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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

MARIA SCHNEIDER, UNIGLOBE  
ENTERTAINMENT, LLC, and AST  
PUBLISHING, LTD., individually and on  
behalf of all others similarly situated,

Plaintiffs,

v.

YOUTUBE, LLC and GOOGLE LLC,

Defendants.

YOUTUBE, LLC and GOOGLE LLC,

Counterclaimants,

v.

PIRATE MONITOR LTD, PIRATE  
MONITOR LLC, and GÁBOR CSUPÓ,

Counterclaim Defendants.

CASE NO.: 3:20-cv-04423-JD

**DEFENDANTS AND  
COUNTERCLAIMANTS YOUTUBE, LLC  
AND GOOGLE LLC'S OPPOSITION TO  
MOTION TO SEVER**

Date Noticed: February 3, 2022

Time Noticed: 10:00 am

Courtroom: 11

Judge: Hon. James Donato

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**ISSUE TO BE DECIDED**

1  
2 Under Federal Rule of Civil Procedure 21, whether Plaintiffs have met their burden of  
3 proof that severance of Defendants’ counterclaims—which raise the question of appropriate  
4 access to Content ID just as Plaintiffs’ claims do—is warranted or is instead inefficient,  
5 inequitable to Defendants, and premature at this stage.

**INTRODUCTION**

6  
7 Plaintiffs and their counsel handpicked Pirate Monitor Ltd. (“Pirate Monitor”) to lead this  
8 putative class action, claiming Pirate Monitor had copyright infringement claims against  
9 Defendants Google and YouTube (“YouTube”) that were representative of those of copyright  
10 holders the world over. They held up Pirate Monitor as a perfect example of a copyright holder  
11 wrongly denied access to YouTube’s Content ID system, a proprietary technology that allows  
12 eligible users to automatically claim and/or block videos incorporating their content that others  
13 upload to YouTube. But Pirate Monitor has instead proven to be a perfect example of why  
14 YouTube does not—and cannot—offer Content ID to everyone.

15 YouTube established that Pirate Monitor engaged in a sweeping fraud in an effort to gain  
16 Content ID access, using foreign operatives to flood YouTube with thousands of videos, then  
17 sending DMCA takedown notices for those same videos, swearing, falsely, that they were  
18 infringing. Pirate Monitor then also admitted that it falsely claimed to own at least one of the  
19 three copyrighted works it put at issue in this case. Giving Pirate Monitor the power to control  
20 and block videos based on bogus copyright claims like those it asserted here could have visited  
21 significant hardship on countless YouTube users.

22 When Plaintiffs could no longer deny Pirate Monitor’s misconduct, Pirate Monitor  
23 dismissed its own claims with prejudice. But YouTube’s counterclaims based on Pirate  
24 Monitor’s fraud remain. Now, after Pirate Monitor has litigated the counterclaims aggressively  
25 for fifteen months, Plaintiffs ask the Court to sever them from the case. They ask not because of  
26 any real risk of unfair prejudice, but because Pirate Monitor’s continued involvement highlights  
27 the folly of their demand for universal Content ID access, and the impropriety of class  
28

1 certification. Under the relevant factors that take into account the similarity of the claims,  
2 judicial economy, convenience, and fairness, the Motion should be denied.

### 3 **FACTUAL BACKGROUND**

#### 4 **A. Plaintiffs' Claims**

5 Pirate Monitor filed this copyright infringement case together with Maria Schneider in  
6 July 2020. Dkt. No. 1 (“Complaint” or “Compl.”). A principal grievance was that YouTube  
7 supposedly has implemented a “two-tiered system” of copyright enforcement for its service. *See*  
8 *id.* ¶¶ 1-2, 8-11, 13, 57-58. According to Plaintiffs, YouTube afforded major studios and record  
9 labels access to its Content ID tool, while denying Pirate Monitor and Schneider (and other  
10 “ordinary creators”) use of the same. *See id.* ¶ 1. That charge was confounding given that  
11 Schneider actually did have access to Content ID via her publishing agent, who granted  
12 YouTube a license to all of Schneider’s musical works and used Content ID for years on her  
13 behalf. Dkt. No. 34 at 2. Nevertheless, Plaintiffs averred that they were forced to rely on less  
14 robust copyright management processes or to send YouTube the takedown notices prescribed by  
15 the Digital Millennium Copyright Act (“DMCA”). Compl. ¶ 9; *see also id.* ¶¶ 63, 72.

16 Plaintiffs styled their case as a putative class action on behalf of copyright holders  
17 everywhere, despite the myriad individualized issues inherent in copyright infringement claims  
18 that preclude class certification. *See, e.g., Kihn v. Bill Graham Archives LLC*, 2022 WL 18935,  
19 at \*2-3 (9th Cir. Jan. 3, 2022) (reversing certification of copyright infringement class because  
20 “individual issues of license and consent would predominate for the absent class members”);  
21 *Football Ass’n Premier League Ltd. v. YouTube, Inc.*, 297 F.R.D. 64, 65 (S.D.N.Y. 2013)  
22 (“copyright claims are poor candidates for class-action treatment”). Pirate Monitor and  
23 Schneider requested an injunction that would require YouTube to “offer to all persons the  
24 technological measures available now, including Content ID.” Compl. ¶ 150.

#### 25 **B. YouTube’s Counterclaims**

26 In their responsive pleading, Defendants explained why YouTube limits access to  
27 Content ID to parties that can be trusted to use it properly. Content ID empowers users to  
28 automatically remove content from YouTube or block it from appearing in the first place. Dkt.

1 No. 34 ¶ 15 (counterclaims). Accordingly, it has the potential to be used to automatically censor  
2 videos that others have every right to post and share through YouTube. Parties can also misuse  
3 Content ID to claim ownership rights in others' content, and thereby divert to themselves  
4 revenue that rightly belongs to others. *Id.* Because of the potential for abuse, YouTube seeks to  
5 ensure that those using Content ID will do so responsibly, and will not cause harm to YouTube,  
6 its users, or to other copyright owners. *Id.* ¶ 16 (counterclaims).

7 Defendants' responsive pleading also asserted counterclaims against Pirate Monitor for  
8 engineering a wide-ranging fraud intended to gain access to Content ID. *See id.* ¶ 1  
9 (counterclaims). To fabricate a supposed need for the tool, Pirate Monitor hired agents to upload  
10 roughly two thousand videos to YouTube, representing in the process that the uploads were  
11 authorized. *See id.* ¶¶ 1, 22 (counterclaims). But Pirate Monitor then promptly sent DMCA  
12 takedown requests for those same videos, swearing under oath that the videos were infringing.  
13 *See id.* ¶¶ 28, 64-65 (counterclaims). As YouTube showed following an extensive investigation,  
14 Pirate Monitor lied—either when claiming their uploads were authorized or when they sent  
15 takedown notices for them. *See id.* ¶¶ 1, 29-31 (counterclaims). YouTube asserted claims for  
16 breach of contract and fraud or, alternatively, for violating § 512(f) of the DMCA, which  
17 prohibits knowingly false takedown notices. *See id.* ¶¶ 37-66 (counterclaims). YouTube sought  
18 compensatory and punitive damages, as well as injunctive relief against Pirate Monitor to  
19 prevent such behavior in the future. *See id.* at 34 (counterclaims).

20 In response, Pirate Monitor first filed a make-work motion to dismiss, claiming that  
21 Defendants' allegations were not sufficiently specific for them to understand. Dkt. No. 44.  
22 After the motion was fully briefed and heard, Defendants amended to provide substantial  
23 additional detail about the misconduct by Pirate Monitor and its sole owner Gábor Csupó,  
24 including damning evidence of their role in the fraudulent scheme. Dkt. No. 60. Pirate Monitor  
25 then filed an answer with defenses that mirrored the Plaintiffs' affirmative claims in the case.  
26 Specifically, Pirate Monitor and Csupó asserted "unclean hands" and "in pari delicto" defenses  
27 to the counterclaims, alleging that "YouTube knowingly encourages, permits, and assists  
28 [infringement], including by not offering Content ID to everyone with valid copyrights." *See*

1 Dkt. No. 68 at 13-14; Dkt. No. 69 at 13-14. That same claim is the centerpiece of Plaintiffs’  
 2 case. *See* Dkt. No. 99 at ¶¶ 2-3, 9 (amended complaint alleging that Defendants “permit and  
 3 facilitate [ ] infringement” by denying Content ID to certain copyright holders).

4 In the midst of this activity, Pirate Monitor admitted that it did not even own one of the  
 5 three copyrighted works it had asserted in the case, but refused to explain how it came to make  
 6 its false allegation of ownership. Following this concession and in light of its obvious  
 7 malfeasance, Pirate Monitor dismissed its affirmative claims with prejudice in March 2021. Dkt.  
 8 No. 66. Its dismissal noted that YouTube’s counterclaims remained unaffected. *See id.*

### 9 C. Pirate Monitor’s Discovery Demands and Obstruction

10 Pirate Monitor has waged an exhaustive discovery campaign in this case for over a year.  
 11 To date, its joint document requests with Schneider number in the hundreds, inclusive of  
 12 subparts. Declaration of Maura L. Rees (“Rees Decl.”) ¶ 2. Even after the dismissal of Pirate  
 13 Monitor’s affirmative claims, Pirate Monitor and Schneider have jointly demanded, *inter alia*,  
 14 documents that show “every part of the Content ID System’s user experience,” standard and  
 15 template communications between YouTube and Content ID participants, all documents  
 16 concerning YouTube’s accommodation or failure to accommodate any “Digital Fingerprinting  
 17 Technology” other than Content ID, all documents concerning YouTube’s Recommended  
 18 Videos, and all documents concerning YouTube Search. *Id.* ¶ 2. Pirate Monitor’s continuing  
 19 presence in the case has also been specifically cited as justification for certain discovery. *Id.* ¶ 3  
 20 (Pirate Monitor and Plaintiffs claimed “dual relevance” of discovery on YouTube’s copyright  
 21 protection efforts which “bears on the DMCA Safe Harbors defense and to Defendants’ claimed  
 22 damages sought through the Counterclaims”).<sup>1</sup>

---

23  
 24  
 25 <sup>1</sup> A host of Plaintiffs’ discovery requests encompass information about Pirate Monitor that would  
 26 be germane to the counterclaims including, but not limited to, requests for “Documents sufficient  
 27 to show . . . information Concerning each Person that sought but was not granted access to the  
 28 Content ID System” (RFP No. 16), “All Documents Concerning determinations of access to the  
 Content ID System” (RFP No. 17), and “All Documents Concerning Takedown Notices You  
 have received Concerning videos posted to Your platform” (RFP No. 27). Rees Decl. ¶ 2.



1 Discovery has not been a two-way street. Pirate Monitor has obstructed YouTube’s  
 2 efforts to obtain documents key to its counterclaims, including documents about Pirate Monitor’s  
 3 requests to gain access to YouTube’s copyright management systems, its use of YouTube, and its  
 4 transmission of takedown notices. Indeed, Pirate Monitor’s failure to comply with its discovery  
 5 obligations was previously the subject of a letter brief before the Court. *See* Dkt. No. 74.  
 6 YouTube has met and conferred with Pirate Monitor as directed by the Court (Dkt. No. 82), but  
 7 Pirate Monitor has refused to make any compromises, and maintains that it will not produce any  
 8 further documents to YouTube.<sup>2</sup>

#### 9 **D. Case Schedule**

10 The parties undertook substantial efforts to agree on a stipulated case schedule. But  
 11 Plaintiffs never suggested they believed that Defendants’ counterclaims should be severed or  
 12 tried on a different schedule. Rees Decl. ¶ 4. Nor did Plaintiffs make that suggestion in the  
 13 separate scheduling proposal they submitted to the Court. *See* Dkt. No. 94.

14 On November 16, 2021, the Court set a unified schedule for both Plaintiffs’ and  
 15 Defendants’ claims. Fact discovery on all claims remains open for another six months. *See* Dkt.  
 16 No. 98. Plaintiffs’ deadline to move for class certification is in September 2022. *Id.* Trial is not  
 17 set until August 2023. *Id.*

### 18 **ARGUMENT**

19 Plaintiffs “bear[] the burden of proving that separation of claims is necessary.” *See*  
 20 *Lindora, LLC v. Isagenix Int’l, LLC*, 198 F. Supp. 3d 1127, 1149 (S.D. Cal. 2016). The  
 21 mechanism for separating a case into separate actions, *i.e.*, severance is provided by Federal Rule  
 22 of Civil Procedure 21. 9A Charles Allen Wright & Arthur R. Miller, Fed. Prac. & Proc. Civ.

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23  
 24 <sup>2</sup> In their Motion to Sever, Plaintiffs raise purported concerns about the complexity and burden of  
 25 continued litigation with Pirate Monitor because of the need for foreign-language documents and  
 26 evidence “half a world away.” Mot. at 6, 9-10 & n.6. But that protest rings hollow not only  
 27 because Plaintiffs chose to name Pirate Monitor as their putative class representative in the first  
 28 place, but also because Plaintiffs’ recent amended complaint added AST, a Russian publishing  
 house, asserting foreign copyrights in foreign language audio books. Dkt. No. 99 ¶¶ 75-76. In  
 any event, the architect of Pirate Monitor’s misconduct, Csupó, is here in California. Dkt. No.  
 69 ¶ 6. It has been his obstruction and Pirate Monitor’s, rather than some geographic or  
 language barrier, that has made discovery difficult.

1 § 2387 (3d ed.) (“the [separate trial] procedure authorized by Rule 42(b) should be distinguished  
 2 from severance under Rule 21” because “severed claims become entirely independent actions”  
 3 with separate judgments). Severing the counterclaims is a drastic remedy that would cause  
 4 significant disruption to the progress of this case. It would subject Defendants’ claims—filed  
 5 fifteen months ago—to an entirely separate schedule, separate trial, separate judgment, and  
 6 separate appeal. *See Herklotz v. Parkinson*, 848 F.3d 894, 898 (9th Cir. 2017) (“When a claim is  
 7 severed, it becomes an entirely new and independent case.”). Given the practical impacts of  
 8 severance, courts treat it as a “procedural device to be employed only in exceptional  
 9 circumstances.” *A&E Prods. Grp. L.P. v. Accessory Corp.*, 2002 WL 1041321, at \*2 (S.D.N.Y.  
 10 May 23, 2002); *see also Ray v. Cuccinelli*, 2020 WL 7353697, at \*1 (N.D. Cal. Dec. 15, 2020)  
 11 (“impulse is toward entertaining the broadest possible scope of action consistent with fairness to  
 12 the parties”). Concerns about potential jury confusion and prejudice at trial do not provide a  
 13 good basis to sever when trial remains over 18 months away; those concerns can be better  
 14 addressed upon the advent of trial. *See, e.g., Allstate Ins. Co. v. Electrolux Home Prods., Inc.*,  
 15 2016 WL 10514773, at \*1 (C.D. Cal. Nov. 3, 2016) (arguments about “unfairness, prejudice,  
 16 and jury confusion” were “premature”).

17 “The application of Rule 21 involves considerations of convenience and fairness.” *SEC*  
 18 *v. Leslie*, 2010 WL 2991038, at \*4 (N.D. Cal. July 29, 2010). In deciding whether to sever a  
 19 claim under Rule 21, a court considers (1) whether the claims arise out of the same transaction or  
 20 occurrence; (2) whether the claims present some common questions of law or fact; (3) whether  
 21 settlement of the claims or judicial economy would be facilitated; (4) whether prejudice would  
 22 be avoided if severance were granted; and (5) whether different witnesses and documentary  
 23 proof are required for the separate claims. *See Lesnik v. Eisenmann SE*, 2018 WL 10911942, at  
 24 \*1-2 (N.D. Cal. June 19, 2018).

25 **I. The Claims and Counterclaims Similarly Address Factual Issues Concerning**  
 26 **YouTube’s Restrictions on Access to Content ID**

27 The first two factors relevant to severance concern the similarity of the claims: (i)  
 28 whether they arise out of the same transaction or occurrence; and (ii) whether they share a

1 common issue of law or fact. The “same transaction or occurrence” test focuses on whether  
2 there are “related activities” and “similarity in the factual background” of the claims. *Jacques v.*  
3 *Hyatt Corp.*, 2012 WL 3010969 at \*3 (N.D. Cal. July 23, 2012). The threshold for finding  
4 “common questions of law or fact” in the context of a severance motion is “very low.” *Gutta v.*  
5 *Renaud*, 2021 WL 533757, at \*6 (N.D. Cal. Feb. 12, 2021) (“test is met if any question of law or  
6 fact common to all plaintiffs will arise in the action”); *see also Nguyen v. CTS Elecs. Mfg. Sols.,*  
7 *Inc.*, 301 F.R.D. 337, 341 (N.D. Cal. 2014) (“The common question may be one of fact or of law  
8 and need not be the most important or predominant issue in the litigation.”). That threshold is  
9 readily satisfied here.

10 As an initial matter, Pirate Monitor has asserted affirmative defenses to YouTube’s  
11 counterclaims that are indistinguishable from the claims that are at the core of Plaintiffs’  
12 affirmative case. Both include inflammatory charges of copyright infringement grounded in  
13 YouTube’s policy of limiting access to Content ID. *Compare* Dkt. No. 68 at 13-14 (affirmative  
14 defenses to counterclaims); Dkt. No. 69 at 13-14 (same), *with* Dkt. No. 99 ¶¶ 9-15 (amended  
15 complaint). Given that obvious overlap, the analysis need go no further. Plaintiffs’ assertion  
16 that their affirmative claims and YouTube’s counterclaims “have nothing to do” with each other  
17 is simply incorrect. Dkt. No. 100 at 1.

18 The affirmative defenses aside, the issue of YouTube’s Content ID access restrictions  
19 will come directly to the fore in both Plaintiffs’ case and YouTube’s counterclaims. Plaintiffs  
20 allege (notwithstanding Schneider’s own access) that “[t]he superior protections of the Content  
21 ID system are completely denied to Plaintiffs and the Class no matter how many times their  
22 copyright works are infringed on the YouTube platform.” Dkt. No. 99 ¶ 11; *see also, e.g., id.* ¶ 3  
23 (“[Defendants] have determined” that “unlike YouTube’s preferred Content ID partners,”  
24 Plaintiffs “lack the resources and leverage necessary to” use Content ID). Plaintiffs assert that  
25 YouTube limits access to Content ID for the purpose of enabling “copyright piracy.” *Id.* ¶ 41.  
26 Plaintiffs even rely on Content ID access as a basis for the “typicality” aspect of their class  
27 allegations, averring: “Plaintiffs’ claims are also typical in that Plaintiffs . . . have not been  
28 provided access to Content ID.” *Id.* ¶ 107.

1 YouTube’s counterclaims explain that Plaintiffs’ theories about Content ID access are not  
2 grounded in reality. Nothing about Content ID is in any way associated with encouraging  
3 “piracy”—to the contrary, YouTube invested well over \$100 million to develop Content ID as  
4 part of its extensive efforts to help content creators protect their copyrights, going far beyond  
5 what the law requires. Dkt. No. 60 ¶¶ 16-18. The system gives copyright holders the ability to  
6 make sweeping, automated assertions of copyright claims over content posted by others. But  
7 because of the potential for abuse and fraud, “YouTube limits access to [Content ID], seeking to  
8 ensure that those who use [it] will do so responsibly, and will not cause harm to YouTube, its  
9 users, or to other copyright owners.” *Id.* ¶ 20.

10 It is hard to imagine a better embodiment of YouTube’s concerns about Content ID  
11 misuse than Pirate Monitor. Its baseless assertion of copyright ownership and its fraudulent  
12 infringement claims would, if made through Content ID’s automated machinery, wreak havoc on  
13 other users and YouTube itself. As a result, the presentation of YouTube’s counterclaims against  
14 Pirate Monitor will confirm the need for Content ID access restrictions and refute Plaintiffs’  
15 charge that the restrictions are intended to enable “copyright piracy.”

16 To the extent Plaintiffs suggest that the counterclaims are irrelevant to any aspect of their  
17 claims because the Pirate Monitor counter-defendants are now “non-Class members,” that is also  
18 incorrect. Pirate Monitor’s dismissal of its copyright claims does not sweep away its history as  
19 the chosen representative of the putative class, nor its misconduct towards YouTube. Proof of  
20 YouTube’s counterclaims will highlight issues such as the former lead plaintiff’s lack of  
21 copyright ownership, its meritless charges of infringement, its unfitness for Content ID access,  
22 and its unclean hands. That will concretely illustrate just some of the individualized issues that  
23 bar certification of a class here. And as the Ninth Circuit held just this week, attempting to  
24 redefine a putative class to exclude invalid claims with inconvenient facts is improper. *See Kihn*,  
25 2022 WL 18935, at \*2 (reversing class certification in copyright case in light of individualized  
26 issues of license and consent). In other words, Pirate Monitor’s actions are not only the focus of  
27 YouTube’s counterclaims, but also bear directly on the impropriety of class certification. That  
28 too militates against severance.

1           **II.       Judicial Economy Is Promoted by Proceeding with the Counterclaims in the**  
 2                                   **Same Action**

3           The Motion seeking to sever YouTube’s counterclaims comes fifteen months after they  
 4 were filed, and more than eight months after Pirate Monitor conceded its affirmative claims were  
 5 without merit and dismissed them with prejudice. Plaintiffs offer no explanation for their  
 6 extended delay in bringing this motion. *Cf.* 16-C J. Phillips, et al., *Rutter Group Practice Guide:*  
 7 *Fed. Civ. Proc. Before Trial* (The Rutter Group 2021) (“A party seeking severance should  
 8 request such relief as soon as the need becomes apparent. Delay may be a factor affecting the  
 9 court’s exercise of discretion.”). Each reason offered by Plaintiffs for seeking severance was  
 10 apparent long ago.

11           Plaintiffs’ delay has resulted in the parties and the Court expending significant resources  
 12 on, among other things, Plaintiffs’ unsuccessful motion to dismiss challenging the counterclaims,  
 13 case management, devising an appropriate pretrial schedule, and addressing discovery disputes.  
 14 Severance now would undo the progress the parties have made and require additional  
 15 involvement of the Court. *See Broadcom Corp. v. Sony Corp.*, 2016 WL 9108039, at \*4 (C.D.  
 16 Cal. Dec. 20, 2016) (denying severance where it would cause court to “have to spend twice the  
 17 amount of judicial resources” and would “hinder[] judicial economy”; “[s]evering the case would  
 18 result in two discovery deadlines, two motions calendars,” two separate paths for discovery  
 19 disputes, two sets of summary judgment briefing, and “two trials”).

20           By contrast, keeping the cases together would promote judicial efficiency. It would  
 21 allow the parties to benefit from consolidated discovery on, for example, YouTube’s Content ID  
 22 tool, YouTube’s policies for accessing the tool, and the reasons for those policies. Keeping the  
 23 cases together would also avoid courts having to make multiple rulings on similar issues. As  
 24 noted, Pirate Monitor has asserted defenses to the counterclaims (*e.g.*, unclean hands and *in pari*  
 25 *delicto*) that are identical to the affirmative claims it once asserted, and that Plaintiffs continue to  
 26 assert. YouTube should not have to litigate those key issues twice, nor should two different  
 27 juries be tasked to separately assess them if they reach trial.

1           **III. It Would Be Prejudicial to Defendants to Sever the Counterclaims, and**  
2           **Plaintiffs' Claims of Prejudice Are Speculative and Premature**

3           Because “[f]airness is a critical consideration in determining whether severance is  
4 appropriate,” the Court must consider “whether any party would suffer prejudice.” *CSAA Ins.*  
5 *Exch. v. Broan-Nutone LLC*, 2017 WL 3840261, at \*2 (E.D. Cal. Sept. 1, 2017) (denying motion  
6 to sever in part because the moving party’s “arguments regarding prejudice [were]  
7 unconvincing” and the non-moving party “ha[d] presented genuine concerns of prejudice should  
8 severance occur”); *see also id.* at \*4. Severance of the counterclaims would be prejudicial to  
9 Defendants, who promptly asserted their counterclaims at the outset of the case.

10           Severance would likely delay resolution of Defendants’ counterclaims. *See Broadcom*,  
11 2016 WL 9108039, at \*4 (“Logic dictates that holding two trials, as opposed to one, will  
12 inevitably cause delay in resolution of the parties’ disputes.”). Severance would also require  
13 Defendants to manage the massive discovery being sought by Plaintiffs and Pirate Monitor on  
14 two separate tracks. If Defendants’ counterclaims were severed, the risks of ubiquitous Content  
15 ID access would be the subject of discovery in this action, and a separate action on Defendants’  
16 counterclaims. Defendants would have to make duplicative document productions, respond to  
17 duplicative sets of discovery, and offer witnesses up for multiple rounds of depositions on the  
18 same topics. That would be prejudicial to Defendants, who negotiated for a single pretrial  
19 schedule, including a single document production process, one fact discovery deadline, and one  
20 trial date to avoid disruptions to their business. *See Ames v. City of Novato*, 2016 WL 6024587,  
21 at \*3 (N.D. Cal. Oct. 14, 2016) (denying severance in part because “separate trials would require  
22 duplicative evidence and witness testimony”).

23           By contrast, Plaintiffs’ claim of prejudice from juror confusion is speculative and  
24 premature. After the completion of pretrial proceedings, discovery, and dispositive motions, the  
25 Court will have ample opportunity to consider any motions that Plaintiffs still believe are  
26 necessary, including a renewed request for severance. On the other hand, if summary judgment  
27 eliminates the need for Plaintiffs’ claims or the counterclaims to be tried, then any apprehension  
28 about juror confusion will be illusory. *See Broadcom Corp.*, 2016 WL 9108039, at \*4 (“severing

1 the case because of jury confusion is premature at this stage in the litigation”); *Allstate Ins. Co.*,  
 2 2016 WL 10514773, at \*1; *Moon v. Cty. of Orange*, 2020 WL 4037173, at \*2 (C.D. Cal. June  
 3 10, 2020) (holding that motion to sever was “premature” because “the pleadings are not yet  
 4 settled”); *Eastman Chem. Co. v. AlphaPet Inc.*, 2011 WL 7121180, at \*8 (D. Del. Dec. 29, 2011)  
 5 (noting that court has frequently “left open the question of how the actions will ultimately be  
 6 tried”); *Synopsys, Inc. v. Magma Design Automation*, 2006 WL 1452803, at \*4 (D. Del. May 25,  
 7 2006) (denying Rule 42(b) bifurcation of antitrust counterclaims from infringement claims and  
 8 noting “the court will not pre-judge the yet-unnamed jurors by assuming they are unable to  
 9 digest the facts and law in this case”).

10 Because Defendants will be prejudiced if the counterclaims were to be severed, and  
 11 because Plaintiffs’ claims of prejudice are premature and speculative, the Court should deny  
 12 Plaintiffs’ Motion to Sever, or at least delay any ruling until after further briefing at the time the  
 13 contours of a trial become more visible.

#### 14 CONCLUSION

15 Plaintiffs chose Pirate Monitor as their standard bearer at the start of this case. They  
 16 understandably now wish to distance themselves as much as possible. But the overlap between  
 17 Plaintiffs’ affirmative claims, YouTube’s counterclaims, and Pirate Monitor’s defenses is plain,  
 18 and no legitimate interests would be served by severing the counterclaims at this point. For the  
 19 foregoing reasons, the Court should deny the Motion.

20 Respectfully submitted,

21 Dated: January 6, 2022

WILSON SONSINI GOODRICH & ROSATI  
 Professional Corporation

23 By: /s/ Maura L. Rees

24 Maura L. Rees

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 26 YOUTUBE, LLC and GOOGLE LLC