

**A-401**

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HALL

Q. Why did Paramount provide the  
DVDs to Audible Magic in May of 2007?

A. The Audible Magic, the content  
11:16:41 was provided to Audible Magic in 2007 as  
part of an effort to block Paramount  
content from being on-line.

Q. It was part of a test, wasn't  
it?

A. I don't know.

MR. WILLEN: Let's introduce  
Exhibit 5. This is Exhibit 5. Bates  
number VIA01707188. It's an e-mail  
from Alan Bell dated May 13th, 2007.

11:16:42 (Hall Exhibit 5, e-mail from  
Alan Bell dated May 13th, 2007,  
Bates number VIA01707188, marked for  
identification, as of this date.)

A. Okay.

11:16:42 Q. Who is Alan Bell?

A. Alan Bell was the chief  
technology officer for Paramount Pictures.  
He no longer holds that position.

Q. One of his responsibilities as  
11:16:42 CTO was evaluating fingerprint

1 HALL

2 technologies?

3 A. It appears that, yeah.

4 Q. So looking at the e-mail that

5 11:16:42 Dr. Bell sent on May 13th, 2007. I'm

6 looking at the 4th paragraph. He says,

7 "Last week we ingested 309 DVD titles into

8 the AM audio fingerprint database as part

9 of an initial test."

10 11:16:44 Do you see that?

11 A. Uh-hum.

12 Q. The 309 DVD titles that he's

13 referring to are the same 309 DVD titles

14 that are referred to in the interrogatory

15 11:16:44 response that we were just looking at?

16 A. Yes.

17 Q. And does this e-mail confirm

18 that they were ingested into the Audible

19 Magic database as part of an initial test?

20 11:16:44 A. Yes.

21 Q. So in the next sentence Dr. Bell

22 says, "Once these fingerprints go into the

23 active matching process, which should be

24 very shortly, we hope to get some data to

25 11:16:44 help understand how effective this process

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is."

Do you know whether that data  
that he refers to was actually provided to  
11:16:45 Paramount?

MR. PLATZER: Objection.

Outside the scope.

A. I don't know.

Q. Was the test that Dr. Bell was  
11:16:45 referring to in this e-mail actually  
conducted?

MR. PLATZER: Same objection.

A. I don't know.

Q. Are you aware of Paramount  
11:16:45 having received any data from Audible  
Magic about the way in which Paramount  
content was being identified on any  
websites using Audible Magic?

MR. PLATZER: Same objections.

11:16:45 I'll make it standing at this point.

A. I am not.

Q. So other than the 309 DVD titles  
that were provided to Paramount -- excuse  
me -- provided to Audible Magic in May of  
11:16:45 2007 as part of this test, has Paramount

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provided any other Paramount content to  
Audible Magic for fingerprinting?

A. No, they have not.

11:16:45 Q. Do you know whether the  
fingerprints that were created in May of  
2007 are still in Audible Magic's system?

A. The 309?

Q. Yes.

11:16:45 A. They are.

Q. So other than those fingerprints  
are there any other fingerprints of  
Paramount content in Audible Magic's  
system that you are aware of?

11:16:45 A. No.

Q. So just again to be clear, with  
respect to the fingerprints that are in  
Audible Magic's system, does Paramount  
have any information about how often  
11:16:45 Audible Magic has made matches to those  
fingerprints on any website?

MR. PLATZER: Objection.

Outside the scope.

A. I have no knowledge of any  
11:16:46 reports.

1 HALL  
2 transport of the metadata and the  
3 fingerprint file in a specific format that  
4 was provided by the YouTube engineers.  
5 11:17:05 Q. Do you know when the YouTube  
6 fingerprinting technology actually  
7 launched?  
8 A. I don't.  
9 Q. Do you know when the technology  
10 11:17:05 first became available for Paramount to  
11 use?  
12 A. My recollection is that it was a  
13 few months prior to August 2008.  
14 Q. What's the basis for that  
15 11:17:05 belief?  
16 A. I was involved in the set-up  
17 e-mails from the YouTube engineers  
18 providing me with the tools to start the  
19 development on the ingest process.  
20 11:17:05 Q. Who were those engineers, do you  
21 recall?  
22 A. I don't remember the first name.  
23 The last name was Vinecat.  
24 Q. Presad?  
25 11:17:05 A. Presad, thank you.

1 HALL

2 Q. Are you aware that there's an  
3 agreement or a contract between Viacom and  
4 YouTube with respect to the use of the  
5 11:17:06 YouTube fingerprinting technology?

6 A. I would imagine there would be,  
7 yes. I'm not aware of the specifics of  
8 the contract.

9 Q. Is there a specific contract  
10 11:17:06 between Paramount and YouTube?

11 A. I'm not aware of one.

12 Q. So how many of Paramount's movie  
13 titles has Paramount provided to YouTube  
14 for fingerprinting?

15 11:17:06 A. That number is in the range of  
16 50.

17 Q. Now, are those the same 50 or a  
18 different 50 than Paramount has provided  
19 to Vobile?

20 11:17:06 A. They are close to but not an  
21 exact. So there are titles that are there  
22 and there are titles that may not be. I  
23 don't know the exact -- I don't have the  
24 50 memorized from each. I know there's  
25 11:17:07 crossover. Again, the idea to go back to

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strategy, was to put the new release  
content in and to identify a set of  
content that was most infringed upon and  
11:17:07 include those.

Q. Why would there be a difference  
though in what was given to YouTube versus  
what was given to Vobile?

A. We look at YouTube and BayTSP as  
11:17:07 primary defenses.

Q. What do you mean by "primary  
defenses"?

A. Well, we don't provide  
everything to Vobile because we have a  
11:17:07 limited amount of titles we can use at any  
given time. And we have chosen not to go  
beyond that.

As I stated earlier, our primary  
vendor for content detection is BayTSP  
11:17:07 and they would have the largest set of  
titles.

Q. So the set of titles that Bay  
has, I believe you said was around 300?

MR. PLATZER: Objection to the  
11:17:07 characterization. That wasn't his

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testimony.

Q. Let's just ask it directly. How many titles have been provided to BayTSP for BayTSP to use in its fingerprinting?

A. It's over 350.

Q. So why is it that Paramount has provided so many more titles to Bay than to YouTube?

A. Partly because BayTSP is our primary vendor for searching out content.

Secondly, we have limited resources to conduct activities so we focus them on the titles that are more likely to be infringed.

Q. Does YouTube charge Paramount to use the YouTube technology?

A. It does not.

Q. Does Paramount pay to use BayTSP's fingerprinting technology?

A. It does indeed.

Q. What are the cost of Paramount's use of BayTSP technology?

A. In excess of a \$100,000 per month.



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Q. Now, are you familiar with the  
concept of Works In Suit?

A. My understanding of Works In  
11:17:09 Suit are titles or content that are listed  
as part of this particular lawsuit.

Q. Now, are you aware whether  
Paramount has provided for fingerprinting  
all of its titles that are Works In Suit  
11:17:09 to YouTube?

A. We have not. There are over 300  
in suit. We have only provided 50.

Q. So are there titles that are  
Works In Suit that Paramount has provided  
11:17:09 to BayTSP that it has not provided to  
YouTube?

A. Yes.

Q. Approximately how many?

A. It's approximately, it would be  
11:17:09 over 200.

Q. In a title that Paramount has  
not provided to YouTube for  
fingerprinting, wouldn't it be able to be  
found on YouTube using the YouTube  
11:17:09 fingerprinting technology?

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A. That's correct.

Q. Is Paramount using BayTSP to search for Paramount content on YouTube?

11:17:09 A. It is.

Q. Including using the fingerprinting technology that BayTSP now provides?

A. That's correct.

11:17:09 Q. Why didn't Paramount just provide the same titles that YouTube, that it provided to BayTSP?

A. It was again from a strategy perspective. BayTSP we use as our primary vendor, we provide them the bulk of the assets. We use YouTube in a limited fashion, putting in new title releases. So any new title that becomes available we fingerprint. The decision to not go back and put the remaining library titles that were in or out of suit was based on that as well as resource constraints.

11:17:10 Q. What are the resource constraints -- I'm sorry, what were the resource constraints?

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A. There's time involved in  
creating the fingerprint for the YouTube  
interface. And it takes manpower to do  
11:17:10 so.

Q. There's not a cost though that's  
being assessed to YouTube to provide  
additional titles for fingerprinting,  
correct?

11:17:10 A. That's correct.

Q. Has YouTube ever told Paramount  
that there was a limit on the number of  
titles that could be provided to YouTube  
for fingerprinting?

11:17:11 A. No.

Q. Other than the resource  
constraints that you spoke about are there  
any downsides from Paramount's perspective  
to providing additional titles to YouTube  
11:17:11 for fingerprinting?

A. No.

Q. I think in one of your previous  
answer to us you talked about providing  
new releases?

11:17:11 A. Uh-hum.

1 HALL

2 Q. Is Paramount now providing some  
3 of its new releases to YouTube for  
4 fingerprinting?

5 11:17:11 A. Paramount provides every new  
6 release to YouTube for fingerprinting.

7 Q. So in the subset of Paramount  
8 content that's been provided to YouTube  
9 for fingerprinting --

10 11:17:12 A. Actually, if you don't mind, we  
11 don't provide the release, we provide the  
12 fingerprint. Just to be clear, we are not  
13 providing content.

14 Q. Got you. So in the set of  
15 11:17:12 fingerprints or titles that have been  
16 provided to YouTube for use by the YouTube  
17 fingerprinting system, are there any  
18 Paramount titles that say were released  
19 before 2005?

20 11:17:12 A. I don't recollect. There's 300  
21 titles. I don't know if any of those were  
22 2005.

23 Q. I thought you said there were 50  
24 titles?

25 11:17:12 A. Are you talking about --

**Schapiro Exhibit 148**

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Subject: RE: Paramount titles ingested into Audible Magic content filtering service  
From: "Powell, Amy - Paramount" <EX:/O=VIACOM/OU=PARAMOUNT/CN=RECIPIENTS/CN=POWELLAM>  
To: Bell, Alan - Paramount  
Cc: Date: Wed, 16 May 2007 19:35:34 +0000

Can we discuss a process for the marketing group to start better protecting our materials? Would love to hear your thoughts.

Thanks!

Amy Powell

Senior Vice President

Interactive Marketing

Paramount Pictures



---

From: Bell, Alan - Paramount  
Sent: Sunday, May 13, 2007 12:11 PM  
To: Moore, Rob - Paramount; Huntsberry, Frederick - Paramount; Fricklas, Michael  
Cc: Prentice, Rebecca - Paramount; Avery, Kelley - Paramount; King, Marsha - Paramount; Sufrin, Ron - Paramount; Basich, Mary - Paramount; Perry, Alfred - Paramount; Salter, John - Paramount; Powell, Amy - Paramount  
Subject: Paramount titles ingested into Audible Magic content filtering service

Audible Magic (AM) uses audio fingerprinting techniques to automatically screen digital content files present on websites such as YouTube, and identify those files which are a match to copyrighted content contained in it's reference database. AM has been widely used by the music industry to detect and issue takedown notices for unauthorised music content, and other broadcast monitoring applications.

Earlier this year, Viacom began discussions with Audible Magic to ingest audio fingerprints of the sound track of MTV content in support of developing and demonstrating a practical system whereby UGC websites such as YouTube could monitor uploaded content for copyrighted elements and either block or post conditionally if some prior agreement existed with the copyright holder.

Paramount has also been participating along with Viacom/MTV in the overall technological assessment of content filtering technologies, especially the various video-based fingerprint technologies that are currently at various stages of development.

Last week we ingested 309 DVD titles into the AM audio fingerprint database as part of an initial test. Once these fingerprints go into the active matching process (which should be very shortly), we hope to get some data to help understand how effective this process is, and something about which are the most targeted titles and at what frequency clips are discovered.

It is important to note that this data is only available from those websites with which AM has an agreement for content identification services, and the nature of those agreements will constrain detail in the reports we hope to receive. However this is an important first step towards understanding the effectiveness content identification, both for blocking as well as in support of potential revenue sharing opportunities.

Although AM is currently the only widely deployed service, we anticipate that as viable video fingerprinting services emerge (AM is expected to launch it's own version shortly) we will selectively engage in further trials.

---

I will keep you posted on developments, and if you have any questions or comments, please do not hesitate to contact me,

alan

**Schapiro Exhibit 149**



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## Biz not sure how to treat upstart YouTube

### Catching YouTube

Andrew Wallenstein

March 21, 2006

The entertainment world is putting the squeeze on YouTube.com, but will it be more like a hug than a headlock?

In a few short months, the Web site has emerged from the obscure ranks of dozens of online viral-video outposts to dominate even giant portals in the category, including Yahoo! and Google.

But its astonishing growth -- streaming 30 million videos a day -- also has put old-guard media empires on the defensive. NBC Universal and CBS Corp. are just a few of the power players who have clamped down on YouTube recently for hosting copyright-infringing clips snatched from broadcast airwaves.

"As the broadband digital space develops, it's important for rules of the road to be clearly established," says Richard Cotton, executive vp and general counsel at NBC Uni.

However, the relationship between this Internet upstart and Hollywood isn't as adversarial as you might assume. For every corporate lawyer firing off angry letters to YouTube, there are two more executives exploring potential partnership opportunities -- maybe even an outright acquisition.

What's more, YouTube execs claim that these conflicting legal and promotional imperatives often unknowingly emanate from the same company.

"There's been a few examples of marketing departments uploading content directly to the site, while on the other side of the company their attorney is demanding we remove this content," YouTube co-founder Chad Hurley says.

The media establishment's schizophrenic attitude toward YouTube reflects the undeniable promotional power of viral video, which sends clips bouncing around the Internet's young-adult user base like a beach ball at a Nickelback concert. As conglomerates begin charging for programming everywhere from their own Web sites to Google Video, savvy independents like YouTube are being sized up as allies a la iTunes or enemies on par with the Napster of old.

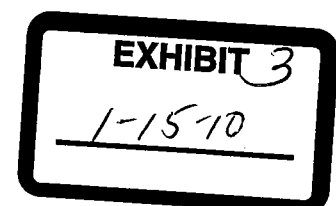
Hurley contends to be the former. YouTube is actively seeking partnerships with media companies, positioning itself as something of a virtual buffet where one can nibble on bite-size clips of programming for free in order to drive consumer interest in the feast offered by movie studios and TV networks.

"The community and viral nature of it is often an opportunity to reach a large audience and to promote movies," Hurley says. "We don't see YouTube as a place to watch a whole show. We're about clips and promotional content, and user-generated content."

In just a few months, YouTube has generated an inordinate amount of attention for a company with only



Advertisement



20 employees squeezed into a loft above a pizza parlor in San Mateo, Calif. Hurley founded the company in February 2005 with fellow twentysomething Steve Chen; both are former employees at online payment service PayPal.

YouTube is not a peer-to-peer service like Napster, but its video-hosting capabilities allow Internet surfers to stream videos easily from a Web page. Also unlike Napster, most of the video available is not entire TV episodes or movies but short clips no longer than three minutes.

That makes YouTube and its ilk ideal for showcasing homemade video of everything from baby's first steps to frat-house pranks. But many of these sites are positively teeming with copyright-infringing footage snipped from current and past television shows and movies. There is no barrier to entry for illegal videos; users can upload whatever they want in less than a half-hour.

YouTube has become an online juggernaut seemingly overnight. Not long after its soft launch in May, viewers were watching 30 videos a day; by the time the company officially launched in December, it was 3 million. Today, YouTube has twice the traffic of Yahoo! Video and more than three times that of Google Video and AOL Video.

"Their growth has been phenomenal," says Leeann Prescott, senior research analyst at Internet tracking firm Hitwise USA. "It's really the next evolution of online entertainment."

But many of the hits that drove the growth were copyright-violating clips. Last month, NBC Uni ordered YouTube and other unspecified viral-video Web sites to take down hundreds of clips, including a "Saturday Night Live" skit known as "Lazy Sunday" that became an Internet sensation. YouTube complied but since has had to chase down more "SNL" material at NBC Uni's behest, including a skit featuring Natalie Portman.

One week later, CBS News came down on YouTube for making available a "CBS Evening News" segment about an autistic basketball player that also became a big Internet draw.

At least that example was one where CBS wanted the footage seen. Not so over at ABC, which had to weather the indignity the day after its Academy Awards telecast of YouTube users parsing every second of a vignette featuring Tom Hanks in which he appears to have accidentally muttered profanities. ABC declined comment.

Sources say Fremantle North America, producer of the Fox powerhouse "American Idol," leaned on YouTube to remove scenes from the megahit show. The company declined comment.

But for all the notoriety YouTube has earned, Hurley notes that the site has not been sued, nor has it even received a cease-and-desist letter. What YouTube has been bombarded with are Digital Millennium Copyright Act notifications, which compel Web sites to remove copyright-infringing material.

YouTube has received high marks from most companies that credit the Web site with complying quickly with removal requests.

"YouTube has been a good corporate citizen and taken off copyrighted material," an MPAA spokeswoman says. "We'll continue to monitor what they do. Right now the indication is they are willing to work with us."

YouTube is starting to see a trickle of established players sign on for promotional partnerships. Matador Records is spreading the word on Pretty Girls Make Graves by allowing viewers to submit music videos for the band's upcoming single. Cable network MTV2 has provided clips from upcoming programming including "The Andy Milonakis Show" that links back to the MTV2 Web site. Even advertisers are on board, as Nike has seeded the site with video clips promoting its footwear.

This week, Dimension entrusted YouTube with the trailer for its upcoming film "Scary Movie 4," which promptly garnered 200,000 streams in its first 15 hours on the site.

"In terms of sheer popularity, presently YouTube is at the forefront when it comes to video sharing," says Ian Schafer, CEO of Deep Focus, Dimension's advertising agency. "The more people who see this film's trailer, the more people we feel will get excited about this film."

Hurley indicated that this is just the beginning, with even bigger brands soon to make joint announcements with YouTube from all over the industry. He also says other programs are taking a



more covert approach, uploading movie trailers and the like without striking any official deals in hopes of starting a faux-organic wildfire of buzz.

Not that YouTube will partner with just anyone. Cognizant of the anarchic sensibility pervading viral video, the company wants to be selective in order not to be viewed as a sellout to corporate interests.

"We are moving really cautiously for that reason," Hurley says. "We are looking at indie brands, the kind of brands that resonate with our users."

For now, the company is abstaining from any kind of advertising on the site in hopes that partnerships with media companies eventually will help pay the bills. Advertising will eventually be incorporated, but in the meantime YouTube is subsisting on the \$3.5 million in private equity funding it received in November from Sequoia Capital.

In the meantime, YouTube is still trying to make amends with corporate Hollywood by improving the mechanism that allows it to move quickly to strike infringing videos. But even as the company improves its technology, Hurley warns that constitutional protection is still in place to keep YouTube an open community. "We're not required to police the site," Hurley says. "But we're building the tools to help control everything."

NBC Uni's Cotton is taking a wait-and-see attitude, noting that digital media is a fast-evolving landscape. Still, he isn't ruling out putting on more pressure.

"They may have to undertake additional activities on the order of filtering or screening," Cotton says.

Were it only that easy. Some of YouTube's more creative users do more than just post excerpts of shows; they splice them together with footage from other bits of video. These amalgamations yield a few absurdist oddities like a video mash-up of "The Apprentice" with footage of Charles Manson, which suggests what might happen if Donald Trump were interviewing the notorious serial killer for his show.

YouTube is far from alone in the viral-video category, with dozens of others attempting to mount the kind of mindshare it has aggregated, including Grouper, Vimeo and Clipshack.

Some new entries are aiming for a more distinctive corner of the market, like Revver, which takes a zero-tolerance policy against illegal footage and goes as far as splitting advertising revenue with amateur auteurs who submit to the site.

"Web sites that attract users by flagrant copyright infringement we don't see as a business," Revver founder Steven Starr says.

YouTube's main competition seems to be the big-brand portals, all of which are stumbling into video-sharing in fits and starts and leaning heavily toward the subscription model. While Google Video has lined up interesting partner brands like CBS, its navigation and ease of use has been heavily criticized.

Yahoo! seemed to be moving strong into original programming but recently has made indications that it will back away from that strategy in favor of more user-generated content.

"I think they're adjusting to the amount of attention we're receiving," Hurley says of Yahoo! Inc. "They're going to be chasing us. We can out-innovate these guys. They are large organizations that take time to innovate product."

YouTube's greatest competition might turn out to be the Internet brand that is currently its greatest asset: social networking giant MySpace.com, which Hitwise estimates delivers one out of every five streams for YouTube. In January, MySpace launched its own video hosting service at [vids.myspace.com](http://vids.myspace.com) that could become an easier go-to option for MySpace's massive user base.

"It could cut into YouTube's traffic," Hitwise USA's Prescott says.

MySpace recently was acquired by News Corp., and therein lies another challenge that might lie ahead for YouTube. Media companies are snapping up online properties in part because they serve as a promotional base. Witness how News Corp.-owned cable channel FX injected MySpace with the latest video from Ice Cube: It happens to double as a promo for "Black. White.," an FX series that launched this month and counts the rapper as one of its executive producers.



And News Corp. isn't the only media giant that recognizes the advertising potential of viral video. Not long after the acquisition of MySpace.com, Viacom grabbed a similar site, iFilm.com. Last week, NBC Universal acquired the female-targeted Web site iVillage, which it plans to seed with video programming as well.

Hurley acknowledges that YouTube could make a nice acquisition target but says no such plans are in the offing.

"That is not our intent," he says. "We're not looking for a quick exit."



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**Schapiro Exhibit 163**

Morril, Mark

---

From: Fricklas, Michael  
Sent: Wednesday, January 31, 2007 11:21 PM  
To: Morril, Mark  
Subject: Fw: YouTube: Update on Potential Pilot Project

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

From: Dean\_Garfield@mpaa.org <Dean\_Garfield@mpaa.org>  
To: Fricklas, Michael  
Sent: Wed Jan 31 16:09:25 2007  
Subject: FW: YouTube: Update on Potential Pilot Project

Hello. I am going to be sending this out to everyone later today.

---

We recently contacted YouTube to pick up our file-removal and filtering discussion where we left off last year. YouTube's position has not changed. They are willing to move forward with a pilot that would involve YouTube using a list of 1,000 titles to (a) remove any content that we identify as being unlicensed, and (b) using the hash from those titles to create a "blacklist" of files that will not be permitted onto the system in the future.

In addition to removing motion picture and television shows based on a title list and then blacklisting those files, YouTube is willing to prevent the posting of content that is registered with AudibleMagic. YouTube has an agreement with AudibleMagic. Thus, the extent your content is registered with AudibleMagic, YouTube will include those registered fingerprints in a directory that is checked before any materials are posted.

As we discussed at the end of last year, YouTube and Google are discussing the development of their own proprietary content recognition technologies. YouTube and Google have yet to resolve whether that technology will be made available to all content owners or only to those with whom YouTube has a licensing deal. That issue is being discussed within Google/YouTube and will be resolved soon.

## **Schapiro Exhibit 173**

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Subject: FW: YouTube and the copyright cops: safe... for now?  
From: "Fricklas, Michael" <EX:/O=VIACOM/OU=CORPUSA/CN=RECIPIENTS/CN=FRICKLAM>  
To: Fricklas, Michael  
Cc: Date: Tue, 18 Jul 2006 00:03:44 +0000

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From: Jason Hirschhorn [mailto:jasonh@triplehmedia.com]  
Sent: Monday, July 17, 2006 8:02 PM  
To: Fricklas, Michael; Matthews, Beth; Lehman, Nicholas  
Subject: Re: YouTube and the copyright cops: safe... for now?

I believe that more than 60% of youtube's traffic is from copyrighted material

On 7/17/06 7:59 PM, "Fricklas, Michael" <Michael.Fricklas@viacom.com> wrote:

thanks. Mostly YouTube behaves -- and why not - user generated content appears to be what's driving it right now.

Also the difference between YouTube's behavior and Grokster's is staggering. While the supreme court's language IS broad; the precedent is not THAT broad. Mike

---

From: Jason Hirschhorn [mailto:jasonh@triplehmedia.com]  
Sent: Monday, July 17, 2006 7:48 PM  
To: Fricklas, Michael; Matthews, Beth; Lehman, Nicholas  
Subject: FW: YouTube and the copyright cops: safe... for now?

<http://arstechnica.com/news.ars/post/20060716-7273.html>

YouTube and the copyright cops: safe... for now?

7/16/2006 7:39:28 PM, by Ken Fisher

If you've never heard of YouTube, let me introduce you: YouTube is a massively popular video sharing site that has quickly become one of the Internet's most trafficked websites, climbing into the top 50 of all sites online in a year's time (as tracked by Alexa). According to Nielsen NetRatings, the site serves almost 13 million users a month and serves up 50 million videos each day. Maybe you've been by the site to see Jon Stewart's hilarious (yet depressingly accurate) coverage of the "Net neutrality" debate, or maybe you enjoyed watching Ernesto Hoost and friends in Silent Library. And maybe, just maybe, you've enjoyed some videos that weren't uploaded without the copyright owner's permission, too.

See, YouTube's continued survival is a bit of a mystery to some. The site thrives in part on what appears to be copyright infringement, but aside from a few scuffles (most notably with NBC), there's been nothing Napster-ish about its history. TV clips, movie clips, you name it... they all appear on the site regularly, and without authorization. So far, the major lawsuits haven't shown up.

Daniel Pearl, Deputy editor of BBC's Newsnight, recently compared life at the venerable Beeb to life at YouTube. Noting that the BBC has to get clearance for everything that it uses, Pearl asks, "So why is there one rule for us and another for YouTube?" That is, why does the BBC get hit with letters, licensing demands, and potential lawsuits when they use unauthorized material, yet YouTube is packed to the gills with it? "Perhaps someone could explain," he says.

For Pearl and others with similar questions, you're in luck. See, while the BBC and other news organizations are accountable for what they show to users, YouTube is built upon laws that give them a safe harbor. And believe it or not, it's the DMCA protecting YouTube—the same DMCA that is destroying fair use. As the EFF's Fred von Lohmann explains in an editorial for The Hollywood Reporter Esq., YouTube is shielded because the site is an "online service



provider," arguably similar to your own Internet Service Provider (ISP). Among other things, the DMCA provides protection for service providers against being held responsible for the actions of their users. Much like the RIAA can't sue Comcast for little Jimmy's pirate web server he hosts on their broadband network, so too with YouTube.

As an online service provider, YouTube seemingly has an out of almost any trouble you can throw at it. A disgruntled copyright owner must first supply the company with a legal notice of the infringement (the infamous takedown notice), and YouTube can stay in the clear by merely identifying the infringing material and removing it. They're safe from damages, even if 20,000 people watched the unauthorized material. Why? Because they only host it. Users upload the video (never mind how they got it), and that's ultimately the big distinction between YouTube and, say, the BBC. If the Beeb showed a 10 minute clip without authorization, they could be liable for thousands of dollars. YouTube, no.

As von Lohmann points out, this isn't a license to print money. YouTube can lose its safe harbor protections if it appears that they are directly profiting from the infringement of copyrights by their users. In von Lohmann's opinion, this is why YouTube only shows advertisements on pages without video on them. As the company searches for a business model, it will be critically important for them to stay away from anything that looks to capitalize on, well, one of the things that makes the site so popular: copyright infringement.

The situation leaves a bad taste in the mouths of many. Weblogs Inc. CEO Jason Calacanis wrote about the company's business model last February: "YouTube and other video hosting sites have made it easy to pirate stuff on the web (which is where piracy started), but they shouldn't be positioned as some revolutionary business," he wrote.

Perhaps it will be revolutionary, however. When the significant legal challenges come, and I strongly believe that they will, YouTube will be put into the onerous position of testing the limits of copyright law. Are clips of longer video programs fair use? Does a company that attracts so much copyrighted material have a chance to fight off charges of inducing or aiding copyright infringement? Does YouTube have a responsibility to make it impossible to download videos from their site? These are but a few of the questions looming large in the background.

While not exactly the same thing, it is important to note that the legitimate uses of P2P did not, in the end, protect Grokster. Rather, the ruling in *Metro-Goldwyn-Mayer Studios v. Grokster* left open the very real possibility that a disgruntled copyright holder could argue that YouTube, as a kind of Internet software, is "designed and promoted to aid in infringement" (to borrow language from the ruling). You may recall the the Supreme Court Justices pinged Grokster for failing to "develop filtering tools or other mechanisms to diminish the infringing activity using their software." And to get back to von Lohmann's argument about the cautious placement of advertisements, note that the justices also addressed this matter from a broad perspective, writing:

"[R]espondents make money by selling advertising space, then by directing ads to the screens of computers employing their software. The more their software is used, the more ads are sent out and the greater the advertising revenue. Since the extent of the software's use determines the gain to the distributors, the commercial sense of their enterprise turns on high-volume use, which the record shows is infringing. This evidence alone would not justify an inference of unlawful intent, but its import is clear in the entire record's context."

That is to say, merely refraining from placing advertisements on pages with infringing video won't necessarily be enough if the high-volume traffic of the site leads to advertising gains elsewhere. Sadly, the Grokster ruling did not bring the clarity to these issues for which many had hoped.

Two things are clear, however. YouTube is popular, and few people want to see the site go away. Since YouTube does not allow for users to download videos (without hacks that they do not support), many people feel that it is ultimately a win-win situation for copyright holders and the audience (the former essentially getting free promotion to the latter). The second matter is that legal eyes are watching YouTube. Following on the heels of their spat with NBC, the company instituted limits on video cap lengths largely to combat copyright infringement, and it may be no coincidence that they publicly revealed their motivations (consider the "filter" arguments noted above). The RIAA is now also after YouTube (and Google) for amateur music videos uploaded by users. Whether or not little spats will erupt into the all-out war that followed the pre-legit days of Napster remains to be seen, but I don't expect that old dog (the entertainment industry) to have learned any new tricks.

[ Discuss

---

--  
jason hirschhorn

**Schapiro Exhibit 174**

---

From: "Davis, Wade" <Wade.Davis@viacom.com>  
Date: Wed, 5 Jul 2006 22:27:45 -0400  
To: "McGrath, Judy" <Judy.McGrath@mtvstaff.com>  
Subject: RE: Regarding YouTube

Good luck!

Please let me know what I can do to help.

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

From: McGrath, Judy  
Sent: Wednesday, July 05, 2006 10:26 PM  
To: Davis, Wade  
Subject: Re: Regarding YouTube

Well, whatever. I'm sure you have plenty of good stuff to do. We certainly had less than zero to do with the guest list....not sure who picked the attendees for Viacom. I insisted on bringing my team. Presentation is not as focused as a real bonafide LRP would be.....too fast, no time.

-----  
Sent from my BlackBerry Wireless Handheld

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

From: Davis, Wade  
To: McGrath, Judy  
Sent: Wed Jul 05 22:13:44 2006  
Subject: RE: Regarding YouTube

I don't know. I didn't press the point. I'll ask again tomorrow.

---

From: McGrath, Judy  
Sent: Wednesday, July 05, 2006 10:11 PM  
To: Davis, Wade  
Subject: RE: Regarding YouTube

What politics? You actually help us!

---

From: Davis, Wade  
Sent: Wednesday, July 05, 2006 10:07 PM  
To: McGrath, Judy  
Subject: RE: Regarding YouTube

Ill get on it.

Not coming to LRP tomorrow; I think dolan was sensitive to the politics of having me there...

---

From: McGrath, Judy  
Sent: Wednesday, July 05, 2006 9:56 PM  
To: Davis, Wade  
Subject: RE: Regarding YouTube

---

PLEASE if you would do it, that would be great.

I WANT TO OWN YOUTUBE, I think it's critical, and if it goes to a competitor.....!!!!!!!!!!!!!!!!!!!!!! Even if we have to buy it with a partner to keep it below the line. This is our MySpace, we can figure it out.

Plus....We don't do NewCo? I assume Rupert and his minions have it on their radar....? NBC with Zalaznik, and Jason as a consultant? They will go for it.

Time is the enemy!

I assumed you would be in our LRP tomorrow...??!! Can't you come?

I will send you a copy of the deck now...ignore the financials on page 14, they are changing. NO ONE UPSTAIRS has this deck yet, so please keep it to yourself.

Meeting is at 9 a.m. on 28. C'mon down.

Okay, there is no air here, I have to go home.

---

From: Davis, Wade  
Sent: Wednesday, July 05, 2006 9:41 PM  
To: McGrath, Judy  
Subject: RE: Regarding YouTube

Do you want me to try to organize this or let blair do it?

---

From: McGrath, Judy  
Sent: Wednesday, July 05, 2006 8:28 PM  
To: Davis, Wade  
Subject: RE: Regarding YouTube

YES

---

From: Davis, Wade  
Sent: Wednesday, July 05, 2006 7:53 PM  
To: McGrath, Judy  
Subject: RE: Regarding YouTube

I talked to blair about this at length last week.

Agree that we should get a group together. Do you think that we should loop bakish in so that we have freston's buy in on the back end?

---

From: McGrath, Judy  
Sent: Wednesday, July 05, 2006 7:02 PM  
To: Davis, Wade  
Subject: FW: Regarding YouTube

I agree with Blair . See below.

---

I think this could be our MySpace. Only bigger and better because it's video....we buy Tagworld or do a deal with Ming for social networking.

I assume you've read the Wired Magazine piece with Rupert on the cover..... "MySpace is a nuclear missile fired across the bow of MTV..." All about how we lost these deals, etc . A nice suicidal moment for me last week, checking that story out....

---

---

From: Blair Harrison [mailto:bharrison@ifilm.com]  
Sent: Wednesday, July 05, 2006 6:47 PM  
To: McGrath, Judy

I was in the middle of a longer email to you about YouTube after the CNet piece on it (that I am sure you have seen) ...

[http://news.com.com/ls+YouTube+a+flash+in+the+pan/2100-1025\\_3-6089886.html?tag=sas.email](http://news.com.com/ls+YouTube+a+flash+in+the+pan/2100-1025_3-6089886.html?tag=sas.email)

Today... I think we should put a squad of four people in a room for a day, and figure out if we can make a business out of it. Assuming we can, we should go and buy it.

I do NOT think it's a flash in the pan... The only doubt about its viability is whether it can navigate the waters of monetizing its stuff vs. the illegality of that stuff and do it quickly enough to prevail. And I see no reason to believe it can't.

The differences between Napster and YouTube – one of the fairest comparisons – are that the Napster people were all idiots, YT are not; Napster was sued by all content owners (en masse), YT is partnering with them; Napster was a one-trick pony that didn't develop any new features after it had first shipped, YT releases them weekly; Napster had effectively no non-infringing uses, YT has many; etc.

To my mind, YT has a business problem to solve that is only slightly worse than Google's was... and therefore eminently solvable.

The only question is... what does it <become>... but assuming we make a video business out of it that is huge and sound and growing, the answer to that question will change often and we will be in good shape anyway.

I am going to pursue this with Adam C and Wade D after the LRP extravaganza this week.

B.

---

From: McGrath, Judy [mailto:Judy.McGrath@mtvstaff.com]  
Sent: Wednesday, July 05, 2006 3:25 PM  
To: Blair Harrison

Hey, what do you think of YouTube today....as an acquisition....I remember your earlier email fondly....

**Schapiro Exhibit 175**



Bloomberg  
Thursday April 29, 2010

## Viacom Chief Says YouTube Clips Weren't Licensed (Update1)

March 25, 2010, 4:57 PM EDT

(Adds share price in last paragraph.)

By Sarah Rabil

March 25 (Bloomberg) -- Viacom Inc. videos uploaded to Google Inc.'s YouTube Web site weren't licensed, conflicting with the cable-television company's practice of licensing its content, Viacom Chief Executive Officer Philippe Dauman said.

"The issue we had with YouTube, in particular, was that a lot of the content we produce professionally was being uploaded without a license agreement," Dauman said today at The Boston College Chief Executives' Club of Boston. "We have nothing against YouTube. It's a wonderful service."

Viacom, the owner of Comedy Central and MTV, sued YouTube in 2007 for copyright infringement, and asked \$1 billion in damages. In documents unsealed last week, Google said Viacom secretly uploaded clips to YouTube while complaining about alleged copyright violations. Viacom disputes the claim, saying a small number of the 63,000 videos cited in its complaint were uploaded with permission.

Viacom, based in New York, rose 49 cents to \$33.26 at 4 p.m. in New York Stock Exchange composite trading.

--Editors: Cécile Daurat, Andrew Dunn

To contact the reporter on this story: Sarah Rabil in New York at [srabil@bloomberg.net](mailto:srabil@bloomberg.net)

To contact the editor responsible for this story: Andrew Dunn at [adunn8@bloomberg.net](mailto:adunn8@bloomberg.net).



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## **Schapiro Exhibit 185**

---

Subject: I think  
From: "McGrath, Judy" <EX:/O=VIACOM/OU=MTVUSA/CN=RECIPIENTS/CN=MCGRATHJ>  
To: Davis, Wade  
Cc: Date: Wed, 05 Jul 2006 14:47:00 +0000

We (MTVN/Viacom) have to buy YouTube. Do we know enough about it? This is our MySpace play, only better, more video.  
???

-----  
Sent from my BlackBerry Wireless Handheld

## **Schapiro Exhibit 187**

---

From: "McGrath, Judy" <Judy.McGrath@mtvstaff.com>  
Date: Thu, 6 Jul 2006 08:22:51 -0400  
To: "Bakish, Robert" <bb@viacom.com>  
Subject: Fw: News update

Help us get YouTube. We cannot see it go to Fox/NBC. Too much of our consumers time spent there.

-----  
Sent from my BlackBerry Wireless Handheld

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

From: Cahan, Adam  
To: Wolf, Michael; McGrath, Judy  
Sent: Thu Jul 06 07:34:02 2006  
Subject: Fw: News update

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

From: Bakish, Robert  
To: Cahan, Adam; Lehman, Nicholas; Patel, Kruti; Witt, Jason; Lesinski, Thomas - Paramount  
Sent: Thu Jul 06 07:25:09 2006  
Subject: News update

So as I think you know, chernin swung by and saw tom friday to talk about their issues relative to our most recent proposal. I met with tom and dolan today to discuss what we thought of all this. To make a long story short they agree that a deal on fox's terms does not make sense for us. So we are going to see if they blink. At the same time nbc has called us (and them) trying to be part of something. I scheduled a meeting for monday with nbc to see what their pov was on structure and key issues. Meeting is with david zaslav who I know well. Will update the group after the meeting

BB/remote

**Schapiro Exhibit 188**

---

Subject: Re: Thank you  
From: "McGrath, Judy" <EX:/O=VIACOM/OU=MTVUSA/CN=RECIPIENTS/CN=MCGRATHJ>  
To: Freston, Tom  
Cc: Date: Fri, 07 Jul 2006 03:34:56 +0000

You'll have to kill me to get to it first.

Hey, should we do anything on August 1? MTV's 25th? I don't think so, but then again.....?

-----  
Sent from my BlackBerry Wireless Handheld

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

From: Freston, Tom  
To: McGrath, Judy  
Sent: Thu Jul 06 23:29:46 2006  
Subject: Re: Thank you

If we get UTube.....I wanna run it

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

From: McGrath, Judy  
To: Freston, Tom  
Sent: Thu Jul 06 23:22:46 2006  
Subject: Re: Thank you

They felt like you in particular were really on it, great questions. They thought you liked being back. And you know, they miss you.

I'm watching Sandler on The Daily Show.

YouTube! I'm banging my shoe. Let's do it.

Adam is terrific.

-----  
Sent from my BlackBerry Wireless Handheld

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

From: Freston, Tom  
To: McGrath, Judy  
Sent: Thu Jul 06 23:17:25 2006  
Subject: Re: Thank you

Thanks

Talked about UTube a lot of the way out .....bob and adam are working up a model asap and, if it's OK, let's do it

Enjpyed being with the peple.....how did they all feel

Adam is smart

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

From: McGrath, Judy  
To: Freston, Tom  
Sent: Thu Jul 06 19:43:11 2006

---

Subject: Thank you

For today. For the time and the engagement. Great questions and discussion. We know what to do. I know this SUCKS it's MADDENING that the revenue isn't there when the content is.....but we will fix it and get the stock back up. "Accretive" digital acquisitions and a big idea or two. Fast. Thanks. They are a sharp team.

-----  
Sent from my BlackBerry Wireless Handheld

**Schapiro Exhibit 200**



---

From: "Cahan, Adam" <Adam.Cahan@mtvn.com>  
Date: Wed, 16 Aug 2006 14:37:08 -0400  
To: "Bakish, Robert" <bb@viacom.com>, "Witt, Jason" <Jason.Witt@mtvstaff.com>, "Patel, Kruti" <Kruti.Patel@viacom.com>, "Stirratt, Nada" <Nada.Stirratt@mtvn.com>  
Subject: YouTube - next steps

Summary thoughts on Conversation with YouTube.

YouTube: Chris Maxcy, YouTube VP content; Zahava Vp Legal, Kevin (?) business development  
MTVN: Adam Cahan, Kruti Patel, Jason Witt

Next steps: Expecting revised proposal from YouTube by end of week. KP to schedule YT call w/ BB/JW/NS/AC next Tuesday/Wednesday

Open issues:

- \* Economics: - YouTube gravitating to a [REDACTED] (we started [REDACTED])
- \* Open issue: They would like to have some concept of a [REDACTED] that enables them to offset bandwidth costs.
- \* Next step Nada - while we will not "pay for distribution" is there a world in which we say, we do not run an ad unless we hit certain ceilings? Not sure this allays their fears about bandwidth cost and monetization? Need a meeting to discuss - AC/JW to schedule
- \* Branding - [REDACTED]
- \* Open issue [REDACTED]
- \* International - YouTube cannot currently provide IP filtering for content.
- \* Open issue: Unclear how much content is truly available for worldwide consumption/clearance
- \* Next Step: KP/JW to reach Gideon Beier for worldwide online content'
- \* Copyright - YouTube proposes to use audio tracking and claiming technology from AudioMagic or GraceNote
- \* Open Issue: Our content does not have an audio fingerprint a la music
- \* Next steps: YouTube to investigate ability to use search and key word "scripting" as a means of identifying copyright. i.e. SpongeBob, SouthPark

Recommended Approach:

- \* Pursue deal terms to understand opportunity - unclear if we are ready/in need of this form of distribution.
- Potential to work with a windowing strategy, i.e. library content, etc.

## **Schapiro Exhibit 202**

To: Ethan Anderson <eanderson@google.com>  
From: Peter Chane <peterch@google.com>  
Cc: [REDACTED]  
Bcc: [REDACTED]  
Received Date: 2006-05-03 16:47:07 CST  
Subject: Re: [Vid-eu] FW: [Harappa-ui] New YouTube UI

---

this is just a quote from Peter Chernin. I dont believe the 80% number. My own analysis of YT points to a much lower # (5%).

On 5/3/06, Ethan Anderson wrote:

the 80% came from an email you sent to harappa-team last week.

Harappa-team] Peter Chernin (Fox) quote on Youtube Harappa

Peter Chane to Video  
Reply - More options Apr 26 (7 days ago)  
Chernin: We as an [video] industry are much better positioned (compared to the music industry)...but the music industry lessons made us do the right things now. YouTube: Exciting as it shows the potential pent up demand...we did a survey and more than 80 percent of video on this site is copyrighted content.

<http://feeds.feedburner.com/pcorg?m=10350>

--

Peter Chane  
peterch@google.com  
Group Business Product Manager  
Google Video I <http://video.google.com>

[REDACTED]

---

From: Peter Chane [mailto:peterch@google.com]  
Sent: Wednesday, May 03, 2006 9:27 AM  
To: Bernardo Hernandez  
Cc: Ethan Anderson; [REDACTED]  
Subject: Re: [Vid-eu] FW: [Harappa-ui] New YouTube UI

where did you get the 80% number from?

On 5/3/06, Bernardo Hernandez wrote:

I think it is really an improvement:

1. Grid instead of list with viral rating information
2. New Honors information
3. Cleaner

Still need a better player.

Even though 80% of their content is illegal, they've got the eyeballs, they've got the buzz about being open and having everything that there is to have. If you wanted to upload your content or were a tv producer, you've have no doubt about YouTube being your choice, I think.

We need to understand that even though technology and UI are an important part, content is king. We need to be able to accept more content. I am attaching an interesting article from this week's Economist.

Bernardo

Internet video

Clip culture

Apr 27th 2006 | SAN MATEO  
From The Economist print edition

A start-up shows big media and mighty Google how to do web video

CHAD HURLEY and Steve Chen, two modest twenty-something software geeks in Silicon Valley, were at a dinner party last year where several people brought their camcorders and then complained how difficult it was to share home videos online. So they did what one does in their circles. They founded a company, called YouTube ; got a few million dollars from Sequoia Capital, an eminent venture-capital firm; wrote some code in Mr Hurley's garage; and then moved into a San Mateo loft that resembles an office. Their simple idea was to make uploading home videos to the internet easy.

It turns out that millions of people already had such videos and were just waiting for a way to share them. Even before YouTube's official launch last December, the site contained more than a million short video clips. In December people were uploading 8,000 clips a day, and watching 3m a day. This month they were uploading 35,000 a day and watching 40m a day. With such amazing growth—almost all by word of mouth, e-mail and hyperlink—YouTube already has four times the traffic of Google Video , the online video market of the world's largest search-engine firm, and the nearest thing to a rival.

YouTube's success is therefore of great interest to many older and larger companies. Web video has over the past year become the next "next big thing" on the internet. A survey by the Online Publishers Association in February found that 69% of American internet users have watched video on the web, 24% do so at least once a week, and 5% every day. Almost every big internet company, from portals such as Yahoo! to retailers like Amazon , now has plans to offer video search and feeds. The traditional media companies—owners of video libraries—are interested too. Walt Disney is about to make several shows from its ABC television network available without charge (ie, with advertising) on a new web cinema. CBS already offers some of its shows online for 99 cents.

This may appeal to younger audiences, since it allows "time-shifting", so that viewers can watch when it suits them, as opposed to when the show is on air. Apple Computer was the first to understand this—it struck a deal with Walt Disney last autumn to provide some television shows on iTunes, its online music store, so

that people can put them onto their iPods.

But the success of YouTube points to another development. People are spending an average of 15 minutes on the site during each visit, enough to view several short, funny clips. This is because they are using YouTube for little breaks during a dull workday. And it is a "lean-forward" experience, as people sit in front of computer screens. This "clip culture", as Mr Hurley calls it, is quite different from the "lean-back" experience of enjoying a half-hour show while reclining on the sofa. So different that YouTube sees Hollywood as a potential ally, rather than as a threat. For instance, the producers of "Lucky Number Slevin", a new film with Morgan Freeman, Lucy Liu and Bruce Willis, are marketing it by making the first eight minutes exclusively available as a clip on YouTube.

This emerging clip culture is also a supply-side phenomenon. Only 10% of the clips on YouTube are from film-industry "professionals", says Mr Chen. About 80% come from rank amateurs, and another 10% from "dedicated amateurs", such as young comedians hoping to use internet celebrity as a way into a career. Unlike the big media companies looking to recycle their film libraries, Google Video and YouTube are simply giving ordinary people a way to share clips. And compared with big, frightening Google , which Messrs Hurley and Chen consider arrogant, little YouTube seems to be doing it a lot better.

On 4/28/06, Ethan Anderson wrote:

YouTube just launched a new UI. I think it's an improvement. Any thoughts?

Ethan

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

From: Nikhil Bhatla [mailto:nikhil@google.com ]

Sent: Friday, April 28, 2006 10:11 AM

To: [REDACTED]

Subject: [Harappa-ui] New YouTube UI

<http://youtube.com/watch?v=LuTCUyCXZOY&watch2>

- new flash video player - looks to just be a cosmetic change.  
they've removed the size options and just have an option for full screen.  
you still can't jump ahead of the buffered region.

- new "Director videos" section on right side (unclear how they're selected)

- ads by google at the bottom

- cleaner comments UI (no more yellow background)

overall, still very cluttered.

- nikhil

[REDACTED]

[REDACTED]



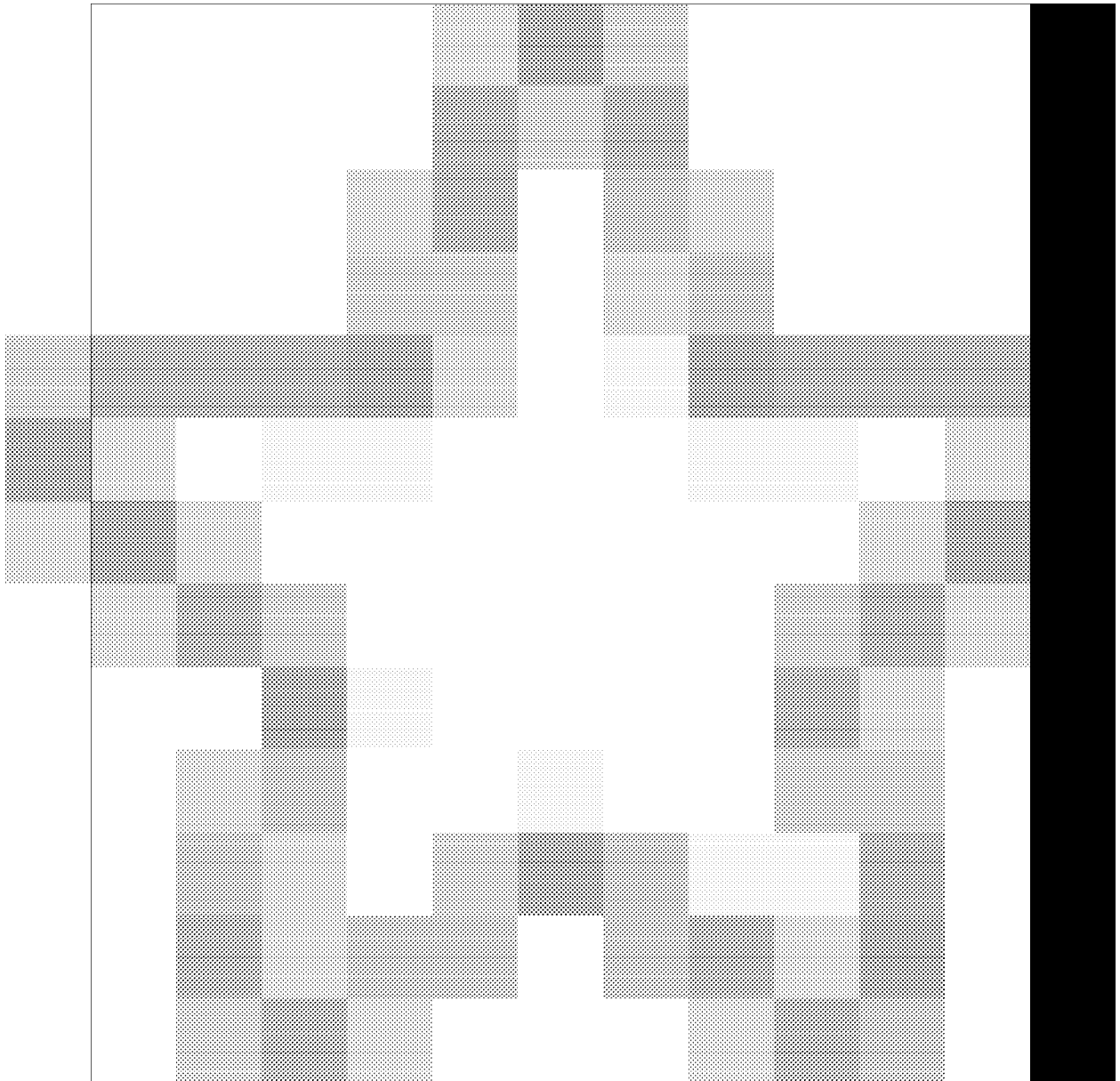
--  
Peter Chane  
peterch@google.com  
Group Business Product Manager  
Google Video | <http://video.google.com>

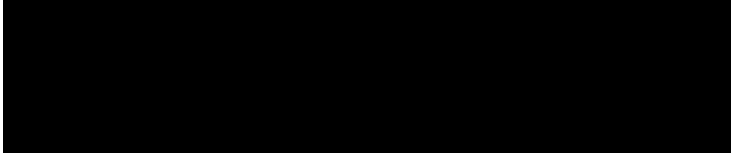
--  
Peter Chane  
peterch@google.com  
Group Business Product Manager  
Google Video | <http://video.google.com>

---

Attachments:

ATT09910.txt  
star\_off\_sm\_2.gif







# **Schapiro Exhibit 211**

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 MARYROSE DUNTON  
SAN FRANCISCO, CALIFORNIA  
FRIDAY, AUGUST 22, 2008

BY: ANDREA M. IGNACIO HOWARD, CSR, RPR, CLR  
CSR LICENSE NO. 9830  
JOB NO. 15500

AUGUST 22, 2008

10:02 a.m.

VIDEOTAPED DEPOSITION OF MARYROSE DUNTON,  
held at the offices of SHEARMAN & STERLING,  
525 Market Street, San Francisco, California,  
pursuant to notice, before ANDREA M. IGNACIO  
HOWARD, CLR, RPR, CSR License No. 9830.

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

FOR THE PLAINTIFFS VIACOM INTERNATIONAL, INC.:

JENNER &amp; BLOCK

By: MICHAEL B. DESANCTIS, Esq.

SARAH A. MAGUIRE, Esq.

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Washington, D.C. 20001

(202) 639-6000 mdesanctis@jenner.com

FOR THE LEAD PLAINTIFFS AND PROSPECTIVE CLASS:

BERNSTEIN LITOWITZ BERGER &amp; GROSSMANN LLP

By: DAVID R. HASSEL, Esq.

1285 Avenue of The Americas

New York, New York 10019

(212) 554-1533 davidh@blbglaw.com

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

WILSON SONSINI GOODRICH &amp; ROSATI

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

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ALSO PRESENT:

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KELLY TRUELOVE, Ph.D., Consultant

KEN REESER, Videographer.

---oOo---

1 DUNTON

2 12:10:02 but I do remember conversations at the time about

3 12:10:08 premium content on YouTube that is professionally

4 12:10:12 produced content.

5 12:10:13 So I do have a recollection following some

6 12:10:19 discussions at looking at the most viewed, most

7 12:10:22 discussed, top rated, top favorites, we call those the

8 12:10:27 browse pages, for that day and tried to determine,

9 12:10:30 based on the video still, if it was premium content or

10 12:10:33 not.

11 12:10:33 Q And premium content is copyrighted content;

12 12:10:36 correct?

13 12:10:37 MR. KRAMER: Objection; the question is

14 12:10:38 vague.

15 12:10:38 THE WITNESS: I have no idea if premium

16 12:10:41 content is copyrighted content.

17 12:10:43 MR. DESANCTIS: Okay.

18 12:10:45 THE WITNESS: But we certainly used that term

19 12:10:48 interchangeably for a long, long time, "copyrighted,"

20 12:10:53 "premium."

21 12:10:53 MR. DESANCTIS: Okay.

22 12:10:59 Q Why were you doing this exercise?

23 12:11:03 A So I took a look at the most viewed, top

24 12:11:06 rated, et cetera, videos for that day, because there

25 12:11:09 was some discussion about premium content on YouTube,

1 DUNTON

2 12:11:13 and I wanted to see, I wanted to look for that day and

3 12:11:18 see how much -- what -- what content was being viewed

4 12:11:22 that day.

5 12:11:23 Q Did you have premium content in February

6 12:11:32 2006?

7 12:11:35 A There was certainly content I would define as

8 12:11:38 "premium" on the website in February 2006, yes.

9 12:11:41 Q In the sense that it was copyrighted,

10 12:11:43 correct, but you didn't have a separate -- an

11 12:11:47 established content category in February 2006; did

12 12:11:50 you?

13 12:11:50 MR. KRAMER: Objection to the extent that

14 12:11:51 that question includes a legal conclusion. The term

15 12:11:57 "copyrighted" is vague.

16 12:11:59 MR. DESANCTIS: Q. Ms. Dunton, is it vague

17 12:12:01 to you when I use the term "copyright"?

18 12:12:08 A Yes.

19 12:12:08 Q Why?

20 12:12:16 A I don't know that I have now or have ever had

21 12:12:20 a very good understanding of copyrights.

22 12:12:23 Q Okay. But in the instant message we've just

23 12:12:36 read, you concluded that over 70 percent of the most

24 12:12:44 viewed, most discussed, top favorite, and top rated

25 12:12:48 videos were copyrighted material; correct?

1 DUNTON

2 12:12:51 A No.

3 12:12:52 Q Is that not what the document says,

4 12:12:54 Ms. Dunton?

5 12:12:56 A I can tell you at one time I looked at the

6 12:13:00 most viewed, top rated content for that day and

7 12:13:06 determined that it was premium content. I -- I have

8 12:13:09 to add, whatever is on the most viewed varies wildly,

9 12:13:15 wildly depending on whatever is going on, the popular

10 12:13:18 culture in the news at the time.

11 12:13:20 So to look at that at any point in time and

12 12:13:23 try to make a determination on what is generally being

13 12:13:26 viewed on YouTube would be incorrect.

14 12:13:29 I'm sure if you looked at it yesterday, it

15 12:13:32 would be all Barrack Obama, and I can look at it

16 12:13:35 yesterday and say "Everything on YouTube is

17 12:13:37 Barrack Obama." So when I did this that day, I looked

18 12:13:41 at the most viewed, most discussed, top rated for that

19 12:13:44 day, and I believe I came, by looking at the stills,

20 12:13:47 the determination that around 70 percent of it was

21 12:13:50 premium content.

22 12:13:51 Q But you didn't say premium content in this

23 12:13:53 IM. You said "copyrighted material"; correct?

24 12:13:56 MR. KRAMER: The document speaks for itself.

25 12:13:58 You can answer.



1 DUNTON

2 12:13:58 THE WITNESS: We used the term, correct or

3 12:14:01 not, interchangeably. "Copyright" and "premium."

4 12:14:05 MR. DESANCTIS: Q. Even in 2006 --

5 12:14:07 A Even --

6 12:14:07 Q -- that's your testimony?

7 12:14:08 A -- even in 2006, yes.

8 12:14:09 Q And in 2006, there was no established

9 12:14:12 category of content on YouTube called "premium

10 12:14:14 content"; was there?

11 12:14:15 MR. KRAMER: Objection; the question is

12 12:14:16 vague.

13 12:14:16 THE WITNESS: What do you mean by

14 12:14:17 "established category of content"?

15 12:14:19 MR. DESANCTIS: Q. Was there content on the

16 12:14:21 website that was treated differently because it was

17 12:14:27 premium?

18 12:14:29 A We didn't treat any content differently in

19 12:14:31 2006.

20 12:14:32 Q Okay. Let's move on in the exchange.

21 12:14:42 After you said it was over 70 percent

22 12:14:44 copyrighted material, you say "hah shit never mind."

23 12:14:52 Were you hoping that -- you were hoping that

24 12:14:56 the number that you found would be lower than

25 12:14:58 70 percent; weren't you?

1 DUNTON

2 12:15:00 A I have no idea what I was hoping at the time

3 12:15:03 that I wrote this.

4 12:15:04 Q Okay. And Steve Chen responds, "hahaha."

5 12:15:14 That's the convention in instant message for laughing;

6 12:15:19 right?

7 12:15:20 A Yes.

8 12:15:20 Q So he thinks it's funny that over 70 percent

9 12:15:24 of the most viewed, most discussed, top favorite, top

10 12:15:28 rated videos on YouTube that day were copyrighted?

11 12:15:33 MR. KRAMER: Calls for speculation.

12 12:15:34 THE WITNESS: So a couple of things. I said,

13 12:15:40 from looking at the video stills, I thought over

14 12:15:43 70 percent or 70 percent or whatever it is were

15 12:15:45 premium. I have no idea what Steve Chen thought at

16 12:15:48 the time.

17 12:15:48 MR. DESANCTIS: Okay.

18 12:15:49 Q But all he responded -- first of all, you

19 12:15:52 didn't say premium. You said "copyrighted"; correct?

20 12:15:56 MR. KRAMER: Document speaks for itself.

21 12:15:58 MR. DESANCTIS: Okay.

22 12:15:59 Q And Steve responded "hahaha"; correct?

23 12:16:07 A Steve says, "hahaha" in this chat; that is

24 12:16:12 correct.

25 12:16:12 Q Okay. When you keep saying "premium

1 DUNTON

2 12:16:14 content," what do you mean?

3 12:16:15 A I mean content that looks to be

4 12:16:18 professionally produced. It's glossy. It's not what

5 12:16:22 we would define at the time as user-generated content.

6 12:16:26 Q Okay. Steve then says "maryrose, you're

7 12:16:35 fired." But that was in gest; correct?

8 12:16:46 A I imagine it -- I imagine it was in gest,

9 12:16:48 correct.

10 12:16:49 Q He didn't fire you; did he?

11 12:16:50 A Steve Chen did not fire me.

12 12:16:52 Q Okay. Then you respond "oh, what I meant to

13 12:16:55 say after I found that 70%, I went and flagged it all

14 12:16:58 for review."

15 12:16:59 What does it mean to flag it for review?

16 12:17:03 A At the time, it meant it goes into a queue

17 12:17:07 that somebody at YouTube reviews.

18 12:17:13 Q Reviews for what purpose?

19 12:17:15 A They can review it for many different

20 12:17:17 purposes. Things are flagged because users find them

21 12:17:21 inappropriate. Anything that users feel break our

22 12:17:24 Terms of Use.

23 12:17:25 Q Okay. But you did not flag it all for

24 12:17:31 review; did you?

25 12:17:33 A I don't know. I don't believe I flagged the

1 DUNTON

2 12:17:39 videos I saw on the most viewed for review.

3 12:17:43 Q Okay. This is a joke; right? You're being

4 12:17:50 sarcastic --

5 12:17:51 A Which part?

6 12:17:53 Q -- in the IM?

7 12:17:54 A Which part?

8 12:17:55 Q That you went and flagged it all for review?

9 12:17:58 A I'm probably being sarcastic, yes.

10 12:18:00 Q And Steve writes back "Oh! Of course."

11 12:18:05 He's being sarcastic back; correct?

12 12:18:10 MR. KRAMER: Calls for speculation.

13 12:18:12 THE WITNESS: I don't know if Steve is being

14 12:18:14 sarcastic or not.

15 12:18:15 MR. DESANCTIS: Q. Do you think he actually

16 12:18:17 thought that you flagged all 70 percent for review?

17 12:18:24 A I don't know what he thought.

18 12:18:25 Q Okay. Was there a flag for copyright

19 12:18:38 infringement in 2006, in February of 2006?

20 12:18:42 A On the YouTube.com website?

21 12:18:45 Q On the YouTube -- yes.

22 12:18:48 A On the user facing --

23 12:18:52 Q As an admin tool.

24 12:19:00 A I don't recall.

25 12:19:01 Q Okay. Was it the practice of employees at

1 DUNTON

2 12:22:41 her testimony.

3 12:22:41 MR. DESANCTIS: It doesn't mischaracterize

4 12:22:43 the testimony at all.

5 12:22:44 Q You then say "because we've got to work

6 12:22:48 towards having a site 100% free of copyrighted

7 12:22:51 material, ya know."

8 12:22:54 You were being sarcastic there again; weren't

9 12:22:58 you?

10 12:23:02 A I don't know if I was being sarcastic. As I

11 12:23:06 said, we used the terms "copyrighted" and "premium --"

12 12:23:11 we exchanged those two terms quite a bit.

13 12:23:14 I thought it was -- yes, this is true. I

14 12:23:17 didn't think it was possible to have a site

15 12:23:22 100 percent free, nor why would we want to, of

16 12:23:26 premium, of professionally produced content. We had

17 12:23:29 premium professional produced content since the

18 12:23:32 beginning of YouTube.

19 12:23:39 Q So then -- so then when you said, "We've got

20 12:23:44 to work towards having a site 100 percent free of

21 12:23:47 copyrighted material," are you telling us now that you

22 12:23:55 meant that or that you were being sarcastic?

23 12:24:00 MR. KRAMER: Objection; the question is

24 12:24:01 compound.

25 12:24:02 THE WITNESS: I don't remember this chat

1 DUNTON

2 12:24:03 specifically. What I can tell you is, we had

3 12:24:09 discussed having a policy where employees would need

4 12:24:14 to flag premium content. I am -- I -- I thought that

5 12:24:23 was a ridiculous policy, and so I believe I'm being

6 12:24:30 sarcastic here.

7 12:24:31 I thought it was ridiculous, because there's

8 12:24:34 premium content on YouTube. There are people who

9 12:24:36 upload -- Nike was one of the first users who uploaded

10 12:24:41 content to our site, right. NBC, CBS, VH1, whatever.

11 12:24:45 I thought that that was a ridiculous policy for us to

12 12:24:48 go and try and flag every single piece of premium

13 12:24:51 content that we saw.

14 12:24:52 MR. DESANCTIS: Q. Why would it be

15 12:24:53 ridiculous?

16 12:24:56 A It would be ridiculous because -- so what was

17 12:24:59 being discussed is, we would flag it, and then

18 12:25:01 somebody would try and look at it and determine who

19 12:25:04 uploaded it. I thought that that was nearly

20 12:25:07 impossible, because since the beginning of YouTube, we

21 12:25:11 have had premium content.

22 12:25:12 Like I said, Nike was one of the first users.

23 12:25:17 It was one of our first viral videos. NBC, VH1, MTV

24 12:25:23 too, at the time. We had no idea. We -- there was no

25 12:25:25 way we could determine who had uploaded a piece of

1 DUNTON

2 12:25:28 content.

3 12:25:33 Q So to be clear, you did not, you, Maryrose

4 12:26:04 Dunton, did not work towards having a site 100 percent

5 12:26:08 free of copyrighted material; correct?

6 12:26:11 MR. KRAMER: Objection to the extent the term

7 12:26:12 "copyrighted material" is vague.

8 12:26:14 MR. DESANCTIS: It is the witness's term.

9 12:26:16 MR. KRAMER: Yes, in a chat that she said she

10 12:26:18 didn't recollect, and so when you're asking her the

11 12:26:20 question irrespective of the chat, you're trying to

12 12:26:24 put words in her mouth, and I want to make sure the

13 12:26:27 record is clear, that that term is vague outside the

14 12:26:29 content of the chat.

15 12:26:30 MR. DESANCTIS: I'm not putting words in her

16 12:26:32 mouth. I'm asking her about the chat.

17 12:26:33 MR. KRAMER: Oh, well, then be clear.

18 12:26:37 MR. DESANCTIS: Q. In the chat, you said

19 12:26:41 "we've got to work towards having a site 100 percent

20 12:26:44 free of concreted material." And my question is you,

21 12:26:48 in fact, did not do that; correct?

22 12:26:54 A I did not do what?

23 12:26:56 Q Work toward having a site 100 percent free of

24 12:26:59 copyrighted material.

25 12:27:03 A So as I've said, we use the term "copyright"

1 DUNTON

2 19:02:42 by "we can be pretty ghetto about it"?

3 19:02:47 A I don't remember this specific chat, but I'm

4 19:02:50 likely referring to the technical implementation.

5 19:02:58 Meaning -- actually, I'm not quite sure what I mean.

6 19:03:03 It -- it sounds like, from reading this, to

7 19:03:07 reuse some additional -- some existing search

8 19:03:10 functionality we have on the site.

9 19:03:15 Q And that's what you mean by "we can be pretty

10 19:03:18 ghetto about it"?

11 19:03:22 A We used that term, I know I've used that

12 19:03:25 term, to refer to reusing existing stuff.

13 19:03:29 Q Okay. And after you ask Matthew Rizzo if you

14 19:03:37 can create a saved search with alerts for the

15 19:03:39 copyright cop stuff, he responds at line "12:16:20 you

16 19:03:46 can have whatever you want, but it is just how much

17 19:03:49 time do you guys want to give to these fucking

18 19:03:55 assholes."

19 19:03:56 Did you understand -- do you understand now

20 19:03:58 that the "fucking assholes" that Matt Rizzo was

21 19:04:02 referring to were copyright owners -- I'm sorry --

22 19:04:06 content owners?

23 19:04:10 A I believe, as I said, I don't remember this

24 19:04:13 specific chat, but I believe the people that Matt was

25 19:04:17 referring to are the people who were abusing the



1 DUNTON

2 19:04:21 features that we gave them.

3 19:04:26 Q Why do you believe that? Is there anything

4 19:04:29 in this text about abusing features?

5 19:04:33 A I haven't -- I haven't -- I've only read the

6 19:04:36 parts that you've called out to me, but I can tell you

7 19:04:39 that the Copyright Cop Content Management Tool that we

8 19:04:44 rolled out was actually severely abused by some

9 19:04:48 content owners, and yeah, that made us angry. That

10 19:04:54 was upsetting.

11 19:04:55 Q So do you actually -- are you saying you

12 19:04:57 actually remember that that -- that in this instance

13 19:05:02 that's who "fucking assholes" refer to?

14 19:05:07 A Well, like I said, I don't remember this

15 19:05:09 specific chat, but I do remember the CVP Tool, and I

16 19:05:16 remember content owners abusing it; that is, they used

17 19:05:20 it erroneously to try and take down content that was,

18 19:05:23 in fact, not theirs and -- and yes, that angered me,

19 19:05:28 and I think it angered Rizzo too.

20 19:05:32 Q Do you remember any specific examples of

21 19:05:50 content owners taking down content that was not

22 19:05:54 theirs?

23 19:05:54 A Yes.

24 19:05:54 Q What were those?

25 19:05:55 A American Idol, WWE. Those two come to mind

1 DUNTON

2 19:06:00 specifically, because they did it quite a bit.

3 19:06:02 Q Okay. But the saved search feature is --

4 19:06:07 would have been available to anyone using Copyright

5 19:06:11 Cop. It wasn't just for those who abuse it; is it?

6 19:06:16 A We were talking about implementing the saved

7 19:06:19 search for the Content Management Tool. So yes,

8 19:06:23 anybody who had access to that tool could conceivably

9 19:06:26 use it.

10 19:06:26 Q For everybody.

11 19:06:28 And yet it's your position now that when Matt

12 19:06:31 Rizzo referred to these "fucking assholes" he was only

13 19:06:37 referring to a subset of content owners who were

14 19:06:41 abusing the process?

15 19:06:43 MR. KRAMER: Objection; that mischaracterizes

16 19:06:45 the testimony; it lacks foundation.

17 19:06:47 And, Counsel, just for the sake of the

18 19:06:49 record, you said you were going to use bad language.

19 19:06:51 It had its intended affect the first time you said it.

20 19:06:54 I don't think you need to keep repeating it.

21 19:07:04 MR. DESANCTIS: That's fair. I won't repeat

22 19:07:09 it.

23 19:07:18 Q Okay. But I -- I do need an answer to the --

24 19:07:22 to the question, and I'll ask it a slightly different

25 19:07:30 way --

1 DUNTON

2 20:04:49 source code would have to be altered?

3 20:04:54 A I'm not an engineer. I couldn't tell you

4 20:04:56 about the technical implementations.

5 20:05:03 Q Okay. Let me direct your attention to line

6 20:05:38 "12:07:48." Mr. Rizzo says, "but I still don't see

7 20:05:48 why we have to cater to these guys." He says "next

8 20:05:52 meeting with the lawyers I am not coming."

9 20:05:57 You responded, "ya, we're just trying to

10 20:06:00 cover our asses so we don't get sued."

11 20:06:04 So do you recall discussing this feature just

12 20:06:12 as a way to cover your ass not to get sued?

13 20:06:16 A Well --

14 20:06:18 MR. KRAMER: Hang on one second.

15 20:06:20 I don't think your question is calling for

16 20:06:22 her to reveal communications with counsel.

17 20:06:24 MR. DESANCTIS: It's absolutely not.

18 20:06:25 MR. KRAMER: Then --

19 20:06:26 MR. DESANCTIS: And I don't want you to.

20 20:06:27 MR. KRAMER: Then please don't, and you can

21 20:06:29 answer the question.

22 20:06:29 THE WITNESS: Okay. I was going to say, I

23 20:06:31 just say right here, I mean I don't remember saying

24 20:06:34 this or the chat specifically, but I do --

25 20:06:36 MR. DESANCTIS: Okay.

1 DUNTON

2 20:06:37 THE WITNESS: -- say -- I say we're trying to

3 20:06:38 cover our asses so we don't get sued.

4 20:06:41 MR. DESANCTIS: Okay. Here's the next

5 20:06:49 exhibit.

6 20:07:14 Q So as you sit here today reading that, does

7 20:07:19 this mean that this was not an example where you were

8 20:07:23 considering implementing a tool to tip the balance

9 20:07:29 more in favor of content owners and against YouTube as

10 20:07:34 a medium for self-expression?

11 20:07:39 A Are you asking me if this is not an example

12 20:07:41 of that?

13 20:07:42 Q Right.

14 20:07:44 A I -- I was not in favor of the e-mail alerts.

15 20:07:48 You're totally right, for exactly that reason. I felt

16 20:07:51 that letting people -- letting content owners take

17 20:07:53 down content without even looking at it based on an

18 20:07:57 e-mail alert for a keyword was an improper balance.

19 20:08:01 That's why I was not in favor of it.

20 20:08:06 Q Improper balance. I see.

21 20:08:12 So you weren't -- so you weren't in favor of

22 20:08:15 it, and the reason you were discussing it was so that

23 20:08:19 it would appear that you were in favor of it? Is that

24 20:08:21 where the "cover your ass" comes in? I'm not sure

25 20:08:25 where covering your ass comes in for discussing a

1 DUNTON

2 20:08:28 feature.

3 20:08:29 A What is your question?

4 20:08:30 Q Well, when you said "we're just trying to

5 20:08:33 cover our ass so we don't get sued," are you referring

6 20:08:38 to discussing the feature? Was this a "cya" move?

7 20:08:46 A I'm referring to us being concerned, me

8 20:08:49 personally, that we were going to get sued. As I

9 20:08:52 said, we were being threatened all the time. That was

10 20:08:55 a scary thing for us.

11 20:08:57 Q Okay. All right.

12 20:09:05 Let me show you what's been marked as Dunton

13 20:09:09 Exhibit 23.

14 20:09:09 (Documents marked Dunton Exhibit 23 - 24

15 20:09:15 for identification.)

16 20:09:15 MR. DESANCTIS: Do we have the other one?

17 20:09:17 Oh, I'm sorry.

18 20:09:23 Q 23, and I'll also hand you now 24.

19 20:09:28 A Okay.

20 20:09:35 MR. KRAMER: Counsel, can I have a standing

21 20:09:39 objection and standing motion with respect to these

22 20:09:41 chats?

23 20:09:41 MR. DESANCTIS: With respect to what?

24 20:09:43 MR. KRAMER: With respect to these chats. I

25 20:09:45 mean, I should move to strike and object each time you

## **Schapiro Exhibit 214**

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

-----X

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.

-----X

VIDEOTAPED DEPOSITION OF JASON WITT

NEW YORK, NEW YORK

THURSDAY, SEPTEMBER 25, 2008

REPORTED BY:  
JENNIFER OCAMPO-GUZMAN  
JOB NO.: 15651

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SEPTEMBER 25, 2008  
9:14 a.m.

VIDEOTAPED DEPOSITION OF JASON  
WITT, held at the offices of WILSON SONSINI  
GOODRICH & ROSATI, PC, 1301 Avenue of the  
Americas, New York, New York, pursuant to  
agreement of parties, before JENNIFER  
OCAMPO-GUZMAN, a Real-Time Shorthand Reporter  
and Notary Public of the State of New York.



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## ALSO PRESENT:

MTV NETWORKS

By: HEATHER WINDT, ESQ., Senior Counsel

MANUEL ABRUE, Videographer

1  
2 09:40:09 THE VIDEOGRAPHER: This is tape  
3 09:40:10 number 1 of the videotape deposition of  
4 09:40:13 Jason Witt in the matter of Viacom  
5 09:40:16 International Inc., Comedy Partners,  
6 09:40:21 Country Music Television, Inc.,  
7 09:40:21 Paramount Pictures Corporation, and  
8 09:40:23 Black Entertainment Television, LLC,  
9 09:40:26 versus YouTube, Inc., YouTube, LLC and  
10 09:40:26 Google, Inc.  
11 09:40:31 This deposition is being held at  
12 09:40:33 1301 Avenue of Americas, New York, New  
13 09:40:36 York, on September 25, 2008, at  
14 09:40:39 approximately 9:40 a.m.  
15 09:40:41 My name is Manuel Abrue from the  
16 09:40:44 firm of David Feldman Worldwide, and I  
17 09:40:46 am the legal video specialist. And the  
18 09:40:50 court reporter is Jennifer Ocampo-Guzman  
19 09:40:52 in association with David Feldman  
20 09:40:54 Worldwide.  
21 09:40:55 Will counsel please introduce  
22 09:40:56 themselves?  
23 09:40:56 MR. VOLKMER: Bart Volkmer from  
24 09:40:59 Wilson Sonsini Goodrich & Rosati  
25 09:41:00 representing Defendants, Google and

1 Witt

2 10:38:07 research?

3 10:38:10 A. That there were a number of views

4 10:38:12 of those clips on YouTube.

5 10:38:14 Q. And why did you ask him to do that

6 10:38:20 research?

7 10:38:21 A. She's actually --

8 10:38:22 Q. Oh, sorry. Why did you ask her to

9 10:38:26 do that research?

10 10:38:28 A. Because we were curious where those

11 10:38:30 clips were showing up. And how much traffic

12 10:38:33 they were getting.

13 10:38:35 Q. And where were they showing up?

14 10:38:38 A. On YouTube and some other video

15 10:38:42 sites. I believe, I don't remember any of

16 10:38:45 the others.

17 10:38:46 Q. And how much traffic?

18 10:38:49 MS. TENNEY: Objection.

19 10:38:50 A. I don't remember.

20 10:38:56 Q. Did you believe that Colbert

21 10:39:00 "Greenscreen" clips were receiving a

22 10:39:03 significant amount of traffic?

23 10:39:05 MS. TENNEY: Objection.

24 10:39:05 A. I recall it was in the millions,

25 10:39:19 vaguely, millions of views, I believe.

1 Witt

2 10:39:21 Q. And what exactly was the

3 10:39:29 "Greenscreen Challenge"?

4 10:39:31 A. Stephen Colbert filmed himself in

5 10:39:35 front of a "Greenscreen" on television and

6 10:39:38 challenged his audience to create mashups.

7 10:39:41 Q. And his audience proceeded to

8 10:39:44 create mashups; correct?

9 10:39:46 A. Some audience did, yeah.

10 10:39:49 Q. And posted those videos on sites

11 10:39:51 like YouTube and other UGC sites?

12 10:39:55 MS. TENNEY: Objection.

13 10:39:56 A. That's my -- at least on YouTube,

14 10:39:56 yes.

15 10:40:03 Q. Is it your belief that those

16 10:40:05 "Greenscreen" videos that were created in

17 10:40:07 response to Mr. Colbert's challenge are

18 10:40:11 authorized on UGC sites?

19 10:40:14 MS. TENNEY: Objection.

20 10:40:17 A. I'm not sure, I don't understand

21 10:40:19 the question.

22 10:40:19 Q. Sure. I'll restate it. Do you

23 10:40:22 believe that the "Greenscreen" videos that

24 10:40:23 appeared on UGC sites are authorized?

25 10:40:27 MS. TENNEY: Objection.

1 Witt

2 10:40:27 A. Authorized by who?

3 10:40:29 Q. By Viacom?

4 10:40:30 A. Oh, I have no knowledge.

5 10:40:32 Q. You don't know if those videos are

6 10:40:35 authorized or not?

7 10:40:36 MS. TENNEY: Objection.

8 10:40:36 A. Can you -- I don't understand

9 10:40:39 authorized.

10 10:40:40 Q. Would it constitute copyright

11 10:40:43 infringement?

12 10:40:44 MS. TENNEY: Objection, calls for

13 10:40:46 legal conclusion.

14 10:40:47 MR. VOLKMER: Ms. Tenney, if you

15 10:40:48 could just wait until I finish the

16 10:40:51 question before you state your

17 10:40:52 objection.

18 10:40:52 Q. Would it constitute copyright

19 10:40:55 infringement for a user to have created a

20 10:40:57 mashup of the Colbert "Greenscreen" and post

21 10:41:00 that video to user generated content websites

22 10:41:03 like YouTube.

23 10:41:04 MS. TENNEY: Objection, calls for

24 10:41:05 legal conclusion.

25 10:41:07 A. I don't know.

1 Witt

2 10:41:07 Q. Do you have a personal opinion?

3 10:41:21 A. No.

4 10:41:21 Q. You don't have opinion one way or

5 10:41:25 another whether that constitutes copyright

6 10:41:27 infringement?

7 10:41:27 MS. TENNEY: Objection, calls for

8 10:41:28 legal conclusion.

9 10:41:31 A. No.

10 10:41:35 Q. Do you view that behavior of

11 10:41:37 creating mashups of the Colbert "Greenscreen"

12 10:41:40 as being positive?

13 10:41:42 MS. TENNEY: Objection.

14 10:41:42 A. I think it was consistent with what

15 10:41:51 Colbert wanted them to do, so.

16 10:41:54 Q. And consistent with what Viacom

17 10:42:00 wanted users to do too; correct?

18 10:42:04 MS. TENNEY: Objection.

19 10:42:04 A. I don't even know who would be able

20 10:42:08 to answer that question for Viacom.

21 10:42:10 Q. Did any Viacom employees create

22 10:42:17 mashups in response to the "Greenscreen

23 10:42:20 Challenge"?

24 10:42:20 MS. TENNEY: Objection, foundation.

25 10:42:21 A. I don't know.

1 Witt

2 10:42:22 Q. Did you create any videos in

3 10:42:26 response to the "Greenscreen Challenge"?

4 10:42:29 A. No.

5 10:42:49 Q. So aside from the instance where

6 10:42:52 you asked Alden Mitchell to ascertain some

7 10:42:56 data regarding the "Greenscreen Challenge,"

8 10:42:58 what other research did you do regarding

9 10:43:01 YouTube prior to Google's acquisition?

10 10:43:17 A. I can only recall one other piece

11 10:43:34 of research and I'm not sure that I requested

12 10:43:41 it.

13 10:43:41 Q. And what was that piece of

14 10:43:42 research?

15 10:43:44 A. Alden Mitchell had pointed out to

16 10:43:46 me at one point that the single most popular

17 10:43:50 clips on YouTube were largely user generated.

18 10:43:56 Q. So prior to Google's acquisition of

19 10:44:14 YouTube, who else at Viacom was involved in

20 10:44:17 negotiations with YouTube regarding a

21 10:44:18 potential deal?

22 10:44:22 A. To my knowledge, and, again, I'm

23 10:44:29 not sure they were negotiations, the people

24 10:44:33 who were participating were Bob Bakish and

25 10:44:37 Adam Cahan.

1 Witt

2 10:44:43 Q. Why do you say that you're not sure

3 10:44:49 that they were negotiations?

4 10:44:52 A. There's a line that, between

5 10:44:56 discussions and negotiations. To me

6 10:45:01 negotiations happen when there is enough

7 10:45:03 common ground that feels like you're starting

8 10:45:07 to isolate variables. I'm not sure they,

9 10:45:13 there was enough common ground where there

10 10:45:17 was a back and forth of proposals, at least

11 10:45:22 to my recollection.

12 10:45:22 Q. Why do you think that there was not

13 10:45:32 enough common ground between YouTube and

14 10:45:38 Viacom in the discussions that were occurring

15 10:45:39 prior to Google's acquisition?

16 10:45:42 A. Because I don't recall proposals

17 10:45:44 going back and forth.

18 10:45:45 Q. And so what was Bob Bakish's role

19 10:45:53 in the discussions between YouTube and Viacom

20 10:45:55 prior to the acquisition?

21 10:45:59 A. I only know that Bob invited me to

22 10:46:02 participate. I don't know what, what his

23 10:46:05 role was.

24 10:46:06 Q. And what was Adam Cahan's role?

25 10:46:16 A. Adam was there in the discussions.



1 Witt

2 15:30:42 content that has been uploaded to YouTube in

3 15:30:44 connection with the viral marketing efforts?

4 15:30:45 MS. TENNEY: Objection, vague and

5 15:30:48 mischaracterizes his testimony.

6 15:30:49 A. Can you repeat that question?

7 15:30:53 Q. Sure. Sure.

8 15:30:55 Would you be able to identify all

9 15:30:57 of the Viacom-produced content that has been

10 15:31:00 uploaded to YouTube in connection with its

11 15:31:02 viral marketing efforts?

12 15:31:04 MS. TENNEY: Objection, vague and

13 15:31:05 mischaracterizes his prior testimony.

14 15:31:07 A. Yeah, I would only be able to -- I

15 15:31:12 would only be able to identify the content

16 15:31:17 that we created for, and that we actually had

17 15:31:19 a third party create for T-Mobile and in that

18 15:31:25 "Iron Man" example which we then used, which

19 15:31:28 was then used in viral marketing.

20 15:31:33 Q. If you wanted to find out all of

21 15:31:36 the content that has been uploaded to the

22 15:31:39 YouTube website in connection with Viacom's

23 15:31:43 viral marketing efforts, would you be able to

24 15:31:45 do that?

25 15:31:45 MS. TENNEY: Objection, lack of

1 Witt

2 15:31:46 foundation, vague. It mischaracterizes

3 15:31:51 his testimony.

4 15:31:51 A. I don't even know that there have

5 15:31:55 been marketing efforts on YouTube by Viacom.

6 15:32:00 Q. But have we not established that in

7 15:32:03 the course of this M80 relationship that

8 15:32:05 there were materials that were put up on

9 15:32:08 YouTube by Viacom?

10 15:32:10 MS. TENNEY: Objection,

11 15:32:10 mischaracterizes his testimony.

12 15:32:11 A. No, they were put up by M80 at the

13 15:32:14 behest of an advertising client and it was

14 15:32:18 the content of an advertising client. We

15 15:32:23 provided an agency-like function. We can

16 15:32:28 create content or authorized content to be

17 15:32:30 created on behalf of an advertiser.

18 15:32:33 Q. And that material was uploaded to

19 15:32:46 the YouTube website though; correct?

20 15:32:48 A. I don't know.

21 15:32:49 MS. TENNEY: Objection,

22 15:32:49 mischaracterizes his testimony.

23 15:32:51 Q. So if you wanted to find out all of

24 15:32:59 the instances where Viacom uploaded content

25 15:33:02 to the YouTube website in connection with

1 Witt

2 15:33:04 viral marketing efforts, would you be able to

3 15:33:07 do so?

4 15:33:07 MS. TENNEY: Objection, lack of

5 15:33:08 foundation, vague and mischaracterizes

6 15:33:09 his testimony.

7 15:33:10 A. If I wanted to find all of the

8 15:33:16 content that Viacom uploaded virally, would I

9 15:33:22 be able to do so, I don't know that Viacom

10 15:33:27 has virally uploaded content. I mean that

11 15:33:36 would be my starting point. I wouldn't even

12 15:33:38 know where to start.

13 15:33:45 Q. Is there a document or a database

14 15:33:46 that you could look at to find out the answer

15 15:33:48 to that question?

16 15:33:49 MS. TENNEY: Objection, lack of

17 15:33:50 foundation.

18 15:33:50 A. Not to my knowledge.

19 15:33:51 Q. Is there anyone at Viacom who would

20 15:33:53 be more knowledgeable regarding Viacom's

21 15:33:57 stealth marketing efforts?

22 15:33:58 MS. TENNEY: Objection, excuse me,

23 15:34:00 objection, vague, lack of foundation.

24 15:34:02 A. If we have stealth marketing

25 15:34:08 efforts, there would -- the head, the heads

1 Witt

2 15:34:12 of marketing and the brands would probably

3 15:34:15 have a better idea than I.

4 15:34:17 Q. Do you know who the head of

5 15:34:22 marketing for MTV is?

6 15:34:25 A. I tried this one, it may be Marnie

7 15:34:28 Black now. It's a guess.

8 15:34:31 Q. And the head of marketing for

9 15:34:35 Comedy Central?

10 15:34:36 MS. TENNEY: Objection, vague.

11 15:34:37 A. I don't know.

12 15:34:37 Q. Do you know if M80 alerts the

13 15:34:53 websites to which its uploading content that

14 15:35:00 it is doing so?

15 15:35:00 MS. TENNEY: Objection, lack of

16 15:35:02 foundation.

17 15:35:02 A. I don't know.

18 15:35:02 Q. Has Viacom ever permitted its

19 15:35:32 content to remain on the YouTube site for

20 15:35:35 promotional purposes?

21 15:35:36 MS. TENNEY: Objection, vague and

22 15:35:37 lack of foundation.

23 15:35:38 A. To the extent that Viacom allowed

24 15:35:45 its content to be on YouTube, I have no idea

25 15:35:49 why those determinations were made.

1 Witt

2 19:36:04 100 over a certain time period, yes.

3 19:36:10 Q. How are you feeling physically?

4 19:36:12 A. Pretty good.

5 19:36:12 Q. Do you feel ill?

6 19:36:14 A. No.

7 19:36:15 Q. Okay. And have you been competent

8 19:36:17 to testify all day today?

9 19:36:19 A. Yes.

10 19:36:20 MS. TENNEY: Okay. I have no

11 19:36:21 further questions.

12 19:36:22 MR. VOLKMER: I have a few

13 19:36:23 questions.

14 19:36:23 EXAMINATION BY

15 19:36:26 MR. VOLKMER (Continued):

16 19:36:26 Q. MTVN is a wholly-owned subsidiary

17 19:36:30 of Viacom, Inc.; correct?

18 19:36:31 A. MTV Networks, yes, I believe so.

19 19:36:34 Q. And are you aware of an agreement

20 19:36:44 between the parties in this litigation that

21 19:36:46 certain discovery limitations in this case

22 19:36:51 assume that Viacom, Inc., affiliates who are

23 19:36:54 not named plaintiffs, including, for example,

24 19:36:56 iFilm, Atom Entertainment, Spike TV and MTV

25 19:36:56 Networks are considered part of Viacom

1 Witt

2 19:37:02 International and are not considered to be

3 19:37:04 third parties for the purposes of this case?

4 19:37:05 MS. TENNEY: Objection, goes beyond

5 19:37:07 the scope.

6 19:37:08 A. Could you repeat the question?

7 19:37:09 Q. Sure. Are you aware of an

8 19:37:11 agreement between the parties that states

9 19:37:13 that certain discovery limitations assume

10 19:37:15 that Viacom Inc.'s affiliates who are not

11 19:37:19 named plaintiffs including, for example,

12 19:37:23 iFilm, Atom Entertainment, Spike TV and MTV

13 19:37:25 Networks are considered part of Viacom

14 19:37:28 International and are not to be considered

15 19:37:31 third parties for the purposes of this case?

16 19:37:32 MS. TENNEY: Objection goes beyond

17 19:37:35 the scope of the redirect.

18 19:37:38 A. No.

19 19:37:38 Q. You had testified that there were

20 19:37:40 instances where you believe that Viacom's

21 19:37:43 content had appeared in the top 100 viewed

22 19:37:46 videos on the YouTube service; is that

23 19:37:48 correct?

24 19:37:48 A. For a particular time period or

25 19:37:52 something like, yes.

1 Witt

2 19:37:53 Q. Do you know which videos those

3 19:37:55 were?

4 19:37:56 A. No.

5 19:37:56 Q. Do you know the time frame?

6 19:37:57 A. No.

7 19:37:59 Q. Do you know if those videos were

8 19:38:02 authorized to be on the YouTube website?

9 19:38:03 MS. TENNEY: Objection to the

10 19:38:04 extent it calls for a legal conclusion.

11 19:38:06 A. Do I -- I don't know whether or not

12 19:38:13 -- there are agreements between YouTube and

13 19:38:15 whoever the owners of those content -- that

14 19:38:17 content was.

15 19:38:18 Q. So you don't know whether those

16 19:38:19 videos were authorized by Viacom?

17 19:38:20 MS. TENNEY: Objection,

18 19:38:21 mischaracterizes his testimony and calls

19 19:38:24 for a legal conclusion. And asked and

20 19:38:36 answered.

21 19:38:36 A. Again, I'm not aware of the

22 19:38:41 circumstances surrounding whether or not, you

23 19:38:46 know, those would be authorized.

24 19:38:48 MR. VOLKMER: Okay, I have no

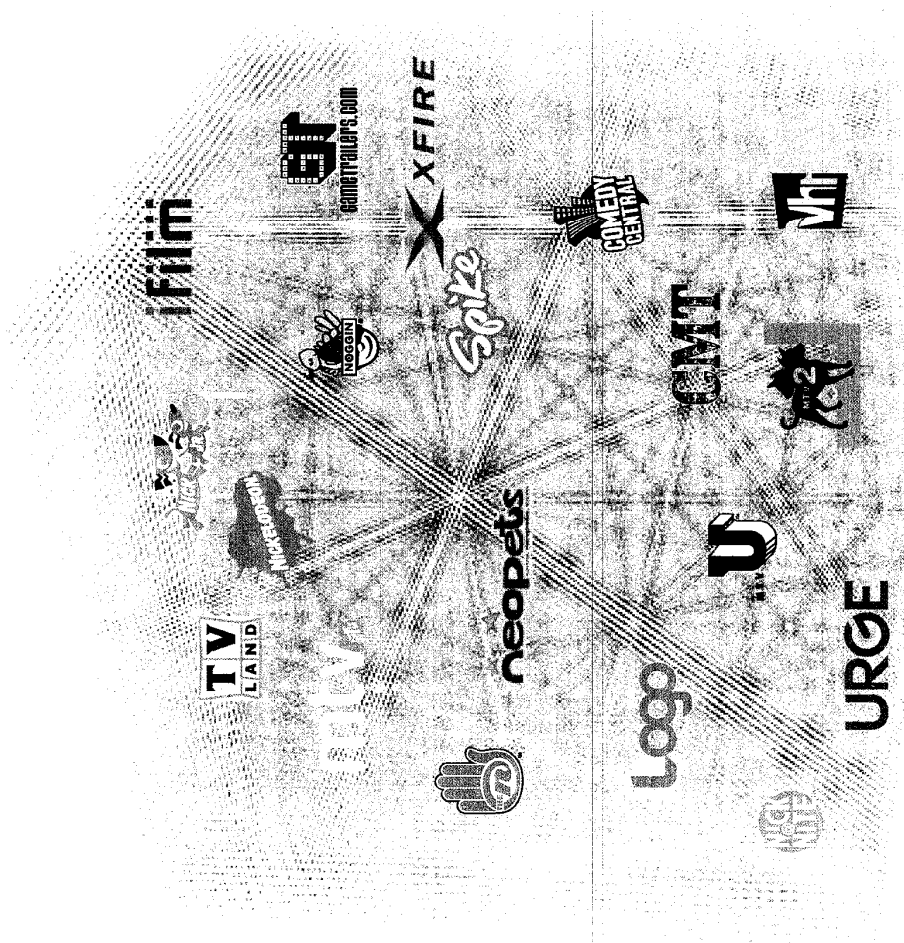
25 19:38:50 further questions. Thank you so much

1 Witt  
2 19:38:51 for your time, Mr. Witt.  
3 19:38:53 THE WITNESS: Thank you.  
4 19:38:53 THE VIDEOGRAPHER: The time is  
5 19:38:55 7:38 p.m. This concludes the video  
6 19:38:58 deposition of Jason Witt.  
7 19:39:02 (Time noted: 7:38 p.m.)  
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## **Schapiro Exhibit 215**

Jason Witt  
Nada Stirratt  
Todd Cunningham  
Kenny Miller



BETTING WORKS

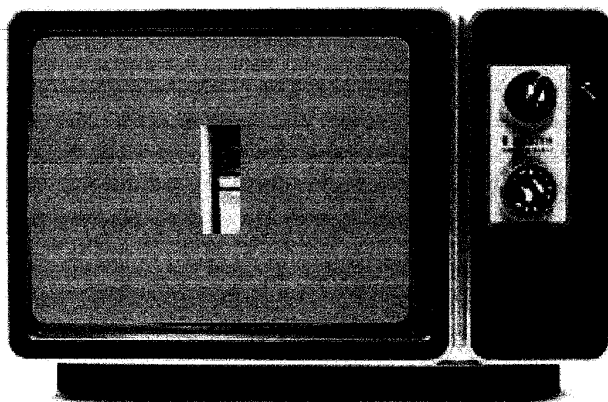
**MTV NETWORKS**

## Only 10% of Time Spent Online = Video

On TV—100% of Time Spent is with Content (and all of it is Video).

Online—Only 40% of Time Spent is with Content (and of that, only ¼ is Video)

Total Time Spent Online (Millions of hours)	
	Total %
Commerce	17%
Communications	39%
<b>Content</b>	<b>40%</b>
Search	5%
<b>Total</b>	<b>100%</b>



Online Video is only 10% of the Picture—If we want to grow ratings, we have to program for the entire experience.



## Billions of Syndicated Streams = Ten Million Dollars

To Make another \$10M Online:

We'd need a Billion (or Two) Incremental Streams with partners

**OR**

We could increase Time Spent on our Sites by 5%

**Video Streams on Distributed Sites Required to Generate \$10 Million for MTVN\***

Traffic Source	CPM	Rev Share	Effective CPM	Streams to Hit \$10M	% of MTVN Annual Streams*
Viral (Embedded)	\$ 5	100%	5.0	2,000MM	110%
HyperDistribution**	10	70%	7.0	1,428MM	79%
Video Aggregators	15	70%	10.5	952MM	53%
Yahoo/Portals	25	50%	12.5	800MM	44%

\*Excludes iFilm and Gametrailers

\*\*Assume 0% ad skip vs. current ~25% ad skip

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**MTV NETWORKS | BET NETWORKS**  
mtvn.com

**91% of MTVN's Online Ad Revenues are Non-Video**

**The Good News: We Monetize Time Spent Online—Not Just Video Streams**

**2006 Projected Online Ad Revenues**

Video Advertising	Non-Video Advertising	Video as % of Total Online
\$ 15M	\$ 145M	<b>9.4%</b>

A-493



## So How do We Increase Time Spent Online?

### Starting Point: Consumer Research

- MTVN is well-known as the most consumer-focused company in Television, if not all of media.
- We have leveraged a maniacal focus and understanding of the consumer to build this business.
- Now we have to understand consumers motivations, needs and behavior online. And enable it.
- We need more research....

A-494



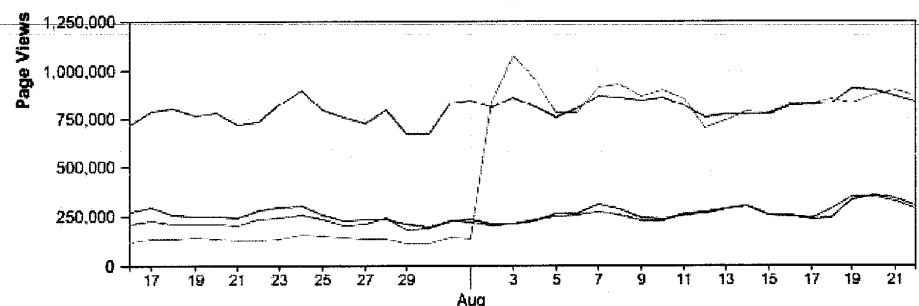
## Based on What We Know Today—Embrace Community

**Our audiences want to  
communicate, share,  
engage (build  
communities)**

**Teens Age 12 to 17**

**Top Categories - Average Minutes Per Visitor  
February 2006 vs. February 2005**

	Year over Year Growth	Percentage of Time Spent
Instant Messenger	41%	40%
Email	33%	14%
Discussion/Chat	46%	13%
Total	40%	67%



Graph Generated by SiteCatalyst using Report Accelerator at 05:50 PM EDT, 23 Aug 2006

**And when we let  
them, the results are  
amazing.**

**A-495**

# Based on What We Know Today—Build Experiences

MTVN can give our audiences the deep-tailored "Experiences" that they crave—not just more content

## VIDIOTS



## BRAND LOYALISTS



## SUPERFANS



## RICH HORIZONTALS



A-496

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## Consumers Spend Over an Hour a Day with Us

TV provides a crucial distinction—and critical advantage.

- TV initiates behavior and induces shared passions and experiences
- MTVN consistently demonstrates unparalleled creative leadership
- We are the Inventors of breakthrough genres and content
- We Innovators of popular culture
- Our audiences want deep tailored "Experiences" that are easy to use--not just more content
- Watching an event as it happens gives an indescribable jolt to those most engaged – quickening their concentration, giving them a sense of participation

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## MTVN On-Air Activates Behavior Online



**Initiation:** Colbert films himself in mock light-saber fight in front of green screen.

**Result:** (on YouTube ALONE)

- 88 Unique Mashups of Colbert fighting Bears, Monsters, the Star Wars Kid
- 7K Reviews and Ratings by viewers of Mashups
- 1.7 Million Video Streams (approx same number of mash-up streams as monthly streams of Colbert clips on Motherlode)

**Initiation:** Colbert urges viewers to vote for him on online poll to name new bridge in Hungary.

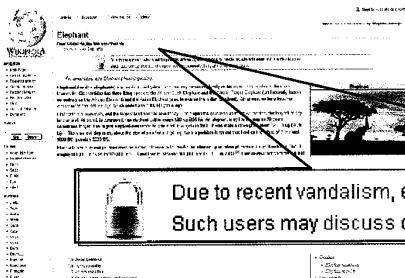
**Result:** Colbert leaps to first place with over 17M votes (leads second-leading votegetter by over 15M votes).

Colbert Report: Bridge Update & Hungary (8/22/06)



**Initiation:** Colbert encourages viewers to change Wikipedia entries to say the elephant population had tripled in the last six months. ["Any user can change any entry, and if enough other users agree with them it becomes true. If only the entire body of human knowledge worked this way."]

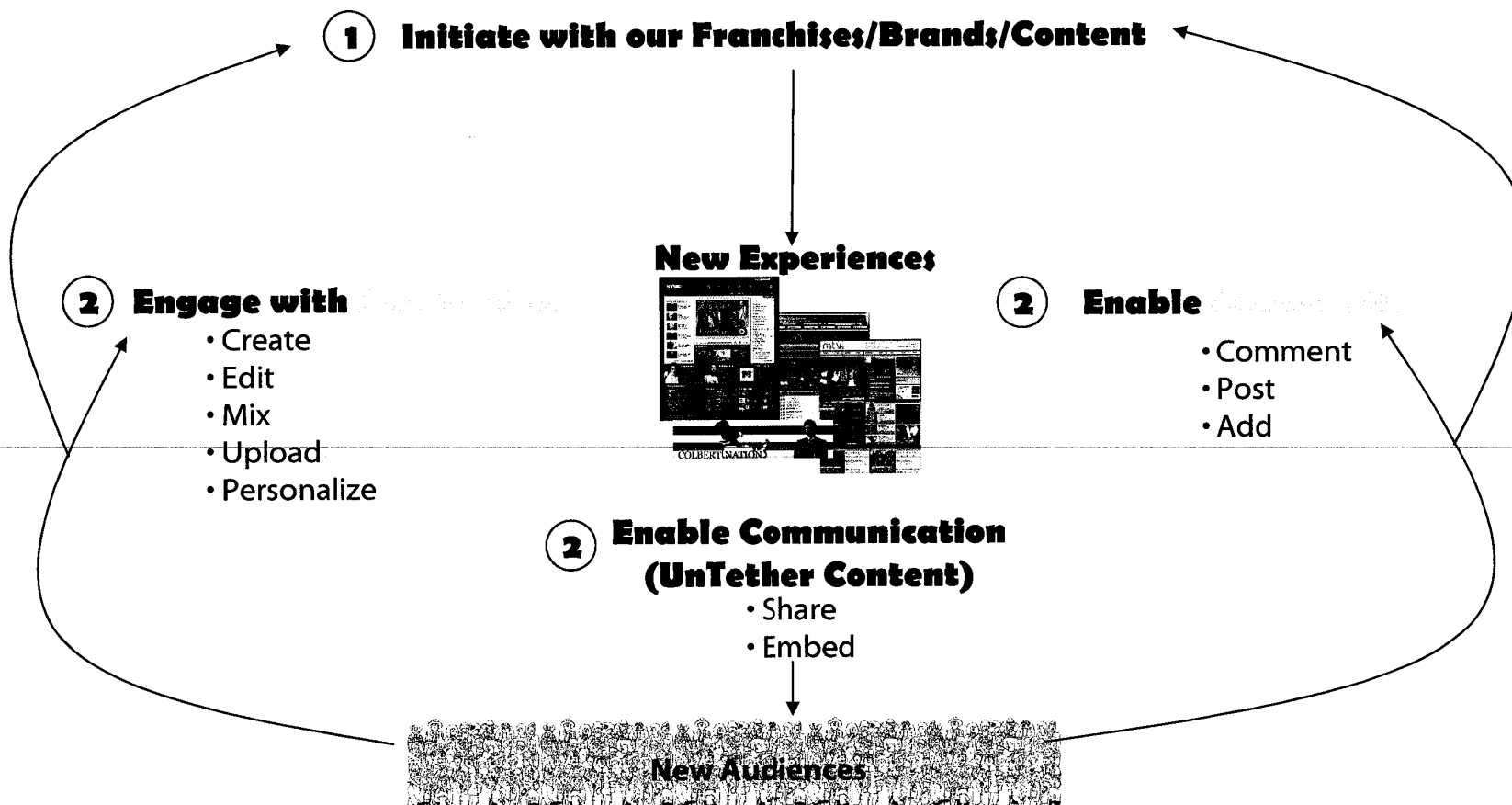
**Result:** Under deluge of changes from audiences, Wikipedia bans further changes to Elephant entry.



Due to recent vandalism, editing of this article by anonymous or newly registered users is currently disabled.  
Such users may discuss changes, request unprotection, or create an account.

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# If We Put It Together, We Win



A-499



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Online

# appendix

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