

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 -- 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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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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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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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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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

Schapiro Exhibit 134

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

VIACOM INTERNATIONAL, INC., COMEDY)	
PARTNERS, COUNTRY MUSIC)	
TELEVISION, INC., PARAMOUNT)	
PICTURES CORPORATION, and BLACK)	
ENTERTAINMENT TELEVISION, LLC,)	
)	
Plaintiffs,)	
)	
vs.)	NO. 07-CV-2203
)	
YOUTUBE, INC., YOUTUBE, LLC,)	
and GOOGLE, INC.,)	
)	
Defendants.)	
_____)	
)	
THE FOOTBALL ASSOCIATION PREMIER)	
LEAGUE LIMITED, BOURNE CO., et al.,)	
on behalf of themselves and all)	
others similarly situated,)	
)	
Plaintiffs,)	
vs.)	NO. 07-CV-3582
)	
YOUTUBE, INC., YOUTUBE, LLC, and)	
GOOGLE, INC.,)	
)	
Defendants.)	
_____)	

VIDEOTAPED DEPOSITION OF ERIC SCHMIDT
SAN FRANCISCO, CALIFORNIA
WEDNESDAY, MAY 6, 2009

JOB NO. 16802

MAY 6, 2009

9:14 a.m.

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.

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SCHMIDT, ERIC

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

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KEN REESER, Videographer.

---oOo---

1 SCHMIDT, ERIC

2 09:21:06 documents? Where are your documents, sir?

3 09:21:09 MR. MANCINI: Objection to form.

4 09:21:16 THE WITNESS: I produced the documents that

5 09:21:17 were required by the protective order.

6 09:21:19 MR. BASKIN: Q. And that yielded 19

7 09:21:21 documents between June 2006 and February 2007?

8 09:21:25 MR. MANCINI: Objection; lacks foundation;

9 09:21:26 mischaracterizes the document.

10 09:21:28 THE WITNESS: Ask your question.

11 09:21:32 MR. BASKIN: Q. That is the question.

12 09:21:34 A Yes.

13 09:21:34 Q Okay. And then there are some months that

14 09:21:49 you produced, at least five months by my count, which

15 09:21:55 there were no custodial documents produced by you.

16 09:21:58 I assume you were working during those

17 09:22:01 months; were you not?

18 09:22:01 A Absolutely.

19 09:22:02 Q And is it plausible, knowing your practice,

20 09:22:06 that you generated no documents during the course of

21 09:22:11 those five months that were relevant to this

22 09:22:13 litigation?

23 09:22:14 MR. MANCINI: Objection; calls for a legal

24 09:22:16 conclusion; calls for speculation.

25 09:22:17 THE WITNESS: Again, I'd be speculating as to

1 SCHMIDT, ERIC

2 09:22:22 the causes, but the numbers are the numbers.

3 09:22:24 MR. BASKIN: Q. So as I understand it, it is

4 09:22:36 fair for the jury in this case to conclude that you

5 09:22:41 had nine custodial documents over the nine-month

6 09:22:44 period from June 2006 to February 2007?

7 09:22:46 MR. MANCINI: Objection; mischaracterization

8 09:22:49 of a document which I've already objected to, and

9 09:22:51 objection to the reference to somehow a jury being

10 09:22:54 present in this room.

11 09:22:56 THE WITNESS: I can't speak for a jury.

12 09:22:58 MR. BASKIN: Q. Now, by the way, under the

13 09:23:06 Google system, as you know it, are all your e-mails

14 09:23:10 preserved?

15 09:23:11 MR. MANCINI: Objection to form.

16 09:23:12 THE WITNESS: You need to ask a more precise

17 09:23:15 question.

18 09:23:16 MR. BASKIN: Q. I know you may be testing my

19 09:23:19 limits here.

20 09:23:21 A I'm an engineer. I'd like to give you an

21 09:23:22 exactly truthful answer.

22 09:23:25 Q Okay. Assuming that you had to go back to

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

24 09:23:33 documents over the course of nine months, including

25 09:23:38 your e-mails, would it be possible for Google to find

1 SCHMIDT, ERIC

2 09:23:42 those documents?

3 09:23:43 MR. MANCINI: Objection; lacks foundation.

4 09:23:44 THE WITNESS: Over what period?

5 09:23:45 MR. BASKIN: Q. June 2006, let's -- to

6 09:23:50 February 2007.

7 09:23:50 A No.

8 09:23:50 MR. MANCINI: Same objection.

9 09:23:52 THE WITNESS: I'm sorry.

10 09:23:53 The answer is no.

11 09:23:54 MR. BASKIN: Q. And from February 2007 until

12 09:24:03 April 2008, do you -- what about the e-mails

13 09:24:07 associated with that time period? Could Google

14 09:24:10 retrieve those e-mails and locate them if asked?

15 09:24:14 MR. MANCINI: Objection to form.

16 09:24:15 Did you mean April 2008?

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

18 09:24:20 differently. Let me phrase it differently.

19 09:24:22 Q During the entire period from 2001 until well

20 09:24:29 under 2008, by our count you produced 791 custodial

21 09:24:33 documents. That covers about seven or eight years.

22 09:24:39 If Google had to go back and retrieve your

23 09:24:44 e-mails for, let's say, the period 2005, are those

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

25 09:24:51 MR. MANCINI: Same objection to the use of

1 SCHMIDT, ERIC

2 09:29:58 A Yeah.

3 09:29:58 Q -- I thought you said that for 30 years it's

4 09:30:01 been your practice not to preserve or to delete

5 09:30:05 e-mails?

6 09:30:05 MR. MANCINI: Objection to form; objection to

7 09:30:07 the characterization of the testimony.

8 09:30:09 MR. BASKIN: Q. Is that accurate?

9 09:30:10 A Again, I'll answer the question previously

10 09:30:14 asked, which was it has been my practice to not keep

11 09:30:16 my e-mails.

12 09:30:17 Q And is this on some sort of automatic system

13 09:30:20 where they are deleted in the ordinary course over

14 09:30:24 some ordinary period of time?

15 09:30:25 MR. MANCINI: Objection to form; objection,

16 09:30:26 lacks foundation.

17 09:30:27 THE WITNESS: Depending on the e-mail system

18 09:30:29 and the company and so forth, the answer would vary.

19 09:30:32 MR. BASKIN: Okay.

20 09:30:32 Q Well, let's take Google in 2005. What was

21 09:30:41 your practice then as to the length of time in which

22 09:30:44 you preserved your e-mails before they were deleted?

23 09:30:47 MR. MANCINI: Objection to form.

24 09:30:48 THE WITNESS: It was my practice to delete or

25 09:30:52 otherwise cause the e-mails that I had read to go away

1 SCHMIDT, ERIC

2 09:30:56 as quickly as possible.

3 09:30:57 MR. BASKIN: Q. Within days?

4 09:31:01 A Yes.

5 09:31:01 Q And I assume that practice carried over to

6 09:31:11 2006 and 2007 and 2008?

7 09:31:13 MR. MANCINI: Objection; lacks foundation.

8 09:31:14 THE WITNESS: In -- again, without the

9 09:31:21 specific dates, in principle, yes.

10 09:31:24 MR. BASKIN: Q. Now, when the lawsuit was

11 09:31:28 filed in February 2007, did anyone instruct you that

12 09:31:36 you should preserve your e-mails relevant to the

13 09:31:41 litigation?

14 09:31:44 Excuse me. As of -- excuse me. As of the

15 09:31:47 filing of this complaint, which is March of 2007, did

16 09:31:50 anyone instruct you to preserve your e-mails that

17 09:31:53 might be relevant to this litigation?

18 09:31:54 MR. MANCINI: Objection to the extent it

19 09:31:55 calls for a privileged communication.

20 09:31:58 THE WITNESS: I want to be careful not to

21 09:32:04 discuss a legal conversation that I had.

22 09:32:08 You used a precise month. A -- a clear -- a

23 09:32:14 clear and precise answer would be that I did change my

24 09:32:16 practice after this lawsuit was filed and I was

25 09:32:20 notified.

1 SCHMIDT, ERIC

2 09:32:21 MR. BASKIN: Q. But if I'm reading our chart

3 09:32:23 right, for example, in the following month, April, you

4 09:32:26 had zero custodial documents you've produced.

5 09:32:28 Is that -- were you preserving e-mails during

6 09:32:33 the month of April?

7 09:32:35 MR. MANCINI: Objection; same objection to

8 09:32:36 the use of this document.

9 09:32:37 THE WITNESS: Again, ignoring the document,

10 09:32:39 which I have not seen and have no comment on, after I

11 09:32:44 was notified of the protective order, I changed my

12 09:32:46 policy.

13 09:32:46 MR. BASKIN: Q. And were you notified -- do

14 09:32:51 you recall if you were notified of the protective

15 09:32:53 order prior to, let's say, June 2007?

16 09:32:59 A I don't remember --

17 09:32:59 MR. MANCINI: Objection to form.

18 09:33:00 THE WITNESS: Sorry.

19 09:33:01 I don't remember the precise date.

20 09:33:02 MR. BASKIN: Now -- excuse me. I'm getting a

21 09:33:15 note. Good question.

22 09:33:21 Q How did you effectuate the change of this

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

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

25 09:33:26 THE WITNESS: Okay. I understood the

1 SCHMIDT, ERIC

2 09:33:31 protective order, and if there were any e-mails that

3 09:33:36 were covered by the protective order, I did not delete

4 09:33:39 or otherwise cause them to go away.

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

1 SCHMIDT, ERIC

2 09:35:24 had with our lawyers.

3 09:35:26 MR. BASKIN: Q. But all I asked was, did

4 09:35:28 you -- and with your own eyes, did you actually see

5 09:35:30 the document request in this case?

6 09:35:32 MR. MANCINI: Objection to form.

7 09:35:35 THE WITNESS: I believe I did.

8 09:35:36 MR. BASKIN: Q. And as you sit here today,

9 09:35:45 sir, does it seem realistic to you that the number of

10 09:35:59 custodial documents produced -- rep -- stated -- set

11 09:36:05 forth on Schmidt Exhibit 1 is the complete set of

12 09:36:09 documents that corresponds to the document request?

13 09:36:12 MR. MANCINI: Again, objection to the use of

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

15 09:36:16 foundation.

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

17 09:36:18 MR. BASKIN: Okay.

18 09:36:21 Q Now -- now, the board -- the Google board

19 09:36:40 authorized the acquisition of YouTube in -- in and

20 09:36:43 around October 2006; is that right, sir?

21 09:36:46 A That's roughly correct, yes.

22 09:36:47 Q And am I right that basically the acquisition

23 09:36:49 closed in and around November?

24 09:36:52 A That's roughly correct, yes.

25 09:36:53 Q Now, prior to October 2006, did you know

1 SCHMIDT, ERIC

2 10:06:27 of any errors in it.

3 10:06:28 MR. BASKIN: Q. Now, if you'd turn to the

4 10:06:45 page 12 of the board book that's Bated stamped -- it

5 10:06:59 has Bates stamp numbers 3573. Could you take a look

6 10:07:02 at that for a second, sir?

7 10:07:03 A I do see it, yes.

8 10:07:05 Q And just take a look at that for a second,

9 10:07:11 and just tell me whether you can -- whether you read

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

11 10:07:18 analysis by CSFB with respect to YouTube.

12 10:07:24 MR. MANCINI: Objection to the

13 10:07:25 characterization of the document; the document speaks

14 10:07:27 for itself; and objection to form.

15 10:07:31 THE WITNESS: I don't recall this page, so I

16 10:07:34 would be speculating as to what it really is trying to

17 10:07:38 convey. I do see that it's their calculation about

18 10:07:43 revenue and YouTube and discounted cash flows under

19 10:07:46 some assumption.

20 10:07:46 MR. BASKIN: Q. And you see, I take it, on

21 10:07:48 the face of page 12 of Schmidt Exhibit 2 that their

22 10:07:53 base case valuation for YouTube was [REDACTED]

23 10:07:59 Do you see that?

24 10:08:01 MR. MANCINI: Objection to the

25 10:08:01 characterization of the document.

1 SCHMIDT, ERIC

2 10:08:03 THE WITNESS: I -- I read that as I see the

3 10:08:08 document, yes.

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,

1 SCHMIDT, ERIC

2 10:08:59 sir?

3 10:08:59 A I told them.

4 10:09:00 Q So why don't you tell us what you remember

5 10:09:02 telling the board in connection with the valuation?

6 10:09:04 A I believed YouTube was worth somewhere around

7 10:09:08 [REDACTED].

8 10:09:09 Q And you communicated that to the Board of

9 10:09:11 Directors of YouTube --

10 10:09:11 A I did.

11 10:09:13 Q -- of Google?

12 10:09:14 A I did.

13 10:09:14 Q And was that -- what methodology did you use

14 10:09:17 to come up with that number?

15 10:09:20 MR. MANCINI: Objection to form.

16 10:09:21 THE WITNESS: My judgment.

17 10:09:22 MR. BASKIN: Q. Was it based on cash flow

18 10:09:24 analysis? Comparable companies? What -- what were

19 10:09:26 you using as the basis for your judgment?

20 10:09:29 MR. MANCINI: Objection to form.

21 10:09:30 THE WITNESS: It's just my judgment. I've

22 10:09:34 done this a long time.

23 10:09:35 MR. BASKIN: Q. So you orally communicated

24 10:09:38 to your board, during the course of the board meeting,

25 10:09:44 that you thought a more correct valuation for YouTube

1 SCHMIDT, ERIC

2 10:09:50 was [REDACTED]; is that what you said, sir?

3 10:09:57 MR. MANCINI: Objection to the

4 10:09:57 characterization of the testimony.

5 10:09:58 THE WITNESS: Again, to help you along, I

6 10:10:02 believed that they were worth [REDACTED]

7 10:10:06 MR. BASKIN: Q. And am I correct that you

8 10:10:07 were asking your board to approve an acquisition price

9 10:10:11 of \$1.65 billion; correct?

10 10:10:15 A I did.

11 10:10:15 MR. MANCINI: Objection to form.

12 10:10:16 MR. BASKIN: Q. And although I'm not very

13 10:10:17 good at math, but I think that would be [REDACTED]

14 10:10:20 [REDACTED] than you thought the company was,

15 10:10:23 in fact, worth?

16 10:10:24 MR. MANCINI: Objection to form; and

17 10:10:25 objection to the mischaracterization of the testimony.

18 10:10:28 THE WITNESS: That is correct.

19 10:10:28 MR. BASKIN: Q. And you communicated that to

20 10:10:30 your board in and around October 9th, 2006?

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

22 10:10:33 THE WITNESS: I did.

23 10:10:34 MR. BASKIN: Q. And was a discussion among

24 10:10:36 the board to the effect that the CEO's valuation was a

25 10:10:42 [REDACTED] than the proposed purchase price?

1 SCHMIDT, ERIC

2 10:10:45 MR. MANCINI: Objection to form.

3 10:10:46 THE WITNESS: I don't remember the exact

4 10:10:48 board conversation, but I explained the -- I explained

5 10:10:52 my reasoning to them, absolutely.

6 10:10:54 MR. BASKIN: Okay.

7 10:10:54 Q And as best you can recall, can you tell us

8 10:10:57 what reasoning you explained?

9 10:10:58 A Sure.

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

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

12 10:11:11 faster than Google Video, which was the product that

13 10:11:15 Google had. And they had indicated to us that they

14 10:11:20 would be sold, and we believed that there would be a

15 10:11:25 competing offer that, because of who Google was, pay

16 10:11:29 much more than they were worth.

17 10:11:33 In the deal dynamics, the price, remember, is

18 10:11:38 not set by my judgment or by a financial model or a

19 10:11:41 discounted cash flow. It's set by what people are

20 10:11:45 willing to pay.

21 10:11:46 And we ultimately concluded that 1.65 billion

22 10:11:50 included a premium for moving quickly and making sure

23 10:11:55 that we could participate in the user success of

24 10:11:59 YouTube.

25 10:12:01 Q And that was the analysis that you

1 SCHMIDT, ERIC

2 10:12:04 communicated to your board in and around October 9,

3 10:12:07 2006?

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

1 SCHMIDT, ERIC

2 10:13:09 worried about?

3 10:13:09 MR. MANCINI: Objection to form; and lacks

4 10:13:11 foundation.

5 10:13:11 THE WITNESS: You inserted [REDACTED] into the

6 10:13:13 conversation. I have not said [REDACTED]

7 10:13:18 It was clear to me that it was important that

8 10:13:22 the phenomena of user-contributed video be a part of

9 10:13:27 the Google portfolio, and that we should be willing to

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

11 10:13:34 necessarily by me.

12 10:13:36 And through the negotiation process we came

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

14 10:13:43 told the board that this was a good deal for Google.

15 10:13:49 MR. BASKIN: Q. And by the way, as part of

16 10:13:58 your thinking, were the YouTube founders, in fact,

17 10:14:13 communicating to the Google team that [REDACTED] was a

18 10:14:19 competing bidder for YouTube?

19 10:14:21 MR. MANCINI: Objection; lacks foundation;

20 10:14:23 objection to form.

21 10:14:24 THE WITNESS: I don't recall the -- the

22 10:14:29 specific buildup to the 1.65 billion. But in a

23 10:14:34 negotiation, you are worried about the other potential

24 10:14:40 buyers, and we were certainly worried about our

25 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

1 SCHMIDT, ERIC

2 10:16:21 you yourself believed was worth around [REDACTED]

3 10:16:24 [REDACTED], did you do so on the assumption that in

4 10:16:29 the future you would, in fact, realize profit from the

5 10:16:36 acquisition?

6 10:16:37 MR. MANCINI: Objection; lacks foundation and

7 10:16:39 mischaracterizes testimony.

8 10:16:40 [REDACTED]

9 10:16:44 [REDACTED]

10 10:16:48 [REDACTED]

11 10:16:56 MR. BASKIN: Q. So, for example, if you look

12 10:16:58 back at Schmidt 2, and in particular page eight

13 10:17:17 thereof, which is the Bates stamp 3569, does this page

14 10:17:40 set forth the rationale for Google's purchase of

15 10:17:45 YouTube in and around October 9th, 2006?

16 10:17:47 MR. MANCINI: So objection. And just to be

17 10:17:49 clear, the document speaks for itself. The document

18 10:17:52 is a Credit Suisse document.

19 10:17:54 THE WITNESS: The answer to your question is

20 10:17:55 no.

21 10:17:57 MR. BASKIN: Q. And did you tell your board

22 10:17:58 that you disagreed with the position of the investment

23 10:18:01 banker?

24 10:18:01 MR. MANCINI: Objection; lacks foundation;

25 10:18:03 and objection to form.

1 SCHMIDT, ERIC

2 10:25:29 valuation -- strike that.

3 10:25:32 Apart from your -- strike that.

4 10:25:34 Apart from the [REDACTED] million figure that

5 10:25:40 you communicated to your board, was the only other

6 10:25:42 acquisition valuation put before them CSFB's?

7 10:25:48 MR. MANCINI: Objection; mischaracterizes the

8 10:25:50 testimony; and objection to form.

9 10:25:51 THE WITNESS: There were many numbers given

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

11 10:26:01 reported to you, this CSFB number, and also the board

12 10:26:05 was told about various other potential values.

13 10:26:11 MR. BASKIN: Q. And who told that to the

14 10:26:12 board, sir?

15 10:26:14 A It would have been the deal team, which would

16 10:26:16 be David Drummond.

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

18 10:26:20 Mr. Drummond communicating to the board?

19 10:26:21 A I don't recall.

20 10:26:21 MR. MANCINI: Objection to form.

21 10:26:22 THE WITNESS: I don't recall the specific

22 10:26:23 numbers.

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

24 10:26:26 people had a number that was [REDACTED] or something

25 10:26:29 like that. So there were many numbers presented.

1 SCHMIDT, ERIC

2 10:26:34 MR. BASKIN: Q. And do you recall whether

3 10:26:36 Mr. Drummond's various numbers were reduced to writing

4 10:26:42 for the board or were they only communicated orally?

5 10:26:44 MR. MANCINI: Objection to form; objection to

6 10:26:46 the characterization of the testimony.

7 10:26:46 THE WITNESS: I have no recollection of how

8 10:26:48 they were communicated, but certainly verbally at a

9 10:26:53 minimum.

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

11 10:26:56 assume, that the acquisition agreement contains an

12 10:27:03 indemnification provision relating to copyright

13 10:27:06 lawsuits?

14 10:27:06 MR. MANCINI: Objection; lacks foundation.

15 10:27:08 THE WITNESS: I am aware of what I'm going to

16 10:27:14 call a holdback. I don't know the details of exactly

17 10:27:19 the terms of the holdback, but it is my understanding

18 10:27:22 that it includes areas of copyright.

19 10:27:25 MR. BASKIN: Q. And was that discussed by

20 10:27:29 the board in and around October 9, 2006?

21 10:27:32 A Yes.

22 10:27:32 MR. MANCINI: Objection to form.

23 10:27:33 THE WITNESS: Yes.

24 10:27:33 MR. BASKIN: Q. And do you remember that

25 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?

1 SCHMIDT, ERIC

2 10:29:04 MR. MANCINI: Yes.

3 10:29:34 MR. BASKIN: Q. Sir, if I wanted to --

4 10:29:38 strike that.

5 10:29:39 Is -- is -- are you aware of any e-mail or

6 10:29:46 memorandum that set forth your position that YouTube

7 10:29:57 was worth [REDACTED] and not \$1.65 billion?

8 10:30:03 MR. MANCINI: Objection to form; objection,

9 10:30:05 lacks foundation.

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

11 10:30:10 there may be one. The reason I remember the [REDACTED]

12 10:30:17 is that in our first conversations about the value,

13 10:30:22 that was sort of where my judgment came to. So I may

14 10:30:26 have written that in an e-mail.

15 10:30:27 MR. BASKIN: Q. And would that be one of the

16 10:30:29 e-mails that were not preserved in and around

17 10:30:34 October/November 2006?

18 10:30:34 MR. MANCINI: Objection; lacks foundation.

19 10:30:39 THE WITNESS: Again, be -- because such an

20 10:30:42 e-mail would have gone to somebody who did preserve

21 10:30:45 all their e-mails for 30 years, it -- if there were

22 10:30:48 such an e-mail, it would have shown up.

23 10:30:50 MR. BASKIN: Q. And have you seen that

24 10:30:52 e-mail with your own eyes?

25 10:30:54 MR. MANCINI: Objection; calls for

1 SCHMIDT, ERIC

2 10:39:17 MR. MANCINI: Same objections.

3 10:39:19 THE WITNESS: Again, I recall complaints

4 10:39:27 about YouTube having different policies, but not

5 10:39:31 specific in the way you asked your question.

6 10:39:36 MR. BASKIN: Q. Well, did you ever read an

7 10:39:39 internal Google document in which a Google executive

8 10:39:44 criticized YouTube because of the way it dealt with

9 10:39:47 copyright issues?

10 10:39:47 MR. MANCINI: Objection; lacks foundation;

11 10:39:50 calls for a legal conclusion; and objection to form.

12 10:39:52 THE WITNESS: I may have. I don't -- I don't

13 10:39:55 recall specifics.

14 10:39:56 MR. BASKIN: Q. Do you remember being told

15 10:40:12 by a senior Google executive that a large part of

16 10:40:20 YouTube's traffic is from pirated content?

17 10:40:24 MR. MANCINI: Objection; lacks foundation;

18 10:40:26 objection to form.

19 10:40:29 THE WITNESS: No specific recollection, no.

20 10:40:34 MR. BASKIN: Let me hand you what we will

21 10:40:36 mark as Schmidt 7. It was Drummond 17, I believe, and

22 10:40:47 Eun -- is that the way you pronounce it, E-U-N, Eun,

23 10:40:50 Eun 12?

24 10:40:51 THE WITNESS: Eun.

25 10:40:51 ///

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

1 SCHMIDT, ERIC

2 10:42:24 sent this e-mail and the chain that follows it --

3 10:42:30 strike that.

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,

1 SCHMIDT, ERIC

2 10:43:30 and it's a series of meetings that occur on typically

3 10:43:35 Tuesdays on a rotating basis. And Video GPS would

4 10:43:39 have been a review of the video -- Google Video

5 10:43:43 product of some kind.

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

1 SCHMIDT, ERIC

2 10:46:51 you recall this e-mail?

3 10:46:52 A I do not.

4 10:46:52 Q Have you seen this e-mail prior to today, to

5 10:46:55 the best of your recollection?

6 10:46:57 A I think --

7 10:46:58 MR. MANCINI: Objection.

8 10:46:58 THE WITNESS: Go ahead.

9 10:46:59 MR. MANCINI: Objection to the extent it

10 10:47:01 seeks communications with counsel.

11 10:47:02 MR. BASKIN: Okay. Fair enough.

12 10:47:03 Q Now, so let's go to the e-mail, sir, at the

13 10:47:05 bottom. You see it says -- the paragraph that reads

14 10:47:11 as follows, let me point it out to you, "there is a

15 10:47:17 chance of pursuing short-term goals with such

16 10:47:21 zealously that we develop blind spots that could

17 10:47:25 hurt us later. For example, there was heated debate

18 10:47:31 about whether we should relax enforcement of our

19 10:47:34 copyright policies in an effort to stimulate traffic

20 10:47:38 growth, despite the inevitable damage it would cause

21 10:47:43 to relationships with content owners."

22 10:47:48 Do you see that, sir?

23 10:47:50 A I do see that paragraph.

24 10:47:51 Q Do you remember reading that paragraph in and

25 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.

1 SCHMIDT, ERIC

2 10:48:57 MR. BASKIN: Q. So you do not have a

3 10:48:58 recollection of being party to a discussion about

4 10:49:01 whether Google Video should relax its policies to

5 10:49:03 comport with YouTube's?

6 10:49:05 MR. MANCINI: Same objections.

7 10:49:07 THE WITNESS: And again, I have no specific

8 10:49:08 recollection in that area.

9 10:49:11 MR. BASKIN: Q. Now, in the next paragraph,

10 10:49:16 Mr. Eun says, "I think we should beat YouTube - and

11 10:49:25 all competitors - but not at all costs. A large part

12 10:49:31 of their traffic is from pirated content."

13 10:49:34 Do you see that, sir?

14 10:49:35 A I see that.

15 10:49:36 Q Does -- do you recall reading that sentence

16 10:49:38 in and around May of 2006?

17 10:49:39 MR. MANCINI: Objection; lacks foundation.

18 10:49:40 THE WITNESS: As I previously said, I don't

19 10:49:43 recall this e-mail and, therefore, I don't recall this

20 10:49:44 sentence.

21 10:49:45 MR. BASKIN: Q. Do you recall a conversation

22 10:49:46 with Mr. Eun on the topic that a large part of

23 10:49:54 YouTube's traffic is from pirated content?

24 10:49:57 MR. MANCINI: Objection to form; lacks

25 10:49:59 foundation.

1 SCHMIDT, ERIC

2 10:49:59 THE WITNESS: I do not.

3 10:50:00 MR. BASKIN: Q. Do you recall any such

4 10:50:01 discussion among the -- in the EMC meetings?

5 10:50:04 MR. MANCINI: Objection; lacks foundation;

6 10:50:06 objection to form.

7 10:50:08 THE WITNESS: I'm assuming you mean EMG,

8 10:50:10 which was the Executive Management Group, and I have

9 10:50:14 no such recollection.

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

11 10:50:16 discussing the concept that a large part of YouTube's

12 10:50:19 traffic is from pirated content with Mr. Page?

13 10:50:24 MR. MANCINI: Objection to form. Objection;

14 10:50:26 lacks foundation.

15 10:50:27 THE WITNESS: Again, same answer, no

16 10:50:29 recollection.

17 10:50:29 MR. BASKIN: Q. And the same answer with

18 10:50:31 respect to Mr. Brin, I take it?

19 10:50:33 THE WITNESS: That --

20 10:50:33 MR. MANCINI: Same objections.

21 10:50:34 THE WITNESS: -- that is correct.

22 10:50:35 MR. BASKIN: Q. Now, in the course of this

23 10:50:36 same e-mail, Mr. Eun says in the next sentence, "When

24 10:50:44 we compare our traffic numbers to theirs, we should

25 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

1 SCHMIDT, ERIC

2 10:51:48 the time; correct?

3 10:51:48 MR. MANCINI: Objection; lacks foundation.

4 10:51:50 Objection to form.

5 10:51:55 THE WITNESS: Not really.

6 10:51:59 MR. BASKIN: Q. You were not aware, in May

7 10:52:00 of 2006, that Grokster was a company that the Supreme

8 10:52:07 Court of the United States had concluded had engaged

9 10:52:12 in illegal copyright violation practices?

10 10:52:15 MR. MANCINI: Objection; lacks foundation;

11 10:52:16 and objection to form.

12 10:52:17 THE WITNESS: I was not aware. If what you

13 10:52:20 said is true, I was not aware of that. He may have

14 10:52:26 meant -- I would be guessing what he meant.

15 10:52:29 MR. MANCINI: So I don't want the witness to

16 10:52:31 speculate.

17 10:52:31 THE WITNESS: So...

18 10:52:33 MR. BASKIN: Q. Now, I take the same answers

19 10:52:34 as my -- as the earlier questions. You've never

20 10:52:37 discussed this with --

21 10:52:38 A Sure.

22 10:52:38 Q -- any human being that you can recall?

23 10:52:41 A Right.

24 10:52:41 Q And you don't recall discussing it with

25 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 11:11:01 A Well, as I previously said, I don't recall

3 11:11:03 this memo at all.

4 11:11:04 Q Okay. Do you recall what you were shown by

5 11:11:13 the Google Video executives at the Video GPS held

6 11:11:16 after this memo was sent to you?

7 11:11:18 MR. MANCINI: Objection; lacks foundation;

8 11:11:20 objection to form.

9 11:11:20 THE WITNESS: I do not.

10 11:11:21 MR. BASKIN: Q. Is it common at GPS meetings

11 11:11:28 for a deck of materials to be circulated to you?

12 11:11:34 A In general terms, there's usually some form

13 11:11:38 of a presentation.

14 11:11:43 Q And in this case, this "some form of a

15 11:11:45 presentation" would have been made by Google Video

16 11:11:47 executives who were actually competing with YouTube at

17 11:11:49 the time; correct?

18 11:11:52 MR. MANCINI: Objection; lacks foundation;

19 11:11:55 objection to form.

20 11:11:56 THE WITNESS: As a general statement, the

21 11:11:58 Video GPS would have had such a presentation.

22 11:12:00 MR. BASKIN: Now, let me show you what was

23 11:12:02 previously marked as Drummond 18, and we will mark it

24 11:12:16 as Schmidt 8.

25 11:12:17 ///

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.

1 SCHMIDT, ERIC

2 11:14:02 Q Now, I just want to walk you through some

3 11:14:07 features of the documents, see if this flags your

4 11:14:11 memory about having certain information communicated

5 11:14:13 to you by the Google Video team.

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 11:14:29 A Okay. I do.

10 11:14:40 Q And if you read 496620, do you have any

11 11:14:50 recollection of seeing that page prior to today?

12 11:14:52 MR. MANCINI: Objection; lacks foundation.

13 11:14:55 I just want to note that this document from

14 11:14:57 its obvious gaps clearly appears to be a draft; and

15 11:15:00 objection to form.

16 11:15:02 THE WITNESS: I have no recollection of this

17 11:15:05 document, and I also have no recollection of this

18 11:15:07 specific page.

19 11:15:08 MR. BASKIN: Q. So I take it that you have

20 11:15:12 no -- do you have a recollection -- strike that.

21 11:15:15 Do you have a recollection of the Google

22 11:15:20 Video team communicating to you in May of 2006 that,

23 11:15:29 "Premium content owners acknowledge YouTube can

24 11:15:34 provide some level of promotion, but mainly perceive

25 11:15:39 YouTube as trafficking mostly illegal content. It's a

1 SCHMIDT, ERIC

2 11:15:45 video Grokster."

3 11:15:47 Do you see that, sir?

4 11:15:48 MR. MANCINI: Object; objection to form and

5 11:15:49 lacks foundation.

6 11:15:51 MR. BASKIN: Q. Do you recall the Google

7 11:15:55 Video team communicating to you in May of 2006 that

8 11:16:00 sentence, sir?

9 11:16:01 MR. MANCINI: Same objections.

10 11:16:01 THE WITNESS: I do not.

11 11:16:03 MR. BASKIN: Q. Do you recall -- if we turn

12 11:16:11 to the page Bates stamped 627, do you see a page

13 11:16:27 that's called "How do we win" on the top of it?

14 11:16:31 A I do.

15 11:16:31 Q And do you see a section three bold sentences

16 11:16:38 down that says, "Google Video can be best partner to

17 11:16:43 content owners."

18 11:16:44 Do you see that, sir?

19 11:16:45 A I do.

20 11:16:46 MR. MANCINI: Objection; the document speaks

21 11:16:48 for itself.

22 11:16:49 THE WITNESS: I do see that.

23 11:16:50 MR. BASKIN: Q. And do you see the Google

24 11:16:53 Video team communicating to you that, "Google Video

25 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 forget about the --

25 11:17:58 MR. BASKIN: Q. Let's turn to 6333 of the

1 SCHMIDT, ERIC

2 11:18:03 last Bates stamp numbers, and are you on a page that

3 11:18:29 says, "How is Google Video doing?"

4 11:18:33 A I am.

5 11:18:33 Q Do you recall seeing that page, sir, prior to

6 11:18:35 today?

7 11:18:35 A Again, you can ask me on every page. I don't

8 11:18:37 recall the document and, therefore, I don't recall any

9 11:18:40 of the specific pages. I, therefore, do not recall

10 11:18:43 this page.

11 11:18:46 Q And do you recall the Google Video team

12 11:18:49 saying to you during the course of the GPS session

13 11:18:56 that, "YouTube's content is all free, and much of it

14 11:19:03 is highly sought-after pirated clips"?

15 11:19:09 MR. MANCINI: Objection.

16 11:19:09 MR. BASKIN: Close quote.

17 11:19:10 MR. MANCINI: Objection; lacks foundation;

18 11:19:11 and same objections -- continuing objections to the

19 11:19:13 use of this document.

20 11:19:15 MR. BASKIN: Q. Do you remember, sir?

21 11:19:16 A No recollection.

22 11:19:17 Q And let me do one more and see if this jars

23 11:19:21 your recollection.

24 11:19:22 A Okay.

25 11:19:27 Q If you turn to Bates stamp 637, being the

1 SCHMIDT, ERIC

2 11:19:39 Bates stamp number, there's a page, "Important points

3 11:19:56 to make somewhere in the deck"; do you have that page,

4 11:20:00 sir?

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.

1 SCHMIDT, ERIC

2 11:21:27 Q That you not -- I take it you do not recall

3 11:21:32 discussing with the EMG the points set forth on

4 11:21:39 Schmidt 8 that we've -- I referred you to a few

5 11:21:42 minutes ago?

6 11:21:43 MR. MANCINI: Same objections.

7 11:21:44 THE WITNESS: I'm sorry. Which? Are you

8 11:21:45 talking about the whole document?

9 11:21:47 MR. BASKIN: Q. No. The -- the four or five

10 11:21:49 references to YouTube being, you know, wholly

11 11:21:53 sustained by pirated content --

12 11:21:56 A Yes, I see it, yes.

13 11:21:56 Q -- being a rogue enabler --

14 11:21:58 A Sure.

15 11:21:59 Q -- of copyright violations, being a video

16 11:22:02 Grokster.

17 11:22:02 Were any of those sentiments communicated by

18 11:22:05 you or discussed by you with members of the EMG?

19 11:22:08 MR. MANCINI: Same objections as prior; and

20 11:22:09 objection to the characterization of the contents of

21 11:22:12 this document.

22 11:22:12 THE WITNESS: Again, I have no recollection

23 11:22:13 of that.

24 11:22:14 MR. BASKIN: Q. No recollection of

25 11:22:16 discussing it with Mr. Brin?

1 SCHMIDT, ERIC

2 11:22:18 A That is correct.

3 11:22:19 Q Mr. Page?

4 11:22:20 A That is correct.

5 11:22:20 Q Mr. Kordestani?

6 11:22:21 A That is correct.

7 11:22:24 Q Now --

8 11:22:25 MR. MANCINI: I also want to object to the

9 11:22:27 extent that Mr. Drummond, I believe, is on EMG. And

10 11:22:31 if communications took place with him, I instruct the

11 11:22:33 witness not to answer on the grounds of privilege.

12 11:22:36 MR. BASKIN: Q. Even if you don't remember

13 11:22:41 this particular document, sir, do you remember a

14 11:22:45 similar discussion of YouTube's practices at the GPS?

15 11:22:49 MR. MANCINI: Same objections.

16 11:22:52 THE WITNESS: Well, unfortunately, I don't

17 11:22:55 recall the GPS. Therefore, I don't recall what

18 11:22:59 happened at the GPS, and I don't recall the specific

19 11:23:01 discussion at the GPS.

20 11:23:02 MR. BASKIN: Q. Now, how about between May

21 11:23:27 of 2006 and October 2006, when you bought YouTube? Do

22 11:23:34 you recall having discussions of these various points

23 11:23:40 made by the Video GPS folks to the EMG?

24 11:23:46 MR. MANCINI: Same objections; and object on

25 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.

1 SCHMIDT, ERIC

2 11:27:30 characterization of the document; lacks foundation.

3 11:27:32 THE WITNESS: Well, it's materially false

4 11:27:36 that that's -- what you said is true because he voted

5 11:27:39 for the acquisition.

6 11:27:40 MR. BASKIN: Q. I'm asking at any time, did

7 11:27:42 he oppose it?

8 11:27:44 MR. MANCINI: Same objections.

9 11:27:45 THE WITNESS: This e-mail implies that he

10 11:27:48 did, that he was opposed to it as of July or whatever.

11 11:27:51 MR. BASKIN: Q. But you have no recollection

12 11:27:52 of it?

13 11:27:53 A No.

14 11:27:53 Q Now, do you recall at the GPS whether

15 11:28:03 Mr. Brin expressly addressed the issue of whether

16 11:28:12 Google Video should compete with YouTube by relaxing

17 11:28:17 its copyright enforcement policies?

18 11:28:19 MR. MANCINI: Objection; lacks foundation;

19 11:28:20 and objection, calls for legal conclusions.

20 11:28:21 THE WITNESS: I have no recollection of

21 11:28:23 Sergey's views. I don't recall the GPS meeting. I

22 11:28:28 don't recall whether he was there, and I don't recall

23 11:28:30 his views.

24 11:28:30 MR. BASKIN: Q. Do you know the phrase

25 11:28:35 "something is not Googley"? Does that mean something

1 SCHMIDT, ERIC

2 11:28:39 to you?

3 11:28:40 THE WITNESS: Well, I --

4 11:28:40 MR. MANCINI: Objection to form.

5 11:28:41 THE WITNESS: -- I've certainly heard it,

6 11:28:44 yeah.

7 11:28:44 MR. BASKIN: Q. And that means, in normal

8 11:28:45 language, it's not the right thing to do, or it's not

9 11:28:49 right, or something like that? Is that what "not

10 11:28:51 Googley" means to you?

11 11:28:52 MR. MANCINI: Objection; lacks foundation.

12 11:28:53 THE WITNESS: It's not a precise phrase.

13 11:28:55 It's used by people who want to criticize some other

14 11:28:58 activity.

15 11:29:01 MR. BASKIN: Q. And do you specifically

16 11:29:04 recall whether, at the Video GPS meeting in and around

17 11:29:13 May 2006, whether Mr. Brin made the statement that,

18 11:29:21 "Competing against YouTube by relaxing copyright

19 11:29:27 enforcement practices is not a Googley thing to do"?

20 11:29:32 MR. MANCINI: Again, objection; lacks

21 11:29:34 foundation; and objection to form; and objection to

22 11:29:35 the extent it seeks a legal conclusion.

23 11:29:37 THE WITNESS: I have no recollection of -- of

24 11:29:41 such an assertion.

25 11:29:42 MR. BASKIN: Q. Now, do you recall when the

1 SCHMIDT, ERIC

2 11:30:06 EMG -- strike that.

3 11:30:11 I take it the EMG was in agreement that

4 11:30:16 Google should in fact purchase YouTube?

5 11:30:19 A At what point?

6 11:30:22 Q Prior to submitting it to the board.

7 11:30:25 A Yes. As of -- as -- as of the submission to

8 11:30:27 the board, the management team had agreed to promote

9 11:30:30 it to the board.

10 11:30:31 Q And do you recall -- recall ever having a

11 11:30:34 discussion among the management team of Google

12 11:30:42 concerning the various statements about YouTube being

13 11:30:47 a video Grokster or a rogue enabler of copyright

14 11:30:52 violations or being sustained by pirated clips?

15 11:30:57 Do you recall those topics being discussed by

16 11:30:59 the EMG?

17 11:31:00 MR. MANCINI: Objection to form; and

18 11:31:02 objection to the extent it seeks a legal conclusion

19 11:31:05 and communications with counsel, to which I instruct

20 11:31:07 the witness not to answer.

21 11:31:08 THE WITNESS: No recollection.

22 11:31:13 MR. BASKIN: Q. Never discussed it, as far

23 11:31:15 as you recall?

24 11:31:15 MR. MANCINI: Same objections.

25 11:31:16 THE WITNESS: Again, as I previously

1 SCHMIDT, ERIC

2 11:38:21 A The subsequent piece of work, "a piece of

3 11:38:24 crap. /FC," that is the signature of Mr. Frank Cousak.

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 SSICA," that

25 11:39:18 was written by Lawrence Gonzalez.

1 SCHMIDT, ERIC

2 11:39:23 If you look below it, you see the little

3 11:39:26 caret? It says "from." Then, "It would be a civil

4 11:39:29 offense to create," that's from the Wire.com website.

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 11:39:47 Q I see. Got it. Okay.

10 11:39:54 Now, when Google purchased YouTube, did you

11 11:40:08 instruct Mr. Hurley and Mr. Chen that their primary

12 11:40:14 goal, at least immediate goal, was to grow the user

13 11:40:19 base and reach one billion views per day?

14 11:40:23 MR. MANCINI: Objection; lacks foundation.

15 11:40:24 THE WITNESS: I don't recall the very

16 11:40:26 specific goal.

17 11:40:27 MR. BASKIN: Q. Does it sound like generally

18 11:40:31 something you said to them, that their -- that their

19 11:40:35 primary objective should be to grow the user base?

20 11:40:38 A Our -- our policy from acquisition was to

21 11:40:40 grow the user base. That is correct.

22 11:40:43 Q And --

23 11:40:44 A I don't recall the specific numbers.

24 11:40:46 Q You don't recall that they should grow it to

25 11:40:48 playbacks of one billion a day?

1 SCHMIDT, ERIC

2 11:40:51 A I don't recall any specific numbers.

3 11:40:52 Q And in late February or early March of 2008,

4 11:41:16 did you shift your thinking and instruct Mr. Hurley

5 11:41:25 that he should now be rapidly redirecting his efforts

6 11:41:29 from user growth to monetization?

7 11:41:33 MR. MANCINI: Objection; lacks foundation;

8 11:41:34 and objection to form.

9 11:41:35 THE WITNESS: Remind me of the dates again.

10 11:41:37 MR. BASKIN: Q. Something in the vicinity of

11 11:41:41 late February, early March 2008.

12 11:41:44 A That's roughly correct.

13 11:41:47 Q And was this an actual meeting you had with

14 11:41:49 Mr. Hurley where you told him to redirect his efforts?

15 11:41:53 A I don't recall saying "redirect."

16 11:41:56 What I recall was to add revenue as a goal.

17 11:42:04 Q And let me show you, for example, what we'll

18 11:42:09 mark as Schmidt 12.

19 11:42:14 (Document marked Schmidt Exhibit 12

20 11:42:19 for identification.)

21 11:42:19 MR. BASKIN: This was marked during the

22 11:42:20 Hurley deposition as well, but I don't recall the

23 11:42:22 number.

24 11:42:56 Q You'll see, sir, that you are not a recipient

25 11:43:01 of this e-mail, and -- and no reason to believe you

1 SCHMIDT, ERIC

2 11:43:04 saw it, but it references in the second paragraph --

3 11:43:10 strike that.

4 11:43:10 You'll see Mr. Hurley is communicating to

5 11:43:13 some of his team, I think, and it says, "As you may

6 11:43:16 know, three weeks ago Eric" -- I assume that's you?

7 11:43:21 A I suppose.

8 11:43:22 Q -- "shifted his thinking on YouTube's focus.

9 11:43:26 So since that time, we have rapidly been redirecting

10 11:43:32 our efforts and resources from user growth to

11 11:43:34 monetization."

12 11:43:36 Do you see that?

13 11:43:36 MR. MANCINI: Objection to the use of a

14 11:43:39 document to which the witness is not copied.

15 11:43:40 THE WITNESS: I see the sentence, yes.

16 11:43:41 MR. BASKIN: Q. And does Mr. Hurley

17 11:43:46 accurately reflect the conversation you had with him

18 11:43:49 three weeks before March 14th, 2008?

19 11:43:51 MR. MANCINI: Same objection; and lacks

20 11:43:53 foundation.

21 11:43:53 THE WITNESS: As I indicated before, it is my

22 11:43:55 recollection that I told him to add revenue, not to

23 11:44:01 redirect.

24 11:44:01 MR. BASKIN: Okay.

25 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?

1 SCHMIDT, ERIC

2 11:46:05 A In my experience as an executive, when you

3 11:46:08 have strong founders, it's very important that they

4 11:46:12 feel that they have control over their company after

5 11:46:17 it's acquired.

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.

1 SCHMIDT, ERIC

2 11:47:31 Q Okay. Now, as you sit here today, do you

3 11:47:40 know whether in 19 -- in 2006, before the acquisition

4 11:47:46 of YouTube by Google, whether Google had entered into

5 11:47:50 a license agreement with Audible Magic to provide

6 11:47:57 fingerprint technology?

7 11:47:58 MR. MANCINI: Objection; lacks foundation;

8 11:48:00 and objection to form.

9 11:48:03 THE WITNESS: This is a question about

10 11:48:05 Google, not YouTube?

11 11:48:05 MR. BASKIN: Q. Question about YouTube, not

12 11:48:08 Google.

13 11:48:08 A You may --

14 11:48:08 Q So let me rephrase it again.

15 11:48:10 A Okay. Try it again.

16 11:48:11 MR. MANCINI: Please.

17 11:48:12 MR. BASKIN: Q. Do you know whether, before

18 11:48:13 Google acquired YouTube --

19 11:48:16 A Ah, okay.

20 11:48:16 Q -- did YouTube enter into a contract with

21 11:48:19 Audible Magic whereby Audible Magic was going to

22 11:48:22 provide fingerprint technology to YouTube?

23 11:48:26 MR. MANCINI: Objection to form; and lacks

24 11:48:26 foundation.

25 11:48:28 THE WITNESS: No recollection.

1 SCHMIDT, ERIC

2 11:48:32 MR. BASKIN: Q. Do you -- do you have a

3 11:48:33 recollection that YouTube had engaged a fingerprint

4 11:48:37 technology vendor prior to your acquisition?

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 11:49:21 THE WITNESS: Yeah. Again, no rec -- no

3 11:49:23 recollection, no knowledge in that area.

4 11:49:25 MR. BASKIN: Q. Now, after Google's

5 11:49:40 acquisition of YouTube in late 2006 and then into

6 11:49:46 2007, were you aware that Google and YouTube were

7 11:49:57 carrying out large -- were carrying out negotiations

8 11:50:00 with large media companies to see if revenue-sharing

9 11:50:09 agreements could be reached with them?

10 11:50:10 MR. MANCINI: Objection to form.

11 11:50:11 THE WITNESS: I'm sorry. I -- which -- which

12 11:50:13 dates and which companies? So --

13 11:50:16 MR. BASKIN: Q. Well, I can be specific.

14 11:50:18 A Yeah.

15 11:50:18 Q But after the acquisition --

16 11:50:20 A So after acquisition?

17 11:50:20 Q Yes.

18 11:50:21 A So Google and YouTube are together.

19 11:50:22 Q Right.

20 11:50:22 A Okay.

21 11:50:24 Q Were you being generally kept abreast of

22 11:50:28 negotiations between YouTube and the major media

23 11:50:31 companies regarding revenue-sharing agreements?

24 11:50:32 MR. MANCINI: Objection to form.

25 11:50:33 THE WITNESS: Yes, in general terms.

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 from.

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?

1 SCHMIDT, ERIC

2 11:51:29 MR. MANCINI: Objection to form.

3 11:51:30 THE WITNESS: You'll have to define what

4 11:51:37 "staying abreast" means for me to understand your

5 11:51:39 question.

6 11:51:39 MR. BASKIN: Q. Well, was the -- Mr. Eun's

7 11:51:42 team and Mr. Kordestani, were they regularly advising

8 11:51:49 you regarding the status of negotiations with the

9 11:51:51 large media companies?

10 11:51:54 A I would use the word "periodic" and say that

11 11:51:58 I was periodically advised.

12 11:52:00 Q And was there actually a phenomenon or an

13 11:52:03 event called the Deal Review?

14 11:52:08 MR. MANCINI: Objection to form.

15 11:52:08 THE WITNESS: That is correct.

16 11:52:09 MR. BASKIN: Q. And were you a participant

17 11:52:10 in the Deal Review?

18 11:52:12 A Sometimes.

19 11:52:12 Q And in the course of the Deal Review, was --

20 11:52:20 strike that.

21 11:52:22 Who were -- who were -- who were the

22 11:52:22 participants on the Deal Review?

23 11:52:25 A Well, at the time, Deal Reviews were owned by

24 11:52:28 Omid, so he was -- he would have always been there;

25 11:52:35 and then depending on schedule, I may or may not have

1 SCHMIDT, ERIC

2 11:52:37 been there.

3 11:52:37 Q And what about other members of the EMG?

4 11:52:41 Would they be in attendance?

5 11:52:44 A Some of them. It would -- it would be -- the

6 11:52:46 rule is they're all invited, so...

7 11:52:49 Q And did Mr. Brin attend the reviews from time

8 11:52:54 to time?

9 11:52:54 MR. MANCINI: Objection to form; vague,

10 11:52:57 "reviews."

11 11:52:58 MR. BASKIN: Okay.

12 11:52:58 Q Did Mr. Brin attend the business review

13 11:53:03 meetings from time to time?

14 11:53:04 MR. MANCINI: Objection to form.

15 11:53:05 THE WITNESS: Again, periodically each of

16 11:53:08 them, which would include Sergey Brin, Larry Page,

17 11:53:13 Omid Kordestani, the people you've named before.

18 11:53:16 MR. BASKIN: Q. And did these -- did these

19 11:53:18 business reviews occur weekly?

20 11:53:21 A They're scheduled on Mondays. Yes.

21 11:53:23 Q And did you make a point of trying to attend

22 11:53:28 most of the weekly meetings, if you could?

23 11:53:33 A In the pantheon of -- in the pantheon of --

24 11:53:39 in the cacophony of Google, it's in the middle of the

25 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.

1 SCHMIDT, ERIC

2 12:21:40 THE WITNESS: The policy as you stated is

3 12:21:45 not -- was not our policy.

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

1 SCHMIDT, ERIC

2 12:22:39 available to media companies independent of whether

3 12:22:42 they did a deal with us.

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.

1 SCHMIDT, ERIC

2 12:23:23 Q Now, to whom did you communicate this policy,

3 12:23:41 Mr. Schmidt?

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 --

1 SCHMIDT, ERIC

2 12:31:28 paragraph I just read?

3 12:31:29 A I --

4 12:31:30 MR. MANCINI: Objection.

5 12:31:30 THE WITNESS: -- I can speculate. But it's

6 12:31:32 an e-mail to himself, so I don't know what -- is this

7 12:31:34 some -- is this what he wishes? Is this what he

8 12:31:38 thought? Is this what used to be true?

9 12:31:39 MR. MANCINI: You shouldn't speculate.

10 12:31:41 THE WITNESS: Right. I don't know.

11 12:31:42 MR. BASKIN: Q. Now, then he says, "Our CYC

12 12:31:46 tools are now live as well and are only offered to

13 12:31:49 partners who enter into a revenue deal with us."

14 12:31:53 Do you see that, sir?

15 12:31:54 MR. MANCINI: Same objection; document speaks

16 12:31:55 for itself.

17 12:31:56 MR. BASKIN: Q. Do you see that sentence,

18 12:31:57 Mr. Schmidt?

19 12:31:57 A I see that sentence.

20 12:32:00 Q And do you recall discussing with Mr. Eun

21 12:32:03 what Google's policies were in connection with using

22 12:32:11 CYC tools with media companies that refuse to enter

23 12:32:16 into revenue-sharing agreements?

24 12:32:17 MR. MANCINI: Objection; lacks foundation.

25 12:32:19 THE WITNESS: No recollection of this

1 SCHMIDT, ERIC

2 12:32:22 specific conversation with David on this topic.

3 12:32:24 MR. BASKIN: Q. Do you recall, during this

4 12:32:28 time frame, this is March of '07, discussing this

5 12:32:33 topic with anyone at the EMG whether the CYC tools are

6 12:32:43 only offered to partners who enter into a revenue deal

7 12:32:46 with us?

8 12:32:46 MR. MANCINI: Objection; lacks foundation.

9 12:32:48 By the way, the document is dated February of

10 12:32:51 '07, and objection to the extent it seeks

11 12:32:53 communications with legal counsel.

12 12:32:55 THE WITNESS: Again, as I previously stated,

13 12:32:57 our policy, as I recall it and as it was discussed

14 12:33:00 during this period, was the CYC tools, which

15 12:33:03 encompassed audio and video identification, would be

16 12:33:06 available to all.

17 12:33:07 MR. BASKIN: And over what time -- strike

18 12:33:11 that.

19 12:33:12 Q Let me ask you this: In the period of 2006

20 12:33:19 or January/February/March of 2007, do you recall any

21 12:33:31 Google executive discussing with you the cost of

22 12:33:36 providing Audible Magic fingerprint technologies to

23 12:33:42 content companies who would -- who did not enter into

24 12:33:48 a revenue-sharing agreement with Google?

25 12:33:51 MR. MANCINI: Objection to form; and lacks

1 SCHMIDT, ERIC

2 12:33:53 foundation.

3 12:33:53 THE WITNESS: Again, no recollection.

4 12:33:56 MR. BASKIN: Q. As you sit here today,

5 12:33:59 Mr. Schmidt, do you have any idea what it would have

6 12:34:03 cost in 2006 and 2007 to have made available Audible

7 12:34:16 Magic fingerprint technologies to media companies even

8 12:34:22 if they decline to enter into a revenue-sharing

9 12:34:26 agreement with YouTube?

10 12:34:27 MR. MANCINI: Objection, lacks foundation;

11 12:34:28 and objection to form.

12 12:34:29 THE WITNESS: I do not know.

13 12:34:30 MR. BASKIN: Q. And am I right you don't

14 12:34:32 recall any conversation whatsoever where anyone told

15 12:34:36 you what it would cost; correct?

16 12:34:37 MR. MANCINI: Objection; lacks foundation;

17 12:34:39 and objection to form.

18 12:34:40 THE WITNESS: That is correct.

19 12:34:41 MR. BASKIN: Q. And you never asked anyone

20 12:34:42 what it would cost, did you, sir?

21 12:34:45 MR. MANCINI: Same objections.

22 12:34:46 THE WITNESS: Correct.

23 12:34:46 MR. BASKIN: Q. Now, do you recall in 2006

24 12:34:56 and again January/February/March 2007, that any

25 12:35:04 executive from Google or YouTube ever request that

1 SCHMIDT, ERIC

2 15:08:30 MS. FORSHEIT: Okay. This will be 36.

3 15:08:33 (Document marked Exhibit 36

4 15:08:57 for identification.)

5 15:08:57 THE WITNESS: Thank you.

6 15:08:59 MS. FORSHEIT: Q. And when you've had a

7 15:09:00 chance to look at the document, let me know if you

8 15:09:03 recognize it.

9 15:09:21 A I do not.

10 15:09:25 Q This appears to be an e-mail from you to a

11 15:09:27 number of people, including the EMG, an e-mail that

12 15:09:33 includes the text of a Wall Street Journal article.

13 15:09:38 Do you recall sending this e-mail?

14 15:09:40 A I do not.

15 15:09:41 Q And did you write the subject line? Did you

16 15:09:45 compose the subject line of the e-mail?

17 15:09:46 A Most likely.

18 15:09:48 Q It says, "It may be happening faster than we

19 15:09:52 think. See Saturday WSJ."

20 15:09:57 Do you know what the "it" refers to in the

21 15:09:59 subject line?

22 15:10:01 A I do not.

23 15:10:02 Q The article -- the title of the Wall Street

24 15:10:08 Journal article here, which is dated October 14th,

25 15:10:11 2006, is "Media Tightens Pressure YouTube Over

1 SCHMIDT, ERIC

2 15:10:14 Copyrights."

3 15:10:15 Does that refresh your recollection as to

4 15:10:16 what the "it" meant in your subject line?

5 15:10:20 MR. MANCINI: Objection.

6 15:10:21 THE WITNESS: As I said, I don't -- I don't

7 15:10:23 recall what the "it" means. It's probable that it's

8 15:10:26 related to the title of the article.

9 15:10:28 MS. FORSHEIT: Q. Did you come up with the

10 15:10:43 idea to pursue YouTube in the first instance?

11 15:10:49 A I did not.

12 15:10:50 Q Do you recall who did?

13 15:10:53 A I believe it was David Drummond.

14 15:10:55 Q I'm actually going to ask you to briefly look

15 15:11:05 back at a document that was marked earlier today.

16 15:11:07 A Sure.

17 15:11:08 Q If you still have Exhibit 7, which was also

18 15:11:13 Drummond Exhibit 17.

19 15:11:22 A Okay. I've got it.

20 15:11:24 Q Okay. This -- you'll recall this is an

21 15:11:32 e-mail from David Eun to you that had forwarded

22 15:11:38 another e-mail on -- and this was in advance of the

23 15:11:44 Video GPS in May of 2006.

24 15:11:50 Under the heading "Balancing short-term

25 15:11:53 versus long-term goals" in the underlying e-mail, in

1 SCHMIDT, ERIC

2 15:12:00 the second paragraph, the second sentence, Mr. Eun

3 15:12:03 states to you, "For example, there was a heated debate

4 15:12:07 about whether we should relax enforcement of our

5 15:12:09 copyright policies in an effort to stimulate traffic

6 15:12:13 growth despite the inevitable damage it would cause to

7 15:12:16 relationships with content owners."

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?

1 SCHMIDT, ERIC

2 15:13:03 A That would be my under -- again, in context,

3 15:13:06 reading the e-mail, that's how I would interpret the

4 15:13:08 paragraph.

5 15:13:09 Q Were you ever a part of that debate in any

6 15:13:12 way?

7 15:13:12 A No.

8 15:13:13 Q Did you ever take a position with respect to

9 15:13:16 that debate?

10 15:13:18 MR. MANCINI: Objection.

11 15:13:19 THE WITNESS: No recollection of it.

12 15:13:22 MS. FORSHEIT: Q. Did you disagree with

13 15:13:24 Mr. Eun with respect to the statements he was making

14 15:13:30 in this e-mail?

15 15:13:32 MR. MANCINI: Objection; asked and answered

16 15:13:33 earlier today.

17 15:13:34 THE WITNESS: Well, it would be, I think,

18 15:13:36 more appropriate to quote from my response to David,

19 15:13:39 which is, "While I understand your points and

20 15:13:42 generally agree, I yet -- I don't yet see a winning

21 15:13:45 strategy from any of the video camps."

22 15:13:49 So I was not referring to any specific point

23 15:13:52 by saying that, and to interpret -- my explanation of

24 15:13:58 my paragraph to him, which I can speak authoritatively

25 15:14:02 on, is "get your act together because your strategy