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

<u>VIACOM INTERNATIONAL INC., ET</u>)	
AL.,)	
)	ECF Case
Plaintiffs,)	
v.)	Civil No. 07-CV-2103 (LLS)
)	
YOUTUBE, INC., ET AL.,)	
)	
Defendants.)	
<u>THE FOOTBALL ASSOCIATION</u>)	
PREMIER LEAGUE LIMITED, ET AL.,)	
on behalf of themselves and all others)	ECF Case
similarly situated,)	
)	Civil No. 07-CV-3582 (LLS)
Plaintiffs,)	
v.)	
)	
YOUTUBE, INC., ET AL.,)	
)	
Defendants.)	

**DECLARATION OF HUNTER WALK IN SUPPORT OF DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT**

HUNTER WALK, pursuant to 28 U.S.C. § 1746, hereby declares as follows:

1. I am a Director of Product Management at Google Inc., and have been employed by Google since December 2003. I joined the YouTube product organization in January 2007 shortly after the acquisition by Google. As Director of Product Management, I lead the product team that is responsible for the development of YouTube, and have personal knowledge of YouTube's business objectives, purpose and scope.

2. YouTube is a site where users are able to upload and broadcast videos about themselves: their ideas, their talents, their message. YouTube's name

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intentionally reflects that goal by emphasizing “you” – *i.e.*, your own, original videos. Its longtime slogan, “Broadcast Yourself,” is still prominently featured on the service and reinforces that message.

3. The videos available for viewing on YouTube are uploaded by YouTube’s millions of users, who range from the families posting their home movies to the largest movie and television studios posting clips for promotional purposes.

4. These hundreds of millions of videos that users have posted to YouTube are staggeringly diverse. They are in every language imaginable, covering virtually every facet of the human experience. They come in from all around the globe, and even from outer space. Some are created using sophisticated video technology; others are created using crude cell phone video cameras. While some of those videos are submitted by the numerous media companies, large and small, that have negotiated licensing deals with YouTube, many more are submitted by ordinary people.

5. I have set forth in this declaration a sampling of the kinds of videos that can be found on YouTube. But any attempt to capture the full scope of the kinds of videos available on YouTube in words necessarily fails. It is much like trying to describe the human experience. And for every remarkable example we actually know about, there are invariably thousands more like it that are available through our service.

6. YouTube has become a valuable source of information in our democracy. Among other things:

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- During the 2008 presidential election, all the major candidates posted video clips to YouTube to spread their messages to the electorate. See, e.g., <http://www.youtube.com/user/johnmccaindotcom?blend=3&ob=4&rclk=cti#p/f/25/JTL4iC1bKzY> (Clip on John McCain's YouTube Channel of speech during the 2008 Presidential Campaign); <http://www.youtube.com/user/barackobamadotcom?blend=1&ob=4&rclk=cth#p/u/781/vpmFd25tRqo> (President Barack Obama's "Seven" TV Ad, posted to his YouTube Channel during the 2008 Presidential Campaign).
- In two of the presidential debates, ordinary Americans were able to ask questions directly of the candidates by submitting videos to YouTube. See, e.g., <http://www.youtube.com/user/YTdebates#p/u/46/XWokI0NaGMc> (The CNN/YouTube Debates).
- President Obama delivers a weekly video address that the White House posts to YouTube and recently sat down for an interview in which he answered questions submitted through YouTube by ordinary Americans, an event described as "the 21st century equivalent of Roosevelt's fireside chats." Attached as Exhibit 1 is a true and correct copy of a January 31, 2010 article that appeared on NewYorkTimes.com, titled *Obama to Field Questions Posted by YouTube Users*. See also, e.g., <http://www.youtube.com/user/whitehouse?blend=1&ob=4&rclk=cth#p/u/91/94RRh9qZGYc> (January 2, 2010 Weekly Address); <http://www.youtube.com/watch?v=0pqzNjYzh7I> (The YouTube Interview with President Obama).
- Hundreds of members of Congress (including the Speaker of the House and the Senate Minority Leader) have set up their own channels on YouTube on which they post videos to communicate directly with their constituents. See <http://www.youtube.com/user/NancyPelosi> (Speaker of the House of Representatives, Nancy Pelosi); <http://www.youtube.com/user/RepublicanLeader> (Senator Minority Leader, Mitch McConnell).
- The 111th Congress unveiled Senate and House "hubs" on YouTube to which all members of the Senate and the House of Representatives can post video messages. See <http://www.youtube.com/user/senatehub> (Senate Hub); <http://www.youtube.com/user/househub> (House Hub).

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7. Other U.S. organizations likewise use YouTube to educate and engage the American public. For example:

- The U.S. Marine Corps, U.S. Army, U.S. Navy and U.S. Air Force all created their own channels on YouTube to share videos of soldiers in action around the world. *See* <http://www.youtube.com/user/MarineCorpsNews> (U.S. Marine Corps); <http://www.youtube.com/user/soldiersmediacenter> (U.S. Army); <http://www.youtube.com/user/UnitedStatesNavy> (U.S. Navy); <http://www.youtube.com/user/AFBlueTube> (U.S. Air Force).
- The U.S. Coast Guard posts clips to YouTube to show real-time videos of Coast Guard activities, including the work the Coast Guard is doing in Haiti to assist with the disaster relief efforts and U.S. Coast Guard rescue missions. *See* <http://www.youtube.com/watch?v=mDUInYe8G2c> (Coast Guard rescue mission on the Colorado River).
- NASA has its own channels on YouTube, where videos are posted of NASA astronauts touring the International Space Station or answering user questions from outer space. *See, e.g.,* <http://www.youtube.com/user/ReelNASA#p/a/3CD87307666C1B55/0/e16eXXAoisg> (Inviting users to submit video questions to the NASA astronauts); <http://www.youtube.com/user/NASAtelevision#p/u/631/JgBgmw-2U8c> (International Space Station Tour Part I).
- Even the Library of Congress (which encompasses the U.S. Copyright Office) has its own channel on YouTube, offering videos on subjects from digital preservation, to Theodore Roosevelt, to lectures on the science of neuromusic. *See* <http://www.youtube.com/user/LibraryOfCongress> (Library of Congress Channel).

8. The embrace of YouTube by official bodies extends well beyond our shores; governments, heads of state, and leaders from around the world are on YouTube. The Vatican, the British royal family, Queen Rania of Jordan, the Iraqi government, the Kremlin, the United Nations, and presidents from Israel to France to South Korea to Estonia (among thousands of other individuals and organizations)

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all have YouTube channels to which they regularly upload videos. *See, e.g.,*

<http://www.youtube.com/user/vatican> (The Vatican);

<http://www.youtube.com/user/theroyalchannel> (The British Royal Family);

<http://www.youtube.com/user/kremlin> (The Kremlin);

<http://www.youtube.com/user/Iraqigov> (Iraqi Government);

<http://www.youtube.com/user/unitednations> (United Nations);

<http://www.youtube.com/peres> (President of Israel);

<http://www.youtube.com/user/PresidentMBLee> (President of South Korea).

9. But it is not just heads of state who are interested in YouTube.

YouTube is a window to events occurring all over the world, bringing information and shedding light on issues that might otherwise go unnoticed and enabling first-hand reporting from war zones and from inside repressive regimes. In my role as Director of Product Development, I have traveled the world talking to people about YouTube. I have heard firsthand from people across the globe how they use YouTube to understand what is happening in their countries based on the variety of opinions, citizen journalism and news reports that are uploaded to the site. And YouTube has been used to raise awareness about numerous political and humanitarian crises, including the violence in Myanmar, the earthquakes in Haiti, and the post-election protests in Iran after the government imposed a media blackout. *See, e.g.,* <http://www.youtube.com/watch?v=HgQd0K5W0vI> (Footage of Haiti Earthquake); <http://www.youtube.com/watch?v=IOMkATcn04M> (Footage of

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the political protests in Iran); <http://www.youtube.com/watch?v=mcQ8zMpthis> (Footage of the violence and unrest in Myanmar).

10. Nonprofit organizations like the American Red Cross, the WWF (formerly the World Wildlife Fund), the World Food Program and the Ad Council use YouTube to publicize their causes, including relief efforts for the 2008 hurricanes, the plight of endangered animals, child malnutrition in underdeveloped countries, Autism awareness, support for veterans and safety belt education. *See, e.g.,* <http://www.youtube.com/watch?v=Og1bYPn8nW8> (American Red Cross PSA, 2008 hurricane relief); <http://www.youtube.com/watch?v=7g9mOMQfY2s> (WWF PSA, Save the Gorilla); <http://www.youtube.com/watch?v=1B98PEXsoXs> (Ad Council PSA, Safety Belt Education). Local organizations do too. Recently, the staff of the Providence St. Vincent Medical Center in Portland, Oregon got together to create a video of themselves dancing around the hospital wearing pink gloves to generate awareness about breast cancer. The video resonated with the YouTube community and now has more than 6,000,000 views. *See* <http://www.youtube.com/watch?v=OEdVfyt-mLw> (Pink Glove Dance).

11. Many organizations have sought to leverage the tremendous power of YouTube by partnering with YouTube to engage the YouTube community. For example:

- In January of this year, at Viacom's request, YouTube enabled its users to watch the Hope for Haiti Now benefit concert live online and encouraged its users to donate to the earthquake relief efforts. *See e.g.,* <http://youtube-global.blogspot.com/2010/01/live-tonight-top-artists-perform-in.html> (YouTube Blog announcing live-streaming of Hope for Haiti Now concert).

HIGHLY CONFIDENTIAL

- In October 2009, YouTube partnered with the World Food Program on World Food Day to raise awareness and funds to help fight world hunger. See <http://youtube-global.blogspot.com/2009/10/can-billion-views-help-billion-people.html> (YouTube blog post on World Food Day); <http://www.youtube.com/watch?v=6jSBW0BOPqM> (World Food Program Video – A Billion for a Billion).
- In 2008, YouTube partnered for the first time with the World Economic Forum, inviting users to respond to the “Davos Question”: What one thing do you think that companies, countries or individuals must do to make the world a better place in 2008? Not only were clips of some of the YouTube users’ responses played at the World Economic Forum’s Annual General Meeting in Davos, Switzerland, but YouTube also posed the same question to the meeting attendees, and 120 of the world’s top leaders and thinkers provided video responses that were posted to YouTube, including Henry Kissinger, Hamid Karzai, Rajendra Pachauri, Yo-Yo Ma and many, many others. See <http://www.youtube.com/watch?v=BDqs-OZWw9o> (2008 Davos Question); http://www.youtube.com/view_play_list?p=749732FFD312CA7F (Responses to 2008 Davos Question).

12. YouTube is transforming education. The site serves as a vehicle for making education accessible – for free – to its millions of users, allowing students of all ages to audit classes at leading universities. Through channels on YouTube EDU, universities from around the world have uploaded more than 40,000 videos of lectures on subjects ranging from particle physics to Shakespeare. YouTube EDU includes universities from the United Kingdom, Canada, France, Spain, Italy, the Netherlands, Russia, Israel, and Australia, as well as universities from all over the United States, including Columbia University, Harvard University, Stanford University, University of Florida, University of Michigan, Carnegie Mellon University, Duke University, Yale University, the University of Virginia, MIT and the University of Notre Dame, to name just a few. Many of those lectures are

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viewed thousands, and sometimes hundreds of thousands, of times. For example, Marian C. Diamond is a professor of anatomy and neuroscience at the University of California at Berkeley who has been teaching for over 40 years. Her lectures have enjoyed tremendous popularity on YouTube and her Integrative Biology 131 lecture on Organization of the Body has been viewed nearly 400,000 times. *See, e.g.,*

http://www.youtube.com/channels?s=ytedu_mv (YouTube EDU);

<http://www.youtube.com/watch?v=S9WtBRNyds0> (Professor Diamond's lecture on Organization of the Body).

13. In addition to posting lectures, many colleges and universities are also using YouTube to connect with prospective students. For example, Yale University recently uploaded an admissions video titled, "That's Why I Chose Yale", a musical spoof of the popular "High School Musical" movies. *See*

<http://www.youtube.com/watch?v=tGn3-RW8Ajk>. Likewise, prospective students are using YouTube videos to supplement their college applications. Tufts

University has even added an option to its application process inviting students to post a short video about themselves to YouTube. Attached as Exhibit 2 is an article that appeared on NewYorkTimes.com on February 23, 2010, titled *To Impress,*

Tufts Prospects Turn to YouTube. *See also*

<http://www.youtube.com/watch?v=SGJMoYcM8yY> (example of student admissions video submission to Tufts).

14. YouTube users have also invented yet another way to educate the YouTube community: by posting a treasure trove of "how-to" videos that provide

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other users with instructions on how to accomplish just about anything, from baking a chocolate cake, to fixing a leaky faucet, to traveling on a budget, to creating your own website. *See, e.g.,*

<http://www.youtube.com/watch?v=7jRE3xRm8Vk> (How to Travel Cheaply);

<http://www.youtube.com/watch?v=Phjw9dzHU-0> (How to Fix a Leaky Faucet);

<http://www.youtube.com/watch?v=msTLaSQFhrc> (How to Make Chocolate Cake);

<http://www.youtube.com/watch?v=pTHc5wB-u8w> (How to Create Your Own Website).

15. Perhaps one of the most exciting outgrowths of this “how to” phenomenon is the YouTube Reporters’ Center, a channel on YouTube dedicated to citizens interested in reporting the news and events happening around them. The YouTube Reporters’ Center features how-to videos from some of the industry’s most respected journalists and media experts, including Katie Couric of the CBS Evening News, Bob Woodward of the Washington Post, Scott Simon of NPR, and Tavis Smiley of PBS. *See* <http://www.youtube.com/user/reporterscenter> (YouTube Reporters’ Center Channel).

16. YouTube has not only given creators large and small a powerful promotional channel to market their work to a global audience, it has become a haven for aspiring artists, who have posted their own original content to YouTube that is often professional in quality if not in budget, and has allowed unknown performers, filmmakers, and artists to rise to worldwide fame. YouTube videos have won Grammy awards and Emmys, *see, e.g.,*

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<http://www.youtube.com/watch?v=dTAAsCNK7RA> (OK Go Treadmill Video, which won a Grammy); <http://www.youtube.com/watch?v=jmR0V6s3NKk> (I Met the Walrus, First YouTube video to win an Emmy); launched unknown singers to fame, *see, e.g.*, <http://www.youtube.com/watch?v=EwTZ2xpQwpA> (Tay Zonday, Chocolate Rain); catapulted aspiring filmmakers to multi-million dollar deals, *see, e.g.*, <http://www.youtube.com/watch?v=-dadPWhEhVk> (Unknown Uruguay filmmaker, Federico Alvarez, gets \$30 million film deal after posting this clip on YouTube); and provided a platform for unexpected YouTube stars like an 83-year-old widower who has become a YouTube sensation, *see* http://www.youtube.com/watch?v=p_YMigZmUuk (geriatric1927, First Try).

17. Major movie and televisions studios, sports leagues, news organizations and other companies have also embraced the YouTube service. These organizations use YouTube for a myriad of purposes, including:

- Advertising – both overtly and covertly – by companies like Ray Ban, American Express and E*Trade. *See, e.g.*, <http://www.youtube.com/watch?v=-prfAENSh2k> (Ray Ban commercial); <http://www.youtube.com/watch?v=m56F4EKN9hg> (American Express commercial); <http://www.youtube.com/watch?v=uHPg262Kr9c> (E*Trade commercial).
- Uploading footage of sporting events like the Stanley Cup Playoffs, NBA Finals, U.S. Open, Wimbledon, Warsaw Open and soccer matches by sports teams, leagues and organizations like the NBA, NHL, U.S. Open, ATP, Wimbledon, MLS, and Real Madrid. *See, e.g.*, <http://www.youtube.com/watch?v=xLYWtjEUKa4> (Top Plays of the NBA Finals, uploaded by the NBA); <http://www.youtube.com/watch?v=JkUNGWH1Jzg> (2008 Stanley Cup Playoff Highlights, uploaded by the NHL); <http://www.youtube.com/watch?v=-MIm5WgIepE> (2009 U.S. Open: Djokovic vs. McEnroe, uploaded by the U.S. Open); http://www.youtube.com/watch?v=Sh9E_JO3nV0 (Highlights of Real

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Madrid soccer match, uploaded by Real Madrid);

<http://www.youtube.com/watch?v=FOqVpflq3EE> (Footage of Roger Federer warming up for Wimbledon match, uploaded by Wimbledon);

<http://www.youtube.com/watch?v=f0IRXINcPjI> (Warsaw Open highlights, uploaded by the ATP).

- Featuring music videos posted or claimed by the artist or record label. *See, e.g.,* http://www.youtube.com/watch?v=NaGLVS5b_ZY (Celine Dion, "A New Day Has Come"); <http://www.youtube.com/watch?v=6vQpW9XRiyM> (Bruce Springsteen, "Glory Days").
- Posting news clips and information from organizations like CBS News, Fox News Channel, the Associated Press, Time Magazine, and Newsweek, as well as from news stations around the world, such as NTV Kenya. *See, e.g.,* <http://www.youtube.com/user/foxnewschannel> (Fox News Channel on YouTube); <http://www.youtube.com/user/CBSNewsOnline> (CBS News Channel on YouTube); <http://www.youtube.com/user/ntvkenya> (NTV Kenya on YouTube).
- Bringing back classic television programs like Star Trek, MacGyver, and Monty Python. *See* <http://www.youtube.com/show/startrek> (Star Trek); <http://www.youtube.com/show/macgyver> (MacGyver); <http://www.youtube.com/user/MontyPython> (Monty Python). Even Sesame Street has a YouTube channel, where users can watch clips of their favorite Sesame Street moments. *See, e.g.,* <http://www.youtube.com/watch?v=vSYadh2xmcl> (Elmo's Song); <http://www.youtube.com/watch?v=Ye8mB6VsUHW> (Cookie Monster singing C is for Cookie).

18. Celebrities from media moguls to musicians to athletes have used

YouTube to promote both themselves and the causes they believe in:

- Oprah, Paul McCartney, Andrea Bocelli and a host of other celebrities have their own channels on YouTube. *See* <http://www.youtube.com/oprah> (Oprah's Channel); <http://www.youtube.com/user/paulmccartney> (Paul McCartney's Channel); <http://www.youtube.com/user/andreabocelli> (Andrea Bocelli's Channel).
- Not only does the rock band U2 have its own YouTube channel (*see* <http://www.youtube.com/user/u2official>), but the band's lead singer and

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well-known humanitarian Bono also has a channel to promote “(Red),” a brand designed to help raise awareness and money to fight AIDS in Africa (see <http://www.youtube.com/user/joinred>).

- Lance Armstrong and Team RadioShack have a channel on YouTube where users can watch clips of Armstrong and Team RadioShack in training (see <http://www.youtube.com/user/TeamRadioShack>); Armstrong also launched a challenge to YouTube users through his LiveStrong channel, inviting users to submit videos about the challenges they have overcome (<http://www.youtube.com/watch?v=9S9vlgtt264>).
- Singer Alicia Keys not only has her own channel on YouTube (see <http://www.youtube.com/user/aliciakeys>), but Keys and her recording label, UMG, recently partnered with YouTube and American Express to live-stream Keys’ AIDS benefit concert (see <http://www.youtube.com/watch?v=dF6D7xs1qMY>).

19. Users in the legal field have also found innovative ways to use YouTube. Law enforcement officials have posted clips to the service seeking the public’s help in identifying and locating criminal suspects whose faces can be seen in surveillance videos, see, e.g., <http://www.youtube.com/watch?v=TwslagFWKIY> (Franklin Police Department), and the Southern District of Indiana makes available informative videos about the judiciary on its YouTube channel, see <http://www.youtube.com/user/USDCINSD> (Southern District of Indiana Channel).

20. With all of the transformative, professional, informational and educational uses of YouTube, many videos feature ordinary users simply sharing pieces of their lives from the mundane to the extraordinary, from the silly to the profound. With each of these videos, whether they are viewed 50 times or 50 million times, YouTube users have the opportunity to share their talents, ideas and

HIGHLY CONFIDENTIAL

creativity and to connect with the global community. Some of the videos posted by YouTube's users include:

- Their pets doing funny things or performing tricks. *See, e.g.,* http://www.youtube.com/watch?v=1JynBEX_kg8 (Voice over of conversation between two kittens); <http://www.youtube.com/watch?v=TZ860P4iTaM> (Nora the Cat, playing the piano); <http://www.youtube.com/watch?v=4PcL6-mjRNk> (Dog playing ball by himself); <http://www.youtube.com/watch?v=xPxDw7ajfGE> (Baby duck feeding fish); http://www.youtube.com/watch?v=imFTcjHIY_s (skateboarding dog).
- Amateur footage of amazing events, like an astounding confrontation between lions, crocodiles and a herd of buffalo at a watering hole in Kruger National Park. *See* <http://www.youtube.com/watch?v=LU8DDYz68kM> (Battle at Kruger).
- Invitations to share ideas, like YouTube user and silent magician MadV's invitation to the YouTube community to write a simple statement on their hands for the world to see, which received an overwhelming number of responses. *See, e.g.,* <http://www.youtube.com/watch?v=Z-BzXpOch-E> (Montage of user responses to original invitation); <http://www.youtube.com/watch?v=s7a9xCIAAdDU> (2009 video inviting additional responses).
- The antics of young children. *See, e.g.,* <http://www.youtube.com/watch?v=OBlgSzsSM> (Charlie Bit My Finger); <http://www.youtube.com/watch?v=E8aprCNnecU> (Little boy tells mommy what he thinks of her); <http://www.youtube.com/watch?v=5P6UU6m3cqk> (Baby Laughing).
- People dancing along to the music. *See, e.g.,* <http://www.youtube.com/watch?v=zlKdbWwruY> (Where the Hell is Matt); <http://www.youtube.com/watch?v=dMH0bHeiRNq> (Evolution of Dance).
- Amazing inventions and fascinating photography. *See, e.g.,* <http://www.youtube.com/watch?v=eaRcWB3jwMo> (robot built from Legos that can solve a Rubik's Cube in 10 seconds); <http://www.youtube.com/watch?v=EMhUZAq5IxQ> (time lapse photography of snowfall in Washington, D.C.).

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- High school students demonstrating their creativity through a class project or posting their athletic highlight films for potential college recruiters. *See, e.g.,* <http://www.youtube.com/watch?v=T7TI-AJi2O8> (Shorewood High School Lip Dub); <http://www.youtube.com/watch?v=hSvIOd7tfh0> (High school student soccer highlights).
- U.S. soldiers sending holiday greetings home. *See, e.g.,* <http://www.youtube.com/watch?v=vPm27Wm-0tY> (Montage video of soldiers' holiday greetings home).
- Surprising wedding marches. *See, e.g.,* <http://www.youtube.com/watch?v=4-94JhLEiN0> (wedding party does surprise wedding march).
- Their fight against cancer. *See, e.g.,* <http://www.youtube.com/watch?v=cvj-0RUpteo> (Boey Fights Cancer).
- Their singing talent (including a proposed YouTube theme song). *See, e.g.,* <http://www.youtube.com/watch?v=pXD7rDgsL88> (Irving Fields' YouTube Theme Song).
- Their search for a bone marrow donor. *See, e.g.,* <http://www.youtube.com/watch?v=ilazm1oNRbk> (Leigh Buckley seeks bone marrow donor).
- Footage of them at the zoo, like the very first YouTube video. *See* <http://www.youtube.com/watch?v=jNQXAC9IVRw> (Me at the Zoo).

21. YouTube's impact on society has been so profound that it inspires intellectual study. Michael Wesch, an Assistant Professor of Cultural Anthropology at Kansas State University, conducted a study on the anthropology of YouTube and participatory culture. Professor Wesch gave a presentation on this topic, titled "An anthropological introduction to YouTube," at the Library of Congress and, of course, he posted the video of that presentation on YouTube. *See* http://www.youtube.com/watch?v=TPAO-lZ4_hU. Among the fascinating aspects of

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YouTube discussed in Professor Wesch's presentation is its unique participatory, collaborative and community-centric nature, where people become linked to one another in ways we may never have expected, all through the power of the YouTube platform.

22. YouTube's users have used YouTube to create a new model for how individuals, companies, organizations and even governments communicate. It is a social network, where people from around the world can easily share video and favorites among each other. It is a forum for free expression, offering an open platform for all types of artistic and political expression, cultural exchange, and entertainment. It is a stage for spreading a message, advancing a cause, or promoting a product to a worldwide audience. It is an educational tool for governments, institutions of higher learning, and ordinary people interested in sharing their expertise. It is a prominent cultural reference point, a repository for individual creative expression of all types, a community that fosters knowledge, art, philanthropy, humor, democracy, journalism, and above all, self-expression.

I certify under penalty of perjury that the foregoing is true and correct.

Dated: SF, California
February 28, 2010



Hunter Walk