169542.
  5. Attached hereto at Tab 190 is a true and correct copy of “*YouTube Blog*” from September 22, 2006, accessed at [http://youtube-global.blogspot.com/2006\\_09\\_01\\_archive.html](http://youtube-global.blogspot.com/2006_09_01_archive.html) on April 22, 2010.
  6. Attached hereto at Tab 191 is a true and correct copy of “*YouTube Blog*” from November 1, 2006, accessed at [http://youtube-global.blogspot.com/2006\\_11\\_01\\_archive.html](http://youtube-global.blogspot.com/2006_11_01_archive.html) on April 22, 2010.
  7. Attached hereto at Tab 192 is a true and correct copy of SC001246, also marked as Ex. 9 at the deposition of Roelof Botha on August 5, 2009.
  8. Attached hereto at Tab 193 is a true and correct copy of CH 00108978-109031.
  9. Attached hereto at Tab 194 is a true and correct copy of GOO001-00327194-97.
  10. Attached hereto at Tab 195 is a true and correct copy of GOO001-00743708-09.
  11. Attached hereto at Tab 196 is a true and correct copy of GOO001-01403584-85.
  12. Attached hereto at Tab 197 is a true and correct copy of GOO001-01521394-95.
  13. Attached hereto at Tab 198 is a true and correct copy of GOO001-01531017-20.
  14. Attached hereto at Tab 199 is a true and correct copy of GOO001-02052928.
  15. Attached hereto at Tab 200 is a true and correct copy of GOO001-02059252-57.
  16. Attached hereto at Tab 201 is a true and correct copy of GOO001-02240612-31.
  17. Attached hereto at Tab 202 is a true and correct copy of GOO001-02250235-62.
  18. Attached hereto at Tab 203 is a true and correct copy of GOO001-02468422-26.
  19. Attached hereto at Tab 204 is a true and correct copy of GOO001-02523433-34.
  20. Attached hereto at Tab 205 is a true and correct copy of is a true and correct copy of a transcript excerpt (pages 32; 42-46; 106) of the deposition of Roelof Botha on August 5, 2009.
  21. Attached hereto at Tab 206 is a true and correct copy of GOO001-02609134-35.

22. Attached hereto at Tab 207 is a true and correct copy of GOO001-05184970-81.
23. Attached hereto at Tab 208 is a true and correct copy of XD00057211-17, X-Ray Dog Music, Inc. Publisher License.
24. Attached hereto at Tab 209 is a true and correct copy of GOO001-00660588, also marked as Ex. 8 at the deposition of Chad Hurley on April 22, 2009.
25. Attached hereto at Tab 210 is a true and correct copy of GOO001-01424049-50.
26. Attached hereto at Tab 211 is a true and correct copy of GOO001-02482760, also marked as Ex. 2 at the deposition of Cuong Do on February 13, 2009.
27. Attached hereto at Tab 212 is a true and correct copy of "*DailyMotion Protection*," accessed at <http://www.dailymotion.com/us/legal/contentprotection> on April 27, 2010.
28. Attached hereto at Tab 213 is a true and correct copy of GOO001-00504044-45.
29. Attached hereto at Tab 214 is a true and correct copy of GOO001-00558783-84.
30. Attached hereto at Tab 215 is a true and correct copy of GOO001-03592968-69, also marked as Ex. 4 at the deposition of Peter Chane on December 2, 2009.
31. Attached here to at Tab 216 is a true and correct copy of GOO001-00562962-65, also marked as Ex. 12 at the deposition of Patrick Walker on July 22, 2008.
32. Attached hereto at Tab 217 is a true and correct copy of GOO001-02055019-20, also marked as Ex. 35 at the deposition of David Drummond on February 12, 2009.
33. Attached hereto at Tab 218 is a true and correct copy of GOO001-02693804-13.
34. Attached hereto at Tab 219 is a true and correct copy of GOO001-05150988.
35. Attached hereto at Tab 220 is a true and correct copy of GOO001-00502665-93, also marked as Ex. 10 at the deposition of David Eun on August 7, 2008.
36. Attached hereto at Tab 221 is a true and correct copy of GOO001-05943950-59, also marked as Ex. 12 at the deposition of Shasha Seth on July 16, 2009.
37. Attached hereto at Tab 222 is a true and correct copy of GOO001-01016844-45, also marked as Ex. 4 at the deposition of Shasha Seth on July 16, 2009.
38. Attached hereto at Tab 223 is a true and correct copy of GOO001-00827503-05.
39. Attached hereto at Tab 224 is a true and correct copy of GOO001-02338150-84.

40. Attached hereto at Tab 225 is a true and correct copy of GOO001-02439050-53, also marked as Ex. 21 at the deposition of Omid Kordestani on February 12, 2009.

41. Attached hereto at Tab 226 is a true and correct copy of GOO001-00255239-42, also marked as Ex. 13 at the deposition of Shasha Seth on July 16, 2009.

42. Attached hereto at Tab 227 is a true and correct copy of GOO001-00561601-21, also marked as Ex. 27 at the deposition of Zahavah Levine on April 2, 2009.

43. Attached hereto at Tab 228 is a true and correct copy of GOO001-00010746, also marked as Ex. 21 at the deposition of Chris Maxcy on August 28, 2008.

44. Attached hereto at Tab 229 is a true and correct copy of GOO001-01931840-51.

45. Attached hereto at Tab 230 is a true and correct copy of GOO001-01931799-811.

46. Attached hereto at Tab 231 is a true and correct copy of JK00004704-05, also marked as Ex. 29 at the deposition of C. Hurley on April 22, 2009.

47. Attached hereto at Tab 232 is a true and correct copy of JK00005039, also marked as Ex. 23 at the deposition of Jawed Karim on June 6, 2009.

48. Attached hereto at Tab 233 is a true and correct copy of JK00005043, also marked as Ex. 1 at the deposition of Chad Hurley on April 22, 2009.

49. Attached hereto at Tab 234 is a true and correct copy of JK00009383, also marked as Ex. 8 at the deposition of Jawed Karim on June 6, 2009.

50. Attached hereto at Tab 235 is a true and correct copy of JK00006057, also marked as Ex. 4 at the deposition of Chad Hurley on April 22, 2009.

51. Attached hereto at Tab 236 is a true and correct copy of JK00000382, also marked as Ex. 45 at the deposition of Chad Hurley on April 22, 2009.

52. Attached hereto at Tab 237 is a true and correct copy of JK00009595-96.

53. Attached hereto at Tab 238 is a true and correct copy of JK00006263-70, also marked as Ex. 45 at the deposition of Jawed Karim on June 6, 2009.

54. Attached hereto at Tab 239 is a true and correct copy of JK00009668, also marked as Ex. 19 at the deposition of Jawed Karim on June 6, 2009.

55. Attached hereto at Tab 240 is a true and correct copy of JK00007423, also marked as Ex. 55 at the deposition of Jawed Karim on June 6, 2009.

56. Attached hereto at Tab 241 is a true and correct copy of JK00008331-35.

57. Attached hereto at Tab 242 is a true and correct copy of JK00000824.
58. Attached hereto at Tab 243 is a true and correct copy of JK00000836.
59. Attached hereto at Tab 244 is a true and correct copy of JK00009130-32, also marked as Ex. 29 at the deposition of Jawed Karim on June 6, 2009.
60. Attached hereto at Tab 245 is a true and correct copy of CSSU 004069-74, also marked as Ex. 14 at the deposition of Storm Duncan on July 16, 2008.
61. Attached hereto at Tab 246 is a true and correct copy of CSSU 003326-50, also marked as Ex. 19 at the deposition of Storm Duncan on July 16, 2008.
62. Attached hereto at Tab 247 is a true and correct copy of the Declaration of Steve Chen in Support of Defendant's Motion Summary Adjudication of Defendant's First Affirmative Defense of DMCA Safe Harbor, dated January 5, 2007, also marked as Ex. 16 at the deposition of Micah Schaffer on July 23, 2008.
63. Attached hereto at Tab 248 is a true and correct copy of "*Video responses : Learn More - YouTube Help*," accessed at <http://www.google.com/support/youtube/bin/answer.py?hl=en&answer=57931>, on April 28, 2010.
64. Attached hereto at Tab 249 is a true and correct copy of "*Get started with your account*," accessed at [http://www.youtube.com/create\\_account?next=%2F](http://www.youtube.com/create_account?next=%2F) on April 28, 2010.
65. Attached hereto at Tab 250 is a true and correct copy of AM 004638-41, also marked as Ex. 11 at the deposition of Vance Ikezoye on September 10, 2009.
66. Attached hereto at Tab 251 is a true and correct copy of JK00010174.
67. Attached hereto at Tab 252 is a true and correct copy of "*NBC's Zucker lashes out at YouTube*," dated February 6, 2007, accessed at [www.ft.com](http://www.ft.com) on April 24, 2010.
68. Attached hereto at Tab 253 is a true and correct copy of PL00189901-59.
69. Attached hereto at Tab 254 is a true and correct copy of PL00001153-206.
70. Attached hereto at Tab 255 is a true and correct copy of PL00025679-82.
71. Attached hereto at Tab 256 is a true and correct copy of PL00190052-54.
72. Attached hereto at Tab 257 is a true and correct copy of PL00190055-57.
73. Attached hereto at Tab 258 is a true and correct copy of GOO001-00519462-65, also marked as Ex. 11 at the deposition of Micah Schaffer on July 23, 2008.

74. Attached hereto at Tab 259 is a true and correct copy of “*Copy Detection Mechanisms for Digital Documents*,” by Sergey Brin, James Davis, Hector Garcia-Molina, Department of Computer Science, Stanford University, dated October 31, 1994.

75. Attached hereto at Tab 260 is a true and correct copy of GOO001-00953867-69, also marked as Ex. 14 at the deposition of Heather Gillette on August 12, 2008.

76. Attached hereto at Tab 261 is a true and correct copy of GOO001-07169720-33.

77. Attached hereto at Tab 262 is a true and correct copy of JK00007378-79, also marked as Ex. 27 at the deposition of Jawed Karim on June 6, 2009.

78. Attached hereto at Tab 263 is a true and correct copy of GOO001-00046063-66, also marked as Ex. 12 at the deposition of Heather Gillette on August 12, 2008.

79. Attached hereto at Tab 264 is a true and correct copy of GOO001-00599550-51, also marked as Ex. 18 at the deposition of Maryrose Dunton on August 22, 2008.

80. Attached hereto at Tab 265 is a true and correct copy of GOO001-02604740-45, also marked as Ex. 5 at the deposition of Frank Chastagnol on December 10, 2008.

81. Attached hereto at Tab 266 is a true and correct copy of GOO001-01877082-87, also marked as Ex. 4 at the deposition of Alex Ellerson on May 22, 2009.

82. Attached hereto at Tab 267 is a true and correct copy of the Declaration of Vance Ikezoye in Support of Plaintiffs’ Motions for Summary Judgment dated February 2, 2006, also marked as Ex. 2 at the deposition of Vance Ikezoye on September 10, 2009.

83. Attached hereto at Tab 268 is a true and correct copy of AM 016617-22, also marked as Ex. 4 at the deposition of Vance Ikezoye on September 10, 2009.

84. Attached hereto at Tab 269 is a true and correct copy of AM 001241-44, also marked as Ex. 13 at the deposition of Frank Chastagnol on December 10, 2008.

85. Attached hereto at Tab 270 is a true and correct copy of GOO001-01998280-81.

86. Attached hereto at Tab 271 is a true and correct copy of GOO001-06033753-54.

87. Attached hereto at Tab 272 is a true and correct copy of Ex. 10 marked at the deposition of Oliver Weingarten on December 15, 2009.

88. Attached hereto at Tab 273 is a true and correct copy of GOO001-01950611-18, also marked as Ex. 8 at the deposition of David King on January 13, 2010.

89. Attached hereto at Tab 274 is a true and correct copy of CH00107156.

90. Attached hereto at Tab 275 is a true and correct copy of GOO001-01620132-48.

91. Attached hereto at Tab 276 is a true and correct copy of “*This Is YouTube*” Screenshot, accessed at <http://www.youtube.com/watch?v=ojqWclLQOxk> on March 16, 2010.
92. Attached hereto at Tab 277 is a true and correct copy of a transcript excerpt (195:13-20) of the deposition of David Drummond on February 12, 2009.
93. Attached hereto at Tab 278 is a true and correct copy of a transcript excerpt (87:3-91:10) of the deposition of Storm Duncan on July 16, 2008.
94. Attached hereto at Tab 279 is a true and correct copy of a transcript excerpt (68:21-69:14; 109:24-110:22) of the deposition of Omid Kordestani on February 12, 2009.
95. Attached hereto at Tab 280 is a true and correct copy of a transcript excerpt (119:4-121:24) of the deposition of Jawed Karim on June 6, 2009.
96. Attached hereto at Tab 281 is a true and correct copy of a transcript excerpt (8:18-10:25, 48:10-50:18) of the deposition of Peter Chane on December 2, 2009.
97. Attached hereto at Tab 282 is a true and correct copy of a transcript excerpt (76:6-77:10) of the deposition of Pierre Lamond on May 26, 2009.
98. Attached hereto at Tab 283 is a true and correct copy of a transcript excerpt (154:8-21; 107:21-109:2; 111:11-112:20; 158:8-21) of the deposition of Heather Gillette on August 12, 2008.
99. Attached hereto at Tab 284 is a true and correct copy of a transcript excerpt (321:6-19) of the deposition of Zahavah Levine on April 2, 2009.
100. Attached hereto at Tab 285 is a true and correct copy of a transcript excerpt (28:2-30:3; 53:4-7; 55:8-13) of the deposition of Dean Garfield on November 2, 2009.
101. Attached hereto at Tab 286 is a true and correct copy of SC009405, also marked as Ex. 1 at the deposition of Pierre Lamond on May 26, 2009.
102. Attached hereto at Tab 287 is a true and correct copy of a transcript excerpt (209:7-9) of the deposition of Brent Hurley on August 26, 2008.
103. Attached hereto at Tab 288 is a true and correct copy of a transcript excerpt (57:1-58:14; 180:16-181:17) of the deposition of Varun Kacholia on January 8, 2010.
104. Attached hereto at Tab 289 is a true and correct copy of a transcript excerpt (254:7-10) of the deposition of Maryrose Dunton on August 22, 2008.



105. Attached hereto at Tab 209 is a true and correct copy of GGoogle Inc. Form 10-K, the Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, for the fiscal year ended December 31, 2007.

106. Attached hereto at Tab 291 is a true and correct copy of a transcript excerpt (21:4-7; 38:11-13) of the deposition of Vance Ikezoye on September 10, 2009.

107. Attached hereto at Tab 292 is a true and correct copy of a transcript excerpt (84-86; 95:2-97:25; 150-155; 175) of the deposition of David King on January 13, 2010.

108. Attached hereto at Tab 293 is a true and correct copy of a transcript excerpt (173:25-174:23) of the deposition of Chad Hurley on April 22, 2009.

109. Attached hereto at Tab 294 is a true and correct copy of a transcript excerpt (24:3-26:17) of the deposition of Matthew Liu on November 13, 2009.

110. Attached hereto at Tab 295 is a true and correct copy of GOO001-08260557-60.

111. Attached hereto at Tab 296 is a true and correct copy of GOO001-02826899-901.

112. Attached hereto at Tab 297 is a true and correct copy of a transcript excerpt (135:15-142:17) of the deposition of Michael Solomon on September 1, 2009.

113. Attached hereto at Tab 298 is a true and correct copy of GOO001-01399226.

Attached hereto at Tab 299 is a true and correct copy of a transcript excerpt (pages 302-303) of the deposition of Michel Grach on September 4, 2008.

114. Attached hereto at Tab 300 is a true and correct copy of GOO001-00718495-98.

115. Attached hereto at Tab 301 is a true and correct copy of GOO001-00482516-18, also marked as Ex. 13 at the deposition of Patrick Walker on July 22, 2008.

116. Attached hereto at Tab 302 is a true and correct copy of "French TV broadcaster TF1 sues YouTube: report" accessed on <http://www.reuters.com/assets/print?aid=USL1661654820080416> on April 29, 2010.

117. Attached hereto at Tab 303 is a true and correct copy of a transcript excerpt (54:9-58:24) of the deposition of Jim Patterson on December 16, 2009.

114. Attached hereto at Tab 304 is a true and correct copy of "UFC's Channel" Screenshot, accessed at <http://www.youtube.com/user/UFC#p/u> on April 29, 2010.

115. Attached hereto at Tab 305 is a true and correct copy of MF 00000280-295.

116. Attached hereto at Tab 306 is a true and correct copy of a transcript excerpt (pages 199:24-200:12) of the deposition of Suzanne Reider on October 3, 2008.
117. Attached hereto at Tab 307 is a true and correct copy of GOO001-00243149-52.
118. Attached hereto at Tab 308 is a true and correct copy of GOO001-09684201-21.
119. Attached hereto at Tab 309 is a true and correct copy of JK00000173-79, also marked as Ex. 17 at the deposition of Jawed Karim on June 6, 2009.
120. Attached hereto at Tab 310 is a true and correct copy of GOO001-01859750-53.
121. Attached hereto at Tab 311 is a true and correct copy of GOO001-01676504-05.
122. Attached hereto at Tab 312 is a true and correct copy of GOO-CH-0010-11, also marked as Ex. 8 at the deposition of Keith Hauprich on September 24, 2009.
123. Attached hereto at Tab 313 is a true and correct copy of a transcript excerpt (pages 112:19-23; 179:2-9) of the deposition of Marco Berrocal on January 21, 2009.
124. Attached hereto at Tab 314 is a true and correct copy of a transcript excerpt (pages 186:21-187:3; 224:23-225:10) of the deposition of Keith Hauprich on November 4, 2008.
125. Attached hereto at Tab 315 is a true and correct copy of a transcript excerpt (pages 21:17-23; 162:24-25; 163:6-7) of the deposition of Jerry Horan on October 20, 2008.
126. Attached hereto at Tab 316 is a true and correct copy of a transcript excerpt (pages 209:25-210:2; 210:5-7; 211:25-212:3; 327:23-328:5) of the deposition of Oliver Weingarten on December 16, 2009.
127. Attached hereto at Tab 317 is a true and correct copy of GOO001-01401527-29.
128. Attached hereto at Tab 318 is a true and correct copy of GOO001-01517877-78.
129. Attached hereto at Tab 319 is a true and correct copy of GOO001-02250866-81.
130. Attached hereto at Tab 320 is a true and correct copy of a transcript excerpt (6:25-7:2) of the deposition of David King on December 12, 2008.
131. Attached hereto at Tab 321 is a true and correct copy of GOO001-09684720-51.
132. Attached hereto at Tab 322 is a true and correct copy of GOO001-09595431.
133. Attached hereto at Tab 323 is a true and correct copy of GOO001-09595472.

134. Attached hereto at Tab 324 is a true and correct copy of a transcript excerpt (142:12-143:25) of the deposition of Henry Marx on November 3, 2009.
135. Attached hereto at Tab 325 is a true and correct copy of GOO001-00078065-67.
136. Attached hereto at Tab 326 is a true and correct copy of “*Vobile Announces Landmark Deployment of Videodna™ Content Identification and Management System*,” dated May 1, 2007, accessed at [www.vobileinc.com/news.html](http://www.vobileinc.com/news.html).
137. Attached hereto at Tab 327 is a true and correct copy of the Brief Amicus Curiae NBC Universal, Inc. in Support of Plaintiff Robert Tur’s Opposition to Motion of YouTube, Inc. For Summary Judgment in *Tur v. YouTube* litigation (06-cv-4436), dated May 15, 2007.
138. Attached hereto at Tab 328 is a true and correct copy of GOO001-00189308-12, also marked as Ex. 10 at the deposition of David King on January 13, 2010.
139. Attached hereto at Tab 329 is a true and correct copy of a transcript excerpt (187-188) of the deposition of Michel Grach on December 3, 2009.
140. Attached hereto at Tab 330 is a true and correct copy of ST00072102; ST 00071507-11) Stage Three Music (US), Inc. Publisher License.
141. Attached hereto at Tab 331 is a true and correct copy of BC00020867-80, Bourne Company Publisher License.
142. Attached hereto at Tab 332 is a true and correct copy of CH00113435-68, Cherry Lane Music Publishing Company, Inc. Publisher License.
143. Attached hereto at Tab 333 is a true and correct copy of RH00111568-1648, Rodgers & Hammerstein Publisher License.
144. Attached hereto at Tab 334 is a true and correct copy of MF00001225-39, Music Force LLC Publisher License.
145. Attached hereto at Tab 335 is a true and correct copy of JK00009381-82, also marked as Ex. 7 at the deposition of Jawed Karim on June 6, 2009.
146. Attached hereto at Tab 336 is a true and correct copy of GOO001-02081141.0001-.0008
147. Attached hereto at Tab 337 is a true and correct copy of GOO001-00947673-675.
148. Attached hereto at Tab 338 is a true and correct copy of GOO001-00839849.

Contains Material Designated Confidential and Highly Confidential Pursuant to Protective Order

I declare under perjury of laws of the United States of America that the foregoing is true and correct.

Dated: New York, New York  
May 7, 2010

  
Elizabeth Anne Figueira