

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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VIACOM INTERNATIONAL INC., COMEDY PARTNERS, COUNTRY MUSIC TELEVISION, INC., PARAMOUNT PICTURES CORPORATION, and BLACK ENTERTAINMENT TELEVISION LLC,	)	
	)	
	)	
	)	ECF Case
	)	
Plaintiffs,	)	Case No. 1:07-cv-02103 (LLS)
	)	
v.	)	
	)	<b>DECLARATION OF ZAHAVAH LEVINE</b>
YOUTUBE, INC., YOUTUBE, LLC, and GOOGLE INC.,	)	
	)	
	)	
Defendants.	)	
	)	
	)	

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I, Zahavah Levine, declare as follows:

1. I am currently Associate General Counsel of Google Inc. (“Google”). Prior to Google’s acquisition of YouTube, Inc. (“YouTube”), I was General Counsel and Vice President of Business Affairs of YouTube. I have personal knowledge of the facts set forth herein and, if called as a witness, I could and would testify competently to them.

2. I have been a practicing attorney for fourteen years, and have spent most of my career practicing copyright law, first in private practice and then as in-house counsel to various companies. I have devoted the better part of my professional life to working hand-in-hand with major media companies on copyright licensing and copyright protection strategies.

3. In February 2006, I was contacted by Chris Maxcy at YouTube and asked to consider joining the company as its first in-house lawyer and its general counsel. Given my existing working relationships with some of the largest copyright holders in the world, I naturally inquired about YouTube’s views regarding copyright protection during the interview process. The

company's founders Chad Hurley and Steve Chen, and a board member, Roelof Botha, explained YouTube's philosophy on this issue. They each strongly impressed upon me that neither they nor YouTube had any interest in growing the company or profiting by virtue of the presence of materials on the service that infringed others' copyrights. Each assured me that I would be given substantial resources and broad discretion to enable the company and copyright holders to combat the unauthorized uploading of videos to the YouTube service, and that they supported those efforts.

4. Since joining YouTube in March 2006, I have spent the considerable majority of my time – thousands upon thousand of hours – working with the company's executives, engineers, business development teams, product designers and staff as well as countless partners and users to minimize the incidence of unauthorized copyrighted material on the service, while ensuring that YouTube remained a vibrant platform for users around the world to share their own videos. During my tenure, YouTube and its parent company Google, have invested many millions of dollars on technologies and teams of employees directed to that end.

#### YouTube's User Education

5. A key component of YouTube's approach to protecting copyright holders is to educate its users. Through multiple means, YouTube warns users that they are prohibited from uploading to the site any copyrighted content to which they do not hold the rights, and strives to teach users how to abide by that prohibition.

6. Before being permitted to upload a video to the site, an individual must first register for our service. As part of the registration process, users must affirmatively accept YouTube's terms of use agreement. A true and correct copy of our current terms of use agreement is located at <http://www.youtube.com/t/terms> and is attached to this declaration as Exhibit 1. Virtually every page of the site contains a direct link to this agreement. It emphasizes YouTube's explicit prohibition on users' uploading copyrighted material that they do not have the right or authorization to share:

**In connection with User Submissions, you further agree that you will not submit material that is copyrighted, protected by trade secret or otherwise**

**subject to third party proprietary rights, including privacy and publicity rights, unless you are the owner of such rights or have permission from their rightful owner to post the material and to grant YouTube all of the license rights granted herein.**

YouTube's terms of use agreement also makes clear that:

YouTube does not permit copyright infringing activities and infringement of intellectual property rights on its Website, and YouTube will remove all Content and User Submissions if properly notified that such Content or User Submission infringes on another's intellectual property rights. YouTube reserves the right to remove Content and User Submissions without prior notice.

These terms of the user agreement (and the condition that they be accepted before a user can upload a video) have been in force in essentially the same manner since YouTube's public launch in December 2005. True and correct copies of our December 2005 and January 2007 terms of use agreements with users are attached to this declaration as Exhibit 2.

7. YouTube also prominently features "Community Guidelines" for the service which are incorporated as part of its terms of service agreement and reinforce the message:

Respect copyright. Only upload videos that you made or that you are authorized to use. This means don't upload videos you didn't make, or use content in your videos that someone else owns the copyright to, such as music tracks, snippets of copyrighted programs, or videos made by other users, without necessary authorizations. Read our [Copyright Tips](#) for more information.

A true and correct copy of the current Community Guidelines page is attached to this declaration as Exhibit 3. YouTube's Community Guidelines, also at times called the "Code of Conduct," have contained essentially the same directives regarding copyright matters since they were added to the site in October 2006. True and correct copies of the October 2006 Community Guidelines and January 2007 Community Guidelines are attached to this declaration as Exhibit 4.

8. Beyond the express agreement YouTube obtains from users and the warnings contained in that agreement and the Community Guidelines, each time a user seeks to upload a video, YouTube explicitly reminds them, via multiple messages prominently displayed in the upload process, that they are prohibited from uploading copyrighted content unless they have the

right or authorization to do so. That warning is displayed in a highlighted box right next to the upload button on the “Video Upload” screen a user must view to upload a video. It reads:

**Important: Do not upload any TV shows, music videos, music concerts, or commercials without permission unless they consist entirely of content you created yourself.**

The Copyright Tips page and the Community Guidelines can help you determine whether your video infringes someone else's copyright.

By clicking "Upload Video", you are representing that this video does not violate YouTube's Terms of Use and that you own all copyrights in this video or have authorization to upload it.

A true and correct copy of the page a user encounters to upload a video is attached as Exhibit 5. The same message appears again on the screen where users are asked to provide descriptions of videos they have uploaded. YouTube has displayed equally prominent and direct warnings to users uploading videos to the service since my arrival at the company. For example, attached as Exhibit 6 to this declaration are true and correct examples of warnings provided to users during the YouTube upload process as of January 2007.

9. On our “*Copyright Tips*” page, located at [http://youtube.com/t/howto\\_copyright](http://youtube.com/t/howto_copyright), we give users considerable practical guidance on copyright basics and again describe the consequences to users of copyright infringement on the site. That same page provides links to even more information we prepare so that users can “*Learn More About Copyright*,” including answers to questions such as “*How do I know what is copyrighted?*” and “*What will happen if I upload infringing content?*” A copy of this page is attached to this Declaration as Exhibit 7.

10. YouTube also dedicates an area of the “Help” section of its website to providing users and content owners alike with information about copyright issues and YouTube’s approach regarding copyrighted material. A true and correct copy of this “Help” page <http://www.google.com/support/youtube/bin/topic.py?topic=10554> is attached hereto as Exhibit 8.

#### User Verification

11. Another step YouTube takes to deter infringing activity on the site (which has been in place since I arrived at the company) is to require that users submit a valid and working email

address to the company before the user may upload any video. YouTube verifies the accuracy of the email address provided by sending an email to the address and requiring the user to respond to it. Only after the validity of the email address is verified may the user upload a video to the service. By requiring verified email addresses, YouTube can ensure there is a mechanism to warn users of improper use of the service, and more readily hold them accountable for such use by, for example, terminating their account.

12. To further minimize the incidence of unauthorized copyrighted material on the site YouTube has, since March 2006, limited the duration of videos uploaded by ordinary users to ten minutes in length to prevent users from uploading a video file consisting of an entire television show or feature length film. To ensure YouTube remains a platform through which users can express themselves freely, we have, at times, made exceptions to our policy for certain users in an effort to accommodate their requests to share longer personal videos. In such cases, however, we have required additional verification from those users in an effort to ensure that the additional privilege we afforded them was used properly.

#### YouTube and the DMCA

13. YouTube has also sought to assist copyright owners in preventing infringement on the site by complying with the requirements and procedures of 17 U.S.C. §512 of the Digital Millennium Copyright Act (“DMCA”).

#### Registering a DMCA Agent

14. YouTube has designated an agent pursuant to the requirements of the DMCA, and has provided that agent’s contact information to the Copyright Office. YouTube’s agent is available to receive notifications of alleged copyright infringement on the site, and can be contacted at: DMCA Complaints, YouTube, Inc., 901 Cherry Ave., Second Floor, San Bruno, CA 94066, Fax: (650) 872-8513, Email: [copyright@youtube.com](mailto:copyright@youtube.com).

15. Our DMCA agent’s contact information is accessible through YouTube’s “Copyright Infringement Notification” page, located at [http://www.youtube.com/t/dmca\\_policy](http://www.youtube.com/t/dmca_policy). A

link to this page is included at the bottom of virtually every page displayed on YouTube.com and is identified by the title “Copyright.” Rights holders can also directly access this information via links located on various YouTube.com pages, including: (1) the “Contact Us” page ([http://www.youtube.com/t/contact\\_us](http://www.youtube.com/t/contact_us)) and (2) the “Copyright Tips” page ([http://www.youtube.com/t/howto\\_copyright](http://www.youtube.com/t/howto_copyright)). These materials have existed in substantially the same form on the site since I arrived at the company.

#### Notice and Takedown Procedure

16. We have listed on our “Copyright Infringement Notification” page the information the DMCA requires (and that we request) copyright holders provide to YouTube to enable us to locate and remove allegedly infringing content. A true and correct copy of this page, [http://www.youtube.com/t/dmca\\_policy](http://www.youtube.com/t/dmca_policy) is attached hereto as Exhibit 9.

17. Our goal is to make it very easy for copyright owners to inform us of alleged copyright infringement on our site. In addition to processing DMCA notices received by postal mail, email or fax, YouTube has developed an online form that walks content owners step-by-step through the process of sending us a DMCA notice. A true and correct copy of the form is attached hereto as Exhibit 10 and is accessible at [http://www.youtube.com/copyright\\_complaint\\_form](http://www.youtube.com/copyright_complaint_form).

18. Further, in March 2006, YouTube launched its Content Verification Program (“CVP”). That program, open to any copyright owner, offers a tool we built to enable content owners to easily locate and flag their videos on the service and send DMCA notices with the click of a mouse. Content owners who sign up for CVP receive lists of videos matching search queries that they input. They can then flag videos they want removed simply by checking a box next to those videos on the list, and electronically send us a valid DMCA notice for such videos simply by clicking a button. I believe YouTube was the first online video service to offer such functionalities to content owners. To date, over 3000 content owners have registered to use the tools in our CVP program, and the tools are available worldwide and around the clock.

19. Once YouTube receives a notification of alleged infringement that substantially complies with the DMCA's requirements, we act promptly to remove the identified material from our service or disable access to it. Throughout my tenure at the company, we have removed almost all of the videos identified in DMCA notices within 24 hours; indeed, for the vast majority of DMCA notices (about 85%), we remove the identified videos within a few minutes using automated tools. We also employ a team throughout the world dedicated to processing manually-submitted DMCA notices, and to assisting copyright holders and users with issues arising from the notice process.

20. Our ability to process DMCA notices was severely tested by Viacom on Friday, February 2, 2007, when Viacom (through its agent, BayTSP) sent us DMCA notices requesting we remove more than one hundred thousand videos from the site. To handle that volume of requests, we had to devise special procedures and write special computer programs to ensure we did not disrupt the normal operation of the site. We also brought in additional personnel and had teams working overtime, around-the-clock through the weekend to respond. To complicate matters, at the same time, we were receiving regular "retractions" from Viacom for videos that it had included in these notices but which it then told us should not be removed. We were also receiving a stream of complaints from users and content partners claiming that Viacom was improperly requesting removal of their videos. And Viacom continued to send additional notices requesting much smaller groups of videos be removed. Despite all this, through our efforts, we were able to remove virtually all of the videos identified in Viacom's large-scale notice before the next business day.

21. For the purposes of these litigations, we have adopted a policy of removing videos from the site promptly after we become aware that they were identified in plaintiffs' various pleadings as allegedly infringing their copyrights. That policy, which I know was regularly followed, applied even where the plaintiffs did not send DMCA notices to YouTube's registered DMCA agent requesting removal of the videos. As a result, I understand that all of the videos that plaintiffs have claimed infringe their copyrights in these cases were removed from YouTube

shortly after they were identified to us, whether by DMCA notice or otherwise, to the extent those videos had not previously been removed.

22. YouTube's prompt responsiveness to takedown requests has drawn consistent praise and appreciation from content owners for years:

- "Thank you very much for your quick action to remove 'SUKKIRI' materials per our email of 20<sup>th</sup> July, 2006." (Nippon Television Network Corporation, 7/21/06)
- "Thanks for the SUPER FAST response – you guys rock!!!!!!!" (JustSayGO LLC -- 11/11/2006)
- "Thank you very much indeed for your fast response. I highly appreciate it as well you as your attitude towards the exchange of audiovisual materials through the Net. Thanks to companies like yours our business can be secure while taking advantage of the benefits of new technologies." (Antonio Hens -- 11/16/2006)
- "Thank you for the quick response. We appreciate your help in complying with this request" (NBC Universal, 4/4/07)
- "thank you so much, I really appreciate your wonderful work. I never thought you would be so efficient." (Somali Musician, Aar, 6/27/07)

I have attached these and other samples of similar messages drawn from our customer service database to this declaration as Exhibit 11. I could easily find hundreds more.

23. Beyond simply removing a video from the site when it has been the subject of a valid DMCA notice, we also email/contact the user who uploaded the video as part of our user education program to: (a) apprise them of the allegation; (b) remind them of the company's policy prohibiting upload of unauthorized copyrighted material; and (c) warn them that repeated acts of copyright infringement will result in the termination of their YouTube account. Copies of the standard messages we send users, which have been substantially the same since I arrived at the company, are attached hereto as Exhibit 12.

24. After we take down an allegedly infringing video, we post a prominent notice at the video's location on the site stating: "This video is no longer available due to a copyright claim by [party alleging infringement]." In doing so, we reinforce the message to any user who visits that video's page, that YouTube should not be used for the posting or accessing of unauthorized



copyrighted material. We have posted similar messages in these circumstances throughout my tenure at the company.

25. Since March 2006, YouTube also has automatically created a digital “hash” or fingerprint of every allegedly infringing video that we remove in response to the DMCA notices described above. A “hash” is essentially a unique numeric value that is generated by analyzing the attributes of a specific video. Once we have a hash for a video that has been removed from the service for alleged copyright infringement, we thereafter prevent any user from uploading a video with a hash that matches it. This “MD-5” filtering technology has been operational at the company since before I arrived. To expand upon its capabilities and allow us to block files similar, but not identical, to ones previously removed from the service, YouTube has invested heavily in developing and deploying video and audio identification technologies described in the accompanying declaration of David King.

26. Over its existence, YouTube has removed approximately 4.7 million videos from the service in response to DMCA take down notices and equivalent take down notices submitted by copyright holders, such as notices in foreign countries. In total, that represents less than one percent of the more than 500 million videos that users have uploaded to YouTube over time. Just as we could not and do not manually pre-screen or review each of the videos uploaded, we cannot feasibly undertake thorough investigations as to the legitimacy of every DMCA notice we receive. Accordingly, we do not know whether the notices we have received constitute valid claims. From personal experience though, I know that improper and invalid notices are a regular occurrence.

#### Termination of Accounts of Alleged Repeat Infringers

27. YouTube has had a policy of terminating the accounts of alleged repeat infringers since before I arrived at the company. As a general matter, that policy has been “three strikes and you’re out.” Thus, in almost all cases, if YouTube receives three takedown requests for content uploaded by a particular user, then YouTube will terminate the user’s YouTube account. Users are notified of YouTube’s policy of terminating repeat infringers in YouTube’s terms of use, on its

“Copyright Tips” page, in the “Help” section of the site, and via emails when they are notified that a video has been removed due to alleged copyright infringement.

28. YouTube tracks notices and issues strikes to users in automated fashion. While “three strikes” describes the basic rule in place, YouTube’s policy allows us to take account of circumstances in determining which of our users are actually “repeat infringers” whose accounts should be terminated. For example, where a user formally contests a claim of infringement using the counter-notice process set forth in Section 512(g) of the DMCA, that claim is not counted as a strike against the user. Further, from experience, YouTube has learned that some of its users are unfamiliar with copyright law, and are surprised when a content owner takes issue with a video they have uploaded. To help educate these users and to give them an opportunity to correct their behavior before suffering the loss of their account, YouTube assesses a single strike per notice, including in circumstances where a DMCA notice identifies more than one allegedly infringing video from the same user. After receiving notice and an explanation that a strike has been assessed, users routinely inform us that they have modified their behavior.

29. YouTube has also found it necessary on occasion to afford additional protections to users who are potential targets of improper or mistaken DMCA notices. For example, in the midst of the 2008 presidential race, we received a letter from Senator McCain’s campaign (a copy of which is attached as Exhibit 13) complaining about a rash of improper DMCA notices:

By providing a platform for political candidates and the American public to post, view, share, discuss, comment on, mash-up, re-mix, and argue over campaign-related videos, YouTube has played a prominent and overwhelmingly positive role in the 2008 election.

\* \* \*

We write, however, to alert you to a problem that has already chilled this free and uninhibited discourse . . . overreaching copyright claims have resulted in the removal of non-infringing campaign videos from YouTube, thus silencing political speech. Numerous times during the course of the campaign, our advertisements or web videos have been the subject of DMCA takedown notices regarding uses that are clearly privileged under the fair use doctrine. . . . Despite the complete lack of merit in these copyright

claims, YouTube has removed our videos immediately upon receipt of takedown notices. This is both unfortunate and unnecessary.

Then-Senator Obama's presidential campaign had equally serious issues. In late June 2008, plaintiff Viacom sent YouTube a DMCA notice averring under penalty of perjury that a video the Obama campaign had uploaded entitled "Barack Obama's Speech on Father's Day" (<http://www.youtube.com/watch?v=Hj1hCDjwG6M>) violated its copyrights. Viacom's notice resulted in a "third strike" for the Obama campaign's account, causing its automatic termination (Viacom did not withdraw its erroneous copyright claim regarding the speech for more than two weeks). To ensure that both Senators McCain and Obama were able to continue communicating their messages to the electorate, we made special accommodations for them under our policy, and have done so for others in limited cases where circumstances have warranted.

30. When a user's account is terminated for violation of YouTube's repeat infringer policy, there are several ramifications. First, the account can no longer be used for any purpose on the service – among other things the user cannot upload additional videos, view age-restricted videos, post comments or participate in any YouTube programs. [REDACTED]

[REDACTED] Second, YouTube takes down *all* videos uploaded to the site from the terminated account – including videos that were not subject to any DMCA notice – along with all of the comments, ratings and view count totals associated with those videos. YouTube takes this protective step even though it results in the removal of large volumes of videos that the user may have had every right to upload and against which no allegation of copyright infringement has been or could be made. [REDACTED]

[REDACTED]

31. YouTube regularly enforces its repeat infringer policy. We have terminated more than 400,000 user accounts based at least in part for copyright strikes assessed under our repeat infringer policy. That figure, however, represents only a tiny fraction of YouTube's user base. Since its inception, there have been over 250,000,000 accounts registered on the YouTube service.

Praise from Copyright Holders

32. Throughout my tenure with YouTube, the company has received praise from content owners for its efforts to restrict and address copyright infringement by its users. Notable for example, were sentiments expressed by a representative of the Motion Picture Association of America, the trade and anti-piracy organization for the major Hollywood studios (including plaintiff Paramount). In March 2006, a representative of the MPAA, was quoted in the *Hollywood Reporter*, a prominent entertainment industry publication, as saying: "YouTube has been a good corporate citizen and taken off copyrighted material." A true and correct copy of the article in which the statement appeared is attached as Exhibit 14. Coming from the MPAA, the statement received considerable attention at YouTube and indicated to me that our company's copyright enforcement efforts generally met with the approval of leading content owners.

33. That view was repeatedly confirmed for me over time. In a June 2006 announcement of an agreement with NBC Universal in which it partnered with YouTube to provide content to be shown on the site, the president of NBC's entertainment division described YouTube as:

[T]he perfect online media partner to promote NBC's marquee entertainment to their audience and explore new and creative ways to harness the power of viral video in a manner that respects copyrights. We applaud YouTube for their continued willingness to work with us to remove any unauthorized NBC content and protect our copyrighted material. We are thrilled to be partnering with this forward-thinking company.

A true and correct copy of that announcement is attached as Exhibit 15. The same NBC executive also told the Wall Street Journal: "YouTube has done their work on protecting copyright and we have assurances that they will continue to do so. They are a bright light . . . ." A true and correct copy of that article from June 2006 is attached hereto as Exhibit 16. In announcing our September

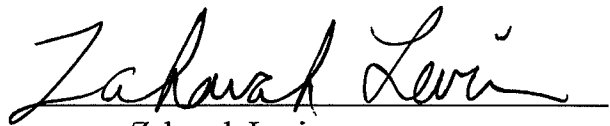
2006 agreement with the Warner Music Group to license its extensive music catalog, Warner's

Executive Vice-President commented:

We commend [CEO] Chad [Hurley] and the YouTube team for their commitment to creating a framework in which the needs of their users and rights of copyright holders can coexist in a mutually beneficial environment. We look forward to partnering with them to offer this powerful distribution platform to our artists and their fans.

That announcement is attached as Exhibit 17. Comments such as these from some of the largest content owners in the world merely confirmed my conviction that YouTube's overall approach to copyright issues has been and remains suitably protective of copyright interests.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge. Executed the \_\_\_ day of March 2010, at San Bruno, California.

  
Zahavah Levine