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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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THE FOOTBALL ASSOCIATION PREMIER :
LEAGUE LIMITED and BOURNE CO., on : **07 Civ. _____**
behalf of themselves and all others similarly :
situated, : **CLASS ACTION COMPLAINT**
: **JURY TRIAL DEMANDED**
Plaintiffs, :
v. :
YOUTUBE, INC., YOUTUBE, LLC and :
GOOGLE, INC., :
Defendants. :
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Plaintiffs, The Football Association Premier League Limited and Bourne Co., on behalf of themselves and all others similarly situated, by their attorneys Proskauer Rose LLP and Bernstein Litowitz Berger & Grossmann LLP, allege for their Complaint against defendants YouTube, Inc., YouTube, LLC (together “YouTube”, which also refers to Defendants’ website YouTube.com) and Google, Inc. (“Google”, and together with YouTube, “Defendants”), on personal knowledge as to matters relating to themselves, and on information and belief as to all other matters, as follows:

NATURE OF ACTION

1. This action is brought to vindicate the rights of owners of copyrighted intellectual property, both large and small. This intellectual property was created and made valuable by the investment – sometimes the life-long investment – of creativity, time, talent, energy, and resources of content producers other than Defendants. Yet Defendants, which own and operate the website YouTube.com, have knowingly misappropriated and exploited this valuable property for their own gain without payment or license to the owners of the intellectual property.

2. The Class (as that term is defined in Paragraph 23 of this Complaint) consists of copyright owners (together with the owners of exclusive rights in sound recordings protected under state law) whose proprietary content Defendants have copied, stored, and electronically disseminated, publicly displayed, or performed, in whole or substantial infringing part, without the authorization of the rights owners. YouTube has done so, first independently and, since November 13, 2006, with the active, knowing encouragement and complicity of, and for the direct financial benefit of, its parent, Google. Defendants have continued and will continue their brazen acts of willful copyright infringement unless enjoined by this Court.

3. The Class is adequately represented by The Football Association Premier League Limited (“PL” or the “Premier League”) and Bourne Co. (“Bourne”, together with the Premier League, “Lead Plaintiffs”). The financial success and ability of Lead Plaintiffs and other Class members (collectively, sometimes referred to herein as “Plaintiffs”) to continue to produce and distribute original and valuable creative works, including musical compositions, sound recordings, motion pictures, television productions, and sports broadcasting, is dependent upon this Court’s protection of their property rights.

4. YouTube bills itself as “the leading destination on the Internet for video entertainment” and boasts millions of monthly visitors to its website. In the operation of its website, YouTube copies and electronically disseminates, on a massive and wide-ranging scale, content including the valuable intellectual property of the Class. Defendants know that YouTube’s very popularity (and concomitant value, including advertising revenues and desirability as a platform for other uses) derive from the unauthorized presence and exploitation of valuable intellectual property rights owned by the Class.

5. YouTube functions by permitting, encouraging, and enabling users to upload and share, among other content: television programming; broadcasts of sporting events; videos, synchronized with sound consisting largely of copyrighted music, commercial sound-recordings and bootlegged recordings of well-known musical groups and other performers; full length features movies; and other proprietary content, the exclusive rights to which are owned by the Class. YouTube not only “stores” user directed content in unmodified form; it engages in, encourages, and enables the unlawful copying, alteration, display, dissemination, and performance of Class members’ intellectual property, and profits handsomely as a result.

6. Defendants are pursuing a deliberate strategy of engaging in, permitting, encouraging, and facilitating massive copyright infringement on the YouTube website because the presence of large amounts of valuable intellectual property generates interest in that website, resulting in public and media attention and increased traffic (which, in turn, increase YouTube’s advertising revenues and projected value as a site, platform, or destination). Fully aware that this business model violates laws protecting the copyrighted content that they have misappropriated on a massive scale, Defendants have adopted a cynical and self-contradictory strategy designed to perpetuate the unlawful exploitation of the Class’s valuable property rights. For example,

Defendants have feigned blindness and an inability to reduce the wholesale infringement that occurs, constantly and unremittingly, every day on the YouTube website, distorting the balance created by Congress and forcing the victims – the content producers themselves – to go through the meaningless exercise of pointing out to Defendants what Defendants plainly already know: that there is copyrighted material being exploited on the YouTube website without the authorization of the rights owners. Defendants have deliberately refrained from implementing readily available technical measures to prevent infringement. Defendants know full well that to employ such measures would undermine the very essence of their business model – to maximize the amount of infringing content available to users of YouTube – and would cause them to lose the benefit of the vast audience the YouTube website now enjoys and the substantial “draw” that such infringing material represents in attracting users.

7. Recent events have confirmed that Defendants are able to identify copyrighted material on the YouTube website – and to remove such material if they wish – so long as victims of Defendants’ infringing conduct agree to pay Defendants to do so, by authorizing the otherwise infringing exploitation of their works by Defendants. In a Twenty-First Century embodiment of an age-old scheme, Defendants have agreed to provide “protection” against their own infringing conduct through a series of “partnership” agreements with various copyright owners. Put another way, when the license fee sought by a copyright owner is low enough to be deemed satisfactory to Defendants, Defendants find themselves able to shed their blinders and employ technology to safeguard the rights of their new “partners.” By contrast, Defendants steadfastly refuse to respect the rights of members of the Class who insist on asserting their rights under the laws Congress has enacted to protect them rather than being forced to sell those rights on the cheap as part of Defendants’ “protection” scheme.

8. Within a year of the launch of YouTube's website, YouTube sold its business to Google for \$1.65 billion in what YouTube touts as "one of the most talked-about acquisitions to date." The resulting increase in Google's share price added nearly \$4 billion in market capitalization to that company on the day of the acquisition. YouTube's tremendous financial success was the direct result of Defendants' unlawful exploitation of the proprietary works of the Class. The \$1.65 billion paid by Google to purchase YouTube in 2006, and the concomitant \$4 billion increase in Google's market capitalization, vastly understates both the value of the intellectual property rights of the Class that YouTube has misappropriated and the harm to the Class caused by Defendants' unlawful conduct. In fact, Google paid this amount for YouTube even though Google already had its own video sharing website called "Google Video." However, as Google was well aware, YouTube had a key edge over Google Video and the scores of other video sharing websites: a massive archive of misappropriated copyrighted material.

9. Each of the Lead Plaintiffs and the members of the Class has been victimized by Defendants. Absent judicial intervention, Lead Plaintiffs and the Class will continue to be victimized by Defendants. For the foregoing reasons, and those set forth below, Plaintiffs seek injunctive and other equitable relief and damages.

THE PARTIES

A. Plaintiffs

10. Lead Plaintiff Premier League, the top division of English soccer, broadcasts its copyrighted creations in 204 countries worldwide and is viewed by audiences estimated at 2.59 billion people. Premier League is a private limited company incorporated in England and Wales with a principal place of business at 30 Gloucester Place, London, W1U 8PL. Premier League

owns or controls the relevant exclusive rights in the following Protected Works, audiovisual footage consisting of soccer matches (the “PL Works”), among others:

- A. Chelsea v Tottenham, April 7, 2007
- B. Arsenal v West Ham, April 7, 2007
- C. Portsmouth v Manchester United, April 7, 2007
- D. Watford v Portsmouth, April 9, 2007
- E. Fulham v Manchester City, April 9, 2007
- F. Bolton v Everton, April 9, 2007
- G. Liverpool v Wigan, April 21, 2007
- H. Fulham v Blackburn, April 21, 2007
- I. West Ham v Everton, April 21, 2007
- J. Manchester United v Middlesbrough, April 21, 2007
- K. Tottenham v Arsenal, April 21, 2007
- L. Chelsea v Bolton, April 28, 2007
- M. Everton v Manchester United, April 28, 2007
- N. Middlesbrough v Tottenham, April 28, 2007
- O. Wigan v West Ham, April 28, 2007
- P. Arsenal v Fulham, April 29, 2007

11. Lead Plaintiff Bourne is an independent music publisher formed in 1919, with a principal place of business at 5 West 37th Street, New York, NY. Bourne holds the exclusive copyright interests in some of the world’s most beloved and well-known songs. Bourne owns or controls the relevant exclusive rights in the following Protected Works, musical compositions (the “Bourne Works”), among others:

- A. “Inka Dinka Doo”, registration number Eu 78547, renewed R 266593, registration number EP 39319, renewed R 267341-42.
- B. “Let’s Fall In Love”, registration number Eu 77136, renewed R 264257, R 263531, registration number EP 39325, renewed R 275972.
- C. “Popcorn”, registration number Eu 131704, renewed RE 750-746, registration number EP 293632, renewed R 799-458.
- D. “San Antonio Rose”, registration number Eu 225380, renewed R 412838, registration number EP 84968, renewed R 412839.
- E. “Smile”, registration number EP 81725, renewed RE 151-113, RE 129-387.

B. Defendants

12. Defendant YouTube, Inc. is a corporation organized and existing under the laws of the State of Delaware and with its principal place of business at 1000 Cherry Avenue, San Bruno, California. YouTube, Inc. was founded in February 2005. YouTube launched the service challenged here on December 15, 2005.

13. Defendant YouTube, LLC is a limited liability company organized and existing under the laws of the State of Delaware and with its principal place of business at 1000 Cherry Avenue, San Bruno, California. YouTube, LLC is a wholly owned and controlled subsidiary of Google. YouTube, LLC is the successor in interest of YouTube, Inc.

14. YouTube maintains an office and employs personnel in New York State and the Southern District of New York. YouTube also advertises employment positions based in New York State and in the Southern District of New York.

15. Defendant Google is a publicly held corporation organized and existing under the laws of the State of Delaware and with its principal place of business at 1600 Amphitheatre Parkway, Mountain View, California. Google has a place of business in New York State and the Southern District of New York at 76 Ninth Avenue, New York, New York. On November 13, 2006, Google closed its acquisition of YouTube for \$1.65 billion dollars in stock.

16. Google is sued here in two capacities: First, as a successor in interest to YouTube. As Google has publicly stated, as a result of the merger, Google acquired all of YouTube's "properties, rights, privileges, purposes, and powers and debts, duties, and liabilities." Second, Google is sued as an active participant, inducer, aider, and abettor and for actively participating in, contributing to, and knowingly and directly profiting from YouTube's unlawful conduct. To achieve a return on its \$1.65 billion investment in the purchase of YouTube, Google intends to cause and is causing YouTube to continue the unlawful conduct alleged herein, and at all times since that purchase Google's sole ownership of YouTube has provided it with a direct financial benefit from YouTube's infringing activities, as well as the legal and practical ability to influence and control the activities of, and decisions made by, YouTube.

17. In addition, Google is independently profiting from the illegal activity. For example, Google's own website enables its users' direct access to YouTube's infringing content. Google exercises complete domination and control over YouTube, maintains a substantial, continuing connection with YouTube with regard to the infringing activities complained of herein, with respect to the matters alleged is utilizing YouTube to commit a fraud or wrong to carry out Defendants' unlawful activity, and the funding of Google has contributed to additional damages to the Class.

JURISDICTION AND VENUE

18. This action arises under the Copyright Act, 17 U.S.C. §§ 101 *et seq.* and under statutory and common law unfair competition laws.

19. This Court has original subject matter jurisdiction of this action under 28 U.S.C. §§ 1331 and 1338(a) and (b) and pursuant to the supplemental jurisdiction provisions of 28 U.S.C. § 1367.

20. This Court has personal jurisdiction over Defendants. Defendants, individually and collectively, acting alone and in concert, do continuous and systematic business in New York State and in this District and maintain one or more offices and employ personnel in New York State, and therefore are domiciliaries of New York State. New York Civil Practice Law and Rules (“CPLR”) § 301.

21. This Court also has personal jurisdiction over Defendants pursuant to CPLR § 302. Defendants, individually and collectively, acting alone and in concert, transact business within New York State and this District and supply goods and services in New York State by permitting users who reside in New York State frequently to upload and view videos. CPLR § 302(a)(1). Defendants commit tortious acts of copyright infringement within New York State every time they permit, encourage, and enable a user to view a copyright protected video without license or permission of the copyright owner. CPLR § 302(a)(2). Defendants commit tortious acts of copyright infringement outside of New York State, which cause injury within New York State, every time they permit, encourage, and enable a user to view an infringing video clip without the express permission or license of New York State resident copyright holders. CPLR § 302(a)(3). Defendants regularly do and solicit business within New York State and derive substantial revenue from their services within New York State. CPLR § 302(a)(3)(i).

