

A-201

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2 12:32:59 BY MR. PLATZER:

3 12:33:01 Q. -- correct?

4 12:33:02 MR. WILLEN: Objection to the form.

5 12:33:06 THE WITNESS: The proposal that's in front of

6 12:33:07 me right now did not result in a -- in a change of our

7 12:33:15 service. I think it's worth noting, though, that we did

8 12:33:22 agree to a -- an upgrade to the original service

9 12:33:30 agreement in -- in 2008.

10 12:33:34 BY MR. PLATZER:

11 12:33:35 Q. And that upgrade was to [REDACTED]

12 12:33:39 [REDACTED]?

13 12:33:40 [REDACTED]

14 12:33:45 [REDACTED]

15 12:33:52 [REDACTED]

16 12:33:57 [REDACTED]

17 12:34:01 [REDACTED]

18 12:34:08 [REDACTED]

19 12:34:14 [REDACTED]

20 12:34:18 Q. Okay. But the -- the upgrade that you agreed

21 12:34:22 to with Audible Magic in 2008, that didn't include Type

22 12:34:25 3 look-ups; right?

23 12:34:27 A. It was a different form of -- of upgrade, but

24 12:34:31 we did upgrade our service with them.

25 12:34:33 Q. An upgrade to service levels, not an upgrade

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2 13:26:52 MR. WILLEN: I don't know if he was entirely
3 13:26:54 listening to the question, because he was distracted
4 13:26:57 based on --
5 13:26:59 THE WITNESS: He -- he put his mouse in a
6 13:27:01 puddle. I was worried again.
7 13:27:04 MR. WILLEN: Have the question again.
8 13:27:05 BY MR. PLATZER:
9 13:27:06 Q. Was it YouTube's view that Audible Magic
10 13:27:06 technology had a high accuracy rate?
11 13:27:09 A. Yes. That is correct. And it's a matter of
12 13:27:17 tuning as well. So, you know, I think, as you seek to
13 13:27:19 get higher recall, you put more pressure on your
14 13:27:22 accuracy. So you start -- so it's a -- you know, it --
15 13:27:26 it's a -- it's a balance point in any system, which I
16 13:27:29 think would also be true of a human.
17 13:27:32 You know, as a human, if you're trying to
18 13:27:35 respond to a -- you know, to something where you're
19 13:27:38 scanning through your memory, you can either be
20 13:27:41 extremely conservative and very accurate, or you can dig
21 13:27:45 a little deeper and make more suppositions and take more
22 13:27:49 guesses, and you'll bring back more information, but
23 13:27:52 your accuracy rate will suffer.
24 13:27:54 Q. Did YouTube tune Audible Magic's
25 13:28:01 fingerprinting technology to minimize false positives?

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2 13:28:08 MR. WILLEN: Objection to the form.

3 13:28:09 THE WITNESS: Audible Magic did not surface

4 13:28:09 any methods for us to tune that balance point. They

5 13:28:09 tuned it that way.

6 13:28:11 BY MR. PLATZER:

7 13:28:12 Q. Okay. And did -- is the sentiment that's

8 13:28:15 expressed on the page we're looking at on this exhibit

9 13:28:20 that Audible Magic had high accuracy, was that YouTube's

10 13:28:25 view for the use of Audible Magic to identify television

11 13:28:29 content as well?

12 13:28:30 MR. WILLEN: Objection to the form. Vague as

13 13:28:34 to time.

14 13:28:39 THE WITNESS: This bullet doesn't speak to

15 13:28:41 that, and I don't think that -- I think it's not -- you

16 13:28:44 know, the level of specificity here is, in general, the

17 13:28:49 Audible Magic service has produced accurate results.

18 13:28:56 BY MR. PLATZER:

19 13:28:57 Q. Well, independently of this document -- I'm

20 13:28:59 asking you in your capacity as a corporate

21 13:29:02 representative for YouTube -- was -- was it YouTube's

22 13:29:06 belief that Audible Magic was accurate for identifying

23 13:29:08 television content?

24 13:29:10 MR. WILLEN: Objection. Vague as to time.

25 13:29:16 THE WITNESS: I think there -- that there

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2 13:29:18 is -- there is an im- -- an important caveat in the --

3 13:29:24 any -- in the ability of the Audible Magic system to

4 13:29:34 provide reliable claim information around television,

5 13:29:40 and the -- the nub of that, the -- the -- the --

6 13:29:43 the key issue, is that every -- you know, I think

7 13:29:51 probably 99 percent of movies have a sound track with

8 13:29:55 music in them, and certainly music also permeates

9 13:29:59 television.

10 13:30:00 And so, not as a technical matter, but as a

11 13:30:04 policy matter or as an ownership issue -- and earlier we

12 13:30:08 had talked about there really being two sides to a

13 13:30:11 fingerprinting system. So one is the raw fingerprinting

14 13:30:15 and its ability to match and the assets -- you know, and

15 13:30:17 getting -- getting hold of media files, turning those

16 13:30:21 into fingerprints, and then matching based on those.

17 13:30:23 But there's an equally important second aspect to these

18 13:30:27 systems, which is the metadata, the ownership, scoped by

19 13:30:32 territory, and the policy information that goes with

20 13:30:34 that.

21 13:30:35 So as you start to take in fingerprints

22 13:30:38 from -- from television and from movies, what we found

23 13:30:46 is that, not as a technical matter, but as a -- as that

24 13:30:50 sort of secondary policy, metadata, really identifying

25 13:30:54 the right owners and who should -- who has standing to

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2 13:30:58 talk about whether this thing should be up or not -- if

3 13:31:02 you're looking purely at the audio side, you end up

4 13:31:05 getting significant numbers of errors based on the music

5 13:31:08 content being embedded in movies and TV.

6 13:31:20 So, you know, you asked me about false

7 13:31:23 positives coming in from -- from Audible Magic. We --

8 13:31:28 you know, as a -- as a purely technical matter, no false

9 13:31:34 positives. As a policy and ownership matter, movies and

10 13:31:39 TV, if you're just matching on the audio channel,

11 13:31:46 created significant inaccuracies.

12 13:31:48 BY MR. PLATZER:

13 13:31:49 Q. Did YouTube ever consider adding a layer of

14 13:31:52 human review following the Audible Magic matches in

15 13:31:55 order to ameliorate that problem?

16 13:32:00 MR. WILLEN: Objection to the form. It's

17 13:32:00 outside the scope of this notice, but if you have a

18 13:32:03 personal understanding, you can reference that.

19 13:32:09 THE WITNESS: So to be clear, if we were to --

20 13:32:20 let's just say, hypothetically, if we were to sit down

21 13:32:23 and say, okay, let's review every match that comes in

22 13:32:27 from a movie or a TV asset. That still wouldn't allow

23 13:32:37 us to make that result perfect, because that -- the --

24 13:32:40 the -- either the studio, or the broadcaster might

25 13:32:44 actually have standing to make claims based on music

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2 13:32:49 that's embedded in those assets or they may not. And

3 13:32:53 the only way that we can know that is for that entity

4 13:32:57 themselves to make that representation.

5 13:33:01 We can't magically ever know who truly owns

6 13:33:05 anything. We need the owners of those things to tell us

7 13:33:09 that they have that ownership, and to -- and to specify

8 13:33:15 that to us. And I think that's precisely why the law is

9 13:33:19 written the way it is.

10 13:33:20 BY MR. PLATZER:

11 13:33:21 Q. Well, I'm not asking hypothetically how such a

12 13:33:23 system would work. I'm asking historically whether

13 13:33:26 YouTube ever actually considered implementing such a

14 13:33:29 system, "such a system" meaning a layer of human review

15 13:33:35 following Audible -- Audible Magic matches.

16 13:33:37 MR. WILLEN: So I'm going to again object.

17 13:33:39 The question about human review is outside the scope of

18 13:33:42 his notice, but if this witness has a personal

19 13:33:45 understanding of the issues related to the question, he

20 13:33:48 can answer.

21 13:33:50 MR. PLATZER: Well, Brian, no, the -- within

22 13:33:52 the scope of this notice is how YouTube used match

23 13:33:56 information from Audible Magic. I'm entitled to ask the

24 13:33:59 uses to which that information was put, and if that

25 13:34:01 information was used to flag videos for human review

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2 13:35:43 companies.
3 13:35:43 BY MR. PLATZER:
4 13:36:04 Q. Did YouTube ever experience a problem with
5 13:36:06 Audible Magic's technology as applied to TV and movie
6 13:36:13 content that the Aud- -- that Audible Magic couldn't
7 13:36:19 identify the content unless it was identified at the
8 13:36:22 beginning of the clip?
9 13:36:24 MR. WILLEN: Objection to the form, vague.
10 13:36:30 THE WITNESS: Yeah, could -- I'm -- could you
11 13:36:33 rephrase that to be a little more precise on what it is
12 13:36:36 you would like to know?
13 13:36:38 BY MR. PLATZER:
14 13:36:38 Q. Well, the -- earlier we discussed --
15 13:36:41 A. Uh-huh.
16 13:36:42 Q. -- the fact that YouTube was only having
17 13:36:44 Audible Magic query unknowns against the first sec- --
18 13:36:47 [REDACTED]. Do you recall that
19 13:36:51 conversation?
20 13:36:52 A. Yes.
21 13:36:53 Q. Did that aspect of the Audible Magic service
22 13:36:56 that it was providing to YouTube ever pose problems for
23 13:37:00 YouTube's ability to identify television or movie
24 13:37:03 content using Audible Magic's technology?
25 13:37:07 MR. WILLEN: Objection to the form. Vague as

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2 13:37:09 to "pose problems."

3 13:37:12 THE WITNESS: So -- so what sort of problems

4 13:37:14 did you -- did you -- do you have in mind, so I --

5 13:37:15 BY MR. PLATZER:

6 13:37:17 Q. False negatives.

7 13:37:18 A. False negatives? Every one of -- every system

8 13:37:24 that attempts to do automated identification will have

9 13:37:29 false negatives. This would -- the issue that you've

10 13:37:38 spoken to would contribute to -- to gaps in coverage as

11 13:37:47 a matter of logic.

12 13:37:49 Q. But historically was that a problem of which

13 13:37:53 YouTube had any specific awareness?

14 13:37:57 MR. WILLEN: Objection to the form.

15 13:38:01 THE WITNESS: I mean, I think, as we discussed

16 13:38:03 in -- in -- in the earlier documents, we were interested

17 13:38:07 in a more expansive service on those lines, and that

18 13:38:17 is -- was a key design principle in the service that we

19 13:38:22 built on Google's technology.

20 13:38:33 THE REPORTER: 7 -- 9, I mean.

21 13:38:35 MR. PLATZER: 9.

22 13:38:37 THE REPORTER: Excuse me.

23 13:38:38 (King Deposition Exhibit Number 9 was marked

24 13:38:38 for identification.)

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2 13:38:38 BY MR. PLATZER:
3 13:38:40 Q. The court reporter has handed you what's been
4 13:38:42 marked as King Exhibit 9. It's a July 3rd, 2007, e-mail
5 13:38:49 from David Eun to Lew Rothman, bears Bates number Google
6 13:38:56 798493 through 798495.
7 13:39:01 Have you seen the e-mail that's been marked as
8 13:39:07 King Exhibit 9 before?
9 13:39:10 MR. WILLEN: Give him a chance to flip through
10 13:39:10 that.
11 13:40:03 THE WITNESS: This rings a bell.
12 13:40:05 BY MR. PLATZER:
13 13:40:07 Q. Do you recall there being an issue in July of
14 13:40:10 2007 of the movie "Sicko" repeatedly being uploaded to
15 13:40:17 YouTube following takedown?
16 13:40:20 A. My recollection of this -- and -- and this is
17 13:40:24 not something that I have instructed myself on in
18 13:40:27 preparation for this testimony, but my recollection is
19 13:40:31 that the -- the uploads were coming directly from the
20 13:40:40 creator of the movie, whose name is oddly eluding me
21 13:40:46 right now. Um --
22 13:40:48 Q. Michael Moore?
23 13:40:49 A. Michael Moore. It's that Michael Moore and
24 13:40:51 his direct staff were the ones that were uploading it.
25 13:40:55 Q. Uh-huh.

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2 13:40:56 A. And that's why -- you know, that's why it

3 13:40:58 showed up so early. But yes, I remember that it -- they

4 13:41:03 kept doing it.

5 13:41:04 Q. And do you recall the Weinstein Company

6 13:41:08 complaining about repeated uploads to YouTube?

7 13:41:13 A. I re- -- I recall this e-mail exchange.

8 13:41:19 Q. I have a question about --

9 13:41:21 A. But it -- it does kind of get -- I remember

10 13:41:23 this as being a rather ironic exchange, in that -- that

11 13:41:27 the Weinstein Company provided funding to Michael Moore

12 13:41:34 and his production company to create this movie and then

13 13:41:38 to market it, and this was a sort of left-hand-not-

14 13:41:41 speaking-to-the-right-hand battle that we often ended up

15 13:41:44 in.

16 13:41:45 So this was not just random people uploading

17 13:41:49 this. This was the creator of the film who you would

18 13:41:53 think would be in tighter alignment with his production

19 13:41:56 company.

20 13:41:56 Q. I have a question about the exchange near the

21 13:41:58 top of the first page.

22 13:42:00 A. Uh-huh.

23 13:42:00 Q. Where the e-mail from Lew Rothman to David Eun

24 13:42:06 is saying:

25 13:42:07 "David,

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2 13:42:07 "Do you guys currently use Audible Magic's
3 13:42:09 fingerprinting technology?"
4 13:42:09 And the response from David Eun saying:
5 13:42:11 "Lew,
6 13:42:12 Yes, we are. We've found though that their
7 13:42:14 technology works better for music videos than
8 13:42:17 other types of video content."
9 13:42:20 Is it, in fact, the case that YouTube found
10 13:42:24 Audible Magic to be more effective for music than for
11 13:42:28 other kinds of video content?
12 13:42:30 MR. WILLEN: Objection to the form.
13 13:42:31 THE WITNESS: As we discussed earlier, Audible
14 13:42:33 Magic provides matching based on audio.
15 13:42:40 We're a video service. And so, if you want to
16 13:42:43 match on video, video fingerprinting is a much more
17 13:42:49 powerful technology.
18 13:42:52 So it is true that the Audible Magic solution
19 13:42:57 was helpful but imperfect for our needs, and this is
20 13:43:03 precisely why we have spent many millions of dollars
21 13:43:11 developing a world class video fingerprinting technology
22 13:43:14 to sup- -- to supplement audio fingerprinting.
23 13:43:18 BY MR. PLATZER:
24 13:43:20 Q. But, to repeat my initial question, has
25 13:43:23 YouTube, in fact, found that Audible Magic is less

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2 13:43:26 effective for video content that isn't a music video?
3 13:43:31 MR. WILLEN: Objection, asked and answered.
4 13:43:43 THE WITNESS: I think, you know, as a -- I
5 13:43:48 just appeal to your reason. If you think about the --
6 13:43:54 the -- the sound that is coming from this room, and the
7 13:43:57 sound that comes from a CD playing, the sound that comes
8 13:44:01 from a CD playing is continuous. It's very -- it's
9 13:44:07 sonically rich. It's a -- it's a very full audio signal
10 13:44:12 to work from.
11 13:44:14 So if I were to play for you right now, say a
12 13:44:19 Beatles song and ask you, what is this, you would
13 13:44:22 probably be able to tell me that's a Beatles song.
14 13:44:26 Now, if I were to play for you a snippet of
15 13:44:31 everybody's voice in this room and ask you to identify
16 13:44:34 each person from that snippet of their voice, it would
17 13:44:39 probably be harder for you to get those all right.
18 13:44:42 Q. And I understand the theoretical argument for
19 13:44:45 why it might be less effective that you're articulating
20 13:44:49 right now.
21 13:44:49 The question I'm asking is whether YouTube
22 13:44:52 actually concluded that that was empirically the case,
23 13:44:55 that Audible Magic worked less well for video that
24 13:44:58 wasn't a music video. Not why it might be the case, but
25 13:45:02 whether Google actually concluded that that was the

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2 13:45:05 case.

3 13:45:06 MR. WILLEN: Objection to the form.

4 13:45:14 THE WITNESS: We found that the results that

5 13:45:16 we got in matching videos with a musical soundbed to

6 13:45:24 them was more effective in using Audible Magic

7 13:45:31 technology, and our response to that was to turn around

8 13:45:35 and spend millions and millions of dollars, and spin up

9 13:45:40 a very large global team on building out a more

10 13:45:45 effective response.

11 13:45:45 BY MR. PLATZER:

12 13:45:46 Q. Okay. And you say you found that the results

13 13:45:48 you got in matching videos within Audible Magic showed

14 13:45:52 that videos of music are more effectively matched;

15 13:45:56 right?

16 13:45:57 MR. WILLEN: Objection. Mischaracterizes

17 13:45:58 testimony.

18 13:45:58 THE WITNESS: I don't have figures around

19 13:46:00 that, but that was -- so I wouldn't -- it -- it wasn't

20 13:46:07 an empirical study, but -- so I appealed to reason in my

21 13:46:14 earlier response, and I think it was that same appeal to

22 13:46:19 reason which led that conversation, as opposed to data.

23 13:46:23 BY MR. PLATZER:

24 13:46:24 Q. Okay. So YouTube didn't do a numerical

25 13:46:28 analysis --

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2 13:46:29 MR. WILLEN: Objection to the form. Vague as

3 13:46:32 to --

4 13:46:32 BY MR. PLATZER:

5 13:46:33 Q. As --

6 13:46:33 MR. WILLEN: -- "empirical analysis."

7 13:46:36 BY MR. PLATZER:

8 13:46:37 Q. -- as to whether Audible Magic was less

9 13:46:39 effective for musical content than for video content.

10 13:46:46 MR. WILLEN: Sorry. Didn't mean to interrupt

11 13:46:48 your question. I restate my objection that it's vague.

12 13:46:55 THE WITNESS: Simply put, if you want to match

13 13:46:57 video, the strongest way to do so is to actually analyze

14 13:47:04 the images.

15 13:47:06 BY MR. PLATZER:

16 13:47:07 Q. So is that a no?

17 13:47:08 MR. WILLEN: Objection. You don't have to

18 13:47:10 answer that.

19 13:47:11 THE WITNESS: It's -- it's -- both as a matter

20 13:47:17 of logic and as a -- in terms of the actual results that

21 13:47:23 we've had afterwards, the best way to identify a video

22 13:47:27 asset is to analyze the pictures.

23 13:47:30 BY MR. PLATZER:

24 13:47:32 Q. But did YouTube ever analyze actual results in

25 13:47:36 order to reach that conclusion?

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2 14:42:45 the time period immediately after it launched?

3 14:42:56 A. I -- I'd -- if recollection serves, during the

4 14:43:01 first few weeks there -- we were careful about how many

5 14:43:08 new partners we took on, because we needed to manage our

6 14:43:11 expectations.

7 14:43:15 That period was a very short period. And once

8 14:43:19 we got comfort that the system could handle load, we

9 14:43:24 quickly moved past those restrictions.

10 14:43:28 Q. When did YouTube move past those restrictions?

11 14:43:34 A. I would say it was within a month.

12 14:43:41 Q. So November of 2007?

13 14:43:42 A. Yes.

14 14:43:43 Q. Okay.

15 14:43:56 A. We wouldn't be doing anybody any favors -- if

16 14:43:59 I can offer just a little bit more, we wouldn't be doing

17 14:44:02 anybody any favors if we offered a system, got everybody

18 14:44:06 to do a lot of work, and then the system fell over and

19 14:44:09 didn't work at all.

20 14:44:10 So we -- we did have to balance our desire to

21 14:44:14 do everything immediately with the desire to provide a

22 14:44:20 reliable service to people that were putting effort in

23 14:44:25 from the other side. We didn't want to waste people's

24 14:44:30 time.

25 14:44:31 Q. I know we discussed earlier the circumstances

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2 14:44:33 under which YouTube would use the YT -- the YTU
3 14:44:39 partition of the Audible Magic database with respect to
4 14:44:42 videos that had been taken down.
5 14:44:44 A. Uh-huh.
6 14:44:45 Q. I'd like to ask a similar set of questions
7 14:44:48 about Google's own fingerprinting technology. Since
8 14:44:52 implementation of Google's own fingerprinting
9 14:44:56 technology --
10 14:44:57 A. Uh-huh.
11 14:44:58 Q. -- are there any circumstances in which a
12 14:45:01 video that is removed pursuant to a takedown notice is
13 14:45:08 fingerprinted and blocked going forward?
14 14:45:13 A. As previously discussed, we switched over,
15 14:45:20 once we had the Google technology in place, when we --
16 14:45:26 we -- we switched over the back end so that when a user
17 14:45:32 of the CMS system flagged a video and said, please
18 14:45:41 create a reference off of this, we did so using the
19 14:45:44 Google technology. So really all my former testimony
20 14:45:47 around that issue is -- would -- would remain the same
21 14:45:53 regardless of which technical back end we were using.
22 14:45:58 Q. YouTube didn't stop doing that at some point
23 14:46:00 in time?
24 14:46:02 MR. WILLEN: Objection to the form.
25 14:46:04 THE WITNESS: That is a service that we still

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2 14:46:06 offer today.

3 14:46:13 BY MR. PLATZER:

4 14:46:13 Q. At what point did the back end switch over?

5 14:46:18 MR. WILLEN: Objection to the form.

6 14:46:22 THE WITNESS: I don't -- I don't recall the

7 14:46:25 precise date at which the back end switched over.

8 14:46:37 THE REPORTER: This is number 13.

9 14:46:39 (King Deposition Exhibit Number 13 was marked

10 14:46:39 for identification.)

11 14:46:39 BY MR. PLATZER:

12 14:46:40 Q. Do you remember what year the back end

13 14:46:42 switched over?

14 14:46:43 A. I would -- I would -- I would say 2008.

15 14:46:53 Q. The court reporter has handed you what's been

16 14:46:56 marked as King 13. It's a document bearing the title

17 14:46:59 "Video Fingerprinting Requirements." The Bates number

18 14:47:03 is Google 2832600 through 2832616.

19 14:47:13 A. Okay. It's a very long document.

20 14:47:16 Q. Do you recognize this as a wiki from Google's

21 14:47:20 system?

22 14:47:23 A. I believe it was a Google doc, but --

23 14:47:28 Q. Oh, a way -- the check box?

24 14:47:31 A. Uh-huh.

25 14:47:32 Q. I have a question here for you. The fourth

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2 14:47:35 grouping of lines from the bottom on the very first

3 14:47:39 page, it says:

4 14:47:40 "We will" -- and then in asterisks "*not*

5 14:47:42 generate ref fingerprint upon claiming by

6 14:47:45 partner of UGC video through desc search," and

7 14:47:49 then in paren, "(Dave: Confirm this

8 14:47:52 statement.)"

9 14:47:53 Following that there's the initials "DK." It says:

10 14:47:56 "This is correct."

11 14:47:57 A. Uh-huh.

12 14:47:57 Q. And then:

13 14:47:57 "The reason we will no longer allow this

14 14:48:00 feature is because we are going to open up CYC

15 14:48:03 to non-partners who we do not think we can

16 14:48:03 trust to review the content carefully enough.

17 14:48:05 CYC should have the same level of

18 14:48:05 functionality for partners and non-partners."

19 14:48:09 A. Uh-huh.

20 14:48:11 Q. Does this refresh your recollection as to

21 14:48:14 whether Google today still generates reference

22 14:48:17 fingerprints from videos that are removed pursuant to a

23 14:48:20 takedown notice?

24 14:48:22 MR. WILLEN: Objection to the form.

25 14:48:23 Mischaracterizes prior testimony.

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1 DAVID KING SAN FRANCISCO, CA JANUARY 13, 2010

2 14:53:44 Q. Can you name them?

3 14:53:51 A. All those were under NDA. Did that not apply

4 14:53:55 in this case?

5 14:53:56 MR. WILLEN: If you know the answer to the

6 14:53:57 question you can answer it. Obviously this whole

7 14:54:00 transcript will be designated as highly confidential,

8 14:54:02 and certain portions of it will probably be designated

9 14:54:06 as restricted.

10 14:54:08 THE WITNESS: Okay. Well, one example would

11 14:54:10 be [REDACTED]

12 14:54:12 BY MR. PLATZER:

13 14:54:12 Q. Any other examples?

14 14:54:14 A. That's one that comes to mind, but there

15 14:54:16 are -- there are certainly, I -- like I said, I didn't

16 14:54:19 review the names. I'm just recalling one from -- you

17 14:54:25 know, from three years ago. I --

18 14:54:28 Q. Have --

19 14:54:28 A. At this point we have 1200 partners on the

20 14:54:30 system. It gets muddled in my mind exactly who did what

21 14:54:35 when.

22 14:54:35 Q. I'm asking for your personal recollection as

23 14:54:37 David King.

24 14:54:38 A. As personal recollection, I can -- the one

25 14:54:39 that I can remember categorically as using Audible Magic

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1 DAVID KING SAN FRANCISCO, CA JANUARY 13, 2010
2 14:54:43 for audio fingerprinting in a block only capacity, one
3 14:54:50 example would be [REDACTED]
4 14:54:52 Q. And [REDACTED] Clarify. What is that?
5 14:54:56 A. [REDACTED]. You can imagine that I
6 14:54:59 took their demands quite seriously.
7 14:55:10 MR. PLATZER: I think we're going to take a
8 14:55:11 very quick break and see if we have anything further.
9 14:55:15 MR. WILLEN: Okay.
10 14:55:16 THE VIDEOGRAPHER: We are now going off the
11 14:55:17 record. The time is 2:55 p.m.
12 15:03:47 (Short break.)
13 15:03:49 THE VIDEOGRAPHER: We are now on the record.
14 15:03:50 The time is 3:04 p.m.
15 15:03:53 BY MR. PLATZER:
16 15:03:55 Q. Sir, a quick authentication question about the
17 15:03:58 last document we were looking at, King Exhibit 13. Have
18 15:04:03 you seen this document before?
19 15:04:06 A. Yes, I have seen this document before.
20 15:04:10 I also wanted to offer just -- and -- and a
21 15:04:16 few more names of block only partners if you -- if you
22 15:04:18 would -- if you would like me to.
23 15:04:20 Q. Please.
24 15:04:21 A. So others we -- we scanned some of the -- some
25 15:04:26 of the names of -- of users of the system, and so others

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1 DAVID KING SAN FRANCISCO, CA JANUARY 13, 2010

2 15:04:30 that I know were block only included companies like [REDACTED],

3 15:04:33 [REDACTED]

4 15:04:41 [REDACTED]

5 15:04:45 [REDACTED]. So those are a few other names. They're

6 15:04:48 -- that is, once again, not an exhaustive list.

7 15:04:53 I'd also like to add that for -- there were

8 15:04:55 many partners of the system that you might not consider

9 15:04:58 block only partners but that, in fact, used the

10 15:05:04 fingerprinting system only for blocking.

11 15:05:07 So they used YouTube as a distribution

12 15:05:11 mechanism for their content, but when it came to their

13 15:05:16 handling of user files or matches in the user-generated

14 15:05:22 side of the house, they -- their decision was always to

15 15:05:28 block. So these lines aren't quite as crisp as -- as,

16 15:05:32 you know, as one might suppose.

17 15:05:37 Q. And those block only partners that you

18 15:05:40 testified to, did they block using the YTB partition?

19 15:05:51 A. They blocked using the YTB and the YTU

20 15:05:56 partitions.

21 15:05:58 Q. And were these partners who used the Audible

22 15:06:01 Magic technology in 2007?

23 15:06:04 A. Yes. I thought your question was bounded to

24 15:06:11 early 2007.

25 15:06:12 Q. Yes.

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1 DAVID KING SAN FRANCISCO, CA JANUARY 13, 2010

2 15:06:13 A. I was speaking specifically to early 2007.

3 15:06:16 Q. It was. Thank you for that clarification.

4 15:06:32 Direct your attention back to King Exhibit 13.

5 15:06:34 You mentioned that you did recognize the document. Can

6 15:06:37 you please explain where you recognize it from?

7 15:06:47 A. It -- it, you know, I don't want to read the

8 15:06:51 whole thing, because that will take too long. Right?

9 15:06:55 Can we agree on that?

10 15:06:56 Q. Yes.

11 15:06:57 A. So just on the surface of it, this would be

12 15:07:01 sort of our ongoing dialogue between the various

13 15:07:08 engineers involved in the system and -- and product

14 15:07:11 people involved in the system, in working through the

15 15:07:13 details of how we should implement the system.

16 15:07:18 Q. And --

17 15:07:18 A. "The system" being video fingerprinting

18 15:07:21 specifically.

19 15:07:22 Q. Do you recall the time frame of this document?

20 15:07:28 A. So I can -- you know, it has one date that

21 15:07:32 appears right here on this front page, which is

22 15:07:35 June 13th. And so, you know, going back to this

23 15:07:40 timeline, like another consistency you'll see between

24 15:07:43 this and this, is on June 13th we did video

25 15:07:47 fingerprinting trials with about ten partners. And in

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2 15:07:50 here you'll see, you know, beta testing video, but we

3 15:07:54 were already, in June of '07, doing a -- a form of beta

4 15:08:02 testing with -- with trial partners.

5 15:08:05 Q. Okay. You believe that this document is from

6 15:08:07 around the summer of 2007?

7 15:08:09 A. Yes.

8 15:08:10 Q. Okay. And just a follow-up question on the

9 15:08:20 additional block only partners that you just listed.

10 15:08:25 Were the ones that you mentioned block only partners who

11 15:08:30 used YouTube for distribution of their own content?

12 15:08:35 A. No. So the -- I was working under what I

13 15:08:40 understood to be your definition of a block only

14 15:08:44 partner. A -- a company which did no licensing of

15 15:08:50 content to YouTube that was purely interested in

16 15:08:53 availing themselves of copyright services and blocking

17 15:08:59 content.

18 15:09:00 Q. Okay. And are -- are any of those companies

19 15:09:05 U.S. companies?

20 15:09:07 MR. WILLEN: Objection to form. Calls for --

21 15:09:12 THE WITNESS: So if we --

22 15:09:12 MR. WILLEN: Hold on.

23 15:09:14 THE REPORTER: "Calls for" --

24 15:09:16 MR. WILLEN: Calls for a legal conclusion.

25 15:09:17 It's -- it's certainly outside the scope of the 30(b)6

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2 15:09:21 topic.

3 15:09:24 THE WITNESS: Should I -- should I answer?

4 15:09:30 MR. PLATZER: This seems to fall quite

5 15:09:33 squarely within the categories of companies who used

6 15:09:35 Audible Magic for blocking.

7 15:09:37 MR. WILLEN: You're asking him whether

8 15:09:38 specific companies are or are not U.S. companies. I

9 15:09:41 don't know how that's within the scope of the topic. If

10 15:09:44 he has a personal understanding about where these

11 15:09:46 companies do business, he can answer the question.

12 15:09:48 THE WITNESS: My personal understanding,

13 15:09:49 without actually researching the question, if we just

14 15:09:56 kind of take them one by one, is that [REDACTED]

15 15:10:02 [REDACTED]

16 15:10:08 [REDACTED]

17 15:10:12 [REDACTED]

18 15:10:16 [REDACTED]

19 15:10:19 [REDACTED]

20 15:10:25 [REDACTED]

21 15:10:28 [REDACTED]

22 15:10:32 [REDACTED]

23 15:10:38 [REDACTED]

24 15:10:42 [REDACTED]

25

A-225

Schapiro Exhibit 134

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

JOB NO. 16802

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MAY 6, 2009

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9:14 a.m.

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VIDEOTAPED DEPOSITION OF ERIC SCHMIDT,
held at the offices of WILSON, SONSINI,
GOODRICH & ROSATI, 601 California Avenue,
Palo Alto, California, pursuant to notice,
before ANDREA M. IGNACIO HOWARD, CLR, CCRR, RPR,
CSR License No. 9830.

1 A P P E A R A N C E S:

2

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25

1 SCHMIDT, ERIC

2 A P P E A R A N C E S (Continued.)

3

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20

21 KEN REESER, Videographer.

22

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SCHMIDT, ERIC

1 09:21:06 documents? Where are your documents, sir?

2 09:21:09 MR. MANCINI: Objection to form.

3 09:21:16 THE WITNESS: I produced the documents that

4 09:21:17 were required by the protective order.

5 09:21:19 MR. BASKIN: Q. And that yielded 19

6 09:21:21 documents between June 2006 and February 2007?

7 09:21:25 MR. MANCINI: Objection; lacks foundation;

8 09:21:26 mischaracterizes the document.

9 09:21:28 THE WITNESS: Ask your question.

10 09:21:32 MR. BASKIN: Q. That is the question.

11 09:21:34 A Yes.

12 09:21:34 Q Okay. And then there are some months that

13 09:21:49 you produced, at least five months by my count, which

14 09:21:55 there were no custodial documents produced by you.

15 09:21:58 I assume you were working during those

16 09:22:01 months; were you not?

17 09:22:01 A Absolutely.

18 09:22:02 Q And is it plausible, knowing your practice,

19 09:22:06 that you generated no documents during the course of

20 09:22:11 those five months that were relevant to this

21 09:22:13 litigation?

22 09:22:14 MR. MANCINI: Objection; calls for a legal

23 09:22:16 conclusion; calls for speculation.

24 09:22:17 THE WITNESS: Again, I'd be speculating as to

SCHMIDT, ERIC

1 09:22:22 the causes, but the numbers are the numbers.

2 09:22:24 MR. BASKIN: Q. So as I understand it, it is

3 09:22:36 fair for the jury in this case to conclude that you

4 09:22:41 had nine custodial documents over the nine-month

5 09:22:44 period from June 2006 to February 2007?

6 09:22:46 MR. MANCINI: Objection; mischaracterization

7 09:22:49 of a document which I've already objected to, and

8 09:22:51 objection to the reference to somehow a jury being

9 09:22:54 present in this room.

10 09:22:56 THE WITNESS: I can't speak for a jury.

11 09:22:58 MR. BASKIN: Q. Now, by the way, under the

12 09:23:06 Google system, as you know it, are all your e-mails

13 09:23:10 preserved?

14 09:23:11 MR. MANCINI: Objection to form.

15 09:23:12 THE WITNESS: You need to ask a more precise

16 09:23:15 question.

17 09:23:16 MR. BASKIN: Q. I know you may be testing my

18 09:23:19 limits here.

19 09:23:21 A I'm an engineer. I'd like to give you an

20 09:23:22 exactly truthful answer.

21 09:23:25 Q Okay. Assuming that you had to go back to

22 09:23:30 look to see if there were more than 19 custodial

23 09:23:33 documents over the course of nine months, including

24 09:23:38 your e-mails, would it be possible for Google to find

SCHMIDT, ERIC

1 09:23:42 those documents?

2 09:23:43 MR. MANCINI: Objection; lacks foundation.

3 09:23:44 THE WITNESS: Over what period?

4 09:23:45 MR. BASKIN: Q. June 2006, let's -- to

5 09:23:50 February 2007.

6 09:23:50 A No.

7 09:23:50 MR. MANCINI: Same objection.

8 09:23:52 THE WITNESS: I'm sorry.

9 09:23:53 The answer is no.

10 09:23:54 MR. BASKIN: Q. And from February 2007 until

11 09:24:03 April 2008, do you -- what about the e-mails

12 09:24:07 associated with that time period? Could Google

13 09:24:10 retrieve those e-mails and locate them if asked?

14 09:24:14 MR. MANCINI: Objection to form.

15 09:24:15 Did you mean April 2008?

16 09:24:17 MR. BASKIN: Huh? Well, let me phrase it

17 09:24:20 differently. Let me phrase it differently.

18 09:24:22 Q During the entire period from 2001 until well

19 09:24:29 under 2008, by our count you produced 791 custodial

20 09:24:33 documents. That covers about seven or eight years.

21 09:24:39 If Google had to go back and retrieve your

22 09:24:44 e-mails for, let's say, the period 2005, are those

23 09:24:49 retrievable, as far as you know, sir?

24 09:24:51 MR. MANCINI: Same objection to the use of

SCHMIDT, ERIC

1 09:29:58 A Yeah.

2 09:29:58 Q -- I thought you said that for 30 years it's

3 09:30:01 been your practice not to preserve or to delete

4 09:30:05 e-mails?

5 09:30:05 MR. MANCINI: Objection to form; objection to

6 09:30:07 the characterization of the testimony.

7 09:30:09 MR. BASKIN: Q. Is that accurate?

8 09:30:10 A Again, I'll answer the question previously

9 09:30:14 asked, which was it has been my practice to not keep

10 09:30:16 my e-mails.

11 09:30:17 Q And is this on some sort of automatic system

12 09:30:20 where they are deleted in the ordinary course over

13 09:30:24 some ordinary period of time?

14 09:30:25 MR. MANCINI: Objection to form; objection,

15 09:30:26 lacks foundation.

16 09:30:27 THE WITNESS: Depending on the e-mail system

17 09:30:29 and the company and so forth, the answer would vary.

18 09:30:32 MR. BASKIN: Okay.

19 09:30:32 Q Well, let's take Google in 2005. What was

20 09:30:41 your practice then as to the length of time in which

21 09:30:44 you preserved your e-mails before they were deleted?

22 09:30:47 MR. MANCINI: Objection to form.

23 09:30:48 THE WITNESS: It was my practice to delete or

24 09:30:52 otherwise cause the e-mails that I had read to go away

SCHMIDT, ERIC

1 09:30:56 as quickly as possible.

2 09:30:57 MR. BASKIN: Q. Within days?

3 09:31:01 A Yes.

4 09:31:01 Q And I assume that practice carried over to

5 09:31:11 2006 and 2007 and 2008?

6 09:31:13 MR. MANCINI: Objection; lacks foundation.

7 09:31:14 THE WITNESS: In -- again, without the

8 09:31:21 specific dates, in principle, yes.

9 09:31:24 MR. BASKIN: Q. Now, when the lawsuit was

10 09:31:28 filed in February 2007, did anyone instruct you that

11 09:31:36 you should preserve your e-mails relevant to the

12 09:31:41 litigation?

13 09:31:44 Excuse me. As of -- excuse me. As of the

14 09:31:47 filing of this complaint, which is March of 2007, did

15 09:31:50 anyone instruct you to preserve your e-mails that

16 09:31:53 might be relevant to this litigation?

17 09:31:54 MR. MANCINI: Objection to the extent it

18 09:31:55 calls for a privileged communication.

19 09:31:58 THE WITNESS: I want to be careful not to

20 09:32:04 discuss a legal conversation that I had.

21 09:32:08 You used a precise month. A -- a clear -- a

22 09:32:14 clear and precise answer would be that I did change my

23 09:32:16 practice after this lawsuit was filed and I was

24 09:32:20 notified.

SCHMIDT, ERIC

1 09:32:21 MR. BASKIN: Q. But if I'm reading our chart

2 09:32:23 right, for example, in the following month, April, you

3 09:32:26 had zero custodial documents you've produced.

4 09:32:28 Is that -- were you preserving e-mails during

5 09:32:33 the month of April?

6 09:32:35 MR. MANCINI: Objection; same objection to

7 09:32:36 the use of this document.

8 09:32:37 THE WITNESS: Again, ignoring the document,

9 09:32:39 which I have not seen and have no comment on, after I

10 09:32:44 was notified of the protective order, I changed my

11 09:32:46 policy.

12 09:32:46 MR. BASKIN: Q. And were you notified -- do

13 09:32:51 you recall if you were notified of the protective

14 09:32:53 order prior to, let's say, June 2007?

15 09:32:59 A I don't remember --

16 09:32:59 MR. MANCINI: Objection to form.

17 09:33:00 THE WITNESS: Sorry.

18 09:33:01 I don't remember the precise date.

19 09:33:02 MR. BASKIN: Now -- excuse me. I'm getting a

20 09:33:15 note. Good question.

21 09:33:21 Q How did you effectuate the change of this

22 09:33:23 policy? What did you do?

23 09:33:24 MR. MANCINI: Objection to form.

24 09:33:26 THE WITNESS: Okay. I understood the

SCHMIDT, ERIC

1 09:33:31 protective order, and if there were any e-mails that
2 09:33:36 were covered by the protective order, I did not delete
3 09:33:39 or otherwise cause them to go away.
4
5 09:33:43 MR. BASKIN: Q. So you made the judgment
6 09:33:45 yourself whether it was covered by the protective
7 09:33:48 order?
8 09:33:48 MR. MANCINI: Objection; lacks foundation;
9 09:33:49 mischaracterizes testimony.
10 09:33:50 THE WITNESS: I would need to discuss a legal
11 09:33:52 conversation to answer your question.
12 09:34:02 It may be helpful to say that we ultimately
13 09:34:06 made the system more automatic to make this
14 09:34:09 operation -- we operationalized it. That may help
15 09:34:15 your -- the confusion over the numbers that you have
16 09:34:17 in the chart.
17 09:34:21 MR. BASKIN: Excuse me one second.
18 09:34:43 Q Now, when you made the -- the assessment what
19 09:35:08 was, in your mind, relevant to the protective order
20 09:35:10 and the -- and the lawsuit, did you actually look at
21 09:35:15 the document request in this case?
22 09:35:16 MR. MANCINI: Objection; mischaracterizes
23 09:35:18 testimony.
24 09:35:19 THE WITNESS: Again, in order to answer your
25 09:35:23 question, I would have to discuss a conversation we

SCHMIDT, ERIC

1 09:35:24 had with our lawyers.

2 09:35:26 MR. BASKIN: Q. But all I asked was, did

3 09:35:28 you -- and with your own eyes, did you actually see

4 09:35:30 the document request in this case?

5 09:35:32 MR. MANCINI: Objection to form.

6 09:35:35 THE WITNESS: I believe I did.

7 09:35:36 MR. BASKIN: Q. And as you sit here today,

8 09:35:45 sir, does it seem realistic to you that the number of

9 09:35:59 custodial documents produced -- rep -- stated -- set

10 09:36:05 forth on Schmidt Exhibit 1 is the complete set of

11 09:36:09 documents that corresponds to the document request?

12 09:36:12 MR. MANCINI: Again, objection to the use of

13 09:36:14 this document and objection because it lacks

14 09:36:16 foundation.

15 09:36:16 THE WITNESS: The answer is yes.

16 09:36:18 MR. BASKIN: Okay.

17 09:36:21 Q Now -- now, the board -- the Google board

18 09:36:40 authorized the acquisition of YouTube in -- in and

19 09:36:43 around October 2006; is that right, sir?

20 09:36:46 A That's roughly correct, yes.

21 09:36:47 Q And am I right that basically the acquisition

22 09:36:49 closed in and around November?

23 09:36:52 A That's roughly correct, yes.

24 09:36:53 Q Now, prior to October 2006, did you know

SCHMIDT, ERIC

1 10:06:27 of any errors in it.

2 10:06:28 MR. BASKIN: Q. Now, if you'd turn to the

3 10:06:45 page 12 of the board book that's Bated stamped -- it

4 10:06:59 has Bates stamp numbers 3573. Could you take a look

5 10:07:02 at that for a second, sir?

6 10:07:03 A I do see it, yes.

7 10:07:05 Q And just take a look at that for a second,

8 10:07:11 and just tell me whether you can -- whether you read

9 10:07:13 this page as containing a discounted cash flow

10 10:07:18 analysis by CSFB with respect to YouTube.

11 10:07:24 MR. MANCINI: Objection to the

12 10:07:25 characterization of the document; the document speaks

13 10:07:27 for itself; and objection to form.

14 10:07:31 THE WITNESS: I don't recall this page, so I

15 10:07:34 would be speculating as to what it really is trying to

16 10:07:38 convey. I do see that it's their calculation about

17 10:07:43 revenue and YouTube and discounted cash flows under

18 10:07:46 some assumption.

19 10:07:46 MR. BASKIN: Q. And you see, I take it, on

20 10:07:48 the face of page 12 of Schmidt Exhibit 2 that their

21 10:07:53 base case valuation for YouTube was [REDACTED]

22 10:07:59 Do you see that?

23 10:08:01 MR. MANCINI: Objection to the

24 10:08:01 characterization of the document.

SCHMIDT, ERIC

1 10:08:03 THE WITNESS: I -- I read that as I see the
2 10:08:08 document, yes.
3
4 10:08:09 MR. BASKIN: Q. Well, in the course of the
5 10:08:10 discussions with the board on October 9th, 2006, was
6 10:08:19 there a discussion of valuation of YouTube?
7 10:08:23 A Yes.
8 10:08:23 Q And do you recall whether there was an
9 10:08:28 alternative valuation provided by management, for
10 10:08:33 instance, CSFB's --
11 10:08:35 MR. MANCINI: Objection to form.
12 10:08:36 MR. BASKIN: Q. -- determination of
13 10:08:39 valuation?
14 10:08:39 MR. MANCINI: Objection to form.
15 10:08:40 MR. BASKIN: That was a lousy question, so
16 10:08:41 let me rephrase it.
17 10:08:42 Q Do you recall whether management had a
18 10:08:43 valuation independent of what CSFB was communicating
19 10:08:50 to the board?
20 10:08:50 MR. MANCINI: Objection to form.
21 10:08:51 THE WITNESS: Yes.
22 10:08:51 MR. BASKIN: Q. And what was management's
23 10:08:53 valuation?
24 10:08:54 A [REDACTED]
25 10:08:57 Q And how was that communicated to the board,

SCHMIDT, ERIC

1 10:08:59 sir?

2 10:08:59 A I told them.

3 10:09:00 Q So why don't you tell us what you remember

4 10:09:02 telling the board in connection with the valuation?

5 10:09:04 A I believed YouTube was worth somewhere around

6 10:09:08 [REDACTED].

7 10:09:09 Q And you communicated that to the Board of

8 10:09:11 Directors of YouTube --

9 10:09:11 A I did.

10 10:09:13 Q -- of Google?

11 10:09:14 A I did.

12 10:09:14 Q And was that -- what methodology did you use

13 10:09:17 to come up with that number?

14 10:09:20 MR. MANCINI: Objection to form.

15 10:09:21 THE WITNESS: My judgment.

16 10:09:22 MR. BASKIN: Q. Was it based on cash flow

17 10:09:24 analysis? Comparable companies? What -- what were

18 10:09:26 you using as the basis for your judgment?

19 10:09:29 MR. MANCINI: Objection to form.

20 10:09:30 THE WITNESS: It's just my judgment. I've

21 10:09:34 done this a long time.

22 10:09:35 MR. BASKIN: Q. So you orally communicated

23 10:09:38 to your board, during the course of the board meeting,

24 10:09:44 that you thought a more correct valuation for YouTube

SCHMIDT, ERIC

1 10:09:50 was [REDACTED]; is that what you said, sir?

2 10:09:57 MR. MANCINI: Objection to the

3 10:09:57 characterization of the testimony.

4 10:09:58 THE WITNESS: Again, to help you along, I

5 10:10:02 believed that they were worth [REDACTED]

6 10:10:06 MR. BASKIN: Q. And am I correct that you

7 10:10:07 were asking your board to approve an acquisition price

8 10:10:11 of \$1.65 billion; correct?

9 10:10:15 A I did.

10 10:10:15 MR. MANCINI: Objection to form.

11 10:10:16 MR. BASKIN: Q. And although I'm not very

12 10:10:17 good at math, but I think that would be [REDACTED]

13 10:10:20 [REDACTED] than you thought the company was,

14 10:10:23 in fact, worth?

15 10:10:24 MR. MANCINI: Objection to form; and

16 10:10:25 objection to the mischaracterization of the testimony.

17 10:10:28 THE WITNESS: That is correct.

18 10:10:28 MR. BASKIN: Q. And you communicated that to

19 10:10:30 your board in and around October 9th, 2006?

20 10:10:32 MR. MANCINI: Objection to form.

21 10:10:33 THE WITNESS: I did.

22 10:10:34 MR. BASKIN: Q. And was a discussion among

23 10:10:36 the board to the effect that the CEO's valuation was a

24 10:10:42 [REDACTED] than the proposed purchase price?

SCHMIDT, ERIC

1 10:10:45 MR. MANCINI: Objection to form.

2 10:10:46 THE WITNESS: I don't remember the exact

3 10:10:48 board conversation, but I explained the -- I explained

4 10:10:52 my reasoning to them, absolutely.

5 10:10:54 MR. BASKIN: Okay.

6 10:10:54 Q And as best you can recall, can you tell us

7 10:10:57 what reasoning you explained?

8 10:10:58 A Sure.

9 10:10:59 This is a company with very little revenue,

10 10:11:06 growing quickly with user adoption, growing much

11 10:11:11 faster than Google Video, which was the product that

12 10:11:15 Google had. And they had indicated to us that they

13 10:11:20 would be sold, and we believed that there would be a

14 10:11:25 competing offer that, because of who Google was, pay

15 10:11:29 much more than they were worth.

16 10:11:33 In the deal dynamics, the price, remember, is

17 10:11:38 not set by my judgment or by a financial model or a

18 10:11:41 discounted cash flow. It's set by what people are

19 10:11:45 willing to pay.

20 10:11:46 And we ultimately concluded that 1.65 billion

21 10:11:50 included a premium for moving quickly and making sure

22 10:11:55 that we could participate in the user success of

23 10:11:59 YouTube.

24 10:12:01 Q And that was the analysis that you

SCHMIDT, ERIC

1 10:12:04 communicated to your board in and around October 9,
2 10:12:07 2006?
3
4 10:12:07 A That is correct.
5 10:12:08 Q So in effect you were, in your mind, paying a
6 10:12:12 [REDACTED] to keep YouTube out of the hand
7 10:12:17 of [REDACTED]; is that --
8 10:12:18 MR. MANCINI: Objection to the
9 10:12:19 characterization of the testimony; lacks foundation.
10 10:12:21 THE WITNESS: Again, I didn't say keep it out
11 10:12:23 of [REDACTED]. What I said was that my -- you asked me a
12 10:12:28 question, my value, how did I value it, and I gave you
13 10:12:31 my answer.
14 10:12:32 But the way to think about it is sometimes
15 10:12:36 things are not -- what my value is, maybe their -- the
16 10:12:38 market prices are different from what I value it at.
17 10:12:41 MR. BASKIN: Q. And so what I was asking was
18 10:12:44 whether, in your mind, were you paying a
19 10:12:49 [REDACTED] to YouTube's founders as a way
20 10:12:55 of keeping YouTube out of the hands of [REDACTED]?
21 10:12:57 MR. MANCINI: Same objections. Objection;
22 10:12:59 lacks foundation.
23 10:13:00 THE WITNESS: No.
24 10:13:02 MR. BASKIN: Q. Meaning, not [REDACTED], or [REDACTED]
25 10:13:05 was not exclusively the other acquirer you were

SCHMIDT, ERIC

1 10:13:09 worried about?

2 10:13:09 MR. MANCINI: Objection to form; and lacks

3 10:13:11 foundation.

4 10:13:11 THE WITNESS: You inserted [REDACTED] into the

5 10:13:13 conversation. I have not said [REDACTED]

6 10:13:18 It was clear to me that it was important that

7 10:13:22 the phenomena of user-contributed video be a part of

8 10:13:27 the Google portfolio, and that we should be willing to

9 10:13:32 pay market value as defined by market and not

10 10:13:34 necessarily by me.

11 10:13:36 And through the negotiation process we came

12 10:13:38 to the conclusion of 1.65 billion, and I reluctantly

13 10:13:43 told the board that this was a good deal for Google.

14 10:13:49 MR. BASKIN: Q. And by the way, as part of

15 10:13:58 your thinking, were the YouTube founders, in fact,

16 10:14:13 communicating to the Google team that [REDACTED] was a

17 10:14:19 competing bidder for YouTube?

18 10:14:21 MR. MANCINI: Objection; lacks foundation;

19 10:14:23 objection to form.

20 10:14:24 THE WITNESS: I don't recall the -- the

21 10:14:29 specific buildup to the 1.65 billion. But in a

22 10:14:34 negotiation, you are worried about the other potential

23 10:14:40 buyers, and we were certainly worried about our

24 10:14:43 competitors, and -- and it's a judgment call how much

1 SCHMIDT, ERIC

2 10:14:52 are you willing to pay for a unique asset.

3 10:14:57 I can't help answer it more than to say that.

4 10:15:01 I don't recall the specific of here, this might

5 10:15:04 happen, that might happen. We certainly discussed all

6 10:15:07 of those things.

7 10:15:08 MR. BASKIN: Q. You don't recall discussing

8 10:15:09 [REDACTED] as a possible acquirer?

9 10:15:11 MR. MANCINI: Objection; asked and answered.

10 10:15:13 THE WITNESS: Again, I'm sure we talked about

11 10:15:18 competitors possibly -- possibly buying them. I don't

12 10:15:22 recall the specifics of companies or price.

13 10:15:29 MR. BASKIN: Q. And did you ever come to

14 10:15:31 learn that, in negotiations with your team, that

15 10:15:36 Mr. Hurley had inflated [REDACTED]'s bid for YouTube by

16 10:15:42 several hundred million dollars?

17 10:15:43 MR. MANCINI: Objection; lacks foundation;

18 10:15:45 objection to form.

19 10:15:46 THE WITNESS: No.

20 10:15:47 MR. BASKIN: Q. And as you sit here today,

21 10:15:50 have you ever heard that, sir?

22 10:15:51 MR. MANCINI: Same objections.

23 10:15:53 THE WITNESS: No.

24 10:15:54 MR. BASKIN: Q. Now, when you recommended to

25 10:16:10 the board that it pay \$1.65 billion for a company that

SCHMIDT, ERIC

1 10:16:21 you yourself believed was worth around [REDACTED]
2
3 10:16:24 [REDACTED], did you do so on the assumption that in
4
5 10:16:29 the future you would, in fact, realize profit from the
6 10:16:36 acquisition?
7
8 10:16:37 MR. MANCINI: Objection; lacks foundation and
9 10:16:39 mischaracterizes testimony.
10
11 10:16:40 [REDACTED]
12 10:16:44 [REDACTED]
13 10:16:48 [REDACTED]
14
15 10:16:56 MR. BASKIN: Q. So, for example, if you look
16 10:16:58 back at Schmidt 2, and in particular page eight
17 10:17:17 thereof, which is the Bates stamp 3569, does this page
18 10:17:40 set forth the rationale for Google's purchase of
19 10:17:45 YouTube in and around October 9th, 2006?
20
21 10:17:47 MR. MANCINI: So objection. And just to be
22 10:17:49 clear, the document speaks for itself. The document
23 10:17:52 is a Credit Suisse document.
24
25 10:17:54 THE WITNESS: The answer to your question is
26 10:17:55 no.
27
28 10:17:57 MR. BASKIN: Q. And did you tell your board
29 10:17:58 that you disagreed with the position of the investment
30 10:18:01 banker?
31
32 10:18:01 MR. MANCINI: Objection; lacks foundation;
33 10:18:03 and objection to form.

SCHMIDT, ERIC

1 10:25:29 valuation -- strike that.

2 10:25:32 Apart from your -- strike that.

3 10:25:34 Apart from the [REDACTED] million figure that

4 10:25:40 you communicated to your board, was the only other

5 10:25:42 acquisition valuation put before them CSFB's?

6 10:25:48 MR. MANCINI: Objection; mischaracterizes the

7 10:25:50 testimony; and objection to form.

8 10:25:51 THE WITNESS: There were many numbers given

9 10:25:53 to the board that included my initial view, which I

10 10:26:01 reported to you, this CSFB number, and also the board

11 10:26:05 was told about various other potential values.

12 10:26:11 MR. BASKIN: Q. And who told that to the

13 10:26:12 board, sir?

14 10:26:14 A It would have been the deal team, which would

15 10:26:16 be David Drummond.

16 10:26:17 Q And what potential valuations do you recall

17 10:26:20 Mr. Drummond communicating to the board?

18 10:26:21 A I don't recall.

19 10:26:21 MR. MANCINI: Objection to form.

20 10:26:22 THE WITNESS: I don't recall the specific

21 10:26:23 numbers.

22 10:26:23 But as you previously identified, the CSFB

23 10:26:26 people had a number that was [REDACTED] or something

24 10:26:29 like that. So there were many numbers presented.

SCHMIDT, ERIC

1 10:26:34 MR. BASKIN: Q. And do you recall whether

2 10:26:36 Mr. Drummond's various numbers were reduced to writing

3 10:26:42 for the board or were they only communicated orally?

4 10:26:44 MR. MANCINI: Objection to form; objection to

5 10:26:46 the characterization of the testimony.

6 10:26:46 THE WITNESS: I have no recollection of how

7 10:26:48 they were communicated, but certainly verbally at a

8 10:26:53 minimum.

9 10:26:54 MR. BASKIN: Q. Now, you are aware, I

10 10:26:56 assume, that the acquisition agreement contains an

11 10:27:03 indemnification provision relating to copyright

12 10:27:06 lawsuits?

13 10:27:06 MR. MANCINI: Objection; lacks foundation.

14 10:27:08 THE WITNESS: I am aware of what I'm going to

15 10:27:14 call a holdback. I don't know the details of exactly

16 10:27:19 the terms of the holdback, but it is my understanding

17 10:27:22 that it includes areas of copyright.

18 10:27:25 MR. BASKIN: Q. And was that discussed by

19 10:27:29 the board in and around October 9, 2006?

20 10:27:32 A Yes.

21 10:27:32 MR. MANCINI: Objection to form.

22 10:27:33 THE WITNESS: Yes.

23 10:27:33 MR. BASKIN: Q. And do you remember that

24 10:27:34 discussion, sir?

1 SCHMIDT, ERIC

2 10:27:35 MR. MANCINI: Objection to form.

3 10:27:36 THE WITNESS: No.

4 10:27:39 MR. BASKIN: Q. Was it a factor in your

5 10:27:45 mind, in recommending the transaction, that there was

6 10:27:47 a holdback provision to protect Google in the event of

7 10:27:52 copyright infringement lawsuits?

8 10:27:53 MR. MANCINI: Objection to form; and

9 10:27:54 objection to the extent it seeks communications from

10 10:27:58 counsel, to which I instruct the witness not to

11 10:28:00 answer.

12 10:28:00 THE WITNESS: It is common for us to have a

13 10:28:02 holdback, and this holdback was -- sorry. Let me say

14 10:28:10 it more concretely.

15 10:28:11 It is -- when we do -- we do loss of

16 10:28:15 acquisitions, it is common to have a holdback for

17 10:28:17 legal issues, surprises and what have you.

18 10:28:23 My judgment was this holdback was sort of in

19 10:28:26 the ballpark, and that's the level of conversation

20 10:28:28 that I recall.

21 10:28:29 MR. BASKIN: Q. Now, give me one second,

22 10:28:50 sir. I want to collect my thoughts, because we may be

23 10:28:52 able to jump ahead a little bit.

24 10:28:55 A Sure.

25 10:29:02 THE WITNESS: May I give this back to you?

SCHMIDT, ERIC

1 10:29:04 MR. MANCINI: Yes.

2 10:29:34 MR. BASKIN: Q. Sir, if I wanted to --

3 10:29:38 strike that.

4 10:29:39 Is -- is -- are you aware of any e-mail or

5 10:29:46 memorandum that set forth your position that YouTube

6 10:29:57 was worth [REDACTED] and not \$1.65 billion?

7 10:30:03 MR. MANCINI: Objection to form; objection,

8 10:30:05 lacks foundation.

9 10:30:07 THE WITNESS: I'm not -- there may be --

10 10:30:10 there may be one. The reason I remember the [REDACTED]

11 10:30:17 is that in our first conversations about the value,

12 10:30:22 that was sort of where my judgment came to. So I may

13 10:30:26 have written that in an e-mail.

14 10:30:27 MR. BASKIN: Q. And would that be one of the

15 10:30:29 e-mails that were not preserved in and around

16 10:30:34 October/November 2006?

17 10:30:34 MR. MANCINI: Objection; lacks foundation.

18 10:30:39 THE WITNESS: Again, be -- because such an

19 10:30:42 e-mail would have gone to somebody who did preserve

20 10:30:45 all their e-mails for 30 years, it -- if there were

21 10:30:48 such an e-mail, it would have shown up.

22 10:30:50 MR. BASKIN: Q. And have you seen that

23 10:30:52 e-mail with your own eyes?

24 10:30:54 MR. MANCINI: Objection; calls for

1 SCHMIDT, ERIC

2 10:40:51 (Document marked Schmidt Exhibit 7

3 10:40:51 for identification.)

4 10:40:51 MR. BASKIN: Q. Who is Mr. Eun, Mr. Schmidt?

5 10:40:52 A I assume you're referring to David Eun at UM?

6 10:40:58 Q Correct.

7 10:41:02 Who is he?

8 10:41:03 A An executive that we hired from Time Warner

9 10:41:05 who was doing media -- media partnerships. He -- he

10 10:41:13 became Jennifer Feikin's boss.

11 10:41:17 Q Was he, in the pecking order of things,

12 10:41:19 basically the senior executive dealing with

13 10:41:23 partnerships with content providers?

14 10:41:25 MR. MANCINI: Objection to form.

15 10:41:26 THE WITNESS: As I recall in the org chart,

16 10:41:31 he did content or media partnerships reporting, I

17 10:41:38 think, to Omid Kordestani, who was responsible for

18 10:41:41 overall partnerships.

19 10:41:43 MR. BASKIN: Okay. Fair enough.

20 10:41:44 Q Now, let me hand -- hand you Exhibit 7.

21 10:42:06 A Okay.

22 10:42:12 Q And Mister --

23 10:42:13 A What would -- what would you like me to focus

24 10:42:16 on?

25 10:42:16 Q Well, first, would it be fair to say that you

SCHMIDT, ERIC

1 10:42:24 sent this e-mail and the chain that follows it --
2 10:42:30 strike that.
3
4 10:42:30 Is it fair to say the Eric Schmidt from whom
5 10:42:34 this e-mail was sent is you?
6 10:42:35 A That is correct.
7 10:42:36 Q And Mr. Kordestani, the cc, is the gentleman
8 10:42:40 you referred to a few seconds ago as Mr. Eun's direct
9 10:42:45 report; correct?
10 10:42:46 A That is correct.
11 10:42:46 Q And going down to Mr. Eun's e-mail, that
12 10:42:55 e-mail was sent to you in and around May 12th, 2006;
13 10:42:59 right, sir?
14 10:43:00 A Yes.
15 10:43:00 Q And that e-mail was sent to you prior to
16 10:43:02 something called the Video GPS; correct?
17 10:43:08 A That's correct.
18 10:43:08 Q And am I correct that GPS is a -- basically,
19 10:43:16 a quarterly review of product lines within Google that
20 10:43:16 you --
21 10:43:23 A No.
22 10:43:23 MR. MANCINI: Objection; lacks foundation.
23 10:43:24 THE WITNESS: No.
24 10:43:24 MR. BASKIN: Q. What was the Video GPS then?
25 10:43:27 A Well, GPS stands for Google product strategy,

SCHMIDT, ERIC

1 10:43:30 and it's a series of meetings that occur on typically
2 10:43:35 Tuesdays on a rotating basis. And Video GPS would
3 10:43:39 have been a review of the video -- Google Video
4 10:43:43 product of some kind.
5
6 10:43:47 And I would read this as -- I read -- I read
7 10:43:52 this e-mail as he's briefing me ahead of the meeting.
8 10:44:00 Q And I take it you did in fact attend the
9 10:44:05 Video GPS, to your recollection?
10 10:44:06 A I normally attend them.
11 10:44:08 Q And in addition to you, would the executive
12 10:44:11 management committee of the company attend GPS
13 10:44:16 meetings?
14 10:44:16 MR. MANCINI: Objection; lacks foundation.
15 10:44:18 THE WITNESS: Approximately half of the
16 10:44:19 executives -- senior executives do, yes.
17 10:44:21 MR. BASKIN: Q. So would Mr. Kordestani have
18 10:44:23 attended in the ordinary course?
19 10:44:25 A Normally not.
20 10:44:27 Q Since this fell within his jurisdiction, is
21 10:44:30 it likely he attended?
22 10:44:31 MR. MANCINI: Objection to form.
23 10:44:34 THE WITNESS: He would have to tell you, but
24 10:44:37 it's again un -- I would be speculating to know -- to
25 10:44:39 know that. Again, normally Omid is not in the

1 SCHMIDT, ERIC

2 10:44:42 meetings. Normally I am in the meetings.

3 10:44:43 MR. BASKIN: Q. What about Mr. Brin?

4 10:44:46 MR. MANCINI: Objection; lacks foundation.

5 10:44:48 THE WITNESS: Some percentage of the time.

6 10:44:51 MR. BASKIN: Q. Do you recall if Mr. Brin

7 10:44:53 attended --

8 10:44:54 A I do --

9 10:44:54 Q -- the Video GPS?

10 10:44:56 A -- I do not. I do not.

11 10:44:57 Q And what about Mr. Page?

12 10:45:02 A Again, no recollection.

13 10:45:03 Q In the ordinary course, does he tend to

14 10:45:08 attend Video GPS meetings?

15 10:45:09 MR. MANCINI: Objection to form.

16 10:45:13 THE WITNESS: Larry more than Sergey. But

17 10:45:17 their meetings -- the GPS's are built around me, so

18 10:45:20 the normal course of business, I'm there and the

19 10:45:23 others may or may not be there.

20 10:45:26 MR. BASKIN: Okay.

21 10:45:28 Q Now, you said -- I think you said that you

22 10:45:30 read Mr. Eun's -- am I pronouncing that right, by the

23 10:45:35 way?

24 10:45:36 A That's correct.

25 10:45:37 Q So it's E-U-N.

1 SCHMIDT, ERIC

2 10:45:38 You read Mr. Eun's e-mail as preparatory to

3 10:45:42 the Video GPS; correct?

4 10:45:45 A That is correct.

5 10:45:46 Q Now, he tells you that -- strike that.

6 10:46:00 Do you read this e-mail as focusing on the

7 10:46:03 issue of how to beat YouTube?

8 10:46:05 MR. MANCINI: Objection to the

9 10:46:06 characterization of the document.

10 10:46:07 THE WITNESS: Well, I haven't read the whole

11 10:46:12 e-mail, but it starts by saying, "We are preparing in

12 10:46:18 preparation for the GPS how we beat YouTube in the

13 10:46:23 short term and how we win over time."

14 10:46:25 So that would be consistent with your

15 10:46:25 assertion.

16 10:46:27 MR. BASKIN: Q. And do you recall that one

17 10:46:28 of the topics being discussed as a way of beating

18 10:46:32 YouTube was whether Google Video should relax

19 10:46:36 enforcement of our copyright policies in an effort to

20 10:46:41 stimulate traffic growth?

21 10:46:43 MR. MANCINI: Objection to the

22 10:46:43 characterization of the document.

23 10:46:45 THE WITNESS: You would have to point me to a

24 10:46:47 paragraph or a sentence here.

25 10:46:49 MR. BASKIN: Q. Well, first, do you -- do

SCHMIDT, ERIC

1 10:46:51 you recall this e-mail?

2 10:46:52 A I do not.

3 10:46:52 Q Have you seen this e-mail prior to today, to

4 10:46:55 the best of your recollection?

5 10:46:57 A I think --

6 10:46:58 MR. MANCINI: Objection.

7 10:46:58 THE WITNESS: Go ahead.

8 10:46:59 MR. MANCINI: Objection to the extent it

9 10:47:01 seeks communications with counsel.

10 10:47:02 MR. BASKIN: Okay. Fair enough.

11 10:47:03 Q Now, so let's go to the e-mail, sir, at the

12 10:47:05 bottom. You see it says -- the paragraph that reads

13 10:47:11 as follows, let me point it out to you, "there is a

14 10:47:17 chance of pursuing short-term goals with such

15 10:47:21 zealousness that we develop blind spots that could

16 10:47:25 hurt us later. For example, there was heated debate

17 10:47:31 about whether we should relax enforcement of our

18 10:47:34 copyright policies in an effort to stimulate traffic

19 10:47:38 growth, despite the inevitable damage it would cause

20 10:47:43 to relationships with content owners."

21 10:47:48 Do you see that, sir?

22 10:47:50 A I do see that paragraph.

23 10:47:51 Q Do you remember reading that paragraph in and

24 10:47:53 around May 2006?

1 SCHMIDT, ERIC

2 10:47:55 MR. MANCINI: Objection; lacks foundation.

3 10:47:56 THE WITNESS: As I indicated, I do not recall

4 10:47:58 the e-mail.

5 10:47:58 MR. BASKIN: Q. Do you recall being party to

6 10:48:00 a discussion as to whether Google Video should relax

7 10:48:04 its copyright policies --

8 10:48:05 MR. MANCINI: Objection to the extent it

9 10:48:06 seeks a leading conclusion.

10 10:48:06 MR. BASKIN: Excuse me. Excuse me. Let me

11 10:48:08 finish. Then you may register your objection.

12 10:48:11 Q Do you recall whether -- strike that.

13 10:48:17 Do you recall being involved in discussions

14 10:48:20 in and around May 2006 on the topic of whether Google

15 10:48:29 Video should relax enforcement of its copyright

16 10:48:31 policies in an effort to stimulate traffic growth?

17 10:48:34 MR. MANCINI: Objection to form; and

18 10:48:35 objection to the extent it seeks communications with

19 10:48:37 counsel, to which I instruct the witness not to

20 10:48:39 answer.

21 10:48:39 THE WITNESS: I only have a vague

22 10:48:43 recollection of their -- as I testified previously, I

23 10:48:48 have only a vague recollection of us talking about the

24 10:48:51 difference between their policies, "their" being

25 10:48:55 YouTube's and ours.

SCHMIDT, ERIC

1 10:48:57 MR. BASKIN: Q. So you do not have a
2 10:48:58 recollection of being party to a discussion about
3 10:49:01 whether Google Video should relax its policies to
4 10:49:03 comport with YouTube's?
5 10:49:05 MR. MANCINI: Same objections.
6 10:49:07 THE WITNESS: And again, I have no specific
7 10:49:08 recollection in that area.
8 10:49:11 MR. BASKIN: Q. Now, in the next paragraph,
9 10:49:16 Mr. Eun says, "I think we should beat YouTube - and
10 10:49:25 all competitors - but not at all costs. A large part
11 10:49:31 of their traffic is from pirated content."
12 10:49:34 Do you see that, sir?
13 10:49:35 A I see that.
14 10:49:36 Q Does -- do you recall reading that sentence
15 10:49:38 in and around May of 2006?
16 10:49:39 MR. MANCINI: Objection; lacks foundation.
17 10:49:40 THE WITNESS: As I previously said, I don't
18 10:49:43 recall this e-mail and, therefore, I don't recall this
19 10:49:44 sentence.
20 10:49:45 MR. BASKIN: Q. Do you recall a conversation
21 10:49:46 with Mr. Eun on the topic that a large part of
22 10:49:54 YouTube's traffic is from pirated content?
23 10:49:57 MR. MANCINI: Objection to form; lacks
24 10:49:59 foundation.

SCHMIDT, ERIC

1 10:49:59 THE WITNESS: I do not.

2 10:50:00 MR. BASKIN: Q. Do you recall any such

3 10:50:01 discussion among the -- in the EMC meetings?

4 10:50:04 MR. MANCINI: Objection; lacks foundation;

5 10:50:06 objection to form.

6 10:50:08 THE WITNESS: I'm assuming you mean EMG,

7 10:50:10 which was the Executive Management Group, and I have

8 10:50:14 no such recollection.

9 10:50:15 MR. BASKIN: Q. Do you recall ever

10 10:50:16 discussing the concept that a large part of YouTube's

11 10:50:19 traffic is from pirated content with Mr. Page?

12 10:50:24 MR. MANCINI: Objection to form. Objection;

13 10:50:26 lacks foundation.

14 10:50:27 THE WITNESS: Again, same answer, no

15 10:50:29 recollection.

16 10:50:29 MR. BASKIN: Q. And the same answer with

17 10:50:31 respect to Mr. Brin, I take it?

18 10:50:33 THE WITNESS: That --

19 10:50:33 MR. MANCINI: Same objections.

20 10:50:34 THE WITNESS: -- that is correct.

21 10:50:35 MR. BASKIN: Q. Now, in the course of this

22 10:50:36 same e-mail, Mr. Eun says in the next sentence, "When

23 10:50:44 we compare our traffic numbers to theirs, we should

24 10:50:48 acknowledge that we are comparing our 'legal traffic'

1 SCHMIDT, ERIC

2 10:50:55 to their mix of traffic from legal and illegal

3 10:50:58 content."

4 10:50:59 Do you see that, sir?

5 10:51:01 A Uh-huh. I do.

6 10:51:01 Q I take it you have no recollection of reading

7 10:51:04 that sentence in and around May of 2006?

8 10:51:05 MR. MANCINI: Objection; lacks foundation.

9 10:51:07 THE WITNESS: Again, I previously answered I

10 10:51:11 don't recall any -- any -- since I don't recall the

11 10:51:12 e-mail, I also don't recall any of the specific

12 10:51:13 sentences in the e-mail.

13 10:51:14 MR. BASKIN: Q. And the same answers that

14 10:51:15 you don't recall conversations with Mr. Eun, or among

15 10:51:18 the EMG, or with Mr. Page, or with Mr. Brin with

16 10:51:21 respect to that -- that communication; correct?

17 10:51:23 MR. MANCINI: Same objections as prior.

18 10:51:25 THE WITNESS: That is correct.

19 10:51:26 MR. BASKIN: Q. Now, he then proceeds to

20 10:51:32 say, "One senior media executive told me they are

21 10:51:37 monitoring YouTube very closely and refer to them as a

22 10:51:41 video Grokster."

23 10:51:42 Do you see that?

24 10:51:42 A I do.

25 10:51:43 Q Now, you knew what was meant by Grokster at

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1 10:51:48 the time; correct?

2 10:51:48 MR. MANCINI: Objection; lacks foundation.

3 10:51:50 Objection to form.

4 10:51:55 THE WITNESS: Not really.

5 10:51:59 MR. BASKIN: Q. You were not aware, in May

6 10:52:00 of 2006, that Grokster was a company that the Supreme

7 10:52:07 Court of the United States had concluded had engaged

8 10:52:12 in illegal copyright violation practices?

9 10:52:15 MR. MANCINI: Objection; lacks foundation;

10 10:52:16 and objection to form.

11 10:52:17 THE WITNESS: I was not aware. If what you

12 10:52:20 said is true, I was not aware of that. He may have

13 10:52:26 meant -- I would be guessing what he meant.

14 10:52:29 MR. MANCINI: So I don't want the witness to

15 10:52:31 speculate.

16 10:52:31 THE WITNESS: So...

17 10:52:33 MR. BASKIN: Q. Now, I take the same answers

18 10:52:34 as my -- as the earlier questions. You've never

19 10:52:37 discussed this with --

20 10:52:38 A Sure.

21 10:52:38 Q -- any human being that you can recall?

22 10:52:41 A Right.

23 10:52:41 Q And you don't recall discussing it with

24 10:52:43 Mr. Eun; correct?

1 SCHMIDT, ERIC

2 10:52:44 MR. MANCINI: Same objections as prior.

3 10:52:45 THE WITNESS: That is correct. You -- go

4 10:52:47 ahead.

5 10:52:47 MR. BASKIN: Now, you're moaning. Do you

6 10:52:59 want a break? Should we go off the record for five,

7 10:53:04 ten minutes?

8 10:53:05 MR. MANCINI: Sure.

9 10:53:06 THE VIDEOGRAPHER: This is the end of

10 10:53:09 videotape and DVD number one in the deposition of Eric

11 10:53:13 Schmidt on May 6th, 2009. The time is 10:53 a.m.

12 10:53:20 We're off the record.

13 10:53:33 (Recess taken.)

14 11:10:12 THE VIDEOGRAPHER: This is the beginning of

15 11:10:13 DVD number two in the continuing deposition of Eric

16 11:10:17 Schmidt on May 6th, 2009. The time is 11:09 a.m.

17 11:10:25 We're back on the record.

18 11:10:27 MR. BASKIN: Q. Mr. Schmidt, Schmidt 7, the

19 11:10:38 memo from Mr. Eun to you, is May of 2006, and then

20 11:10:46 five months later, by my count, you bought YouTube.

21 11:10:51 You don't recall discussing the Eun memo with

22 11:10:54 anyone, not with Mr. Kordestani or anyone else?

23 11:10:58 MR. MANCINI: Objection; lacks foundation;

24 11:11:00 asked and answered.

25 11:11:00 MR. BASKIN: Q. Is that correct?

1 SCHMIDT, ERIC

2 11:12:17 (Document marked Schmidt Exhibit 8

3 11:12:27 for identification.)

4 11:12:27 MS. KOHLMANN: 8.

5 11:12:37 MR. MANCINI: Watch your soda when you reach.

6 11:12:39 MR. BASKIN: We may not have enough, guys.

7 11:12:44 You may have to share. Oh, okay. Here's another one.

8 11:13:06 Q Now, I note, sir, that you are not -- on the

9 11:13:09 cover page you are not a recipient of this, but you'll

10 11:13:15 see the cover page says that this is the final content

11 11:13:21 team pages for Video GPS; do you see that, sir?

12 11:13:25 A I do see that, yes.

13 11:13:26 Q And is this the form in which you would

14 11:13:29 expect a deck to be communicated to you at GPS

15 11:13:32 meetings?

16 11:13:32 MR. MANCINI: Objection to form; lacks

17 11:13:34 foundation.

18 11:13:34 THE WITNESS: In general terms, yes.

19 11:13:38 MR. BASKIN: Okay.

20 11:13:40 Q And can you identify for us specifically

21 11:13:45 whether Schmidt Exhibit 8 was seen by you in and

22 11:13:56 around May of 2006?

23 11:13:58 A I don't recall specifically.

24 11:13:59 Q You don't recall the document specifically?

25 11:14:01 A No.

SCHMIDT, ERIC

1 11:14:02 Q Now, I just want to walk you through some
2 11:14:07 features of the documents, see if this flags your
3 11:14:11 memory about having certain information communicated
4 11:14:13 to you by the Google Video team.
5
6 11:14:18 Turn, for example -- and I think we're going
7 11:14:23 to have to use Bates stamps here, but if you see
8 11:14:26 there's a 496620.
9
10 11:14:29 A Okay. I do.
11
12 11:14:40 Q And if you read 496620, do you have any
13 11:14:50 recollection of seeing that page prior to today?
14
15 11:14:52 MR. MANCINI: Objection; lacks foundation.
16
17 11:14:55 I just want to note that this document from
18 11:14:57 its obvious gaps clearly appears to be a draft; and
19 11:15:00 objection to form.
20
21 11:15:02 THE WITNESS: I have no recollection of this
22 11:15:05 document, and I also have no recollection of this
23 11:15:07 specific page.
24
25 11:15:08 MR. BASKIN: Q. So I take it that you have
26 11:15:12 no -- do you have a recollection -- strike that.
27
28 11:15:15 Do you have a recollection of the Google
29 11:15:20 Video team communicating to you in May of 2006 that,
30 11:15:29 "Premium content owners acknowledge YouTube can
31 11:15:34 provide some level of promotion, but mainly perceive
32 11:15:39 YouTube as trafficking mostly illegal content. It's a

SCHMIDT, ERIC

1 11:15:45 video Grokster."

2 11:15:47 Do you see that, sir?

3 11:15:48 MR. MANCINI: Object; objection to form and

4 11:15:49 lacks foundation.

5 11:15:51 MR. BASKIN: Q. Do you recall the Google

6 11:15:55 Video team communicating to you in May of 2006 that

7 11:16:00 sentence, sir?

8 11:16:01 MR. MANCINI: Same objections.

9 11:16:01 THE WITNESS: I do not.

10 11:16:03 MR. BASKIN: Q. Do you recall -- if we turn

11 11:16:11 to the page Bates stamped 627, do you see a page

12 11:16:27 that's called "How do we win" on the top of it?

13 11:16:31 A I do.

14 11:16:31 Q And do you see a section three bold sentences

15 11:16:38 down that says, "Google Video can be best partner to

16 11:16:43 content owners."

17 11:16:44 Do you see that, sir?

18 11:16:45 A I do.

19 11:16:46 MR. MANCINI: Objection; the document speaks

20 11:16:48 for itself.

21 11:16:49 THE WITNESS: I do see that.

22 11:16:50 MR. BASKIN: Q. And do you see the Google

23 11:16:53 Video team communicating to you that, "Google Video

24 11:16:58 should respect copyrights of premium content owners

1 SCHMIDT, ERIC

2 11:17:03 (we should beat YouTube by improving features and user

3 11:17:09 experience, not being a rogue enabler of content

4 11:17:15 theft)."

5 11:17:16 Do you see that, sir?

6 11:17:16 MR. MANCINI: Objection; lacks foundation;

7 11:17:17 and continue the objection on the use of this document

8 11:17:19 which appears to be an obvious draft.

9 11:17:21 THE WITNESS: You said communicate to me.

10 11:17:26 It's not obvious to me that this was -- as I

11 11:17:29 indicated, I have no recollection of this document, so

12 11:17:32 I don't know that I am the target for this document.

13 11:17:34 But I see the sentence that you quoted,

14 11:17:37 absolutely.

15 11:17:37 MR. BASKIN: Q. Well, do you remember the

16 11:17:42 Google Video team expressing the sentiment set forth

17 11:17:46 in the -- in that sentence --

18 11:17:47 MR. MANCINI: Objection; lacks foundation.

19 11:17:48 MR. BASKIN: -- found -- found on Schmidt 8?

20 11:17:51 THE WITNESS: As I indicated, I don't recall.

21 11:17:53 MR. MANCINI: Same objections.

22 11:17:55 THE WITNESS: I'm sorry.

23 11:17:57 MR. BASKIN: How about --

24 11:17:58 THE WITNESS: I forgot about the --

25 11:17:58 MR. BASKIN: Q. Let's turn to 6333 of the

SCHMIDT, ERIC

1 11:18:03 last Bates stamp numbers, and are you on a page that

2 11:18:29 says, "How is Google Video doing?"

3 11:18:33 A I am.

4 11:18:33 Q Do you recall seeing that page, sir, prior to

5 11:18:35 today?

6 11:18:35 A Again, you can ask me on every page. I don't

7 11:18:37 recall the document and, therefore, I don't recall any

8 11:18:40 of the specific pages. I, therefore, do not recall

9 11:18:43 this page.

10 11:18:46 Q And do you recall the Google Video team

11 11:18:49 saying to you during the course of the GPS session

12 11:18:56 that, "YouTube's content is all free, and much of it

13 11:19:03 is highly sought-after pirated clips"?

14 11:19:09 MR. MANCINI: Objection.

15 11:19:09 MR. BASKIN: Close quote.

16 11:19:10 MR. MANCINI: Objection; lacks foundation;

17 11:19:11 and same objections -- continuing objections to the

18 11:19:13 use of this document.

19 11:19:15 MR. BASKIN: Q. Do you remember, sir?

20 11:19:16 A No recollection.

21 11:19:17 Q And let me do one more and see if this jars

22 11:19:21 your recollection.

23 11:19:22 A Okay.

24 11:19:27 Q If you turn to Bates stamp 637, being the

SCHMIDT, ERIC

1 11:19:39 Bates stamp number, there's a page, "Important points
2 11:19:56 to make somewhere in the deck"; do you have that page,
3 11:20:00 sir?
4
5 11:20:00 A I do.
6 11:20:01 Q Do you recall the Google Video team
7 11:20:02 communicating to you during the course of the GPS
8 11:20:08 that, "YouTube's business model is completely
9 11:20:11 sustained by pirated content. They are at the mercy
10 11:20:17 of companies not responding with DMCA requests."
11 11:20:24 MR. MANCINI: Objection.
12 11:20:24 MR. BASKIN: Q. Do you see that, sir?
13 11:20:25 MR. MANCINI: Objection; lacks foundation;
14 11:20:26 and continuing objection to the fact that this is
15 11:20:28 obviously a draft document, as made evident by the
16 11:20:32 title of this slide.
17 11:20:33 MR. BASKIN: Q. Do you recall, sir, having
18 11:20:35 that fact communicated to you by the Google Video team
19 11:20:37 during the course of the GPS?
20 11:20:38 MR. MANCINI: Same objections.
21 11:20:39 THE WITNESS: No recollection.
22 11:20:42 MR. BASKIN: Q. Now, I take it that you do
23 11:21:02 not recall having discussions with the Executive
24 11:21:23 Management Group -- is it group or committee?
25 11:21:26 A Group, EMG.

SCHMIDT, ERIC

1 11:21:27 Q That you not -- I take it you do not recall

2 11:21:32 discussing with the EMG the points set forth on

3 11:21:39 Schmidt 8 that we've -- I referred you to a few

4 11:21:42 minutes ago?

5 11:21:43 MR. MANCINI: Same objections.

6 11:21:44 THE WITNESS: I'm sorry. Which? Are you

7 11:21:45 talking about the whole document?

8 11:21:47 MR. BASKIN: Q. No. The -- the four or five

9 11:21:49 references to YouTube being, you know, wholly

10 11:21:53 sustained by pirated content --

11 11:21:56 A Yes, I see it, yes.

12 11:21:56 Q -- being a rogue enabler --

13 11:21:58 A Sure.

14 11:21:59 Q -- of copyright violations, being a video

15 11:22:02 Grokster.

16 11:22:02 Were any of those sentiments communicated by

17 11:22:05 you or discussed by you with members of the EMG?

18 11:22:08 MR. MANCINI: Same objections as prior; and

19 11:22:09 objection to the characterization of the contents of

20 11:22:12 this document.

21 11:22:12 THE WITNESS: Again, I have no recollection

22 11:22:13 of that.

23 11:22:14 MR. BASKIN: Q. No recollection of

24 11:22:16 discussing it with Mr. Brin?

SCHMIDT, ERIC

1 11:22:18 A That is correct.
2
3 11:22:19 Q Mr. Page?
4
5 11:22:20 A That is correct.
6
7 11:22:20 Q Mr. Kordestani?
8
9 11:22:21 A That is correct.
10
11 11:22:24 Q Now --
12
13 11:22:25 MR. MANCINI: I also want to object to the
14 extent that Mr. Drummond, I believe, is on EMG. And
15 11:22:27 if communications took place with him, I instruct the
16 11:22:31 witness not to answer on the grounds of privilege.
17
18 11:22:33
19
20 11:22:36 MR. BASKIN: Q. Even if you don't remember
21
22 11:22:41 this particular document, sir, do you remember a
23
24 11:22:45 similar discussion of YouTube's practices at the GPS?
25
26
27 11:22:49 MR. MANCINI: Same objections.
28
29 11:22:52 THE WITNESS: Well, unfortunately, I don't
30
31 11:22:55 recall the GPS. Therefore, I don't recall what
32
33 11:22:59 happened at the GPS, and I don't recall the specific
34
35 11:23:01 discussion at the GPS.
36
37 11:23:02 MR. BASKIN: Q. Now, how about between May
38
39 11:23:27 of 2006 and October 2006, when you bought YouTube? Do
40
41 11:23:34 you recall having discussions of these various points
42
43 11:23:40 made by the Video GPS folks to the EMG?
44
45 11:23:46 MR. MANCINI: Same objections; and object on
46
47 11:23:49 the basis that it lacks foundation and may call for a

1 SCHMIDT, ERIC

2 11:23:52 communication with counsel.

3 11:23:53 THE WITNESS: Again, no -- no recollection.

4 11:23:56 MR. BASKIN: Q. And no recollect -- I'm

5 11:23:57 sorry?

6 11:23:59 A No recollection of anything specific.

7 11:24:00 Q And no recollection of discussing it with

8 11:24:03 Mr. Brin; correct?

9 11:24:04 A That is correct.

10 11:24:04 MR. MANCINI: Same objections.

11 11:24:05 MR. BASKIN: Q. Or Mr. Page; correct?

12 11:24:07 A That's correct.

13 11:24:07 MR. MANCINI: Lacks foundation.

14 11:24:08 MR. BASKIN: Q. Or Mr. Kordestani; correct?

15 11:24:10 MR. MANCINI: Lacks foundation.

16 11:24:11 THE WITNESS: That is correct.

17 11:24:13 MR. BASKIN: Q. Now, am I right, sir, that

18 11:24:22 two months after the -- after the Eun memo and after

19 11:24:29 the GPS meeting, the Video GPS meeting, you instructed

20 11:24:36 Mr. Drummond to try to buy 100 percent of YouTube?

21 11:24:40 MR. MANCINI: Objection; mischaracterizes

22 11:24:42 testimony; lacks foundation.

23 11:24:48 THE WITNESS: Sorry.

24 11:24:49 MR. BASKIN: Q. Well, let me do it a

25 11:24:50 different way.

100

SCHMIDT, ERIC

1 11:27:30 characterization of the document; lacks foundation.

2 11:27:32 THE WITNESS: Well, it's materially false

3 11:27:36 that that's -- what you said is true because he voted

4 11:27:39 for the acquisition.

5 11:27:40 MR. BASKIN: Q. I'm asking at any time, did

6 11:27:42 he oppose it?

7 11:27:44 MR. MANCINI: Same objections.

8 11:27:45 THE WITNESS: This e-mail implies that he

9 11:27:48 did, that he was opposed to it as of July or whatever.

10 11:27:51 MR. BASKIN: Q. But you have no recollection

11 11:27:52 of it?

12 11:27:53 A No.

13 11:27:53 Q Now, do you recall at the GPS whether

14 11:28:03 Mr. Brin expressly addressed the issue of whether

15 11:28:12 Google Video should compete with YouTube by relaxing

16 11:28:17 its copyright enforcement policies?

17 11:28:19 MR. MANCINI: Objection; lacks foundation;

18 11:28:20 and objection, calls for legal conclusions.

19 11:28:21 THE WITNESS: I have no recollection of

20 11:28:23 Sergey's views. I don't recall the GPS meeting. I

21 11:28:28 don't recall whether he was there, and I don't recall

22 11:28:30 his views.

23 11:28:30 MR. BASKIN: Q. Do you know the phrase

24 11:28:35 "something is not Googley"? Does that mean something

1 11:28:39 to you?

2 11:28:40 THE WITNESS: Well, I --

3 11:28:40 MR. MANCINI: Objection to form.

4 11:28:41 THE WITNESS: -- I've certainly heard it,

5 11:28:44 yeah.

6 11:28:44 MR. BASKIN: Q. And that means, in normal

7 11:28:45 language, it's not the right thing to do, or it's not

8 11:28:49 right, or something like that? Is that what "not

9 11:28:51 Googley" means to you?

10 11:28:52 MR. MANCINI: Objection; lacks foundation.

11 11:28:53 THE WITNESS: It's not a precise phrase.

12 11:28:55 It's used by people who want to criticize some other

13 11:28:58 activity.

14 11:29:01 MR. BASKIN: Q. And do you specifically

15 11:29:04 recall whether, at the Video GPS meeting in and around

16 11:29:13 May 2006, whether Mr. Brin made the statement that,

17 11:29:21 "Competing against YouTube by relaxing copyright

18 11:29:27 enforcement practices is not a Googley thing to do"?

19 11:29:32 MR. MANCINI: Again, objection; lacks

20 11:29:34 foundation; and objection to form; and objection to

21 11:29:35 the extent it seeks a legal conclusion.

22 11:29:37 THE WITNESS: I have no recollection of -- of

23 11:29:41 such an assertion.

24 11:29:42 MR. BASKIN: Q. Now, do you recall when the

SCHMIDT, ERIC

1 11:30:06 EMG -- strike that.

2 11:30:11 I take it the EMG was in agreement that

3 11:30:16 Google should in fact purchase YouTube?

4 11:30:19 A At what point?

5 11:30:22 Q Prior to submitting it to the board.

6 11:30:25 A Yes. As of -- as -- as of the submission to

7 11:30:27 the board, the management team had agreed to promote

8 11:30:30 it to the board.

9 11:30:31 Q And do you recall -- recall ever having a

10 11:30:34 discussion among the management team of Google

11 11:30:42 concerning the various statements about YouTube being

12 11:30:47 a video Grokster or a rogue enabler of copyright

13 11:30:52 violations or being sustained by pirated clips?

14 11:30:57 Do you recall those topics being discussed by

15 11:30:59 the EMG?

16 11:31:00 MR. MANCINI: Objection to form; and

17 11:31:02 objection to the extent it seeks a legal conclusion

18 11:31:05 and communications with counsel, to which I instruct

19 11:31:07 the witness not to answer.

20 11:31:08 THE WITNESS: No recollection.

21 11:31:13 MR. BASKIN: Q. Never discussed it, as far

22 11:31:15 as you recall?

23 11:31:15 MR. MANCINI: Same objections.

24 11:31:16 THE WITNESS: Again, as I previously

1 11:38:21 A The subsequent piece of work, "a piece of
2 11:38:24 crap. /FC," that is the signature of Mr. Frank Cousak.
3
4 11:38:30 Q I see. Got it.
5 11:38:31 A Okay. Shall I continue with the other
6 11:38:34 e-mail? If you -- maybe I should just for
7 11:38:38 completeness --
8 11:38:38 Q Yeah, just --
9 11:38:38 A -- since you brought it up.
10 11:38:38 Q Okay.
11 11:38:42 A You'll notice that this is even more nested.
12 11:38:45 Do you see the two carets that is ">>23 the Digital
13 11:38:52 Millennium" --
14 11:38:52 Q Right.
15 11:38:52 A -- I wrote that one line.
16 11:38:55 The single carets, those little paren --
17 11:38:58 those little, again, greater than, greater than, "The
18 11:39:00 DMCA" --
19 11:39:01 Q Right.
20 11:39:02 A -- that was written by Chanmen Tang.
21 11:39:07 Q I see.
22 11:39:09 A Then the person who wrote a -- and
23 11:39:11 misspelled, unfortunately -- "an possibly even more
24 11:39:15 evil law which hasn't been yet passed is SSCA," that
25 11:39:18 was written by Lawrence Gonzalez.

SCHMIDT, ERIC

1 11:39:23 If you look below it, you see the little
2 11:39:26 caret? It says "from." Then, "It would be a civil
3 11:39:29 offense to create," that's from the Wire.com website.
4
5 11:39:33 Q I see. Okay.
6 11:39:35 A So to be incredibly precise on these e-mails,
7 11:39:41 the only words that I wrote were "the Digital
8 11:39:44 Millennium Copyright Act."
9
10 11:39:47 Q I see. Got it. Okay.
11 11:39:54 Now, when Google purchased YouTube, did you
12 11:40:08 instruct Mr. Hurley and Mr. Chen that their primary
13 11:40:14 goal, at least immediate goal, was to grow the user
14 11:40:19 base and reach one billion views per day?
15 11:40:23 MR. MANCINI: Objection; lacks foundation.
16 11:40:24 THE WITNESS: I don't recall the very
17 11:40:26 specific goal.
18 11:40:27 MR. BASKIN: Q. Does it sound like generally
19 11:40:31 something you said to them, that their -- that their
20 11:40:35 primary objective should be to grow the user base?
21 11:40:38 A Our -- our policy from acquisition was to
22 11:40:40 grow the user base. That is correct.
23 11:40:43 Q And --
24 11:40:44 A I don't recall the specific numbers.
25 11:40:46 Q You don't recall that they should grow it to
26 11:40:48 playbacks of one billion a day?

SCHMIDT, ERIC

1 11:40:51 A I don't recall any specific numbers.

2 11:40:52 Q And in late February or early March of 2008,

3 11:41:16 did you shift your thinking and instruct Mr. Hurley

4 11:41:25 that he should now be rapidly redirecting his efforts

5 11:41:29 from user growth to monetization?

6 11:41:33 MR. MANCINI: Objection; lacks foundation;

7 11:41:34 and objection to form.

8 11:41:35 THE WITNESS: Remind me of the dates again.

9 11:41:37 MR. BASKIN: Q. Something in the vicinity of

10 11:41:41 late February, early March 2008.

11 11:41:44 A That's roughly correct.

12 11:41:47 Q And was this an actual meeting you had with

13 11:41:49 Mr. Hurley where you told him to redirect his efforts?

14 11:41:53 A I don't recall saying "redirect."

15 11:41:56 What I recall was to add revenue as a goal.

16 11:42:04 Q And let me show you, for example, what we'll

17 11:42:09 mark as Schmidt 12.

18 11:42:14 (Document marked Schmidt Exhibit 12

19 11:42:19 for identification.)

20 11:42:19 MR. BASKIN: This was marked during the

21 11:42:20 Hurley deposition as well, but I don't recall the

22 11:42:22 number.

23 11:42:56 Q You'll see, sir, that you are not a recipient

24 11:43:01 of this e-mail, and -- and no reason to believe you

SCHMIDT, ERIC

1 11:43:04 saw it, but it references in the second paragraph --

2 11:43:10 strike that.

3 11:43:10 You'll see Mr. Hurley is communicating to

4 11:43:13 some of his team, I think, and it says, "As you may

5 11:43:16 know, three weeks ago Eric" -- I assume that's you?

6 11:43:21 A I suppose.

7 11:43:22 Q -- "shifted his thinking on YouTube's focus.

8 11:43:26 So since that time, we have rapidly been redirecting

9 11:43:32 our efforts and resources from user growth to

10 11:43:34 monetization."

11 11:43:36 Do you see that?

12 11:43:36 MR. MANCINI: Objection to the use of a

13 11:43:39 document to which the witness is not copied.

14 11:43:40 THE WITNESS: I see the sentence, yes.

15 11:43:41 MR. BASKIN: Q. And does Mr. Hurley

16 11:43:46 accurately reflect the conversation you had with him

17 11:43:49 three weeks before March 14th, 2008?

18 11:43:51 MR. MANCINI: Same objection; and lacks

19 11:43:53 foundation.

20 11:43:53 THE WITNESS: As I indicated before, it is my

21 11:43:55 recollection that I told him to add revenue, not to

22 11:44:01 redirect.

23 11:44:01 MR. BASKIN: Okay.

24 11:44:03 Q And what -- what occurred during this time

1 SCHMIDT, ERIC

2 11:44:10 period that caused you to shift your thinking, as

3 11:44:17 Mr. Hurley refers to in an e-mail?

4 11:44:19 MR. MANCINI: Objection; lacks foundation;

5 11:44:20 and objection to form.

6 11:44:21 THE WITNESS: The -- at this point, we have

7 11:44:29 owned YouTube for a year and a half, and their revenue

8 11:44:35 performance had been poor, and I felt that they should

9 11:44:44 spend more time on it.

10 11:44:46 MR. BASKIN: Okay.

11 11:44:47 THE WITNESS: That's my recollection.

12 11:44:48 MR. BASKIN: Okay.

13 11:45:03 Q Did you discuss with Mr. Hurley, in the

14 11:45:05 course of that conversation, any steps that YouTube

15 11:45:10 should take in and around March of 2008 to achieve

16 11:45:18 greater monetization?

17 11:45:20 MR. MANCINI: Objection; lacks foundation;

18 11:45:21 and objection to form.

19 11:45:22 THE WITNESS: We -- we made an explicit

20 11:45:27 decision upon the acquisition of YouTube to operate it

21 11:45:30 quite independently. So I'm not -- I recall no such

22 11:45:37 direction from me to him on details.

23 11:45:43 MR. BASKIN: Okay.

24 11:45:44 Q What was the reason why you decided to

25 11:46:00 operate YouTube independently?

SCHMIDT, ERIC

1 11:46:05 A In my experience as an executive, when you
2 11:46:08 have strong founders, it's very important that they
3 11:46:12 feel that they have control over their company after
4 11:46:17 it's acquired.
5
6 11:46:19 Because of the location, which was San Bruno,
7 11:46:23 and because we thought the founders were very
8 11:46:27 talented, we made an explicit decision to not fold
9 11:46:30 YouTube's business operations into Google's.
10 11:46:34 In particular, to keep separate brand,
11 11:46:37 separate business activities, separate deals and
12 11:46:39 partnerships, because we thought that would create
13 11:46:42 more choices, more differentiation and fundamentally
14 11:46:47 retain the founders.
15 11:46:56 Q Okay. Now, are you familiar with a company
16 11:47:11 called Audio Magic? Have you ever heard that name
17 11:47:18 before?
18 11:47:18 MR. MANCINI: Objection to form.
19 11:47:21 MR. BASKIN: Q. I'm sorry. Sorry. My
20 11:47:24 mistake. Withdrawn.
21 11:47:26 A That's all right. I --
22 11:47:27 Q Withdrawn.
23 11:47:28 A Sorry.
24 11:47:28 Q How about Audible Magic?
25 11:47:30 A I have heard their name.

SCHMIDT, ERIC

1 11:48:32 MR. BASKIN: Q. Do you -- do you have a
2 11:48:33 recollection that YouTube had engaged a fingerprint
3 11:48:37 technology vendor prior to your acquisition?
4
5 11:48:39 MR. MANCINI: Same objections.
6 11:48:40 THE WITNESS: Only in very general terms.
7 11:48:42 MR. BASKIN: Q. Meaning you generally heard
8 11:48:45 that?
9 11:48:46 A When I say "general terms," I mean at some
10 11:48:49 point I'm sure somebody told me something like that,
11 11:48:52 but the specifics of the company, the details and so
12 11:48:56 forth, I don't recall.
13 11:48:57 Q I assume you never saw the license agreement
14 11:48:59 between YouTube and Audible Magic?
15 11:49:02 MR. MANCINI: Objection; lacks foundation;
16 11:49:04 objection to form.
17 11:49:05 THE WITNESS: If there is one, I have not
18 11:49:06 seen it.
19 11:49:07 MR. BASKIN: Okay.
20 11:49:08 Q And I assume you have -- no one discussed
21 11:49:11 with you the cost of the license, what it was
22 11:49:13 costing -- what it would cost YouTube to utilize
23 11:49:16 Audible Magic's fingerprint technologies?
24 11:49:19 MR. MANCINI: Objection; lacks foundation;
25 11:49:20 and objection to form.

1 SCHMIDT, ERIC

2 11:50:34 MR. BASKIN: Q. And was this a topic that

3 11:50:36 was discussed with the board from time to time?

4 11:50:39 MR. MANCINI: Objection to form.

5 11:50:41 THE WITNESS: I have no recollection of the

6 11:50:43 board.

7 11:50:43 MR. BASKIN: Q. What about the EMG --

8 11:50:48 MR. MANCINI: Objection to form.

9 11:50:49 MR. BASKIN: Q. -- with respect to the

10 11:50:50 management group?

11 11:50:52 MR. MANCINI: And objection to the extent it

12 11:50:53 seeks a privileged communication.

13 11:50:55 THE WITNESS: Yes.

14 11:50:57 MR. BASKIN: Q. And how frequently was the

15 11:50:59 status of negotiations with large media companies

16 11:51:02 discussed at the EMG?

17 11:51:03 MR. MANCINI: Objection to form; and

18 11:51:04 objection to the extent it seeks privileged

19 11:51:07 communications.

20 11:51:07 THE WITNESS: No specific period, and not --

21 11:51:16 not very frequently, so...

22 11:51:18 MR. BASKIN: Q. But with respect to the five

23 11:51:21 or six largest media companies, did you make it your

24 11:51:26 practice to stay abreast of the status of negotiations

25 11:51:28 with them?

SCHMIDT, ERIC

1 11:51:29 MR. MANCINI: Objection to form.

2 11:51:30 THE WITNESS: You'll have to define what

3 11:51:37 "staying abreast" means for me to understand your

4 11:51:39 question.

5 11:51:39 MR. BASKIN: Q. Well, was the -- Mr. Eun's

6 11:51:42 team and Mr. Kordestani, were they regularly advising

7 11:51:49 you regarding the status of negotiations with the

8 11:51:51 large media companies?

9 11:51:54 A I would use the word "periodic" and say that

10 11:51:58 I was periodically advised.

11 11:52:00 Q And was there actually a phenomenon or an

12 11:52:03 event called the Deal Review?

13 11:52:08 MR. MANCINI: Objection to form.

14 11:52:08 THE WITNESS: That is correct.

15 11:52:09 MR. BASKIN: Q. And were you a participant

16 11:52:10 in the Deal Review?

17 11:52:12 A Sometimes.

18 11:52:12 Q And in the course of the Deal Review, was --

19 11:52:20 strike that.

20 11:52:22 Who were -- who were -- who were the

21 11:52:22 participants on the Deal Review?

22 11:52:25 A Well, at the time, Deal Reviews were owned by

23 11:52:28 Omid, so he was -- he would have always been there;

24 11:52:35 and then depending on schedule, I may or may not have

SCHMIDT, ERIC

1 11:52:37 been there.

2 11:52:37 Q And what about other members of the EMG?

3 11:52:41 Would they be in attendance?

4 11:52:44 A Some of them. It would -- it would be -- the

5 11:52:46 rule is they're all invited, so...

6 11:52:49 Q And did Mr. Brin attend the reviews from time

7 11:52:54 to time?

8 11:52:54 MR. MANCINI: Objection to form; vague,

9 11:52:57 "reviews."

10 11:52:58 MR. BASKIN: Okay.

11 11:52:58 Q Did Mr. Brin attend the business review

12 11:53:03 meetings from time to time?

13 11:53:04 MR. MANCINI: Objection to form.

14 11:53:05 THE WITNESS: Again, periodically each of

15 11:53:08 them, which would include Sergey Brin, Larry Page,

16 11:53:13 Omid Kordestani, the people you've named before.

17 11:53:16 MR. BASKIN: Q. And did these -- did these

18 11:53:18 business reviews occur weekly?

19 11:53:21 A They're scheduled on Mondays. Yes.

20 11:53:23 Q And did you make a point of trying to attend

21 11:53:28 most of the weekly meetings, if you could?

22 11:53:33 A In the pantheon of -- in the pantheon of --

23 11:53:39 in the cacophony of Google, it's in the middle of the

24 11:53:42 meetings that I attempt to attend as opposed to the

1 SCHMIDT, ERIC

2 12:19:08 MR. BASKIN: Q. The majority was related to

3 12:19:10 the monetary terms?

4 12:19:12 A Absolutely.

5 12:19:12 MR. MANCINI: And objection to the extent it

6 12:19:14 seeks communications with counsel.

7 12:19:16 MR. BASKIN: Q. And -- but as you sit here

8 12:19:20 today, do you have a -- any recollection of the topic

9 12:19:26 of making readily available fingerprint technology or

10 12:19:30 metadata search technology available to these media

11 12:19:34 companies being discussed?

12 12:19:35 MR. MANCINI: Again, objection to the extent

13 12:19:37 it seeks privileged communications, to which the

14 12:19:40 witness is instructed not to answer.

15 12:19:41 THE WITNESS: As I previously discussed, we

16 12:19:44 developed a product which encompassed those

17 12:19:47 technologies called Claim Your Content, and we did

18 12:19:50 review that, and we viewed that as a very positive

19 12:19:55 outcome for the media companies. And so we did

20 12:19:58 discuss CYC, as we knew -- as we knew it with them.

21 12:20:03 MR. BASKIN: Q. Now, in 2006 and 2007, sir,

22 12:20:19 was it Google policy that fingerprint technologies

23 12:20:29 would only be made available to companies who entered

24 12:20:31 into revenue-sharing deals with Google?

25 12:20:33 MR. MANCINI: Objection; lacks foundation.

1 SCHMIDT, ERIC

2 12:20:35 THE WITNESS: To my recollection, it was not

3 12:20:39 the policy that you just said.

4 12:20:41 MR. BASKIN: Q. It was -- your recollection

5 12:20:45 is you were prepared to use fingerprint technologies

6 12:20:47 in '06 and '07 in connection with media companies that

7 12:20:53 did not enter into revenue-sharing agreements?

8 12:20:55 MR. MANCINI: Objection to form.

9 12:20:55 THE WITNESS: I'm sorry. Maybe I got the

10 12:20:57 dates confused. Your question was in '06 and '07,

11 12:21:01 prior to YouTube?

12 12:21:02 MR. BASKIN: Q. No. Let me start over

13 12:21:04 again.

14 12:21:04 A Okay.

15 12:21:04 Q We've got to get the dates pretty clear.

16 12:21:07 A Yes.

17 12:21:07 Q Let's start with the block of time from the

18 12:21:09 end of '06, 2006, when -- after you acquired YouTube.

19 12:21:19 A Okay.

20 12:21:19 Q Was it Google policy that fingerprint

21 12:21:28 technologies would only be made available to media

22 12:21:34 companies who entered into revenue-sharing deals with

23 12:21:37 YouTube?

24 12:21:38 MR. MANCINI: Objection; lacks foundation;

25 12:21:39 and objection to form.

SCHMIDT, ERIC

1 12:21:40 THE WITNESS: The policy as you stated is
2 12:21:45 not -- was not our policy.
3
4 12:21:46 MR. BASKIN: Q. You actually recall a
5 12:21:48 meeting -- and -- a meeting or gathering where it was
6 12:21:53 agreed upon this was not the policy?
7 12:21:55 MR. MANCINI: Objection; lacks foundation.
8 12:21:57 THE WITNESS: Yes.
9 12:21:57 MR. BASKIN: Q. Tell me about that meeting
10 12:21:58 or meetings.
11 12:22:00 MR. MANCINI: And objection to the extent it
12 12:22:01 seeks legal communications with counsel, to which the
13 12:22:03 witness is instructed not to answer.
14 12:22:05 THE WITNESS: I -- I don't recall this
15 12:22:07 specific meeting, but I do remember that I made the
16 12:22:10 decision.
17 12:22:10 MR. BASKIN: Q. And it was your decision
18 12:22:11 that in the end of 2006, that YouTube would make
19 12:22:19 fingerprint technologies available to media companies
20 12:22:23 even if they did not enter into a revenue-sharing
21 12:22:28 agreement?
22 12:22:28 MR. MANCINI: Objection to form.
23 12:22:29 THE WITNESS: Again, as part of our CYC
24 12:22:33 strategy, we agreed at my direction that the CYC
25 12:22:36 tools, which include the ones you described, would be

SCHMIDT, ERIC

1 12:22:39 available to media companies independent of whether
2 12:22:42 they did a deal with us.
3
4 12:22:43 MR. BASKIN: Q. And when did you make that
5 12:22:44 decision, Mr. Schmidt?
6 12:22:47 A Certainly around the time of the acquisition,
7 12:22:50 if not before.
8 12:22:52 Q You mean before November 2000 --
9 12:22:56 A Yeah.
10 12:22:56 Q -- October 2006?
11 12:22:58 A Yeah, in that time period.
12 12:22:59 Q And did you communicate that to people at
13 12:23:01 YouTube?
14 12:23:01 A I did.
15 12:23:01 Q With whom did you communicate with?
16 12:23:06 A It would -- this would almost certainly
17 12:23:07 require a legal --
18 12:23:10 MR. MANCINI: Yes. To the extent it seeks
19 12:23:12 communications with counsel, I instruct the witness
20 12:23:14 not to answer.
21 12:23:14 THE WITNESS: Right.
22 12:23:15 MR. BASKIN: Q. And it was your
23 12:23:18 understanding that people were following your
24 12:23:20 policies, Mr. Schmidt?
25 12:23:23 A Yes.

SCHMIDT, ERIC

1 12:23:23 Q Now, to whom did you communicate this policy,
2 12:23:41 Mr. Schmidt?
3
4 12:23:43 A Within Google or outside of Google?
5 12:23:46 Q Well, let's start within Google.
6 12:23:49 A The executives of the company.
7 12:23:51 Q The executives of Google and YouTube?
8 12:23:56 A Again, without -- without talking about the
9 12:23:58 lawyers, the non-lawyers would certainly have heard it
10 12:24:02 from me directly.
11 12:24:03 Q They would have heard directly from you in
12 12:24:06 meetings with you that they should make --
13 12:24:08 A Yeah.
14 12:24:08 Q -- these tools available --
15 12:24:10 A Uh-huh.
16 12:24:10 Q -- to media companies even in the absence of
17 12:24:13 a revenue-sharing agreement?
18 12:24:16 A And my, again, vague recollection is that it
19 12:24:20 was, in fact, the proposal that I was approving that
20 12:24:22 they were -- they wanted to do. So there was
21 12:24:24 agreement that we should do this.
22 12:24:26 Q And this was a proposal they -- who
23 12:24:28 communicated this proposal to you?
24 12:24:31 A I don't recall. But I remember distinctly
25 12:24:33 that this did occur, so --

SCHMIDT, ERIC

1 12:31:28 paragraph I just read?

2 12:31:29 A I --

3 12:31:30 MR. MANCINI: Objection.

4 12:31:30 THE WITNESS: -- I can speculate. But it's

5 12:31:32 an e-mail to himself, so I don't know what -- is this

6 12:31:34 some -- is this what he wishes? Is this what he

7 12:31:38 thought? Is this what used to be true?

8 12:31:39 MR. MANCINI: You shouldn't speculate.

9 12:31:41 THE WITNESS: Right. I don't know.

10 12:31:42 MR. BASKIN: Q. Now, then he says, "Our CYC

11 12:31:46 tools are now live as well and are only offered to

12 12:31:49 partners who enter into a revenue deal with us."

13 12:31:53 Do you see that, sir?

14 12:31:54 MR. MANCINI: Same objection; document speaks

15 12:31:55 for itself.

16 12:31:56 MR. BASKIN: Q. Do you see that sentence,

17 12:31:57 Mr. Schmidt?

18 12:31:57 A I see that sentence.

19 12:32:00 Q And do you recall discussing with Mr. Eun

20 12:32:03 what Google's policies were in connection with using

21 12:32:11 CYC tools with media companies that refuse to enter

22 12:32:16 into revenue-sharing agreements?

23 12:32:17 MR. MANCINI: Objection; lacks foundation.

24 12:32:19 THE WITNESS: No recollection of this

SCHMIDT, ERIC

1 12:32:22 specific conversation with David on this topic.

2 12:32:24 MR. BASKIN: Q. Do you recall, during this

3 12:32:28 time frame, this is March of '07, discussing this

4 12:32:33 topic with anyone at the EMG whether the CYC tools are

5 12:32:43 only offered to partners who enter into a revenue deal

6 12:32:46 with us?

7 12:32:46 MR. MANCINI: Objection; lacks foundation.

8 12:32:48 By the way, the document is dated February of

9 12:32:51 '07, and objection to the extent it seeks

10 12:32:53 communications with legal counsel.

11 12:32:55 THE WITNESS: Again, as I previously stated,

12 12:32:57 our policy, as I recall it and as it was discussed

13 12:33:00 during this period, was the CYC tools, which

14 12:33:03 encompassed audio and video identification, would be

15 12:33:06 available to all.

16 12:33:07 MR. BASKIN: And over what time -- strike

17 12:33:11 that.

18 12:33:12 Q Let me ask you this: In the period of 2006

19 12:33:19 or January/February/March of 2007, do you recall any

20 12:33:31 Google executive discussing with you the cost of

21 12:33:36 providing Audible Magic fingerprint technologies to

22 12:33:42 content companies who would -- who did not enter into

23 12:33:48 a revenue-sharing agreement with Google?

24 12:33:51 MR. MANCINI: Objection to form; and lacks

SCHMIDT, ERIC

1 12:33:53 foundation.

2 12:33:53 THE WITNESS: Again, no recollection.

3 12:33:56 MR. BASKIN: Q. As you sit here today,

4 12:33:59 Mr. Schmidt, do you have any idea what it would have

5 12:34:03 cost in 2006 and 2007 to have made available Audible

6 12:34:16 Magic fingerprint technologies to media companies even

7 12:34:22 if they decline to enter into a revenue-sharing

8 12:34:26 agreement with YouTube?

9 12:34:27 MR. MANCINI: Objection, lacks foundation;

10 12:34:28 and objection to form.

11 12:34:29 THE WITNESS: I do not know.

12 12:34:30 MR. BASKIN: Q. And am I right you don't

13 12:34:32 recall any conversation whatsoever where anyone told

14 12:34:36 you what it would cost; correct?

15 12:34:37 MR. MANCINI: Objection; lacks foundation;

16 12:34:39 and objection to form.

17 12:34:40 THE WITNESS: That is correct.

18 12:34:41 MR. BASKIN: Q. And you never asked anyone

19 12:34:42 what it would cost, did you, sir?

20 12:34:45 MR. MANCINI: Same objections.

21 12:34:46 THE WITNESS: Correct.

22 12:34:46 MR. BASKIN: Q. Now, do you recall in 2006

23 12:34:56 and again January/February/March 2007, that any

24 12:35:04 executive from Google or YouTube ever request that

SCHMIDT, ERIC

1 15:08:30 MS. FORSHEIT: Okay. This will be 36.

2 15:08:33 (Document marked Exhibit 36

3 15:08:57 for identification.)

4 15:08:57 THE WITNESS: Thank you.

5 15:08:59 MS. FORSHEIT: Q. And when you've had a

6 15:09:00 chance to look at the document, let me know if you

7 15:09:03 recognize it.

8 15:09:21 A I do not.

9 15:09:25 Q This appears to be an e-mail from you to a

10 15:09:27 number of people, including the EMG, an e-mail that

11 15:09:33 includes the text of a Wall Street Journal article.

12 15:09:38 Do you recall sending this e-mail?

13 15:09:40 A I do not.

14 15:09:41 Q And did you write the subject line? Did you

15 15:09:45 compose the subject line of the e-mail?

16 15:09:46 A Most likely.

17 15:09:48 Q It says, "It may be happening faster than we

18 15:09:52 think. See Saturday WSJ."

19 15:09:57 Do you know what the "it" refers to in the

20 15:09:59 subject line?

21 15:10:01 A I do not.

22 15:10:02 Q The article -- the title of the Wall Street

23 15:10:08 Journal article here, which is dated October 14th,

24 15:10:11 2006, is "Media Tightens Pressure YouTube Over

SCHMIDT, ERIC

1 15:10:14 Copyrights."

2 15:10:15 Does that refresh your recollection as to

3 15:10:16 what the "it" meant in your subject line?

4 15:10:20 MR. MANCINI: Objection.

5 15:10:21 THE WITNESS: As I said, I don't -- I don't

6 15:10:23 recall what the "it" means. It's probable that it's

7 15:10:26 related to the title of the article.

8 15:10:28 MS. FORSHEIT: Q. Did you come up with the

9 15:10:43 idea to pursue YouTube in the first instance?

10 15:10:49 A I did not.

11 15:10:50 Q Do you recall who did?

12 15:10:53 A I believe it was David Drummond.

13 15:10:55 Q I'm actually going to ask you to briefly look

14 15:11:05 back at a document that was marked earlier today.

15 15:11:07 A Sure.

16 15:11:08 Q If you still have Exhibit 7, which was also

17 15:11:13 Drummond Exhibit 17.

18 15:11:22 A Okay. I've got it.

19 15:11:24 Q Okay. This -- you'll recall this is an

20 15:11:32 e-mail from David Eun to you that had forwarded

21 15:11:38 another e-mail on -- and this was in advance of the

22 15:11:44 Video GPS in May of 2006.

23 15:11:50 Under the heading "Balancing short-term

24 15:11:53 versus long-term goals" in the underlying e-mail, in

SCHMIDT, ERIC

1 15:12:00 the second paragraph, the second sentence, Mr. Eun
2 15:12:03 states to you, "For example, there was a heated debate
3 15:12:07 about whether we should relax enforcement of our
4 15:12:09 copyright policies in an effort to stimulate traffic
5 15:12:13 growth despite the inevitable damage it would cause to
6 15:12:16 relationships with content owners."
7
8 15:12:18 The debate that Mr. Eun is referring to, do
9 15:12:26 you know what debate he's referencing there?
10 15:12:29 MR. MANCINI: Objection; asked and answered
11 15:12:30 previously today.
12 15:12:30 THE WITNESS: Well, as I indicated in my
13 15:12:33 private -- previous testimony, I don't recall this
14 15:12:37 e-mail. In reading the paragraph before, I would
15 15:12:41 interpret that paragraph as referring to the video
16 15:12:43 team debate.
17 15:12:45 MS. FORSHEIT: Q. A debate between the
18 15:12:47 members of the video team?
19 15:12:49 A Yes. To be precise, the Google Video team
20 15:12:52 who are the competitor of YouTube at this point in
21 15:12:55 time.
22 15:12:55 Q Right.
23 15:12:56 And you believe the reference to the debate
24 15:12:58 to be a debate among the members of the Google Video
25 15:13:02 team; is that right?

SCHMIDT, ERIC

1 15:13:03 A That would be my understanding -- again, in context,

2 15:13:06 reading the e-mail, that's how I would interpret the

3 15:13:08 paragraph.

4 15:13:09 Q Were you ever a part of that debate in any

5 15:13:12 way?

6 15:13:12 A No.

7 15:13:13 Q Did you ever take a position with respect to

8 15:13:16 that debate?

9 15:13:18 MR. MANCINI: Objection.

10 15:13:19 THE WITNESS: No recollection of it.

11 15:13:22 MS. FORSHEIT: Q. Did you disagree with

12 15:13:24 Mr. Eun with respect to the statements he was making

13 15:13:30 in this e-mail?

14 15:13:32 MR. MANCINI: Objection; asked and answered

15 15:13:33 earlier today.

16 15:13:34 THE WITNESS: Well, it would be, I think,

17 15:13:36 more appropriate to quote from my response to David,

18 15:13:39 which is, "While I understand your points and

19 15:13:42 generally agree, I yet -- I don't yet see a winning

20 15:13:45 strategy from any of the video camps."

21 15:13:49 So I was not referring to any specific point

22 15:13:52 by saying that, and to interpret -- my explanation of

23 15:13:58 my paragraph to him, which I can speak authoritatively

24 15:14:02 on, is "get your act together because your strategy