

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

APR 21 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

ROBERT TUR, doing business as Los
Angeles News Service,

Plaintiff - Appellee,

v.

YOUTUBE, INC.,

Defendant - Appellant.

No. 07-56683

D.C. No. CV-06-04436-FMC

MEMORANDUM *

Appeal from the United States District Court
for the Central District of California
Florence-Marie Cooper, District Judge, Presiding

Argued and Submitted March 5, 2009
Pasadena, California

Before: O'SCANNLAIN, RYMER, and WARDLAW, Circuit Judges.

* This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

YouTube appeals from the district court's grant of Robert Tur's motion to dismiss his case.¹ The facts are known to the parties and need not be repeated here, except as necessary to explain our decision.

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The district court did not abuse its discretion by declining to award attorney's fees and costs as a condition of the voluntary dismissal. Although YouTube may be correct that a substantial amount of the costs it has incurred are "not useful in continuing litigation between the parties," *Koch v. Hankins*, 8 F.3d 650, 652 (9th Cir. 1993), the district court had no way to distinguish between useful and non-useful work based upon the conclusory affidavit submitted by YouTube's counsel, and the court was not under an obligation to accept YouTube's say-so regarding the amount of useful and non-useful work it performed. Moreover, though YouTube's privilege concerns are legitimate, *see Gates v. Gomez*, 60 F.3d 525, 535 (9th Cir. 1995), they do not justify a wholesale refusal to provide *any* records whatsoever. Finally, we are satisfied that YouTube had the chance to submit billing records. Because it submitted an affidavit to the

¹ We resolve YouTube's appeal from the district court's denial of summary judgment in an opinion filed concurrently with this memorandum disposition.

district court listing hours spent on the case by its attorneys, YouTube cannot claim that it did not know that the district court would rule upon fees and costs.

Accordingly, the district court's grant of Tur's motion to dismiss is
AFFIRMED.