

A-301

225

1 SCHMIDT, ERIC

2 15:14:05 doesn't make any sense." That's what I'm -- that's

3 15:14:09 what I'm communicating to him.

4 15:14:11 MS. FORSHEIT: Q. The Google Video strategy?

5 15:14:13 A Yeah. They're losing.

6 15:14:17 Q Okay.

7 15:14:22 A So I don't take a position on the details

8 15:14:24 there, so --

9 15:14:24 Q And do you recall ever telling Mr. Eun, on

10 15:14:27 any occasion, that Google Video was being

11 15:14:30 outmaneuvered by YouTube?

12 15:14:35 MR. MANCINI: Objection; lacks foundation.

13 15:14:36 THE WITNESS: Well, you can see that I say

14 15:14:40 that in this e-mail. "My issue is that the team is

15 15:14:42 reacting to others rather than driving a new strategy,

16 15:14:47 and I want to see a compelling differentiated

17 15:14:50 strategy."

18 15:14:50 That's synonymous with a "yes" to your

19 15:14:52 question.

20 15:14:54 MS. FORSHEIT: Q. Did that cause you to

21 15:15:02 re-evaluate the copyright strategy that Google Video

22 15:15:05 had adopted?

23 15:15:06 MR. MANCINI: Objection; lacks foundation;

24 15:15:08 and objection to form.

25 15:15:09 THE WITNESS: No recollection of that.

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SCHMIDT, ERIC

15:15:12 MS. FORSHEIT: Q. And as head of the
15:15:20 company, is it your testimony today that you don't
15:15:22 recall any concerns at the time of the acquisition of
15:15:26 YouTube about the extent of copyright infringement
15:15:29 occurring on YouTube?

15:15:31 MR. MANCINI: Objection to the
15:15:31 characterization of the testimony and to the extent it
15:15:33 seeks communications with counsel. Therefore,
15:15:37 instruct not to answer.

15:15:38 THE WITNESS: I believe that's not what I
15:15:39 said earlier. I believe what I said was I was aware
15:15:43 from public reports of the general question prior to
15:15:48 the acquisition. And anything else would be a legally
15:15:53 privileged answer.

15:15:57 MS. FORSHEIT: I assume that since you don't
15:16:14 recall -- strike that.

15:16:17 Q I assume that since you don't know, as you
15:16:19 sit here today, what Premier League is, that you don't
15:16:22 recall ever having discussions about possibly entering
15:16:25 into any kind of content deal with Premier League?

15:16:28 MR. MANCINI: Objection; calls for
15:16:30 speculation.

15:16:30 THE WITNESS: That is correct. I don't
15:16:32 recall any -- I don't recall anything about such a

Schapiro Exhibit 135

Aggregate number of works in the soundtrack database from inception

| <u>Year</u> | <u>Month</u> | <u>Month Quantity</u> | <u>Total</u> |
|-------------|--------------|-----------------------|--------------|
| 2006 | 12 | 9 | 9 |
| 2007 | 1 | 55 | 64 |
| | 2 | 436 | 500 |
| | 3 | 405 | 905 |
| | 4 | 19959 | 20864 |
| | 5 | 22216 | 43080 |
| | 6 | 2630 | 45710 |
| | 7 | 1718 | 47428 |
| | 8 | 2373 | 49801 |
| | 9 | 2822 | 52623 |
| | 10 | 720 | 53343 |
| | 11 | 382 | 53725 |
| | 12 | 1187 | 54912 |
| 2008 | 1 | 1889 | 56801 |
| | 2 | 7063 | 63864 |
| | 3 | 2118 | 65982 |
| | 4 | 6040 | 72022 |
| | 5 | 3677 | 75699 |
| | 6 | 1641 | 77340 |
| | 7 | 5018 | 82358 |
| | 8 | 2721 | 85079 |
| | 9 | 1654 | 86733 |
| | 10 | 1083 | 87816 |
| | 11 | 1538 | 89354 |
| | 12 | 881 | 90235 |
| 2009 | 1 | 786 | 91021 |
| | 2 | 9563 | 100584 |
| | 3 | 1214 | 101798 |
| | 4 | 1025 | 102823 |
| | 5 | 2064 | 104887 |
| | 6 | 2314 | 107201 |
| | 7 | 20477 | 127678 |
| | 8 | 602 | 128280 |
| | 9 | 891 | 129171 |



Top 10 content owners from inception to present

| Supplier | Total |
|--------------------|---------------|
| MTVN | 91100 |
| Viacom FP | 15074 |
| Endemol | 4695 |
| NBCU | 4368 |
| Fox | 4173 |
| CanalPlus | 3475 |
| Viacom DVD | 2750 |
| Disney | 1643 |
| Fox DVD | 1249 |
| WB DVD | 615 |
| WB | 29 |
| Grand Total | 129171 |

Number of works by content owner by date since soundtrack inception

| Supplier | Year | Month | Quantity |
|-----------|------|-------|----------|
| CanalPlus | 2008 | 9 | 4 |
| CanalPlus | 2008 | 10 | 593 |
| CanalPlus | 2008 | 11 | 415 |
| CanalPlus | 2008 | 12 | 459 |
| CanalPlus | 2009 | 1 | 383 |
| CanalPlus | 2009 | 2 | 467 |
| CanalPlus | 2009 | 3 | 528 |
| CanalPlus | 2009 | 4 | 270 |
| CanalPlus | 2009 | 5 | 46 |
| CanalPlus | 2009 | 6 | 19 |
| CanalPlus | 2009 | 8 | 232 |
| CanalPlus | 2009 | 9 | 59 |
| Disney | 2007 | 4 | 24 |
| Disney | 2007 | 5 | 13 |
| Disney | 2007 | 6 | 87 |
| Disney | 2007 | 7 | 216 |
| Disney | 2007 | 8 | 279 |
| Disney | 2008 | 1 | 22 |
| Disney | 2008 | 2 | 73 |
| Disney | 2008 | 3 | 34 |
| Disney | 2008 | 4 | 12 |
| Disney | 2008 | 5 | 70 |
| Disney | 2008 | 6 | 240 |
| Disney | 2008 | 8 | 8 |
| Disney | 2008 | 9 | 30 |
| Disney | 2008 | 10 | 37 |
| Disney | 2008 | 11 | 74 |
| Disney | 2008 | 12 | 1 |
| Disney | 2009 | 1 | 119 |
| Disney | 2009 | 2 | 82 |
| Disney | 2009 | 3 | 44 |
| Disney | 2009 | 4 | 97 |
| Disney | 2009 | 5 | 30 |
| Disney | 2009 | 6 | 11 |
| Disney | 2009 | 7 | 27 |
| Disney | 2009 | 8 | 8 |
| Disney | 2009 | 9 | 5 |
| Endemol | 2009 | 5 | 1851 |
| Endemol | 2009 | 6 | 2145 |
| Endemol | 2009 | 7 | 699 |
| Fox | 2007 | 4 | 171 |
| Fox | 2007 | 5 | 192 |
| Fox | 2007 | 6 | 319 |
| Fox | 2007 | 7 | 305 |
| Fox | 2007 | 8 | 223 |
| Fox | 2007 | 9 | 201 |
| Fox | 2007 | 10 | 241 |
| Fox | 2007 | 11 | 174 |
| Fox | 2007 | 12 | 529 |

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|---------|------|----|-------|
| Fox | 2008 | 1 | 105 |
| Fox | 2008 | 2 | 37 |
| Fox | 2008 | 3 | 86 |
| Fox | 2008 | 4 | 66 |
| Fox | 2008 | 5 | 57 |
| Fox | 2008 | 6 | 135 |
| Fox | 2008 | 7 | 95 |
| Fox | 2008 | 8 | 163 |
| Fox | 2008 | 9 | 30 |
| Fox | 2008 | 10 | 42 |
| Fox | 2008 | 11 | 99 |
| Fox | 2008 | 12 | 49 |
| Fox | 2009 | 1 | 51 |
| Fox | 2009 | 2 | 66 |
| Fox | 2009 | 3 | 90 |
| Fox | 2009 | 4 | 80 |
| Fox | 2009 | 5 | 76 |
| Fox | 2009 | 6 | 38 |
| Fox | 2009 | 7 | 320 |
| Fox | 2009 | 8 | 119 |
| Fox | 2009 | 9 | 14 |
| Fox DVD | 2007 | 12 | 447 |
| Fox DVD | 2008 | 2 | 757 |
| Fox DVD | 2008 | 5 | 45 |
| MTVN | 2007 | 2 | 1 |
| MTVN | 2007 | 4 | 16963 |
| MTVN | 2007 | 5 | 20778 |
| MTVN | 2007 | 6 | 2012 |
| MTVN | 2007 | 7 | 1036 |
| MTVN | 2007 | 8 | 1835 |
| MTVN | 2007 | 9 | 1148 |
| MTVN | 2007 | 11 | 97 |
| MTVN | 2007 | 12 | 2 |
| MTVN | 2008 | 1 | 982 |
| MTVN | 2008 | 2 | 3986 |
| MTVN | 2008 | 3 | 1422 |
| MTVN | 2008 | 4 | 3496 |
| MTVN | 2008 | 5 | 1785 |
| MTVN | 2008 | 6 | 665 |
| MTVN | 2008 | 7 | 4721 |
| MTVN | 2008 | 8 | 1163 |
| MTVN | 2008 | 9 | 826 |
| MTVN | 2009 | 2 | 7591 |
| MTVN | 2009 | 4 | 397 |
| MTVN | 2009 | 7 | 19365 |
| MTVN | 2009 | 8 | 31 |
| MTVN | 2009 | 9 | 798 |
| NBCU | 2006 | 12 | 9 |
| NBCU | 2007 | 1 | 55 |
| NBCU | 2007 | 2 | 435 |
| NBCU | 2007 | 3 | 405 |
| NBCU | 2007 | 4 | 225 |

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|------------|------|----|------|
| NBCU | 2007 | 5 | 151 |
| NBCU | 2007 | 6 | 179 |
| NBCU | 2007 | 7 | 123 |
| NBCU | 2007 | 8 | 32 |
| NBCU | 2007 | 9 | 81 |
| NBCU | 2007 | 10 | 224 |
| NBCU | 2007 | 11 | 34 |
| NBCU | 2007 | 12 | 66 |
| NBCU | 2008 | 1 | 92 |
| NBCU | 2008 | 2 | 105 |
| NBCU | 2008 | 3 | 366 |
| NBCU | 2008 | 4 | 98 |
| NBCU | 2008 | 5 | 211 |
| NBCU | 2008 | 6 | 191 |
| NBCU | 2008 | 7 | 146 |
| NBCU | 2008 | 8 | 113 |
| NBCU | 2008 | 9 | 32 |
| NBCU | 2008 | 10 | 94 |
| NBCU | 2008 | 11 | 60 |
| NBCU | 2008 | 12 | 70 |
| NBCU | 2009 | 1 | 40 |
| NBCU | 2009 | 2 | 114 |
| NBCU | 2009 | 3 | 129 |
| NBCU | 2009 | 4 | 181 |
| NBCU | 2009 | 5 | 61 |
| NBCU | 2009 | 6 | 101 |
| NBCU | 2009 | 7 | 66 |
| NBCU | 2009 | 8 | 64 |
| NBCU | 2009 | 9 | 15 |
| Viacom DVD | 2007 | 4 | 1032 |
| Viacom DVD | 2007 | 5 | 1082 |
| Viacom DVD | 2007 | 7 | 38 |
| Viacom DVD | 2007 | 8 | 4 |
| Viacom DVD | 2007 | 11 | 22 |
| Viacom DVD | 2008 | 4 | 17 |
| Viacom DVD | 2008 | 5 | 366 |
| Viacom DVD | 2009 | 2 | 41 |
| Viacom DVD | 2009 | 8 | 148 |
| Viacom FP | 2007 | 4 | 1544 |
| Viacom FP | 2007 | 6 | 33 |
| Viacom FP | 2007 | 9 | 1392 |
| Viacom FP | 2007 | 10 | 228 |
| Viacom FP | 2007 | 11 | 55 |
| Viacom FP | 2007 | 12 | 143 |
| Viacom FP | 2008 | 1 | 688 |
| Viacom FP | 2008 | 2 | 2105 |
| Viacom FP | 2008 | 3 | 210 |
| Viacom FP | 2008 | 4 | 1736 |
| Viacom FP | 2008 | 5 | 1141 |
| Viacom FP | 2008 | 6 | 410 |
| Viacom FP | 2008 | 7 | 56 |
| Viacom FP | 2008 | 8 | 1274 |

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|-----------|------|----|------|
| Viacom FP | 2008 | 9 | 732 |
| Viacom FP | 2008 | 10 | 317 |
| Viacom FP | 2008 | 11 | 890 |
| Viacom FP | 2008 | 12 | 302 |
| Viacom FP | 2009 | 1 | 193 |
| Viacom FP | 2009 | 2 | 1202 |
| Viacom FP | 2009 | 3 | 423 |
| WB | 2007 | 10 | 27 |
| WB | 2008 | 5 | 2 |
| WB DVD | 2008 | 4 | 615 |

Schapiro Exhibit 136

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, |) | Case No. |
| Plaintiffs, |) | 1:07CV02103 |
| vs. |) | |
| YOUTUBE, INC., YOUTUBE, LLC, |) | |
| and GOOGLE, INC., |) | |
| Defendants. |) | |
| _____ |) | |

VIDEOTAPED DEPOSITION OF LEE L'ARCHEVESQUE
NEW YORK, NEW YORK
Thursday, February 18, 2010

REPORTED BY:
ERICA RUGGIERI, CSR, RPR
JOB NO: 18753

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February 18, 2010

9:22 a.m.

VIDEOTAPED DEPOSITION OF LEE

L'ARCHEVESQUE, held at the offices of
Mayer Brown, 1675 Broadway, New York,
New York, pursuant to notice, before Erica
L. Ruggieri, Registered Professional
Reporter and Notary Public of the State of
New York.

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A P P E A R A N C E S
FOR THE LEAD PLAINTIFFS AND PROSPECTIVE
CLASS:

JENNER & BLOCK, LLP
BY: LUKE C. PLATZER, ESQ.
1099 New York Avenue, NW
Suite 900
Washington, DC 20001-4412
(202) 639-6000
Lplatz@jenner.com

FOR THE DEFENDANTS YOUTUBE, INC.,
YOUTUBE, LLC and GOOGLE, INC.:

MAYER BROWN, LLP
BY: BRIAN WILLEN, ESQ.
JASON I. KIRSCHNER, ESQ.
1675 Broadway
New York, New York 10019
(212) 506-2500
Bwillen@mayerbrown.com
Jkirschner@mayerbrown.com

ALSO PRESENT:
MANUEL ABREU, Videographer

1 L'ARCHEVESQUE
2 number VIA02072896, marked for
3 identification, as of this date.)
4 A. Okay.
5 11:07:15 Q. Do you know who Vance Ikezoye
6 is?
7 A. No, I don't know.
8 Q. So this is an e-mail, the one
9 I'm looking at is at the bottom of the
10 11:07:24 first page. It's an e-mail from Chris
11 Maxcy to Vanceikezoye@Audiblemagic.com,
12 dated December 5th, 2006, cc'ing Adam
13 Cahan. And the e-mail says, "Hi, Vance, I
14 wanted to introduce you to Cahan at
15 11:07:43 Viacom."
16 Does this e-mail suggest that
17 Chris Maxcy from YouTube was introducing
18 Adam Cahan at Viacom to Audible Magic?
19 A. It seems -- that's a personal
20 11:08:03 introduction. That's, you know, Chris
21 introducing Vance and Adam. I don't know
22 if that's the introduction company to the
23 company or it's a personal introduction.
24 Q. Do you know whether either
25 11:08:15 Mr. Cahan or Joe Simon or Nick Rockwell

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L'ARCHEVESQUE

had had any dealings with Audible Magic prior to December of 2006?

A. I don't know.

11:08:40 Q. In December 2006 Audible Magic's technology was fingerprint-based technology?

A. Yes.

11:08:55 Q. Was it Viacom's understanding, in December of 2006, that Audible Magic maintained a database that contained various fingerprints that had been provided by content owners?

A. It contained a fingerprint database, yes.

Q. In December of 2006, do you know what kinds of fingerprints were in Audible Magic's fingerprint databases?

A. It was primarily music at that point, I believe.

11:09:28 Q. Do you know, as of December of 2006, whether there were any movie studios or television studios that had provided content to Audible Magic for fingerprinting?
11:09:44

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L'ARCHEVESQUE

A. I don't know for sure, but I believe that they had started to create sound track database at that point.

11:09:50 Q. Can you identify any movie studio, television studio that had provided content to Audible Magic to be fingerprinted in December of 2006?

A. No.

11:10:01 MR. PLATZER: This is a standing objection here, but as I have expressed, we believe this whole line of questioning is outside the scope of the deposition topic.

11:10:12 MR. WILLEN: It's squarely within the deposition topic, but we will go on, and you can note your objection.

Q. So in December of 2006, was Viacom aware that there were any content owners, other than record labels or music publishers, that had provided content to Audible Magic for fingerprinting?

A. I don't know.

11:10:36 Q. You weren't affirmatively aware,

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L'ARCHEVESQUE

in December of 2006, that content owners other than record labels and music publishers had provided fingerprints to Audible Magic, were you?

MR. PLATZER: Objection to the Form. Vague as to "you," as to whether you mean Mr. L'Archevesque.

MR. WILLEN: I mean Viacom.

MR. PLATZER: And repeat the objection. Outside the scope.

A. Sorry. The question again, please?

Q. You said you didn't know one way or another whether content owners other than record labels or music publishers had provided content to Audible Magic for fingerprinting in December of 2006?

A. I do not know if we knew, in December 2006, of that being the case or not.

Q. Okay. Do you know, sitting here today, either because of your preparation for the deposition or independently, whether, in December of 2006, any movie

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L'ARCHEVESQUE

studios or television studios had provided content to Audible Magic for fingerprinting?

11:11:40 A. I don't know.

Q. As of December of 2006, had Viacom provided any content to Audible Magic for fingerprinting?

A. No.

11:11:58 Q. So in December 2006 there were no Viacom-related fingerprints in any of Audible Magic's databases?

A. That's correct.

Q. In December of 2006, were any of Viacom's own websites using Audible Magic to filter user-submitted content?

A. No.

Q. Did Viacom -- excuse me -- did Viacom test Audible Magic's technology?

11:12:30 A. Viacom, I believe there was an ongoing interaction with Audible Magic, as far as implementation options, installation options, configuration options, that did take place.

11:12:50 MR. WILLEN: Let's actually look

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L'ARCHEVESQUE

at a document. This will be
Exhibit 11.

(L'Archevesque Exhibit 11,
11:13:15 Audible Magic test license
agreement, Bates number AM 003811,
marked for identification, as of
this date.)

MR. WILLEN: This is a document
11:13:05 produced by Audible Magic, bearing
Bates number AM 003811. And it's
described as an Audible Magic test
license agreement.

A. Okay.

11:13:22 Q. Have you seen this before?

A. I don't recall seeing it, no.

Q. All right. Well, just take a
quick look at it.

A. Okay.

11:13:40 Q. Are you aware of the existence
of this test license agreement,
independently of just seeing this
document?

A. No, no.

11:13:49 Q. The date of this document is the

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L'ARCHEVESQUE

quarter 2007?

A. It would have been in that second quarter time frame.

11:26:21 Q. Were there particular types of works that Viacom was providing to Audible Magic by means of the MRSS feeds?

A. That's the on-line content. That's content that we have gone onto our websites.

11:26:40 Q. So do you know the first date on which fingerprints of Viacom content actually appeared in any of Audible Magic's databases?

11:26:58 A. No, I don't know when the fingerprints, you know, would have been processed and added to that database officially.

Q. Was there some lag between when Viacom made the content available and when it actually appeared as a fingerprint in the Audible Magic system?

MR. PLATZER: Objection. Calls for speculation.

11:27:19 A. There would have been a minimal

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L'ARCHEVESQUE

lag, minimum type lag. But we implemented a receipt system at some point after that, which, you know, gave us notification of when they were going in the database, when they were fingerprinted.

Q. So as of March of 2007, there were no Viacom fingerprints that were in any of Audible Magic's databases, correct?

11:27:49 MR. PLATZER: Objection, calls for speculation.

A. I understand that to be the case.

Q. When the Viacom fingerprints were included in Audible Magic's system, is it correct that they were included in something that Audible Magic called the sound track database?

A. Yes.

11:28:12 Q. Were there any other databases in Audible Magic that Viacom fingerprints were added to?

A. I believe at that time it was a music database and a sound track database, and our fingerprints were in the sound

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L'ARCHEVESQUE

track database.

Q. All of the fingerprints at
Viacom supplied to Audible Magic would
11:28:40 have appeared in the sound track database?

A. Yes.

Q. Why was it not until the second
quarter of 2007 that Viacom started
providing access to its content to Audible
11:29:05 Magic for fingerprinting?

A. There was -- that prior quarter
was spent looking at the company, looking
at, you know, how it was, its traction
with other companies, talking to them. It
11:29:27 was actually, you know, that was fairly
timely closure to that.

Q. I'm sorry, I didn't hear the
last thing you said.

A. I said that was fairly timely
11:29:37 with how we felt about Audible Magic and
got them fingerprints or access.

Q. I'm sorry, when was the first
contact that Viacom had with Audible
Magic?

11:29:48 MR. PLATZER: Objection. Asked

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L'ARCHEVESQUE

and answered.

A. December 2006, I believe.

Q. So once Viacom started providing
11:30:05 access to content to Audible Magic, how
did Viacom decide what content to provide?

A. We would -- we determined it
through several ways. One was rights, did
we have rights to fingerprint that
11:30:26 content. Another was popularity, how
popular was the content.

What we didn't -- what we didn't
provide was things we didn't have rights
to.

Q. What kinds of content would fall
11:30:39 into that bucket?

A. I can't say what types of
content, specifically, but the general,
I'm not a lawyer, but my general
11:30:51 understanding of rights is you need a
certain amount of rights in order to be
able to fingerprint this content.

Q. I see. So these were works that
Viacom owned in conjunction with some
11:31:04 other entity?

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L'ARCHEVESQUE

11:31:12 A. You know best of type shows, where you might have other licensing or limitations of what we can do. And you wouldn't -- I mean we wouldn't fingerprint trailers and things of that nature.

Q. Why not?

11:31:22 A. Aside from potential rights issues, it's just not something we fingerprinted. Really, if we had the rights and they were willing to fingerprint them, we let them fingerprint as I mumble some more. If we had the rights and it was fairly easy to give them access, they fingerprinted.

Q. Were there any cost issues associated with Audible Magic generating these fingerprints?

A. I don't believe so, no.

11:31:49 Q. So cost wasn't a reason that Viacom wouldn't have let audible fingerprint more of Viacom's content?

A. It wouldn't be a cost issue. It would be a, you know, are the cycles that we are spending fingerprinting being spent

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L'ARCHEVESQUE

A F T E R N O O N S E S S I O N

(Time noted: 1:13 p.m.)

THE VIDEOGRAPHER: The time is

01:12:53 1:13 p.m. We are back on the record.

L E E L ' A R C H E V E S Q U E,

resumed and testified as follows:

EXAMINATION BY (Cont'd.)

MR. WILLEN:

01:12:56 Q. So I wanted to go back and just
clarify something that you said earlier.
I had asked you a question about the audit
work that Viacom was doing to look at how
Audible Magic was working. And you said
01:13:09 there were initially some timing concerns
as far as when the content was getting
identified and/or blocked. I just was
curious as to what, in particular, you
were referring to.

01:13:19 A. With some of the initial iFilm
sampling, it looked like the -- it was
taking longer for the content to kind of
be removed from the staging area than
other times. I believe it was measured in
01:13:36 minutes, nothing more than that. So you

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L'ARCHEVESQUE

would do an upload, and it would either kind of not automatically, but in a fairly timely fashion it would go away. I would say copyright infringement, I don't remember what the exact text was, but there was some times when that would take a little bit longer.

Q. I see.

01:13:57 So I want to switch gears now and talk about the YouTube fingerprinting technology.

A. Okay.

Q. So when did Viacom first become aware that YouTube was developing its own fingerprinting technology?

A. First -- second quarter of 2007.

Q. How did Viacom learn that?

A. I'm not sure exactly. I believe 01:14:22 it was learned through Mike Fricklas.

Q. And this was before the YouTube technology had actually launched, correct?

A. Yes.

Q. Did YouTube invite Viacom to participate in a pilot test of that 01:14:36

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technology?

A. Yes. We referred to it as a beta test, but yes.

01:14:47 Q. Do you know when YouTube, Google, made the invitation to Viacom to participate in the beta test?

A. I don't exactly, but I'm guessing it's in the same time frame, 01:15:03 second quarter 2007.

Q. And Viacom, in fact, did end up participating in that beta test?

A. We did.

Q. When was the testing that Viacom 01:15:17 did of the YouTube fingerprinting, when did that actually take place?

A. I don't know exactly, but it was, if I remember correctly, there was a little bit of a delay with getting the 01:15:30 test process and tools in place and the methodology in place. It was probably end of the second quarter, maybe beginning of the third quarter 2007.

Q. And you, yourself, were involved 01:15:41 in this testing, correct?

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A. Yes.

Q. What was your role?

A. My team's role was to work with,
01:15:49 you know, Bane Hunter, who we talked about
before, as well as our infrastructure
people to work out kind of a useful
approach or a doable approach to the
testing, meaning getting the content and
01:16:05 the correct type, getting the
infrastructure in place to facilitate the
testing. And, on the Bane side, also to
test the fingerprinting tool that YouTube
had, meaning how you could fingerprint
01:16:21 your own, create your own fingerprint.

Q. I see.

A. It was a combination of things.

Q. So can you just describe, sort
of at a high level of generality, what the
01:16:32 testing methodology was?

A. There was, during the initial
conversations, there was a lot of kind of
exploratory questions around who should do
the fingerprinting. Should we do it
01:16:44 internally. Our standard work flow is,

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slightly in either the resolution of the screen or the rotation, some sound variables, things of that nature. Then they were uploaded to the system to see if the matching would take place.

Q. Were there multiple rounds of testing that Viacom did, as part of this process?

01:19:10 A. I think the test involved several rounds, yes. But I think it was part of the same test, if I recall correctly.

Q. And did you see different results, as the test went on?

01:19:25 A. Yeah. There were different results. Yes, there were.

Q. How were they different?

01:19:37 A. There was some anomalies in, you know, the minimum length of clip that was required in order to get a match. That seemed to change throughout the test. And because of that, the matching results also changed.

01:19:53 Q. Sorry, what do you mean, "the

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matching results also changed"?

A. Well, the feeling was that the tool might have changed a little during the testing. And while it may have been accepting, say, a 15-second clip, the bar seemed to move throughout the test and end up a little higher.

01:20:08
So the feeling was, I think it was, I don't remember the results specifically, but I think it ended up being set to 30 seconds, so a 30-second minimum in order to generate a match.

Q. Did you actually communicate with people at Google or YouTube about that issue?

A. We were communicating with folks at YouTube at the beginning, heavily. During the middle it was not a lot of communication. And to be honest with you, I don't know exactly what was communicated back to them. But there was interactions with them.

Q. Do you know for a fact, one way or another, whether the tool actually

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changed during the test process?

A. I can't say for sure, no.

Q. Now, at the end of the test you
01:21:03 prepared a written report?

A. I did.

Q. Was it just the one report, or
were there multiple reports that you
prepared?

01:21:09 A. From my group there was one
report.

Q. Okay. Let's just look at it, so
we are talking about the same thing.

(L'Archevesque Exhibit 18,
01:21:37 document produced by Viacom, Bates
numbers VIA01922290, marked for
identification, as of this date.)

MR. WILLEN: This is 18. This
is a document produced by Viacom with
01:21:39 the Bates numbers VIA01922290.

A. Okay.

Q. So this is the report that your
group prepared?

A. Yes.

01:22:49 Q. Other than this report, or

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A. Yes. That's where we fingerprint internally, outside of our standard work flows, and provide those fingerprints, yes.

Q. I see. Okay.

So when did Viacom first start providing YouTube with access to Viacom content, for purposes of fingerprinting?

A. Early 2000 -- early Q2, 2008.

Q. So has Viacom provided YouTube with access to all Viacom content in existence for fingerprinting or only a subset of Viacom content?

A. Not all the content in existence, no.

Q. What are the categories of Viacom content that Viacom has made available to YouTube for fingerprinting?

A. Primarily, the DTO library.

Q. When you say "the DTO library," what exactly are you referring to?

A. Download to own library. It's a library of content made up of, you know, more recent type content, the more popular

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L'ARCHEVESQUE

content that we use for, you know, with other companies that we distribute our content to.

01:38:29 Q. Does that DTO library include every Viacom television show that's aired since Q2, 2008?

A. I don't know for sure.

01:38:46 Q. But is there any content in that library, that sort of older content?

A. There is some, yes.

Q. Now, are you familiar with the term work-in-suit or WorksInSuit?

A. Yes.

01:39:07 Q. What is your understanding of what that term means?

A. It's my understanding that WorksInSuit are the pieces of content that are noted as part of this case. Pardon my legal ineptitude.

01:39:31 Q. So has Viacom provided every one of the WorksInSuit to YouTube, for purposes of allowing YouTube to create fingerprints?

01:39:45 A. No. They are separate work

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L'ARCHEVESQUE

flows. I think we are between 75 and 80 percent of the WorksInSuit being fingerprinted. Those are separate kind of -- those are separate work flows. We have the work flow that kind of drives our day-to-day fingerprinting, then we have this other work flow which -- related to this litigation in general, I guess. So there's not complete overlap at this point.

Q. So just to understand the testimony, there's a specific, separate work flow that relates to creating or having fingerprints created of the WorksInSuit in particular?

MR. PLATZER: Objection. Mischaracterizes the witness's testimony.

MR. WILLEN: I'm really not characterizing. I'm trying to understand.

A. No. There's our standard day-to-day production work flows for fingerprinting carry on that are in place

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today. There's this other work flow that is related to this litigation that populates the WorksInSuit list. And that overlap is where the fingerprinting would exist.

Q. So I'm not sure I understand.

A. We have 80 percent coverage on the fingerprints through our standard fingerprinting work flow.

Q. So the testimony is that 80 percent, something like 75 to 80 --

A. 75 to 80.

Q. -- of the WorksInSuit have been provided to YouTube for fingerprinting?

A. To our fingerprinting vendors, yes.

MR. PLATZER: And as I stated before, there's some written discovery on its way. Once that's complete, we will sort of have actual numbers on this.

At this point he's testifying general categories and his general awareness.

Schapiro Exhibit 143

From: Michelena.hallie@mtvn.com
Sent: Tuesday, October 31, 2006 4:23 PM
To: Mark M. Ishikawa
Cc: paramount_cc; Lawrence Low
Subject: RE: YouTube 25 All Protocol

Thanks, Mark. Even a preliminary report before noon your time on thursday would be great.

From: Mark M. Ishikawa [mailto:marki@baytsp.com]
Sent: Tuesday, October 31, 2006 10:36 AM
To: Hallie, Michelena
Cc: paramount_cc; Lawrence Low
Subject: RE: YouTube 25 All Protocol

Michelena,

The spreadsheet is for the analysis project which is ***not*** the project we are executing for you at this point. Your reporting is as we are delivering unless there are changes you want us to make. The spreadsheet is for the project described on page 17

I'm hoping that we can have some data for you by Thursday, but you won't have a more comprehensive report till next week. There's a lot of stuff to crawl on MySpace and I don't think we can cover it all in a week.

Mark

BTW: We have tested the Audible Magic technology for video clips. We have not found it to be very effective in video content recognition. The other point is that they will have to fingerprint each episode and count each episode as part of their 1000 unit filtering deal. MTVN could easily go through 1000 assets on their own.

From: Michelena.hallie@mtvn.com
Sent: Tuesday, October 31, 2006 6:13 AM
To: Mark M. Ishikawa
Cc: paramount_cc
Subject: RE: YouTube 25 All Protocol

Just want to make sure we're clear here. I can't say I understand everything on this spread sheet but we want the enforcement analysis not the more expensive and inclusive analysis. Is that what this is for? It's the one at \$20,000 per month at page 18 of your report.

And on the MySpace front, do you know when we'll be getting the initial report? I'm leaving early on thursday and will be out on friday. I'd love to circulate it beforehand if possible.

Thanks, Mark.

From: Mark M. Ishikawa [mailto:marki@baytsp.com]
Sent: Tuesday, October 31, 2006 3:04 AM
To: Hallie, Michelena
Cc: paramount_cc
Subject: RE: YouTube 25 All Protocol

Michelena,

The MySpace crawlers went into testing today, and should be ready to go Tuesday or Wednesday. I think I mentioned the implementation dates last week when we spoke. Sorry if I didn't.

6/11/2008

I'm going to attach the spreadsheet for the video threat analysis project. This is only the data we are going to be reporting, and is not in a presentation format yet. This is something you may want to share with the business side.

Thanks

Mark

From: Michelena.hallie@mtvn.com
Sent: Monday, October 30, 2006 5:22 PM
To: Courtney Nieman
Cc: Mark M. Ishikawa; Evelyn Espinosa; Deana Arizala
Subject: Re: YouTube 25 All Protocol

It should be all programs being tracked on youtube which will be a changing list. So I have authorization to add the extra programs to the budget.

Does this mean we aren't getting a report on myspace before the end of the week? Since I had authorized that over a week ago I was hoping to get that report earlier.

As for what the reports should look like let's have them follow your standard format at least initially - which I assume has the same info we are getting on youtube. We can customize it as we get more into the process.

-----Original Message-----

From: Courtney Nieman <courtney@baytsp.com>

To: Hallie, Michelena

CC: Mark M. Ishikawa <marki@baytsp.com>; Evelyn Espinosa <evelyn@baytsp.com>; Deana Arizala <deanaa@baytsp.com>

Sent: Mon Oct 30 20:15:45 2006

Subject: YouTube 25 All Protocol

Michelena,

We have one more project to get underway for you. You and Mark worked out a 25 program list for us to do our traditional Tracking and Enforcement on all P2P and non P2P protocols. You also mentioned a couple specific web sites you want us to track. So, of the 42+ current shows we are tracking for Viacom, can you tell me which 25 programs you want us to put in the list? Also, please send along any information that you feel would help direct the kind of reports you are looking for, what kind of questions do you want answered? Statistics that you need us to gather. Etc.

We are just coming out of an upgrade to our system, so we can get this in place and up and running by EOB tomorrow and deliver a preliminary report by the end of the week, with weekly reporting to begin next week. Looking forward to helping you protect your property.

Courtney Nieman
Manager Client Services
BayTSP, Inc.
408-341-2314
AIM: BayTSPCanne
Have you checked out BayTSP's Piracy news web log? <http://www.baytsp.com/weblog>

The information contained in this email message may be confidential and is intended only for the parties to whom it is addressed. If you are not the intended recipient or an agent of same, please notify us of the mistake by telephone (408-341-2300) or email and delete the message from your system. Please do not copy the message or distribute it to anyone.

6/11/2008

Schapiro Exhibit 144

From: Mark M. Ishikawa
Sent: Tuesday, November 21, 2006 7:11 AM
To: Michelena.hallie@mtvn.com
Cc: Evelyn Espinosa; Arielle Kim
Subject: RE: Some follow ups

PRIVILEGED PREPARED ON REQUEST OF COUNSEL

Client Memo

Fingerprinting technologies

BayTSP has been in the process of evaluating the various automated content detection systems available today. The two basic types of technologies are Audio Fingerprinting and Video Fingerprinting. We continuously work with the different vendors in this space to identify new technologies for our customers and help the content detection companies improve their products.

Audio Fingerprinting technologies have been available for several years and have a reasonable success rate when the comparison content is a direct rip from the source media. The success rate is significantly higher when comparing music versus audio from television or movie content. Utilizing this technology on non music content ex: television or movies has not produced an acceptable level of results.

The video technologies we have tested have serious scalability issues, and have a low success rate when trying to identify smaller segments (< 15 minute clips). Another factor that reduces the success rate of the technologies is when the comparison video is lower quality (low frame rate, camcorder copy, reduced image resolution). The systems we have evaluated slow down significantly as the number of source fingerprints increase. We do not see this to be a viable option until a breakthrough in technology or major increase in computing power is achieved.

Audio Fingerprint companies:

- Audible Magic
- Relatable
- Advestigo

Video Fingerprint companies:

- Advestigo (French)
- David Saymed Technology (French)
- Thompson (French) remarketed Advestigo technology
- NTT (Japanese)

Schapiro Exhibit 145

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-2103

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 KENT WALKER
PALO ALTO, CALIFORNIA
THURSDAY, DECEMBER 17, 2009

BY: ANDREA M. IGNACIO HOWARD, CSR, RPR, CLR
CSR LICENSE NO. 9830
JOB NO. 18312

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DECEMBER 17, 2009

9:05 a.m.

VIDEOTAPED DEPOSITION OF KENT WALKER,
MAYER BROWN, Two Palo Alto Square, Suite 300,
Palo Alto, California, pursuant to notice, and
before me, ANDREA M. IGNACIO HOWARD, CLR, RPR,
CRR, CSR License No. 9830.

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

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

ALSO PRESENT: Catherine Lacavera, Google, Inc.
Stewart Pettigrew, Videographer.

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WALKER, KENT

09:51:21 current practices with the Google Video time with
09:51:23 regard to copyright, so I can affirmatively tell you
09:51:26 my understanding of what the YouTube team is doing,
09:51:28 which I've just done. I really can't comment on what
09:51:31 the Google Video team is doing, other than to know
09:51:34 that, at one point in the past, they were doing manual
09:51:37 review of, I believe, every piece of content that was
09:51:41 being uploaded.

09:51:42 MR. DESANCTIS: Okay. I appreciate that
09:51:45 clarification, and -- and I want to clar- -- clarify
09:51:47 it one further.

09:51:49 Q Is it your -- what is your understanding
09:51:53 today whether there is any manual review of -- for
09:52:03 potentially infringing content on the YouTube site?

09:52:07 A If by -- by "manual review" we mean
09:52:10 individuals going out and proactively looking for
09:52:12 things that might be unauthorized, I don't believe we
09:52:16 do or could do that, because we can't know the status
09:52:21 of whether or not something's authorized by just
09:52:24 looking at it.

09:52:25 Q Okay. What I was referring to by "manual
09:52:27 review" is actually whatever you were referring to by
09:52:29 "manual" -- by "manual review" --

09:52:31 A Yes.

1 WALKER, KENT

2 09:52:31 Q -- with respect to what hap- -- what

3 09:52:33 occurred, at least at some point --

4 09:52:34 A Yes.

5 09:52:34 Q -- on the Google Video site.

6 09:52:36 A So the Google Video, I believe, and this is

7 09:52:39 before my time with the company, and I have very

8 09:52:44 little understanding of this, so this is -- this is,

9 09:52:47 in large, retrospective; but my understanding was that

10 09:52:51 the Google Video team was -- had human beings looking

11 09:52:54 at each piece of content before it was uploaded. That

12 09:52:56 was for a variety of purposes, including avoiding

13 09:52:59 pornography, hate speech, other kinds of things.

14 09:53:01 That may have included attempting to

15 09:53:04 determine whether content was authorized or not, but I

16 09:53:08 think that, if they were doing that, they probably

17 09:53:11 would have given up fairly quickly because it's --

18 09:53:14 it's an impossible task.

19 09:53:20 Q Why do you say "it's an impossible task"?

20 09:53:31 A Because only the content owner can know

21 09:53:33 whether or not the content is authorized.

22 09:53:49 Q Do you recall there ever having been any

23 09:54:17 discussion as to whether Google, Inc., should --

24 09:54:25 should engage in some form of manual review for

25 09:54:28 potentially copyright infringing works on YouTube?

1 WALKER, KENT

2 09:54:32 MR. SCHAPIRO: Objection; vague; overbroad;

3 09:54:34 time frame.

4 09:54:42 MR. DESANCTIS: I'm asking any -- any time,

5 09:54:43 and if you do recall --

6 09:54:45 THE WITNESS: Yes.

7 09:54:45 MR. DESANCTIS: -- any discussions --

8 09:54:46 THE WITNESS: I -- I don't recall.

9 09:54:47 MR. DESANCTIS: -- we can ask further.

10 09:54:48 THE WITNESS: I don't recall discussions of

11 09:54:49 that. I was -- I was trying to sort out whether or

12 09:54:51 not there were even any privileged conversations in

13 09:54:53 the context of this case, and I don't believe I had

14 09:54:57 those conversations.

15 09:54:58 MR. DESANCTIS: Okay. Let me just...

16 09:55:25 Q Are you familiar with You -- what's known as

17 09:55:29 community flagging tools on YouTube?

18 09:55:31 A Generally, yes.

19 09:55:32 Q Can you describe generally your understanding

20 09:55:36 of them --

21 09:55:37 A Sure.

22 09:55:37 Q -- just so I'm sure that we're on the same

23 09:55:39 page?

24 09:55:39 A No, that -- that's fine.

25 09:55:40 I've not used them myself, so I don't know

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WALKER, KENT

10:37:55 A It's approximately three years ago now, so
10:37:58 the chronology, in my mind, is not as clear as it
10:38:01 could be.

10:38:01 Q Understood.

10:38:02 A But I remember a couple of conversations with
10:38:03 Mr. Fricklas about our continuing efforts to ensure
10:38:08 that unauthorized content was not on the YouTube site.
10:38:11 Our work to -- was ongoing at the time to implement
10:38:14 both Audible Magic or continuing the implementation of
10:38:17 Audible Magic and to develop our own tools to address
10:38:21 these issues, which we thought would extend to -- to
10:38:23 video content and be better than tools that are out
10:38:27 there in the marketplace, and I remember him raising
10:38:29 concerns about when this would happen. That was --
10:38:31 that was the general back and forth of the
10:38:32 conversation.

10:38:49 Q Just to be clear, are -- are you suggesting
10:38:50 that you offered implementing Audible Magic for
10:38:55 Viacom?

10:38:57 A No, I believe Audible Magic was already being
10:38:59 implemented on the YouTube site at the time of this
10:39:02 conversation, but that it was focused on audio
10:39:06 content, rather than the video content that would have
10:39:09 been most -- of most interest to Viacom.

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WALKER, KENT

10:39:11 Q Do you know whether you ever offered the
10:39:13 Audible Magic feature to Viacom?

10:39:17 A The -- the conversation I had with
10:39:18 Mr. Fricklas was about our development of video tools,
10:39:21 which we had just started to put Google engineers
10:39:25 against, and we had some very accomplished search
10:39:28 engineers at Google, and this is essentially a search
10:39:30 problem, because you're -- the creation of content
10:39:33 identification requires a creation of a -- of a vast
10:39:35 database of information against, which you need to
10:39:39 search extraordinarily quickly, and in -- with regard
10:39:41 to a lot of transmutations of content, so it's -- it's
10:39:45 a remarkably complicated search, an algorithmic
10:39:49 process.

10:39:49 We had some of the best people in the world
10:39:51 doing that, and we were in the process of trying to
10:39:54 really dig into the problem. The problem is -- is
10:39:56 difficult for music and even harder for video content
10:40:00 because video content, which typically also has audio
10:40:04 content associated with it, is much richer and larger,
10:40:08 so you have a -- an exponentially larger database that
10:40:11 you need to search against essentially, and you need
10:40:13 to do this in a remarkably short amount of time.

10:40:17 So that the -- the early assessments that we

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WALKER, KENT

10:40:18 were getting, as early as January and February that
10:40:22 year, was that it might take days, hours -- hours or
10:40:27 days to -- to run a search of a given piece of content
10:40:30 against that database.

10:40:31 That astonishingly in the course of six
10:40:34 months was reduced to a matter of seconds so that it
10:40:37 wouldn't interfere with the user upload. So this was
10:40:39 the conversation I was having with Mr. Fricklas and --
10:40:41 and separately with Mr. Braverman, Allen Braverman,
10:40:47 who is the general counsel of -- of The Walt Disney
10:40:50 Company, with regard to our efforts to -- to implement
10:40:53 these kinds of tools.

10:41:19 Q I'm sorry. You spoke about an assessment or
10:41:24 Google getting assessments in early January, that it
10:41:27 would take hours or days to run searches against a
10:41:33 given piece of content.

10:41:34 A I don't want to be precise on the time. I'm
10:41:36 not sure that's exactly what I said, or if it was, let
10:41:40 me correct it.

10:41:41 My understanding was that we were reviewing
10:41:42 in early 2007, and I don't know whether that was
10:41:44 January or February, I need to look more closely,
10:41:48 or -- or if there are other documents that would
10:41:51 refresh a recollection, that would be great, but we

1 WALKER, KENT

2 10:41:54 were starting to study the problem of very high volume

3 10:41:59 search in video and how to implement Content ID in

4 10:42:05 that framework. So when I say "we," it was primarily

5 10:42:08 engineering teams from YouTube and Google or -- or a

6 10:42:10 combined team working on this project.

7 10:42:12 The concern was that the existing products on

8 10:42:15 the marketplace were -- would not scale to a platform

9 10:42:19 of YouTube's size even then, and it's become

10 10:42:22 significantly larger since, and would not do a very

11 10:42:26 good job. Would -- there would be a lot of problems

12 10:42:29 in separating wheat from chaff. It would

13 10:42:32 substantially comprise or destroy the user experience

14 10:42:35 if a user had to wait for hours or days before they

15 10:42:38 could upload or see a video, and that the technology

16 10:42:40 was -- was buggy, and we thought we could do a

17 10:42:45 substantially superior job, both for -- for video and

18 10:42:48 for audio.

19 10:42:50 Q And -- but during that time YouTube was using

20 10:42:54 Audible Magic; correct?

21 10:42:55 A I believe that YouTube had been using Audible

22 10:43:01 Magic, as of that time, and perhaps earlier. I don't

23 10:43:04 know when they would have started doing that.

24 10:43:06 Q Audible Magic is an audio fingerprinting

25 10:43:08 technology?

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WALKER, KENT

10:43:09 A It is. That's my understanding. Well, it --
10:43:10 it's a -- I'm not sure whether that's the company or
10:43:13 the -- the brand name for the company's tool, but
10:43:15 generally, yes.

10:43:16 Q And do you recall, in these conversations, in
10:43:19 early 2007 with Mr. Fricklas, whether you ever offered
10:43:26 to implement the Audible Magic fingerprinting for
10:43:30 Viacom?

10:43:33 A I don't remember one way or the other with
10:43:34 regard to Audible Magic. What we did offer to
10:43:36 implement was a much better audio and video content
10:43:40 identification system for not just Viacom, but for all
10:43:43 of the content providers.

10:43:44 Q Well, but that -- what you're calling a
10:43:48 better solution didn't exist in February and January
10:43:51 of 2007; did it?

10:43:53 A Not in the fully formed shape that it had six
10:43:57 months later, no.

10:43:58 Q So Google was developing it at that time?

10:44:00 A Correct.

10:44:00 Q And while Google was developing that --
10:44:03 while -- while Google was developing its own systems,
10:44:10 it was also using Audible Magic at the time; correct?

10:44:15 MR. SCHAPIRO: Objection; asked and answered.

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WALKER, KENT

10:44:16 THE WITNESS: As I -- again, I -- I believe
10:44:18 that YouTube had begun using Audible Magic for audio
10:44:24 content, at some point in time, prior to the
10:44:27 January/February date that we're talking about here.

10:44:29 MR. DESANCTIS: Q. And during that
10:44:31 January/February time, you did not offer the Audible
10:44:36 Magic solution to Viacom; correct?

10:44:40 A I --

10:44:40 MR. SCHAPIRO: Objection; asked and answered;
10:44:41 mischaracterizes the testimony.

10:44:42 THE WITNESS: Yeah.

10:44:43 MR. DESANCTIS: Well, I -- I don't want to --
10:44:44 I actually don't mean to be mischaracterizing the --

10:44:46 THE WITNESS: No, that's fine.

10:44:47 MR. DESANCTIS: -- testimony at all.
10:44:48 You said that you offered something better,
10:44:50 which was still under development.

10:44:51 Q My question is, during that time of
10:44:53 development, did you offer them the use of Audible
10:44:54 Magic in the meantime?

10:44:55 A Right.

10:44:55 So there -- there are a number of layers
10:44:57 there to peel back.

10:44:59 Q Sure.

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WALKER, KENT

10:44:59 A One, I have no idea what other people --
10:45:01 there were a number of people in the company who were
10:45:03 engaged with Viacom in a whole variety of context that
10:45:07 I'm not familiar with.

10:45:08 Q Understood.

10:45:08 A So I don't know what they may or may not have
10:45:11 offered. With regard to my conversation with
10:45:13 Mr. Fricklas, I don't remember whether Audible Magic
10:45:15 came up, I don't remember whether he asked for it, I
10:45:18 don't remember whether I offered it or didn't offer
10:45:19 it. I just don't recall.

10:45:20 The reason for that was that it was and still
10:45:24 is my understanding that Audible Magic is more --
10:45:28 while it's not a great tool, it relatively is more
10:45:32 suited for audio content, music content, primarily,
10:45:34 than is for video content. In part because of the --
10:45:37 the reasons we talked about before, that video is much
10:45:41 more information dense, it's a much harder search
10:45:44 problem, and that the -- the Audible Magic technology
10:45:49 hadn't evolved in a way that would make it usable or
10:45:52 useful for Viacom to -- to implement.

10:45:55 There's another distinction as well, which
10:45:58 is, music content is perhaps uniquely legally complex
10:46:04 because of the number of overlapping and sometimes

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WALKER, KENT

10:46:08 inconsistent rights associated with it. There are a
10:46:12 wide number of different rights that are owned by the
10:46:15 performer, the creator, the -- the publishers, the
10:46:18 labels, the collecting societies in Europe, et cetera,
10:46:23 and each of those entities can own multiple rights,
10:46:26 which sometimes align and sometimes do not.

10:46:29 As a result of that, there are complexities
10:46:31 associated with that, which I believe the Audible
10:46:34 Magic system had been optimized for, both in terms of
10:46:36 the technological operation of the system and the
10:46:40 assembly of a database, which was designed to track
10:46:43 all of the -- the complex music rights associated with
10:46:46 it.

10:46:47 As the name Audible Magic itself suggests, it
10:46:50 was a music tool, at least that was my understanding.

10:46:53 MR. SCHAPIRO: Let's -- let's take a break
10:46:56 for five minutes.

10:46:58 THE VIDEOGRAPHER: The time is 10:47.

10:47:00 Off the record.

10:47:01 (Recess taken.)

10:57:04 THE VIDEOGRAPHER: The time is 10:57.

10:57:10 On the record.

10:57:15 MR. DESANCTIS: Mr. Walker, before we just
10:57:21 took a short break, you were describing for me certain

1 WALKER, KENT

2 11:54:05 the Bates number ending in '6796.

3 11:54:24 At the end of the first full paragraph,

4 11:54:28 Mr. Cotton writes, "More specifically, YouTube can and

5 11:54:33 should at a minimum take the following steps," and it

6 11:54:37 then -- he then lists a number of bullet points.

7 11:54:41 Do you see where I'm referring?

8 11:54:43 A Yes, I do.

9 11:54:43 Q Okay. In the first bullet point -- the first

10 11:55:04 bullet point reads, "YouTube should promptly deploy

11 11:55:09 'fingerprint' based filtering technology, such as

12 11:55:12 Audible Magic, to screen all uploaded video against a

13 11:55:15 database of copyrighted works and prevent upload

14 11:55:21 and/or display of unauthorized video both as to full

15 11:55:24 copies of works and clip -- clipped excerpts"; do you

16 11:55:29 see that?

17 11:55:30 A Yes, I do.

18 11:55:30 Q Did Google deploy Audible Magic's

19 11:55:36 fingerprinting service for NBC Universal in February

20 11:55:41 of 2007?

21 11:55:42 MR. SCHAPIRO: Objection; mischaracterizes

22 11:55:43 the document.

23 11:55:47 THE WITNESS: I don't -- as I said before,

24 11:55:49 I -- I don't know which companies were using Audible

25 11:55:53 Magic. I -- I do know that NBCU did participate and

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WALKER, KENT

11:55:58 does participate, I believe, in content identification
11:56:05 with us more generally.

11:56:24 MR. DESANCTIS: Q. Can you describe further
11:56:25 what you mean by "NBCU did participate and does
11:56:32 participate in content identification with us"? What
11:56:35 do you mean "participate in content identification
11:56:38 with us"?

11:56:38 A I believe they participate in the content
11:56:40 identification program and were one of the -- the
11:56:42 trusted testers who began use of that program in the
11:56:46 summer of 2007, and I believe they continue to do so.

11:56:49 Q So you're talking about Google's own Content
11:56:51 ID system?

11:56:53 A Yes, that's one I'm familiar with. I -- I
11:56:56 can't speak to whether or not they may use others.

11:56:58 Q So NBCU was part of the initial testing of
11:57:06 the -- of the Google Content ID program?

11:57:11 A I don't know for sure. There were a small
11:57:13 number of major company -- content companies that
11:57:17 participated, and I don't remember their identity, but
11:57:20 I believe we opened up content identification to the
11:57:23 world-at-large in the fall of 2007, and I believe that
11:57:30 we were participating by that point or shortly after.

11:57:35 Q From the period in between February 12th,

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WALKER, KENT

11:57:38 2007, which is the date of this letter, and the fall
11:57:40 of 2007, do you know whether YouTube offered Audible
11:57:58 Magic audio fingerprinting to NBC Universal?

11:58:03 A I don't know either way.

11:58:08 Q Do you know if YouTube offered any audio
11:58:13 fingerprinting solution to NBC Universal during that
11:58:18 time that it was testing the Google Content ID system?

11:58:21 A Audio may -- I mean, did NBC Universal have
11:58:26 audio-only content that they were looking to protect?

11:58:30 Q Well, no, that wasn't my question.

11:58:32 A Okay.

11:58:34 Q Do you -- is it your understanding -- well,
11:58:38 let me ask it this way: Isn't it true that audio
11:58:42 fingerprints, fingerprints of audio can be used to
11:58:46 identify video clips?

11:58:48 A Generally, in a -- as I understand, a poor
11:58:53 way.

11:58:53 Q Where does that understanding come from?

11:58:55 MR. SCHAPIRO: Objection; asked and answered.

11:58:56 MR. DESANCTIS: No.

11:58:57 THE WITNESS: No, it's the -- it's the same
11:59:00 comment I had before, which is my general
11:59:02 understanding of the industry, conversations with the
11:59:04 people at CableLabs, conversations with Google or

1 WALKER, KENT

2 14:17:18 (Document marked Walker Exhibit No. 8

3 14:17:19 for identification.)

4 14:17:19 MR. DESANCTIS: Let me show you what I've

5 14:18:00 marked as Walker Exhibit 8. Please take a look at it

6 14:18:08 and familiarize yourself with it.

7 14:18:10 This is a two-page document bearing the Bates

8 14:18:14 range G00001-8051209 through '210.

9 14:18:33 THE REPORTER: Excuse me.

10 14:19:53 THE WITNESS: Okay.

11 14:19:54 MR. DESANCTIS: Okay.

12 14:19:54 Q Do you recognize this exhibit as an e-mail

13 14:19:59 exchange between you and Paul Cappuccio in late April,

14 14:20:09 early May of 2007?

15 14:20:11 A Generally, yes. Again, as I notice, the

16 14:20:15 format here is a little unusual, in that it doesn't

17 14:20:18 have the normal indentations, but that may have been

18 14:20:21 as a result of the AOL systems, having stripped some

19 14:20:25 of that out. It's also, of course, copied to Mr. Eun

20 14:20:29 and Louise Sams at -- I believe it's Turner

21 14:20:30 Broadcasting.

22 14:20:32 Q Do you recall this e-mail exchange?

23 14:20:46 A Not independently and not specifically, but I

24 14:20:49 remember having conversations with Paul over the phone

25 14:20:53 and in various meetings, as well as probably an

1 WALKER, KENT

2 14:20:56 e-mail.

3 14:20:57 Q Okay. Did this exchange take place while

4 14:21:54 Google was testing its proprietary Content ID system?

5 14:21:59 A It looks as though it did. Again, this is

6 14:22:02 dated May 1st. This actually refreshes my

7 14:22:05 recollection that the system was available for testing

8 14:22:08 even earlier than I thought previously, because the

9 14:22:12 suggestion in the very end of the note, Bates

10 14:22:18 ending '1210, is that we were in the process of

11 14:22:20 providing a short confidentiality and trial agreement

12 14:22:24 to Time Warner as early as would have been May 2nd or

13 14:22:29 3rd of 2007.

14 14:22:30 Q And you know when the Google Content ID

15 14:22:34 system actually went live, so to speak, as opposed to

16 14:22:38 just being in testing?

17 14:22:41 A It's a difficult question to answer for any

18 14:22:44 technology that's being developed, because it

19 14:22:47 progresses gradually.

20 14:22:50 There were internal testing stages, there

21 14:22:54 were early testing stages in which we developed more

22 14:22:59 of a library of information and refined the system

23 14:23:03 that morphed, apparently about this time, into more

24 14:23:07 formalized agreements to -- for us to receive

25 14:23:11 reference materials and improve the system, and then

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WALKER, KENT

14:23:14 ultimately I think it was announced as available to
14:23:18 the public in the fall of 2007.

14:23:34 Q Okay. If you look up at the paragraph
14:24:05 numbered two from Mr. Cappuccio at the top, this is in
14:24:09 response to your e-mail below, he says, "What am I
14:24:12 supposed to think when you say 'first, you are not
14:24:14 willing to commit to specific technologies,' then
14:24:18 second you don't want to sign up to any nonspecific
14:24:21 commitment? It sounds like more of trust us, which I
14:24:26 am no longer inclined to do."

14:24:36 Was Mr. Cappuccio -- do you agree with
14:24:39 Mr. Cappuccio's characterization that what Google was
14:24:43 asking was for Time Warner to trust Google, or was --
14:24:47 was there -- or was Google actually offering something
14:24:53 more than that?

14:24:54 MR. SCHAPIRO: Objection to the form.

14:24:56 THE WITNESS: For starters, the document --
14:25:00 the thread, to the extent it's a thread, refers to a
14:25:04 document that's not attached. I don't know if you
14:25:06 have a copy, but would provide relevant context for
14:25:10 the exchange.

14:25:12 Second, I don't agree with the formulation.
14:25:18 To some degree to the contrary, the paragraph that I
14:25:22 pointed out earlier, the final paragraph on the second

1 WALKER, KENT

2 14:25:25 page of the document, Bates ending '1210, provides

3 14:25:29 that we were prepared to move forward in very concrete

4 14:25:34 ways with regard to the content identification system,

5 14:25:38 and the proof of the pudding was in the eating. We,

6 14:25:42 in fact, did just that, and Time Warner, fairly soon

7 14:25:46 thereafter, began using content identification.

8 14:26:46 MR. DESANCTIS: Can we go off the record and

9 14:26:48 take a short break in the interest of actually saving

10 14:26:51 us time?

11 14:26:51 MR. SCHAPIRO: Yes.

12 14:26:52 THE WITNESS: No, no. Don't.

13 14:26:53 THE VIDEOGRAPHER: The time is 2:27.

14 14:26:56 Off the record.

15 14:26:58 (Recess taken.)

16 14:33:45 THE VIDEOGRAPHER: The time is 2:34.

17 14:33:47 On the record.

18 14:33:48 MR. DESANCTIS: Q. Are you familiar,

19 14:34:18 Mr. Walker, with something called "the principals for

20 14:34:21 user-generated content services," often referred to as

21 14:34:23 "UGC principles"?

22 14:34:25 A Generally, is this what also is something

23 14:34:27 called "the Disney principles"?

24 14:34:29 Q Perhaps. Let me --

25 14:34:30 A But --

Schapiro Exhibit 146

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.) Case No. 1:07CV02103
 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.) Case No. 07CV3582
 YOUTUBE, INC., YOUTUBE, LLC, and)
 GOOGLE, INC.,)
)
 Defendants.)
 -----)

VIDEOTAPED DEPOSITION OF ALAN E. BELL
New York, New York
Tuesday, August 5th, 2009

REPORTED BY:
ERICA RUGGIERI, CSR, RPR
JOB NO: 17408

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August 5th, 2009

9:35 a.m.

VIDEOTAPED DEPOSITION OF ALAN E.
BELL, held at the offices of Mayer Brown,
1675 Broadway, New York, New York,
pursuant to notice, before before Erica L.
Ruggieri, Registered Professional Reporter
and Notary Public of the State of New
York.

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A P P E A R A N C E S

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Bwillen@mayerbrown.com

ALSO PRESENT:

CARLOS KING, Videographer

1 BELL
2 if we can get a closer relationship in
3 other technology areas, like search,
4 metrics and ad insertion."
5 12:13:47 Do you see that?
6 A. Yes.
7 Q. Do you recall writing that?
8 A. Not specifically.
9 Q. But no reason to think that
10 12:13:51 you --
11 A. No, correct.
12 Q. What did you mean, when you said
13 that you would like to use the test?
14 And am I right that the test
15 12:14:01 that you are referring to here is the test
16 of the YouTube fingerprinting tool?
17 A. It was that test.
18 Q. What did you mean, when you said
19 you would like to use the test to see if
20 12:14:11 we could get a closer relationship in
21 other technology areas?
22 A. My personal opinion was that
23 Google was a very visible and important
24 company, and there would be value in
25 12:14:29 having a broad technical exchange, as we

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and I had experienced with Warner Brothers, for example, and large companies with significant interest in digital content.

12:14:43 Q. Other than the reasons that you give in this e-mail, are you aware of other reasons that -- let's start with you, other reasons that you were interested in participating in the test of the YouTube fingerprinting tool?

A. The main point of interest for me was to evaluate it technically.

12:15:19 Q. With a possible eye to having Paramount start using it?

A. That would have been -- that is a potential outcome. It was a potential outcome.

12:15:28 Q. That was a potential outcome that you had discussed with others within Paramount?

A. I don't recall, specifically, in the time frame of this communication.

12:15:50 Q. Outside of the time frame of this communication, do you recall

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discussions in the period generally leading up to the testing, that one potential outcome of being involved in the testing process would be for Paramount ultimately to start using the YouTube fingerprinting tool, once it was actually deployed?

MR. PLATZER: It's okay.

12:15:58 A. I would have viewed that, I think I did view that as a potential outcome, in the sense that if it was not a potential outcome, why test it?

Q. Okay. Now, is it fair to say that one reason for engaging in the test was to figure out what the strengths and weaknesses were of the YouTube fingerprinting tool, as it existed in its beta form?

12:16:34 A. Yes.

Q. And was the idea to potentially give feedback to YouTube and Google about what the tool did well and what the tool could do better?

12:16:47 A. Yes.

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Q. Okay. What role did you play in the actual testing process?

A. My role began with being the main point of contact with the Google team.

12:17:13

Q. And did it change?

A. Well, and while that role did not, I participated internally to Paramount in designing the nature of the test clips and participated in the -- or supervised the feedback that we gave to YouTube.

12:17:29

Q. Did other Viacom entities other than Paramount, were they involved in testing the YouTube fingerprinting tool?

A. Yes.

Q. Which ones?

A. The technology group that reports to Joe Simon.

12:18:05

Q. That's part of MTVN?

A. I believe so.

Q. So other than MTVN, were there other Viacom entities that participated in the testing process?

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performed by Paramount, or were they performed by some other Viacom entity?

A. All I know is that we participated in some resubmission or -- either that or the test samples we'd already sent were retested. I think that was actually what happened.

Q. And was there a report that Paramount prepared about the second round of testing?

A. I don't remember.

Q. Do you know whether Paramount or Viacom provided to YouTube any feedback about the second -- about the additional testing that was done?

A. I don't recall what Viacom may have done. I don't believe -- what I do know is we didn't provide in as formal and, you know, as specific form as that first test result. I don't recall providing anything in that kind of comprehensive and hopefully very clear way.

Q. I think you said the reason for

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that was, for whatever reason, the process didn't gel as much internally?

A. Honestly, I can't recall. It's one of those things. You know, I'm not pointing fingers at anybody, but it just didn't come together in the same way.

Q. Sure. Do you know when the YouTube fingerprinting tool actually was made available for content owners to begin using?

A. My recollection is it was probably in the spring of 2008, somewhere in that time frame. Maybe the end of 2007.

It was certainly post the test.

Q. And how did you learn that the tool had actually launched?

A. As I recall it was more or less a continuity of the exchange of information that began during the test phase.

Q. So the fact that it was now being made available was conveyed to you by Google?

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BELL

A. Probably, yeah.

Q. Now, at the time that the tool was actually deployed in its live version, was Paramount invited to begin using it?

A. In effect. I don't know if we wrote a letter of invitation specifically, but we began using it.

And one of my main -- not main activities, but one of the activities that I was engaged in was trying to establish a reasonably systematic way for our movies to go through, prior to release, the fingerprinting tool that we had.

Q. I see.

Was there a period between the time the tool was made available for content owners and the time that Paramount actually started using it?

A. I don't recall.

Q. So do you recall when -- let me back up.

Was there a contract that was signed, in connection with Paramount's decision to begin using the YouTube

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fingerprinting tool?

A. I don't recall.

Q. So were you involved in the
01:45:54 decision that Paramount made to begin
using the fingerprinting tool?

A. Not directly.

Q. Were you involved in any way?

A. My report or our report was
01:46:11 circulated, and we continued to -- we,
Paramount, the group I was working with,
continued to correspond and communicate
with YouTube and moved into this start-up
phase, I would call it.

Q. Start-up phase?

A. Start-up phase, yeah.

Q. And you don't recall when that
start-up phase actually was occurring?

A. I think that was sometime in the
01:46:42 spring of 2008, fall of 2008. That's my
best recollection, anyway.

Q. Sure. What accounts for the gap
between the testing that was done in
August and the decision to actually start
01:46:54 using the tool, which you say was in the

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spring of 2008? Why was there that time delay?

A. One reason is there was some continuation of the testing, the so-called second phase.

Really, from my point of view, it was not so much a decision, at least I wasn't aware of a memo or anything that I can recall. And it was simply the interaction, the internal considerations of who is going to actually do this, because there was not a fingerprinting operator assigned or budgeted for.

And it was just normal course of business. You know, we began receiving the software. I believe there may have been some initial, you know, not necessarily abnormal, but didn't install right or didn't have the right version. There was a certain amount of training, because they had a screen that gave us an automatic feedback.

That was all just the normal process of starting from scratch. That's

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why I call it start-up process. It wasn't like we threw a big switch and everything happened.

01:48:15 Q. Was YouTube/Google charging Paramount to use the fingerprinting tool?

A. I honestly don't remember. I don't remember.

01:48:28 Q. So from your perspective, why did Paramount want to start using the YouTube fingerprinting tool?

A. It was made available. As far as I know, there was no alternative, that was what was offered. And our testing 01:48:48 indicated there was no reason, on the basis of it plain didn't work, to not use it.

01:49:04 Q. So at the time that the decision or the process began for Paramount to start using the tool, was it your sense that the technology had made improvements from the time it was originally tested by Paramount?

A. I couldn't be certain about 01:49:18 that. Remember, the Paramount testing was

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in the stress test, and issues of scaleability weren't stressed. So that was -- and the operational interaction of larger volumes of content, that was not something that concerned us at Paramount, with our relatively small amount of content.

01:49:29 Q. Sorry, when you say scaleability wasn't tested, what exactly do you mean?

A. The amount of material that Paramount anticipated providing, once we were in the operational phase, would amount to something like 20 movies a year. Maybe 30, maybe 50.

01:50:00 But if we call that roughly a hundred hours, compared to the output of a television station, it's minuscule. So we are more -- so that's the answer.

01:50:16 Q. So let's just talk a little bit about how the system works.

Paramount provides what are called reference files; is that right, to YouTube?

01:50:32 A. Yes.

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A. Not to my awareness, no.
Q. Did Paramount start using Audible Magic, for the purpose of identifying its content on the Internet, at some point after January of 2007?

A. Not to my awareness.
Q. Not to your awareness. How about -- excuse me, how about Gracenote, was Paramount using Gracenote to search for Paramount content on the Internet in January of 2007?

A. No.
Q. And did there come a point later in time when Paramount started using Gracenote to search for its content on the Internet?

A. Not that I recall, no.
Q. I'm going to ask you about other Viacom entities, if you know whether any other Viacom entities were using Audible Magic to search for their content on the Internet in around January of 2007?

A. I don't know.
Q. Who would actually know that, as

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for, let's say, MTV?

A. My contact onto that site was the CIO, Joe Simon.

02:51:37 Q. Are you able to compare Audible Magic with Gracenote?

A. I don't know enough about Gracenote.

02:51:57 Q. Do you know why Paramount was not using Audible Magic to search for its content on the Internet in January of 2007?

A. I don't know why it should be.

Q. Why shouldn't it be?

02:52:20 A. I think it was an -- I think we were simply at the stage at Paramount of beginning to explore, understands -- understand who was out there, and that was one of my immediate areas to investigate.

02:52:40 Q. So my understanding, and please correct me if I'm wrong, is that in order to use a technology like Audible Magic, the content owner has to provide either reference files or fingerprints that are then ingested into the fingerprinting

02:52:53

1 BELL

2 database --

3 A. Correct.

4 Q. -- is that right?

5 02:52:59 So let's actually look at a

6 document.

7 MR. WILLEN: I lost track of

8 what exhibit we are actually on.

9 (Bell Exhibit 11, e-mail

10 02:53:40 exchange, Bates numbers VIA00320291

11 and 340292, marked for

12 identification, as of this date.)

13 Q. This is Exhibit 11, a document

14 produced by Viacom marked VIA00320291 and

15 02:53:48 340292. It's an e-mail, top e-mail dated

16 March 16th, 2007.

17 Do you recall this e-mail

18 exchange?

19 A. Not specifically.

20 02:54:37 Q. Okay. The bottom e-mail is an

21 e-mail from you, Dr. Bell, to Amy Powell?

22 A. Yes.

23 Q. Who is Amy Powell?

24 A. She was, to my knowledge,

25 02:54:49 managing the on-line portion of the

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promotional activities.

Q. And you write, "I have been coupled with the Viacom initiatives, and 02:55:03 MTVN is gearing up to pump audio fingerprints into Audible Magic. I am working towards the same for Paramount content and would like to get a handle on the rate at which we generate material 02:55:16 that would need to be indexed into the database."

Do you see that?

A. Yes.

Q. Okay. What do you understand 02:55:26 this to mean, when it says, "MTVN is gearing up to pump audio fingerprints into Audible Magic"?

A. That it's making preparation to provide or -- either content or the 02:55:46 fingerprints for some content to that company.

Q. And it says that you were working towards the same for Paramount content?

A. Yes, it does say that. 02:55:54

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think that's as far as I can go. My purpose was to engage probably, I think, for the first time, with actual process.

02:57:30 In my mind, that was an initial -- in effect a test, although it wasn't structured as a test, in terms of this verbiage; but it was okay, here's a company which appears to have capability and is willing to accept some content.

Q. So as of March of 2007, Paramount had not provided any fingerprints to Audible Magic; is that right?

02:58:04 A. I can't recollect whether that's exactly true or not.

Q. Is that what this e-mail suggests?

A. Potentially.

02:58:18 Q. Do you know whether MTVN had provided fingerprints to Audible Magic before March of 2007?

A. No. I don't remember.

Q. But the e-mail suggests that they hadn't, is that fair?

02:58:30

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A. Well, gearing up, if you'd like to interpret that as preparing to. But I don't know, factually, if they had already done some or not done some.

02:58:41 My impression, correct or incorrect, was that they were in the gearing up mode.

Q. Okay. And once the fingerprints were in the Audible Magic database, do you know what they would have been used for?

A. Paramount fingerprints?

Q. Yes.

A. I just don't recall the precise objectives --

Q. Okay.

A. -- beyond it would be -- you know, it was presumably running files against the references we provided them. But I don't recall where the files would come from precisely.

Q. Okay. But at any point before Paramount had provided fingerprints to Audible Magic, am I right that the Audible Magic tool would not have been able to

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identify that Paramount content?

A. Yes.

Q. Yes, it would not have been able
02:59:53 to identify the content?

A. I agree with your statement.

Q. Okay. So in the next sentence
of the e-mail you ask Ms. Powell, you say,
"Can you give me a sizing, doesn't have to
03:00:06 be an exact, within 20 percent or so is
fine, of the number of elements generated
per month or per year that are distributed
as part of theatrical marketing?"

Do you see that?

A. Uh-hum, I do.
03:00:16

Q. Why did you want to know that
information?

A. To estimate potential workload.

Q. So what was the purpose of
03:00:27 generating fingerprints of, specifically,
marketing materials?

A. Well, one purpose could be,
again, to limit the amount of prerelease
material that may leak out from wherever.

Q. Any other purposes?
03:00:45

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A. That's the one that comes to mind.

Q. Now, setting aside this e-mail, do you know -- do you have, independently, a recollection of Paramount actually completing the process of pumping fingerprints into Audible Magic?

A. No, I don't recollect that.

Q. Do you have a recollection of MTV completing the process of pumping fingerprints into Audible Magic?

A. I don't know if they did or not.

Q. So did Audible Magic ultimately provide any functionality for Paramount at any time while you were the CTO?

A. When you say "functionality," I need to distinguish between a testing experimental kind of relationship --

Q. Sure.

A. -- and one to which we were heading with YouTube, which was on target to become a commercial and ongoing activity.

Q. Sure.

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A. So which one do you want me to comment on?

Q. Let's start with the former, and then we can talk about the latter.

A. Without specific remembrances, the interaction we had with Audible Magic included, I believe, actual fingerprints being developed. We had that level of interaction.

To my knowledge, we never, Paramount, made a systematic attempt to use or move towards using, with Paramount content, based on Paramount's work, you know, an actual in-place process with Audible Magic.

Q. Okay. So it's your recollection that the process that's being described in this e-mail was in connection with the testing process of Audible Magic?

A. Yes.

Q. Now --

A. And evaluation more generally.

Q. Sure. Now, do you know why it was that Paramount decided not to use

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Audible Magic for the more commercial purposes that you were alluding to?

MR. PLATZER: I'm going to object on grounds of vagueness.

MR. WILLEN: Yeah, that's a fair objection.

MR. PLATZER: More commercial.

MR. WILLEN: That's a fair objection.

Q. Let's just go back to the testimony.

You said Paramount never made a systematic attempt to use or move toward using Audible Magic, based on Paramount content.

A. Yes.

Q. Do you know why that was the case?

A. There were -- let me think.

The relationship that I experienced in my own area of activity within Paramount never really matured to the point where it was a consideration to provide content to Audible Magic.

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Q. And why was that?

A. Audible Magic, in my technical opinion, wasn't -- could do a job; but, as I became familiar with some of the other companies I was meeting, didn't necessarily stand out at a technology level.

03:04:23 It did stand out as a company that actually had deployment, as opposed to stuff in development or ready for deployment.

Q. Right. And I think you testified that at least when you started, Audible Magic and Gracenote were the only deployed systems that existed?

A. They were very visible to everybody.

Q. Okay. Do you recall referring to the decision to submit fingerprints to Audible Magic as a tactical initiative?

A. I don't recall it, specifically.

Q. Okay. Let's look at another document.

03:06:07 (Bell Exhibit 12, document,

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Bates number VIA01707133, marked for identification, as of this date.)

Q. This is Exhibit 12, a document produced by Viacom, Bates number VIA01707133.

A. I have read it.

Q. In the last paragraph you say, "I am proceeding along a path to have Paramount content ingested, along with MTVN content, to Audible Magic. Scott Martin and Al Parry are in the loop on the legal side, and I am being careful that this tactical initiative does not preclude better options down the road."

Do you see that?

A. Yes, I do.

Q. Do you have a recollection of writing this e-mail?

A. Not specifically, no.

Q. Do you know what you would have meant by tactical initiative in this context?

A. Bearing in mind that my role was CTO, I was both motivated to understand

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03:07:27 what was current and also not necessarily
jump at the first solution. Bear in mind,
all technologies, especially young ones,
03:07:27 evolve pretty quickly. So I just meant
that this was simply motion and not going
to lock us into any particular approach.

Q. And again, this would be in the
phase that Paramount was testing the
03:07:43 Audible Magic system?

A. It would be in that time frame.

Q. I think I asked you earlier
whether you were aware that YouTube was
using Audible Magic at any time.

03:07:57 A. And I think I said I don't
recollect --

Q. Right.

A. -- or didn't know.

Q. That's what I thought you had
03:08:02 said --

A. Yeah.

Q. -- but I wanted to make sure.
So were you aware of any
discussions that occurred between
03:08:11 Paramount and YouTube about the use of

1 BELL

2 Audible Magic by YouTube?

3 A. I don't recollect, no.

4 Q. Are you aware of any instance in

5 03:08:24 which Viacom -- let's start with

6 Paramount.

7 Are you aware of any instance in

8 which Paramount asked YouTube to use

9 Audible Magic to scan for Paramount

10 03:08:36 content on the YouTube service?

11 A. I don't remember.

12 Q. You don't remember?

13 A. No.

14 Q. Are you aware of any instance in

15 03:08:45 which anyone at Viacom asked YouTube to

16 use Audible Magic to scan for Viacom

17 content on the YouTube service?

18 A. I don't know of it.

19 Q. Are you familiar with technology

20 03:09:07 called Auditude?

21 A. I'm familiar with the company,

22 yes.

23 Q. What kind of technology does

24 Auditude offer?

25 03:09:14 A. At the time I was working with

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them, meeting with them, it was a fingerprinting technology based on audio.

Q. And when was the time that you were meeting with them?

A. It was in the spring, probably spring/summer of 2007.

Q. So is the technology that Auditude offers, is it similar to the technology that Audible Magic offered?

A. In the general class, it was audio fingerprinting.

Q. Now, was there ever a point, to your knowledge, when Auditude offered video fingerprinting, in addition to audio fingerprinting?

A. As I recall, that was under development. And I don't remember with certainty, but I believe they were interested in having a, you know, having discussions about their progress and potentially demonstrations.

Q. Do you know, sitting here today, whether Auditude today offers a video fingerprinting option?

Schapiro Exhibit 147

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,) Case No.
 Plaintiffs,) 1:07CV02103
 vs.)
 YOUTUBE, INC., YOUTUBE, LLC,)
 and GOOGLE, INC.,)
 Defendants.)
 _____)

VIDEOTAPED DEPOSITION OF MARK HALL
NEW YORK, NEW YORK
Tuesday, February 23, 2010

REPORTED BY:
ERICA RUGGIERI, CSR, RPR
JOB NO: 18813

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February 23, 2010

9:04 a.m.

VIDEOTAPED DEPOSITION OF MARK HALL,
held at the offices of Mayer Brown, 1675
Broadway, New York, New York, pursuant to
notice, before before Erica L. Ruggieri,
Registered Professional Reporter and
Notary Public of the State of New York.

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time that Paramount provided content to Audible Magic for fingerprinting?

A. That's correct.

11:16:39 Q. And the DVDs that Paramount provided to Audible Magic on May 8th, 2007, that was the same set of DVDs that Paramount had previously provided to BayTSP?

11:16:39 A. It wasn't -- I don't know if it was the same set of DVDs. I don't know how the content was provided to Audible Magic. I just know the time frame in which it was provided.

11:16:39 Q. And you said the number of DVDs that was provided to Audible Magic was approximately 300?

A. Yeah. I believe the exact number is 309 based on a conversation I had with Vobile.

11:16:39 Q. So prior to May 8th, 2007, there were no Paramount fingerprints in Audible Magic's system?

MR. PLATZER: Objection,
11:16:39 foundation. Calls for speculation.

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A. Can you ask the question again.

Q. Prior to May 8th, 2007, were there any Paramount fingerprints in

11:16:40 Audible Magic's system?

MR. PLATZER: Same objections.

A. Not that I know of.

Q. And just to be clear, prior to May 8th 2007, Paramount had not provided

11:16:40 any content on Audible Magic for purposes of fingerprinting?

A. To my knowledge, no.

Q. Okay. If there were no Paramount fingerprints in Audible Magic's system, would Audible Magic's technology been able to identify any Paramount content on any of the Internet sites that it was being used on?

11:16:40 MR. PLATZER: Objection.

Incomplete hypothetical. Calls for speculation.

A. Ask the question again, please.

Q. Sure. If there were no Paramount fingerprints in the Audible

11:16:41 Magic system, would Audible Magic's

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technology have been able to identify
Paramount content on any of the websites
that it was being used on?

11:16:41 MR. PLATZER: Same objections.

A. I couldn't tell you.

Q. Can you think of any way that
Audible Magic technology could identify
Paramount content without there being
11:16:41 Paramount fingerprints in the system?

MR. PLATZER: Objection. Calls
for speculation.

A. Can I think of any way that the
Vobile system could identify content from?
11:16:41 Without fingerprint? Is that what your
question is?

Q. The question is -- yeah. I
think it's Audible Magic. But can you
think of any way that the Audible Magic
11:16:41 technology would be able to identify
Paramount content without there being
Paramount fingerprints in the Audible
Magic system?

MR. PLATZER: Same objections.

11:16:41 A. To identify, no.