

# 10-3270

# 10-3342

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**IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT**

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VIACOM INTERNATIONAL INC., COMEDY PARTNERS,  
COUNTRY MUSIC TELEVISION, INC., PARAMOUNT PICTURES CORPORATION,  
BLACK ENTERTAINMENT TELEVISION LLC,  
*Plaintiffs-Appellants,*  
*(caption continued on inside cover)*

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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**SUPPLEMENTAL JOINT APPENDIX  
VOLUME III OF IX (Pages SJA-489 to SJA-744) – PUBLIC VERSION**

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v.

YOUTUBE, INC., YOUTUBE, LLC, GOOGLE INC.,  
*Defendants-Appellees.*

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THE FOOTBALL ASSOCIATION PREMIER LEAGUE LIMITED, on behalf of  
themselves and all others similarly situated, BOURNE CO., CAL IV  
ENTERTAINMENT, LLC, CHERRY LANE MUSIC PUBLISHING COMPANY,  
INC., NATIONAL MUSIC PUBLISHERS' ASSOCIATION, THE RODGERS &  
HAMMERSTEIN ORGANIZATION, EDWARD B. MARKS MUSIC  
COMPANY, FREDDY BIENSTOCK MUSIC COMPANY, dba Bienstock  
Publishing Company, ALLEY MUSIC CORPORATION, X-RAY DOG  
MUSIC, INC., FEDERATION FRANCAISE DE TENNIS, THE MUSIC FORCE  
MEDIA GROUP LLC, SIN-DROME RECORDS, LTD., on behalf of themselves  
and all others similarly situated, MURBO MUSIC PUBLISHING, INC., STAGE  
THREE MUSIC (US), INC., THE MUSIC FORCE, LLC,  
*Plaintiffs-Appellants,*

ROBERT TUR, dba Los Angeles News Service,  
THE SCOTTISH PREMIER LEAGUE LIMITED,  
*Plaintiffs,*

v.

YOUTUBE, INC., YOUTUBE, LLC, GOOGLE INC.,  
*Defendants-Appellees.*

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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 BRENT HURLEY  
SAN FRANCISCO, CALIFORNIA  
TUESDAY, AUGUST 26, 2008

BY: ANDREA M. IGNACIO HOWARD, CSR, RPR, CLR  
CSR LICENSE NO. 9830  
JOB NO. 15688

AUGUST 26, 2008

11:02 a.m.

VIDEOTAPED DEPOSITION OF BRENT HURLEY  
SHEARMAN & STERLING, 525 Market Street,  
San Francisco, California, pursuant to notice,  
before ANDREA M. IGNACIO HOWARD, CLR, RPR, CSR  
License No. 9830.

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

ALSO PRESENT:

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1 HURLEY

2 11:06:55 2005 --

3 11:06:56 A That's correct.

4 11:06:57 Q -- correct?

5 11:06:57 What was your personal net worth when you

6 11:07:00 left Fisher Investments in July 2005?

7 11:07:08 A I don't recall specifically, but given the

8 11:07:14 college student loans I still had, I was underwater.

9 11:07:19 Q And then you took a position at YouTube in

10 11:07:23 August 2005; is that correct?

11 11:07:24 A That's correct.

12 11:07:24 Q And your title was director of finance and

13 11:07:28 operations; is that correct?

14 11:07:31 A Yeah. Initially I didn't have a title --

15 11:07:33 Q I see.

16 11:07:34 A -- but --

17 11:07:34 Q But eventually it became --

18 11:07:36 A -- that's what it became, yeah.

19 11:07:37 Q Okay. And what's your present personal net

20 11:07:39 worth?

21 11:07:42 A It's a few million.

22 11:07:47 Q A few million.

23 11:07:48 More than 5 million?

24 11:07:50 A Yes.

25 11:07:50 Q Okay. More than 10 million?

1 HURLEY

2 11:30:57 could explain why that would be?

3 11:30:59 A Well, as I said, I produced some of the  
4 11:31:02 slides to compose the board reports. It was a  
5 11:31:05 collaboration effort, and once I e-mailed the board  
6 11:31:09 reports, there were no -- the slides for the board  
7 11:31:13 reports , they were really of no use to me. We were  
8 11:31:18 on to the next month, and so if I made -- I would  
9 11:31:27 delete them. I don't know. It's possible.

10 11:31:33 Q Okay. Now, there was a period of time prior  
11 11:31:40 to the acquisition when you were the person  
12 11:31:43 responsible for finances at YouTube; correct?

13 11:31:46 A That's right.

14 11:31:46 Q And I take it that as part of your duties,  
15 11:31:52 you prepared financial projections; is that correct?

16 11:31:56 A That's correct.

17 11:31:56 Q And did you prepare those on your office  
18 11:32:02 laptop?

19 11:32:03 A Uh-huh.

20 11:32:04 Q And where did you store those?

21 11:32:08 A Just on the --

22 11:32:09 MR. INGBER: Objection; assumes facts not in  
23 11:32:12 evidence.

24 11:32:13 THE WITNESS: Huh?

25 11:32:13 MR. INGBER: Go ahead. You can answer.

1 HURLEY

2 11:32:15 MR. VERRILLI: Q. Where did you store those?

3 11:32:16 A On the laptop.

4 11:32:17 Q On the laptop?

5 11:32:18 A Uh-huh.

6 11:32:18 Q Okay. Anywhere else?

7 11:32:21 A They were sent through e-mail, but they

8 11:32:24 weren't stored. We didn't have a server, a company

9 11:32:27 server.

10 11:32:28 Q And financial projections, I take it, then

11 11:32:32 were not developed on the Wiki?

12 11:32:37 A No.

13 11:32:37 Q Okay. So is it possible then that you

14 11:32:45 deleted financial projections that you had prepared on

15 11:32:48 your office laptop?

16 11:32:51 MR. INGBER: At any time?

17 11:32:54 MR. VERRILLI: Yeah.

18 11:32:54 Q At any time while -- prior to the

19 11:32:58 acquisition.

20 11:32:59 A It's possible, but it's more likely that the

21 11:33:02 model evolved over time as the company grew, so it

22 11:33:06 wasn't that the first version was thrown out and let's

23 11:33:09 start with a new one. It was just that you just

24 11:33:12 refine as you get more data.

25 11:33:15 Q Did you keep hard copies of your financial

1 HURLEY

2 11:33:17 projections?

3 11:33:19 A There were excerpts that were included in  
4 11:33:21 some of the board reports, but a spreadsheet is much  
5 11:33:28 easier to use than a printout.

6 11:33:30 Q Right.

7 11:33:31 And I'm just trying to understand. You  
8 11:33:34 didn't save the spreadsheets over time that you did?

9 11:33:38 A Of course I saved them.

10 11:33:42 Q Okay. And you saved them on your office  
11 11:33:45 laptop?

12 11:33:45 MR. INGBER: Again, are we talking about  
13 11:33:47 pre-acquisition?

14 11:33:47 MR. VERRILLI: Yes, just pre -- I'm sorry.  
15 11:33:49 Pre-acquisition, yes.

16 11:33:51 THE WITNESS: I'm sorry. As far as saving,  
17 11:33:54 do you mean the actual model that's being refined over  
18 11:33:58 time, or snapshots of the model?

19 11:34:00 MR. VERRILLI: The snapshots of the model.

20 11:34:03 THE WITNESS: No, not necessarily.

21 11:34:05 MR. VERRILLI: Q. So you would erase the  
22 11:34:08 financial projections that you made --

23 11:34:10 A No.

24 11:34:10 Q -- in January once you got to February or  
25 11:34:15 March; is that what you're saying?

1 HURLEY

2 11:34:15 A No, we would refine.

3 11:34:17 MR. INGBER: Objection; misstates the

4 11:34:18 witness's testimony.

5 11:34:19 THE WITNESS: We wouldn't erase. We would

6 11:34:21 refine. Again, as you get more data, we would add

7 11:34:25 that to the model.

8 11:34:25 MR. VERRILLI: Q. I just want to get

9 11:34:26 clarity, Mr. Hurley. You did not maintain a

10 11:34:30 historical projection of what your projections were at

11 11:34:33 various points in time?

12 11:34:34 A No, because the projections are refined over

13 11:34:37 time as you get data.

14 11:34:39 Q Sure.

15 11:34:40 But it wasn't relevant to you to know in June

16 11:34:44 how accurate your predictions in January had been?

17 11:34:49 A Not necessarily.

18 11:34:51 Q So you just erased them?

19 11:34:52 MR. INGBER: Objection; asked and answered.

20 11:34:54 THE WITNESS: We didn't erase. We refined

21 11:34:56 as we got more data.

22 11:34:58 MR. INGBER: Mischaracterizes the witness's

23 11:35:00 testimony.

24 11:35:00 THE WITNESS: We got better projections.

25 11:35:02 MR. VERRILLI: Right.

1 HURLEY

2 11:35:02 Q And so you overwrote the old data?

3 11:35:04 MR. INGBER: Objection; asked and answered;

4 11:35:06 mischaracterizes the witness's testimony.

5 11:35:08 Go ahead.

6 11:35:09 THE WITNESS: Yeah. Again, we just refined

7 11:35:11 them and then tried to improve them.

8 11:35:12 MR. VERRILLI: Q. Well, would refining them,

9 11:35:16 as you are using that word, include overriding the

10 11:35:20 hold data in the spreadsheet?

11 11:35:26 A It's possible that -- well, of course when

12 11:35:29 you get more information, if you learn that one thing

13 11:35:32 is -- is wrong, and it's not accurate, then you remove

14 11:35:35 that from the model, and you add the new, better

15 11:35:38 information to give you a better forecast.

16 11:35:41 Q And you wouldn't save anywhere in any form

17 11:35:44 the old information?

18 11:35:48 MR. INGBER: Objection; asked and answered.

19 11:35:50 THE WITNESS: Yeah. You refine the model.

20 11:35:53 You get the better model. You don't keep the old

21 11:35:56 model around.

22 11:35:56 MR. VERRILLI: Q. When you created these

23 11:35:58 financial projections, did you make any backup copies?

24 11:36:03 MR. INGBER: Objection; vague.

25 11:36:04 THE WITNESS: Again, I saved it to my local

1 HURLEY

2 11:36:12 machine.

3 11:36:13 MR. VERRILLI: Q. And were you working in

4 11:36:15 Microsoft Excel?

5 11:36:17 A Yeah.

6 11:36:18 Q And how frequently did you do financial

7 11:36:21 projections?

8 11:36:27 A I mean --

9 11:36:28 MR. INGBER: Again, just focusing

10 11:36:29 pre-acquisition?

11 11:36:29 MR. VERRILLI: Yes.

12 11:36:31 THE WITNESS: Okay. It was one of my many

13 11:36:35 duties. It depends what time, what time period. Over

14 11:36:42 time, I focused more and more on finance and

15 11:36:45 operations.

16 11:36:46 MR. VERRILLI: Q. Well --

17 11:36:47 A Again, it was -- over time, the model also

18 11:36:50 got better, so it was just continual refinements.

19 11:36:55 Q And starting in January 2006 through the

20 11:37:04 period of the acquisition by Google --

21 11:37:06 A Yes.

22 11:37:06 Q -- did you do financial projections on --

23 11:37:08 more frequently than once a month?

24 11:37:15 A Certainly once a month to -- for the board

25 11:37:18 reports and also to measure the -- the data that we

1 HURLEY

2 11:37:21 got from the previous month to include that in the

3 11:37:24 model.

4 11:37:24 Q So at least once a month?

5 11:37:32 A Yes.

6 11:37:32 Q You did them for the board reports?

7 11:37:35 A Yes.

8 11:37:35 Q And then I take it you did them also for

9 11:37:39 other reasons in addition to the board reports?

10 11:37:43 MR. INGBER: Objection; assumes facts not in

11 11:37:45 evidence.

12 11:37:45 THE WITNESS: We did it for the company to --

13 11:37:52 I mean, to project where the -- how the site was

14 11:37:58 growing --

15 11:37:58 MR. VERRILLI: Q. And --

16 11:37:59 A -- what the company was up to.

17 11:38:00 Q -- and you maintained no historical record of

18 11:38:03 your projections from month to month? That's what

19 11:38:06 you're testifying to?

20 11:38:07 MR. INGBER: Objection to form; asked and

21 11:38:09 answered several times.

22 11:38:10 THE WITNESS: Yeah. Again, the model was

23 11:38:14 refined, and each month we would measure the stocks,

24 11:38:23 and then insert those as fact, and then the

25 11:38:26 forward-looking projection we would refine over time.



1 HURLEY

2 11:38:28 So the historic data was captured in that  
3 11:38:31 model. It was just that the model would continue to  
4 11:38:34 shape and evolve over time.

5 11:38:35 MR. VERRILLI: Okay.

6 11:38:40 Q Mr. Hurley, can you explain to me how one  
7 11:38:45 would go about uploading a video clip onto YouTube?

8 11:38:51 A Sure. Just --

9 11:38:52 MR. INGBER: Objection; vague as to time.

10 11:38:56 MR. VERRILLI: Well, let's -- okay. Let's  
11 11:38:58 make the time frame from the period between

12 11:39:02 January 1st, 2006, and the time of the acquisition.

13 11:39:05 During that time frame, can you explain to me  
14 11:39:08 how one would go about uploading a video clip onto  
15 11:39:12 YouTube?

16 11:39:12 A Sure. I can give you the general work flow.

17 11:39:16 You create an account on YouTube. You verify  
18 11:39:22 your e-mail address for that account. You go to our  
19 11:39:26 upload screen, click the upload button, select the  
20 11:39:32 video file you want to upload, include the metadata  
21 11:39:39 fields that we ask for, a description, title, tags,  
22 11:39:44 category, and then hit upload.

23 11:39:48 Q And that's all it takes to upload?

24 11:39:51 A Generally, yeah, pretty much.

25 11:39:52 Q And did you ever upload videos to YouTube

1 HURLEY

2 12:13:29 plan for a start-up is hardly planned, because things

3 12:13:33 change so quickly. It's more reactive.

4 12:13:35 MR. VERRILLI: Q. Well, you had a business

5 12:13:38 model at least that you were pursuing; right?

6 12:13:41 A Again, the models at that time were so -- it

7 12:13:47 was just, again, best guesses and they were just

8 12:13:50 guesses.

9 12:13:52 Q Well, you -- one possibility was to pursue an

10 12:14:02 advertising based business model; correct?

11 12:14:04 A Yes.

12 12:14:04 Q Do you have any others?

13 12:14:12 A That was the primary. I don't recall any

14 12:14:15 other specific plans.

15 12:14:16 Q So the only one you can recall is an

16 12:14:20 advertising based business model?

17 12:14:22 A Well, first and foremost we were focused on

18 12:14:25 creating a great user experience, so it's very

19 12:14:29 secondary. That may sound odd creating a business and

20 12:14:34 not worrying about first and foremost money, but that

21 12:14:39 was the case. I mean, we were really trying to build

22 12:14:43 a great experience for the user.

23 12:14:44 Q And you didn't care about the money?

24 12:14:47 A Not in -- initially, no.

25 12:14:49 Q When did you start caring about the money?

1 HURLEY

2 12:14:51 MR. INGBER: Objection to form.

3 12:14:52 THE WITNESS: Well, it could be viewed that

4 12:14:58 we -- we are now just starting to focus on money.

5 12:15:03 Even after the acquisition, Google allowed us to

6 12:15:07 continue to focus on the user and to create a great

7 12:15:10 user experience.

8 12:15:11 MR. VERRILLI: Q. Well, your brother was

9 12:15:12 focused on the money in that e-mail on August 17th,

10 12:15:16 2005; wasn't he?

11 12:15:17 A No; he was focused on a successful company.

12 12:15:19 Q "A multi-billion dollar success" is what it

13 12:15:23 said; right?

14 12:15:23 MR. INGBER: Objection; asked and answered,

15 12:15:25 Don.

16 12:15:26 THE WITNESS: Creating a great product that

17 12:15:28 leads to success.

18 12:15:29 MR. VERRILLI: Q. And as far as you know, in

19 12:15:40 2005, no one employed at YouTube was thinking about

20 12:15:45 getting acquired?

21 12:15:46 A In -- at what time period?

22 12:15:48 Q In 2005.

23 12:15:50 A No.

24 12:15:54 Q So it would surprise you to learn --

25 12:15:56 A Not to my knowledge.

1 HURLEY

2 12:15:56 Q -- so it would surprise you to learn that

3 12:15:58 your brother was actually communicating with other

4 12:16:00 YouTube employees in 2005 about getting acquired?

5 12:16:03 MR. INGBER: Objection to form.

6 12:16:05 He testified that the answer was no, not to

7 12:16:08 his knowledge.

8 12:16:08 MR. VERRILLI: So I asked him whether he'd be

9 12:16:11 surprised if that were the case.

10 12:16:14 THE WITNESS: Again, we had a -- a similar

11 12:16:17 vision of focusing on the users and creating a great

12 12:16:20 product. Anything like that, the money, any kind of

13 12:16:26 acquisition was very secondary and not at the

14 12:16:32 forefront of our thinking.

15 12:16:32 MR. VERRILLI: Okay.

16 12:16:35 Q Well, this -- we're talking about the

17 12:16:41 advertising based business model.

18 12:16:44 A Uh-huh.

19 12:16:44 Q Describe to me what an advertising based

20 12:16:47 business model is as you understand it.

21 12:16:52 A As I understand it, similar websites, you get

22 12:17:00 traffic, people come to you, the site, and then you

23 12:17:03 can insert ads onto those pages and -- and earn

24 12:17:07 revenue from those ads.

25 12:17:09 Q So one goal of an advertising based business

1 HURLEY

2 12:17:13 model is to build up a large community of users of the

3 12:17:18 website; right?

4 12:17:23 A Yeah.

5 12:17:24 Q Okay. And another goal in an advertising

6 12:17:29 based business model is to entice advertisers to place

7 12:17:36 ads on the website in order to earn revenue; right?

8 12:17:44 A That's one way. It's not necessarily the

9 12:17:47 way, and that's not the way we initially had it.

10 12:17:49 Q Okay. What -- how did you initially have it?

11 12:17:52 A Just with the various ad networks online that

12 12:17:56 you can employ. It's not that you have a direct sales

13 12:17:59 force selling ads for your site. They just auto

14 12:18:02 insert those ads.

15 12:18:03 Q But you did have a sales force selling ads

16 12:18:06 for your site by the second quarter of 2006; correct?

17 12:18:09 A That's right.

18 12:18:09 Q And you had planned well before the second

19 12:18:12 quarter of 2006 to have a sales force selling ads

20 12:18:16 directly by the second quarter of 2006; correct?

21 12:18:19 MR. INGBER: Objection to form; vague and

22 12:18:20 ambiguous.

23 12:18:22 What do you mean by "well before"?

24 12:18:25 THE WITNESS: Yeah, I don't recall

25 12:18:26 specifically when we planned that, to add a sales

1 HURLEY

2 12:18:33 force.

3 12:18:34 MR. VERRILLI: Q. You don't recall?

4 12:18:36 A No. Initially it was a -- it -- it would --

5 12:18:42 it would be easier for us if we didn't have a sales

6 12:18:45 force, if we could just use the ad networks that would

7 12:18:49 automatically do things on their own.

8 12:18:53 Q So going back to Exhibit 1, your resume, one

9 12:18:57 thing that it says is that you prepared and delivered

10 12:19:00 due diligence for the following transactions, and one

11 12:19:03 of them is Series A and B financing; do you see that

12 12:19:06 there?

13 12:19:07 A Uh-huh.

14 12:19:07 Q That was with Sequoia; correct?

15 12:19:10 A That's right.

16 12:19:10 Q And then it says "Equipment loan and lease";

17 12:19:13 do you see that?

18 12:19:14 A That's right.

19 12:19:14 Q That was with Triple Point; correct?

20 12:19:16 A That's right.

21 12:19:16 Q You don't recall making representations to

22 12:19:19 Triple Point that you had plans to have a direct

23 12:19:21 advertising sales force in the field in advance of the

24 12:19:25 second quarter of 2006?

25 12:19:28 A I don't remember specifically. Again, I

1 HURLEY

2 12:29:31 reviewing the videos before they were uploaded?

3 12:29:34 A Not before. They would immediately go live

4 12:29:38 to the site, and that was actually one of the reasons

5 12:29:43 that we introduced the community flagging, is that

6 12:29:48 they may upload -- I would go to bed at night. I was

7 12:29:51 the only guy doing this. Somebody may upload a video

8 12:29:54 in the middle of the night that was inappropriate, and

9 12:29:56 then in the morning this video may show up on one of

10 12:30:00 the most viewed pages, but there wasn't an easy way to

11 12:30:04 -- I would have to work through all the way back until

12 12:30:06 the middle of the night to be able to find that and

13 12:30:08 take that video down.

14 12:30:12 So the community flagging was an ability for

15 12:30:15 people to flag it and that it would automatically go

16 12:30:18 into a queue.

17 12:30:21 Q But you -- you were reviewing -- I just want

18 12:30:24 to get the facts clear. Until the end of

19 12:30:28 November 2005 you were reviewing every video that was

20 12:30:34 unloaded onto the site?

21 12:30:35 A Well, it depends. Reviewing, I would look at

22 12:30:38 thumbnails of videos. I wasn't actually watching

23 12:30:41 videos. It was -- it would be impossible to do that.

24 12:30:44 Q Did you review a thumbnail of every video

25 12:30:47 that was uploaded to the site?

1 HURLEY

2 12:30:52 A Yeah, I would do my best. I was the only one  
3 12:30:54 doing it.

4 12:30:55 Q It must have been an -- must have been a real  
5 12:30:57 job, but -- but I just want to get clear.

6 12:31:02 That's what you were attempting to do, was to  
7 12:31:03 review a thumbnail of every video uploaded to the  
8 12:31:07 site?

9 12:31:07 A It was very ad hoc. Again, just looking at  
10 12:31:10 thumbnails, and if I saw some bare flesh, then I would  
11 12:31:14 remove it, but outside of sort of spotting porn,  
12 12:31:18 trying to catch other kind of inappropriate videos was  
13 12:31:21 very difficult to do. They would go through if they  
14 12:31:25 were, you know, violence videos, stuff like that.

15 12:31:31 You can't see that with just a thumbnail, so  
16 12:31:33 it would go live. Again, that's why we started  
17 12:31:37 building these tools so that the community could help  
18 12:31:39 police it.

19 12:31:40 So we looked to other sites, similar to  
20 12:31:44 online sites, like Craigslist and sort of these open  
21 12:31:48 forums and what they had done is sort of best  
22 12:31:50 practices to -- to rely on the community to be able to  
23 12:31:55 help keep -- keep the community itself safe.

24 12:31:58 Q Did you look at Google Video's practices as a  
25 12:32:01 model?



1 HURLEY

2 12:47:21 Q You've just been handed a document,

3 12:47:24 Mr. Hurley. It's been marked Exhibit 7.

4 12:47:27 Could you take a look at it, please.

5 12:47:29 A Uh-huh. Okay.

6 12:48:06 Q This is an e-mail from you; is that correct?

7 12:48:14 A That's correct.

8 12:48:14 Q And it was sent on the 24th of November 2005;

9 12:48:20 correct?

10 12:48:21 A Yes.

11 12:48:21 Q And --

12 12:48:23 MR. INGBER: Just for the record, there's

13 12:48:24 actually two e-mails in this chain.

14 12:48:26 MR. VERRILLI: Thank you. The e-mail at the

15 12:48:28 top half of the page is the one we're referring to.

16 12:48:31 Q You understand that, Mr. Hurley; right?

17 12:48:34 A Yes.

18 12:48:34 Q And the -- the -- the e-mail was sent on the

19 12:48:40 24th of November; correct?

20 12:48:42 A Yeah.

21 12:48:43 Q That was the day before the Thanksgiving

22 12:48:45 holiday; right?

23 12:48:46 A Yes, yeah.

24 12:48:47 Q Right.

25 12:48:49 And you are sending a message here to other

1 HURLEY

2 12:48:57 YouTube employees who are going to help you review

3 12:49:01 videos over the holiday weekend; correct?

4 12:49:03 A That's correct.

5 12:49:03 Q Okay. And you're giving them instructions

6 12:49:06 about what to do; correct?

7 12:49:08 A Yes.

8 12:49:08 Q Okay. And one of the instructions you give

9 12:49:16 them says "As far as copyright stuff is concerned, be

10 12:49:20 on the lookout for Family Guy, South Park and

11 12:49:25 full-length anime episodes."

12 12:49:29 Do I have that pronunciation correct by the

13 12:49:31 way?

14 12:49:31 A Sure. I don't know. Anime.

15 12:49:36 Q But that's one of the instructions you gave

16 12:49:38 to the reviewers; right?

17 12:49:42 A Yes.

18 12:49:42 Q And so when a reviewer found a Family Guy

19 12:49:49 episode, what was the reviewer supposed to do?

20 12:49:53 A I assume try to take it down.

21 12:49:58 Q And when the reviewer found a South Park

22 12:50:01 episode, what was the reviewer supposed to do?

23 12:50:04 A Try to take it down.

24 12:50:05 Q And when the reviewer found a full-length

25 12:50:09 anime episode, what was the reviewer supposed to do?

1 HURLEY

2 12:50:13 A Try to take it down.

3 12:50:14 Q Okay. But it was -- but the instruction goes

4 12:50:17 on to say that "music videos and news programs are

5 12:50:21 fine to approve"; right?

6 12:50:25 A Uh-huh.

7 12:50:25 MR. INGBER: Give an audible response.

8 12:50:27 THE WITNESS: Yes.

9 12:50:32 MR. VERRILLI: Q. Can I ask you to go back

10 12:50:35 and look at Exhibit 2, please. Let me know when

11 12:50:51 you're ready.

12 12:50:52 A Okay.

13 12:51:00 Q Are you ready?

14 12:51:01 A Yeah, I'm ready.

15 12:51:02 Q Okay. So this is an e-mail that you sent

16 12:51:04 approximately a month and a half earlier; correct?

17 12:51:07 A That's correct.

18 12:51:08 Q Okay. And the subject is "Admin

19 12:51:12 Improvements"; correct?

20 12:51:14 A That's right.

21 12:51:14 Q What does "Admin" mean?

22 12:51:18 A That was the review where the queue of videos

23 12:51:24 when we would look at the thumbnails would be.

24 12:51:27 Q Okay. Can you go down to this number four

25 12:51:32 here? You see it --

1 HURLEY

2 14:36:26 you were involved in the review process, you never

3 14:36:29 relied exclusively on the community flagging to

4 14:36:32 prevent pornography from appearing on the site;

5 14:36:37 correct?

6 14:36:38 MR. INGBER: Objection to form.

7 14:36:39 THE WITNESS: I think as I had said before,

8 14:36:41 we didn't have community flagging at the outset, so of

9 14:36:46 course we were just trying, ad hoc, trying to control

10 14:36:51 the site.

11 14:36:52 MR. VERRILLI: Q. But you continued when --

12 14:36:57 during the time when you were involved in review,

13 14:37:00 YouTube continued to review proactively for

14 14:37:04 pornography even after you had the community flagging

15 14:37:07 system in place; correct?

16 14:37:12 A Not to my knowledge.

17 14:37:16 Is this after I stopped doing any kind of

18 14:37:18 reviews?

19 14:37:19 Q When you were doing it.

20 14:37:20 A When I was doing it?

21 14:37:22 Q When you were doing it.

22 14:37:27 A Not to my knowledge. I know we stopped

23 14:37:30 reviewing all videos, and we had introduced a flag and

24 14:37:36 reviewed the flag videos.

25 14:37:38 Q And did YouTube ever implement the flagging

1 HURLEY

2 15:17:58 MR. INGBER: Hold on. I don't want you to

3 15:18:00 guess.

4 15:18:00 THE WITNESS: Oh, sorry. Yeah. Yeah, I'm

5 15:18:04 not sure. It may or might -- may not actually be part

6 15:18:08 of private videos.

7 15:18:10 MR. VERRILLI: Q. The fact is that YouTube

8 15:18:15 proactively reviewed every private video uploaded to

9 15:18:18 make sure there was no inappropriate content; correct?

10 15:18:20 MR. INGBER: Objection; vague as to time.

11 15:18:24 THE WITNESS: Initially we reviewed any

12 15:18:26 video.

13 15:18:26 MR. VERRILLI: Q. And after YouTube stopped

14 15:18:28 reviewing any video, it continued to review all

15 15:18:31 private videos uploaded to ensure there was no

16 15:18:34 inappropriate content; correct?

17 15:18:39 A Again, I'm not sure as far as timing. I

18 15:18:43 transitioned those duties over to Heather and the

19 15:18:46 other team members.

20 15:18:49 Q But you created a document that specifically

21 15:18:51 says that all private videos will be screened for

22 15:18:54 inappropriate content; didn't you?

23 15:18:56 MR. INGBER: Objection.

24 15:18:57 Show him the document if you feel it will

25 15:19:02 refresh his recollection.

1 HURLEY

2 15:34:05 I'm not -- I'm not surprised. It's just that I don't

3 15:34:11 specifically remember doing it.

4 15:34:12 MR. VERRILLI: Q. You don't have any reason

5 15:34:13 to think that this is incorrect; do you?

6 15:34:16 A No.

7 15:34:20 Q Okay. Could we give the witness Exhibit 14,

8 15:34:24 please.

9 15:34:39 Here you go. 14.

10 15:34:42 MR. INGBER: Is this the document with the

11 15:34:43 subject line "Board Preso"?

12 15:34:49 MR. VERRILLI: No, I'm sorry. I got ahead of

13 15:34:51 myself.

14 15:34:51 MR. INGBER: I think we're going on to 14 and

15 15:34:53 heading to 17 if you're marking a new 16?

16 15:34:57 MR. VERRILLI: No, I think I jumped ahead,

17 15:35:00 because I premarked this. That's what I think is

18 15:35:03 causing the confusion here. I think we are at 15.

19 15:35:05 MR. INGBER: Yeah, you're right.

20 15:35:06 MR. VERRILLI: And this document is 14. It's

21 15:35:08 a document, the tag line says "June Results." Okay.

22 15:35:12 It's my -- I'm the source of that confusion.

23 15:35:22 MR. INGBER: This is 14.

24 15:35:44 Don, which -- what's the Bates number on the

25 15:35:46 document that you've labeled Exhibit 13?

1 HURLEY

2 15:35:49 MR. VERRILLI: Exhibit 13?

3 15:35:50 MR. INGBER: Yes.

4 15:35:51 MR. VERRILLI: Exhibit 13 is the "Board

5 15:35:55 Preso."

6 15:35:56 MR. INGBER: Okay.

7 15:35:56 MR. VERRILLI: It's 00762173.

8 15:36:03 MR. INGBER: Okay. Got it.

9 15:36:05 MR. VERRILLI: Okay.

10 15:36:06 Q Mr. Hurley, have you had a chance to review

11 15:36:08 this document?

12 15:36:09 A Yes.

13 15:36:09 Q And the first page of this document is an

14 15:36:13 e-mail, and it's from you to another person at

15 15:36:17 YouTube; correct?

16 15:36:18 A Uh-huh, that's right.

17 15:36:19 Q And it's dated June -- forgive me, and it's

18 15:36:23 dated August 18th, 2006; correct?

19 15:36:29 A August 18th, yeah.

20 15:36:30 Q Okay. And it attaches -- it has an

21 15:36:35 attachment; correct?

22 15:36:36 A That's correct.

23 15:36:36 Q And did you prepare this attachment?

24 15:36:39 A Yes.

25 15:36:39 Q Okay. And you're familiar with it?

1 HURLEY

2 15:36:42 A Yes.

3 15:36:42 Q Okay. I just want you to explain some things

4 15:36:49 to me about this document, and I'm going to ask if we

5 15:36:52 could start on Bates numbered page 0073364.

6 15:37:09 A Okay.

7 15:37:10 Q There is a column to the left that says

8 15:37:12 "date"; right?

9 15:37:13 A Yeah.

10 15:37:14 Q Is that the date on which the particular

11 15:37:16 advertisement ran?

12 15:37:17 A Yes.

13 15:37:17 Q Okay. And the next column says "Channel";

14 15:37:21 right?

15 15:37:22 A Yeah.

16 15:37:22 Q What does that mean?

17 15:37:24 A Just the ad unit on the site depending on

18 15:37:32 which page it was on.

19 15:37:33 Q Okay. So let me just ask some questions so I

20 15:37:35 can get clarification as to what this means.

21 15:37:37 For example, on 6/1/2006 it says "Channel

22 15:37:43 Watch Top." Does that mean the advertisement appeared

23 15:37:46 at the top of the watch page?

24 15:37:48 A Yes.

25 15:37:48 Q Okay. And the next one, 6/1/2006, says



1 HURLEY

2 15:37:52 "Results Top." Does that mean that the advertisement

3 15:37:55 appeared at the top of the results page?

4 15:37:57 A The top of the search results page, I

5 15:37:59 believe.

6 15:37:59 Q Okay. I'm just trying to understand what --

7 15:38:02 what you meant by the words you used here.

8 15:38:04 A Uh-huh.

9 15:38:04 Q That's what it means --

10 15:38:06 A Yeah.

11 15:38:06 Q -- search results page?

12 15:38:08 Okay. And below it, I'm not going to go

13 15:38:12 through each one. I just want to gain a general

14 15:38:15 understanding of what these terms mean.

15 15:38:17 "6/1/2006 Results Right." That means that

16 15:38:20 the ad appeared on the right-hand side of the search

17 15:38:24 results page --

18 15:38:25 A True.

19 15:38:26 Q -- is that correct?

20 15:38:26 A Yeah.

21 15:38:27 Q Okay. And on the next one, it says "Browse

22 15:38:31 Right"; what does that mean?

23 15:38:35 A Those are the browse pages of most viewed or

24 15:38:38 most discussed videos.

25 15:38:39 Q Okay. And then "Channels Top," what does

1 HURLEY

2 15:38:46 that mean?

3 15:38:48 A I believe that's your own YouTube channel  
4 15:38:51 when you create your account. That's sort of like  
5 15:38:55 similar to your profile on other sites.

6 15:38:57 Q Okay. How about "Members Top"? What does  
7 15:39:00 that mean?

8 15:39:01 A I'm not sure what that means.

9 15:39:07 Q How about "Groups Top"?

10 15:39:09 A I assume that's just the top of the groups  
11 15:39:13 browse page.

12 15:39:13 Q How about "Tribal Top"?

13 15:39:16 A I'm not sure. We did have an ad network  
14 15:39:22 called Tribal Fusion. I don't know why they had a  
15 15:39:25 separate unit there, what that means.

16 15:39:27 Q And the -- without going through this  
17 15:39:32 document line by line, this is a summary of the  
18 15:39:37 advertisements that ran on YouTube in June 2006; is  
19 15:39:44 that correct?

20 15:39:44 A Yeah.

21 15:39:44 Q And the data on the right-hand column is  
22 15:39:48 basically measuring how well the advertisements did in  
23 15:39:50 terms of what revenue they generated, how much  
24 15:39:53 attention they got, that sort of thing; right?

25 15:39:55 MR. INGBER: Objection; vague.

1 HURLEY

2 15:39:56 THE WITNESS: Yeah, it shows clicks and  
3 15:39:58 earnings.

4 15:39:59 MR. VERRILLI: Okay.

5 15:40:00 Q And what this -- one of the things that this  
6 15:40:03 document tells us is that in June 2006, YouTube was  
7 15:40:07 running ads on the watch pages; right?

8 15:40:12 A Yes.

9 15:40:12 Q And that in June 2006, it was running ads on  
10 15:40:16 the results pages; correct?

11 15:40:18 A Yes.

12 15:40:18 Q And in June 2006, it was running ads on the  
13 15:40:22 browse pages; correct?

14 15:40:23 A Yes.

15 15:40:23 Q And in June 2006, it was running  
16 15:40:27 advertisements on the channels pages; correct?

17 15:40:29 A Correct.

18 15:40:30 Q And in June 2006, it was running ads on the  
19 15:40:33 members pages; correct?

20 15:40:36 A Yeah, whatever those members' names are, yes.

21 15:40:41 Q Okay. And so any of the pages listed in this  
22 15:40:43 document, it is a page on which advertising ran on  
23 15:40:49 YouTube in June 2006; correct?

24 15:40:53 A Yes.

25 15:40:53 Q Okay. And I don't know if I asked you about

1 HURLEY

2 15:40:56 this one. I'm sorry.

3 15:40:57 "6/1/2006 Home Right," what does that mean?

4 15:41:03 A I assume it's the home page.

5 15:41:05 Q Okay. So the right-hand side of the home

6 15:41:08 page, is that what that would mean?

7 15:41:11 A Yeah, I can't be sure.

8 15:41:15 Q Well, you wrote the document; didn't you?

9 15:41:18 A This is a dump that Alex would dump out of, I

10 15:41:22 believe, double click. So this is a spreadsheet that

11 15:41:26 he created. I created the -- the -- the top

12 15:41:31 spreadsheet.

13 15:41:35 Q Okay. Let me mark this as exhibit....

14 15:42:02 (Document marked Hurley Exhibit 16

15 15:42:03 for identification.)

16 15:42:27 MR. VERRILLI: Q. I'm just going to ask you

17 15:42:37 a question about the first page, but you should feel

18 15:42:39 free to take all the time you want to look at the

19 15:42:42 document.

20 15:43:42 A Okay.

21 15:43:43 Q Okay. Exhibit 16 is -- the first page of it

22 15:43:55 consists of an e-mail chain, and the first e-mail

23 15:44:01 listed is an e-mail from you to Sean Dempsey; right?

24 15:44:06 A That's right.

25 15:44:06 Q Who's Sean Dempsey?

1 HURLEY

15:44:09 2 A I believe he's on the corporate development  
15:44:11 3 team at Google.

15:44:15 4 Q Okay. Did you interact with him during the  
15:44:17 5 course of due diligence on the Google acquisition of  
15:44:21 6 YouTube?

15:44:21 7 A Very briefly. We may -- this may be one of  
15:44:25 8 like two e-mails we exchanged.

15:44:27 9 Q Okay. You were involved in that due  
15:44:29 10 diligence process though; correct?

15:44:33 11 A Yes.

15:44:33 12 Q Okay. And it's CCed to Storm Duncan;  
15:44:38 13 correct?

15:44:38 14 A Uh-huh.

15:44:38 15 Q And who's he?

15:44:40 16 A I don't recall who Storm is, but he looks  
15:44:42 17 like a banker from Credit Suisse.

15:44:47 18 Q Okay. And in this message to Sean Dempsey,  
15:44:51 19 you were answering some questions that he posed to  
15:44:53 20 you; correct?

15:44:56 21 A Yes.

15:44:56 22 Q And item number three in your answer says  
15:44:59 23 "Yes, we are running ROS ads on both the search, watch  
15:45:03 24 and browse pages." That's what it says; right?

15:45:06 25 A That's what it says.

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1 HURLEY

15:45:07 2 Q What's "ROS" stand for?

15:45:10 3 A Just Run of Site.

15:45:12 4 Q What is a run-of-site ad?

15:45:17 5 A Jeez, I don't know the specific definition.

15:45:45 6 Yeah, I don't know the specific definition.

15:45:48 7 Q Did you know it at the time you wrote this  
15:45:50 8 e-mail?

15:45:51 9 A Yeah, I guess if I was --

15:45:55 10 MR. INGBER: Don't guess.

15:45:56 11 THE WITNESS: Well, yeah, I don't recall.

15:46:04 12 MR. VERRILLI: Q. Well, whatever a  
15:46:08 13 run-of-site ad is, you're confirming in this e-mail  
15:46:11 14 that as of October 2006 those ads were running on the  
15:46:15 15 search watch and browse pages; correct?

15:46:17 16 A That's what it says.

15:46:18 17 Q And it would be important for you to be  
15:46:20 18 accurate in conveying this information to Google as  
15:46:23 19 part of the due diligence for this deal; correct?

15:46:26 20 A Yes.

15:46:26 21 Q So it's safe to assume that this was an  
15:46:30 22 accurate statement of what YouTube was, in fact, doing  
15:46:32 23 in October 2006 with respect to run-of-site ads;  
15:46:36 24 correct?

15:46:36 25 MR. INGBER: Objection to form.

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1 HURLEY

2 15:46:37 THE WITNESS: Yeah. Again, I don't recall

3 15:46:45 specifically, but that's what the e-mail says, so I

4 15:46:48 have no reason to believe it's false.

5 15:46:50 MR. VERRILLI: Q. Well, my question to you

6 15:46:52 is whether -- I believe my question to you is -- I

7 15:46:55 apologize if I'm confused here -- was whether it was

8 15:46:59 important to be accurate in conveying this information

9 15:47:04 on Exhibit 16 to Google in the course of this due

10 15:47:07 diligence process.

11 15:47:08 MR. INGBER: Asked and answered.

12 15:47:11 MR. VERRILLI: Q. And what was the answer?

13 15:47:12 A Yes.

14 15:47:23 MR. VERRILLI: Okay. Could we mark this

15 15:47:25 document, please, as, I guess, what, 17? Yes, 17.

16 15:47:35 (Document marked Hurley Exhibit 17

17 15:47:37 for identification.)

18 15:47:37 MR. VERRILLI: Q. We've only got a few

19 15:47:38 minutes left on the tape, so after we discuss this

20 15:47:41 document, why don't we take a break; okay?

21 15:47:43 A Sure.

22 15:50:04 Q You ready?

23 15:50:06 A Okay.

24 15:50:06 Q Okay. The cover page of Exhibit 17 is an

25 15:50:09 e-mail from Maryrose Dunton to Micah Schaffer and

1 HURLEY

2 15:50:15 Heather Gillette; correct?

3 15:50:17 A That's correct.

4 15:50:18 Q It's dated January 1st, 2006, -- January

5 15:50:22 10th, 2006; correct?

6 15:50:23 A Yes.

7 15:50:23 Q Okay. It has an attachment to it; correct?

8 15:50:28 A That's correct.

9 15:50:28 Q The attachment is titled "YouTube Feature  
10 15:50:33 Description"; correct?

11 15:50:34 A That's correct.

12 15:50:35 Q The feature name is "Admin Improvements";  
13 15:50:38 correct?

14 15:50:38 A Correct.

15 15:50:38 Q The document lists three innovators; correct?

16 15:50:44 A Correct.

17 15:50:44 Q One of them is Brent; correct?

18 15:50:47 A Yes.

19 15:50:47 Q That's you; correct?

20 15:50:48 A Yes.

21 15:50:48 Q Okay. So you were one of the innovators of  
22 15:50:51 this admin improvements feature; correct?

23 15:50:54 A Yes, I worked on this feature.

24 15:50:56 Q Okay. Do you recall doing so?

25 15:50:59 A Yes. Well, I recur -- I recall working with



1 HURLEY

2 15:51:09 lawyer -- with lawyers on this feature.

3 15:51:11 MR. INGBER: Okay. Don't -- that's fine.

4 15:51:13 MR. VERRILLI: I didn't ask him anyway.

5 15:51:15 MR. INGBER: I understand. I want to caution

6 15:51:17 him not to reveal any attorney-client communications.

7 15:51:20 MR. VERRILLI: Okay.

8 15:51:21 Q The -- you know what, in light of that, I'm

9 15:51:24 thinking what I'd like to do is finish my questions on

10 15:51:29 this. I don't know if it's going to run over the

11 15:51:31 tape, but I would like to finish my questions on this

12 15:51:34 document, and then we can take a break; okay?

13 15:51:37 A Okay.

14 15:51:37 Q So what I'd like to first direct your

15 15:51:39 attention to with respect to this document,

16 15:51:44 Mr. Hurley, is the item number one on the page,

17 15:51:50 "Screening of Only Flagged/Private Videos"; you see

18 15:51:54 that there?

19 15:51:55 A Yeah.

20 15:51:55 Q This document indicates that moving forward

21 15:52:01 all private videos will be screened; correct?

22 15:52:05 MR. INGBER: Objection to form.

23 15:52:06 THE WITNESS: That's what the document says.

24 15:52:15 MR. VERRILLI: Q. And that was the policy

25 15:52:16 going forward as of the time this document was

1 HURLEY

2 15:52:18 created; right?

3 15:52:20 MR. INGBER: Objection to form.

4 15:52:21 THE WITNESS: Again, I didn't create this

5 15:52:25 document. I contributed to these features, but I

6 15:52:31 don't recall specifically. Again, I had moved on to

7 15:52:33 other things. This was sort of my last project that I

8 15:52:38 was working on until I like really transitioned over

9 15:52:42 to finance and operation duties. So I don't recall

10 15:52:49 the specific policy going forward or....

11 15:52:56 MR. VERRILLI: Q. It does indicate that all

12 15:53:00 private videos will be screened; right?

13 15:53:06 A It says "Moving forward, only flagged and

14 15:53:08 private videos will be reviewed."

15 15:53:10 Q And then the last of the bullets there under

16 15:53:13 point one indicates that all private videos will be

17 15:53:17 screened; right?

18 15:53:23 MR. INGBER: Objection to form. The document

19 15:53:25 speaks for itself.

20 15:53:29 THE WITNESS: Break out admin into three tabs

21 15:53:31 with videos filtered. Private videos is one of those.

22 15:53:36 MR. VERRILLI: Q. So does this mean that any

23 15:53:38 video that was uploaded as a private video would

24 15:53:43 automatically be routed to admin for review?

25 15:53:47 MR. INGBER: Objection; lacks foundation.

1 HURLEY

2 15:53:54 THE WITNESS: Again, I don't recall. I

3 15:53:56 wasn't involved with the daily admin tool at this

4 15:54:00 point.

5 15:54:00 MR. VERRILLI: Q. Well, is listing you as an

6 15:54:04 innovator another embellishment?

7 15:54:06 MR. INGBER: Objection; argumentative.

8 15:54:09 THE WITNESS: Again, I -- I contributed to

9 15:54:10 this, but I didn't actually implement it.

10 15:54:12 MR. VERRILLI: Q. Well, did you contribute

11 15:54:14 to the decision that all private videos would be

12 15:54:16 screened?

13 15:54:17 MR. INGBER: Objection.

14 15:54:17 And I'll allow you to answer only to the

15 15:54:22 extent you're not revealing privileged attorney-client

16 15:54:35 communications.

17 15:54:37 THE WITNESS: I don't recall specifically

18 15:54:38 what I added. I just know that I worked on this

19 15:54:42 project primarily with our lawyers, but as far as

20 15:54:51 specific things, and again, I wasn't an engineer, I'm

21 15:54:57 not really a product person, I just had been reviewing

22 15:54:59 the videos in the early days. So my input was helpful

23 15:55:05 to try to come up with these tools.

24 15:55:08 MR. VERRILLI: Q. And you don't have any

25 15:55:11 reason to doubt that all private videos were, in fact,

1 HURLEY

2 15:55:14 screened after this feature was implemented; do you?

3 15:55:16 MR. INGBER: Objection; lacks foundation.

4 15:55:18 You can answer.

5 15:55:19 THE WITNESS: Again, I don't recall

6 15:55:24 specifically, but I don't have any reason to believe

7 15:55:27 that -- that it wasn't.

8 15:55:30 MR. VERRILLI: Q. Well, to your knowledge,

9 15:55:33 were the other elements of the changes in practice

10 15:55:40 identified in this document actually implemented?

11 15:55:44 MR. INGBER: Objection to form.

12 15:56:13 THE WITNESS: I can't recall specifically. I

13 15:56:20 know you have to confirm your e-mail address, so I

14 15:56:23 can -- I know that is a feature that's on the site

15 15:56:25 now.

16 15:56:27 I don't ever recall having an e-mail alert

17 15:56:30 for flagged at YouTube, so I can't recall, so I can't

18 15:56:38 really give specifics on all this stuff. Again,

19 15:56:41 because I wasn't directly --

20 15:56:41 MR. VERRILLI: Q. And --

21 15:56:44 THE WITNESS: -- involved in the day-to-day.

22 15:56:45 MR. VERRILLI: Q. Sorry. I didn't mean to

23 15:56:47 interrupt you.

24 15:56:47 Under "Scope," the first item is "Screening

25 15:56:50 of Only Flagged/Private Video"; do you see that?

1 HURLEY

2 15:56:54 A I see that.

3 15:56:55 Q Okay. So is one of the changes that this  
4 15:57:01 feature described in this exhibit bringing about is an  
5 15:57:10 end to the review on a proactive basis of all of  
6 15:57:15 the -- of thumbnails of all of the videos that are  
7 15:57:19 being uploaded to YouTube?

8 15:57:21 MR. INGBER: Objection to form.

9 15:57:24 THE WITNESS: It's -- I don't recall the  
10 15:57:41 specific timetable, but I believe we stopped reviewing  
11 15:57:44 all videos earlier around that Thanksgiving time  
12 15:57:49 period because it was -- it was impossible to do, so  
13 15:57:57 that's why we were creating these tools.

14 15:58:01 MR. VERRILLI: Q. Well, was the decision to  
15 15:58:08 stop reviewing all videos based on the advice that  
16 15:58:14 your lawyers gave you?

17 15:58:18 MR. INGBER: Objection; that question in  
18 15:58:21 itself may call for the disclosure of privileged  
19 15:58:26 attorney-client communications. So I'm going to  
20 15:58:29 instruct the witness not to answer.

21 15:58:30 MR. VERRILLI: Okay. I'm not trying to be  
22 15:58:32 difficult about this. We have an issue about advice  
23 15:58:34 of counsel.

24 15:58:35 MR. INGBER: I understand.

25 15:58:35 MR. VERRILLI: I'm going to make a record,

1 HURLEY

2 15:58:38 okay, and you can instruct the witness not to answer,

3 15:58:40 and it will be fine.

4 15:58:41 Q So what I'm trying to get at here,

5 15:58:43 Mr. Hurley, is whether you relied on the advice of

6 15:58:47 counsel in shaping the policies set forth in this

7 15:58:51 document?

8 15:58:52 MR. INGBER: Is that a question?

9 15:58:55 MR. VERRILLI: Yes.

10 15:58:55 MR. INGBER: Okay. I instruct you not to

11 15:58:58 answer to the extent that it will reveal privileged

12 15:59:01 attorney-client communications.

13 15:59:09 Actually, strike that. I instruct you not to

14 15:59:12 answer the question on the ground that it will reveal

15 15:59:14 attorney-client communications.

16 15:59:16 MR. VERRILLI: Okay.

17 15:59:20 Q Tell me the names of the attorneys with whom

18 15:59:23 you were conferring during the process that led up to

19 15:59:27 these policy changes?

20 15:59:30 A Brian Knapp and Kathy Kirkman.

21 15:59:34 Q And were they lawyers at the Wilson, Sonsini

22 15:59:37 firm?

23 15:59:37 A Yes.

24 15:59:37 Q Okay. Anyone else?

25 15:59:40 A Not that I recall.

1 HURLEY

2 15:59:42 Q Did YouTube have an in-house lawyer at this  
3 15:59:44 time?

4 15:59:47 A I'm not sure.

5 15:59:54 THE VIDEOGRAPHER: We're really getting low  
6 15:59:55 on tape now.

7 15:59:58 MR. VERRILLI: Okay. Let's take our break  
8 16:00:00 now.

9 16:00:00 THE VIDEOGRAPHER: This is the end of  
10 16:00:01 videotape number two in the deposition of Brent Hurley  
11 16:00:04 on August 26th, 2008.

12 16:00:07 The time is 3:59 p.m. -- :54 p.m.

13 16:00:12 We're off the record.

14 16:00:13 (Recess taken.)

15 16:23:51 THE VIDEOGRAPHER: This is the beginning of  
16 16:23:53 videotape number three in the deposition of  
17 16:23:57 Brent Hurley on August 26th, 2008. The time is  
18 16:24:00 4:23 p.m.

19 16:24:01 We are back on the record.

20 16:24:04 MR. VERRILLI: Q. Mr. Hurley, before the  
21 16:24:06 break, we were talking about Exhibit 17. Could you  
22 16:24:11 take another look at that?

23 16:24:12 A Sure.

24 16:24:12 Q This was the YouTube feature description.

25 16:24:21 A Yes.

1 HURLEY

2 16:57:33 please. So just to remind you, Exhibit 3 is an e-mail

3 16:57:59 from you to Jawed Karim dated November 22nd, 2005,

4 16:58:05 correct?

5 16:58:05 A Correct.

6 16:58:05 Q You're responding to an e-mail that Mr. Karim

7 16:58:09 sent to you on November 22nd asking you why YouTube

8 16:58:14 got rid of the copyright flagging; correct?

9 16:58:16 A Yes.

10 16:58:16 Q Now, it's true, isn't it, that YouTube for a

11 16:58:19 time had a copyright flagging feature; correct?

12 16:58:22 A Yes.

13 16:58:22 Q Okay. Explain to me how that feature worked

14 16:58:25 when it was in operation?

15 16:58:31 A As you see in this e-mail, it shows there are

16 16:58:35 a number of things you could flag a video for on being

17 16:58:40 feature this to promote, try to get your video on the

18 16:58:46 front page inappropriate, miscategorized and

19 16:58:51 copyright.

20 16:58:54 Q So explain to me, please, how the feature

21 16:58:58 worked.

22 16:58:58 A Although there are these different buckets,

23 16:59:01 they just were flagged and -- and put into the queue.

24 16:59:05 Q So while this feature was operative, if a

25 16:59:09 YouTube user flagged a video for copyright, then it



1 HURLEY

2 16:59:13 would go into the queue; correct?

3 16:59:16 A Yeah.

4 16:59:17 Q And it would be reviewed to determine whether

5 16:59:19 it was likely to be an unauthorized upload of

6 16:59:22 copyrighted work; correct?

7 16:59:31 A Yeah, I think that was the thinking at the

8 16:59:37 time.

9 16:59:38 Q You used the word "yeah" when you started

10 16:59:42 that answer. You meant "yes"?

11 16:59:45 A Yes.

12 16:59:45 Q Okay. And then there came a point where

13 16:59:50 YouTube made a policy decision to remove the copyright

14 16:59:55 flagging feature; correct?

15 16:59:58 A Yes.

16 16:59:58 Q So when you had the feature, you were

17 17:00:04 reviewing videos, "you" meaning YouTube -- let me --

18 17:00:09 let me start over so we don't have any lack of

19 17:00:11 clarity.

20 17:00:11 When the feature was in place, YouTube was

21 17:00:14 reviewing videos to determine whether they were likely

22 17:00:18 to be unauthorized uploads of copyrighted works;

23 17:00:23 correct?

24 17:00:25 MR. INGBER: Hold on.

25 17:00:40 Objection to the form of the question to the

1 HURLEY

2 17:00:42 extent it mischaracterizes the witness's testimony.

3 17:00:44 MR. VERRILLI: You can answer the question.

4 17:00:48 THE WITNESS: Could you repeat the question,

5 17:00:49 please?

6 17:00:49 MR. VERRILLI: Could you read it back,

7 17:00:50 please.

8 17:01:10 (Whereupon, record read by the Reporter as

9 17:01:10 follows:

10 16:59:58 "Question: So when you had the feature, you

11 17:00:04 were reviewing videos, "you" meaning YouTube

12 17:00:08 -- let me -- let me start over so we don't

13 17:00:10 have any lack of clarity.

14 17:00:11 "When the feature was in place, YouTube was

15 17:00:14 reviewing videos to determine whether they

16 17:00:18 were likely to be unauthorized uploads of

17 17:00:22 copyrighted works; correct?")

18 17:01:12 THE WITNESS: So again, this e-mail was dated

19 17:01:25 November 22nd. I think the subsequent e-mail was like

20 17:01:30 two days later where we stopped reviewing all the

21 17:01:35 thumbnails of the videos being uploaded. At this

22 17:01:39 time, we had received notices from content owners

23 17:01:43 asking us to remove things from the site. So, you

24 17:01:48 know, we were trying to address the problem and create

25 17:01:51 different features to -- to again address this

1 HURLEY

2 17:01:55 problem. One of these was that this copyright flag

3 17:02:01 that we had but then quickly realized that it was

4 17:02:06 completely ineffective, there was -- people could flag

5 17:02:13 things that they, you know, weren't the copyright

6 17:02:15 owner. They might be upset with one of their friends

7 17:02:21 and flag a video.

8 17:02:23 There was just a whole host of things, and we

9 17:02:25 were in no position to know who -- if -- if the

10 17:02:32 content was -- was authorized and also whoever was

11 17:02:36 flagging the video, if they were authorized to make

12 17:02:39 the judgment call to have it removed or request to

13 17:02:42 have it removed.

14 17:02:44 MR. VERRILLI: Q. Well, the user who flagged

15 17:02:47 it didn't make a judgment call to remove it; correct?

16 17:02:49 MR. INGBER: Objection; calls for

17 17:02:51 speculation.

18 17:02:54 MR. VERRILLI: Q. Let me rephrase it.

19 17:02:55 A Yeah.

20 17:02:55 Q YouTube made the decision whether to remove

21 17:02:57 the flagged videos, not the user; correct?

22 17:03:01 A Remove this copyright flag?

23 17:03:03 Q Any flagged video. YouTube made the decision

24 17:03:06 to remove a flagged video, not the user; correct?

25 17:03:10 MR. INGBER: Objection; argumentative.

1 HURLEY

2 17:03:11 THE WITNESS: After a video is flagged, we  
3 17:03:16 review it to, you know, use our best efforts to -- to  
4 17:03:19 see if the video violates the terms of use, and then  
5 17:03:23 yes, we remove it from the site.

6 17:03:25 MR. VERRILLI: Right.

7 17:03:25 Q The flagging by the user does not  
8 17:03:27 automatically result in the removal?

9 17:03:29 A No.

10 17:03:30 Q The removal occurs when YouTube makes a  
11 17:03:33 judgment that the video should be removed; correct?

12 17:03:37 A That is correct.

13 17:03:37 Q And for --

14 17:03:38 A And I'd just like to add that, you know,  
15 17:03:41 things like porn are -- are easy to sort of see that  
16 17:03:44 they violated the terms of use. You look at the  
17 17:03:47 video, you know all the information you need is  
18 17:03:49 contained in that video, so we can remove those in  
19 17:03:56 confidence that they are, in fact, violations of the  
20 17:03:58 Terms of Use.

21 17:04:01 Again, other pieces of content which may be  
22 17:04:04 unauthorized, we have no way of knowing if, in fact,  
23 17:04:09 the content owner did authorize and did see the site  
24 17:04:13 with their videos.

25 17:04:15 One example that's pointed to a lot is the

1 HURLEY

2 17:30:45 THE WITNESS: Yeah. So my understanding of  
3 17:30:47 an MD5 hash, it's a unique thumbprint of the video  
4 17:30:52 file, but the exact video file needs to be uploaded to  
5 17:30:55 produce a matching fingerprint.

6 17:30:58 So if -- if you took one clip and it was a --  
7 17:31:04 a two-minute clip of this video and we got a notice,  
8 17:31:09 or it was inappropriate and we took it down, if  
9 17:31:13 another user tried to upload it but they had edited,  
10 17:31:16 so it was only one of the two minutes, then it would  
11 17:31:20 be a different thumbprint, so it wouldn't be able to  
12 17:31:24 recognize that.

13 17:31:25 MR. VERRILLI: Right.

14 17:31:26 Q So it was ineffective unless the -- unless  
15 17:31:30 the subsequent upload was exactly identical to the  
16 17:31:34 clip that had been taken down; correct?

17 17:31:36 MR. INGBER: Objection to form.

18 17:31:41 THE WITNESS: It was the best solution at the  
19 17:31:43 time. And again it was a -- a feature that we  
20 17:31:46 introduced that, to my knowledge, no other video site  
21 17:31:49 had introduced showing that we were actively trying to  
22 17:31:55 address this, this issue.

23 17:31:57 MR. VERRILLI: Q. Well, if you had gotten an  
24 17:31:59 MD5 hash of an entire episode of a television show,  
25 17:32:04 then any clip that was uploaded that matched any part

1 HURLEY

2 17:32:10 of the television show would have been blocked;

3 17:32:13 wouldn't it?

4 17:32:14 THE WITNESS: No.

5 17:32:14 MR. INGBER: Objection to form.

6 17:32:15 THE WITNESS: That's exactly what I said

7 17:32:17 wouldn't happen. That's what I was outlining the

8 17:32:20 fundamental limitations of this MD5 hash, that it

9 17:32:24 needed to be the exact same video.

10 17:32:28 MR. VERRILLI: Q. So it didn't really block

11 17:32:30 very many uploads; did it?

12 17:32:35 MR. INGBER: Objection; vague.

13 17:32:36 THE WITNESS: Yeah, I -- I don't have that

14 17:32:38 information, but again, it was a best tool that we had

15 17:32:46 at the time. We were trying to rapidly come up

16 17:32:48 with -- with tools to address this.

17 17:32:50 MR. VERRILLI: Q. You think that was the

18 17:32:51 best available technology at the time, to prevent the

19 17:32:54 unauthorized upload of copyrighted works?

20 17:32:58 MR. INGBER: Objection to form.

21 17:33:02 THE WITNESS: To my knowledge.

22 17:33:02 MR. VERRILLI: Q. You never heard of Audible

23 17:33:06 Magic at that time?

24 17:33:09 A I can't recall.

25 17:33:11 Q Did you ever here of Audible Magic?

1 HURLEY

2 17:35:54 witness, we have to repeat our questions.

3 17:35:56 MR. INGBER: Okay.

4 17:35:57 MR. VERRILLI: I'm sorry for that, but that's

5 17:35:58 just the way it is.

6 17:35:59 MR. INGBER: Just because you're not getting

7 17:36:00 the answers you necessarily want, Don, doesn't make a

8 17:36:04 witness evasive.

9 17:36:05 MR. VERRILLI: Q. So let's continue to

10 17:36:07 discuss the Content Verification Program; okay?

11 17:36:14 A (Witness nods head.)

12 17:36:14 Q That program was designed to have two phases;

13 17:36:21 right?

14 17:36:27 A I don't -- I don't recall specifically. I

15 17:36:30 know we were adding new features just like we're

16 17:36:34 adding new features to the site. Just like rapidly

17 17:36:38 throughout the entire life of the company.

18 17:36:40 Q You designed the program; right?

19 17:36:43 A I -- yeah, I -- I had the lead working with

20 17:36:47 our lawyers and also other product people at the -- at

21 17:36:51 YouTube.

22 17:36:52 MR. VERRILLI: Okay. Can we mark this,

23 17:36:53 please, as an exhibit?

24 17:36:53 (Document marked Hurley Exhibit 20

25 17:37:10 for identification.)

1 HURLEY

2 17:37:10 MR. INGBER: Thank you.

3 17:37:11 MR. VERRILLI: Q. Let me know when you're

4 17:37:14 ready, Mr. Hurley.

5 17:38:07 A Okay.

6 17:38:07 Q You ready?

7 17:38:08 A Yeah.

8 17:38:10 Q The first page of this document is an e-mail

9 17:38:13 from you to Maryrose Dunton; correct?

10 17:38:18 A Correct.

11 17:38:18 Q And it's dated March 1st, 2006; correct?

12 17:38:22 A That's correct.

13 17:38:22 Q And it was forwarding an attachment; correct?

14 17:38:27 A That's correct.

15 17:38:28 Q And the attachment describes something called

16 17:38:31 a "Content Mgmt System Program Spec"; right?

17 17:38:34 A That's correct.

18 17:38:35 Q And is this document describing the Content

19 17:38:41 Verification Program?

20 17:38:45 A This was a spec sheet, so this was an outline

21 17:38:50 of what we envisioned it might become, but it wasn't

22 17:38:54 that the program actually, I believe, launched.

23 17:38:58 So it wasn't a -- it wasn't a rundown of what

24 17:39:01 we had created. It was a -- this is what we, you

25 17:39:05 know, would like to create.



1 HURLEY

2 17:39:07 Q Do you remember how long after you sent this  
3 17:39:11 document to Ms. Dunton you actually launched the  
4 17:39:14 program?

5 17:39:16 A I don't recall specifically. I believe that  
6 17:39:21 it would be rolled out there. There are a number of  
7 17:39:23 features listed here, so I don't think it's one day we  
8 17:39:27 turned everything on. It was probably over a series  
9 17:39:29 of pushes.

10 17:39:32 Q Well, when did you start pushing the features  
11 17:39:37 out?

12 17:39:38 A This -- this is at a time where I was  
13 17:39:42 transitioning again over to the finance and operation  
14 17:39:47 roles. This was sort of my last project with the  
15 17:39:51 reviewing of videos. So I worked on the spec sheet in  
16 17:39:56 conjunction with -- with counsel, but then I sort of  
17 17:40:02 dropped off, and -- and then the actual product people  
18 17:40:06 and engineers then executed and actually created this,  
19 17:40:11 but by that -- by that time I rolled off onto other  
20 17:40:15 duties.

21 17:40:16 Q So you're not aware that you launched the  
22 17:40:20 Content Verification Program approximately ten days  
23 17:40:24 after this e-mail was sent?

24 17:40:25 A I don't recall.

25 17:40:29 Q This was a program that you were in charge

1 HURLEY

2 17:40:30 of?

3 17:40:31 A Again, it wasn't -- there's a distinction. I  
4 17:40:34 helped brainstorm about these tools and -- and things  
5 17:40:38 that we could do. Again, there -- there weren't any  
6 17:40:41 other video sites that were employing these things, so  
7 17:40:44 I was -- I was -- I was looking at other sites like  
8 17:40:48 eBay. You can see the URLs that reference eBay's sort  
9 17:40:53 of similar program that I was looking at.

10 17:40:56 But again, I wasn't the -- the "product  
11 17:40:59 manager" for this. I had been transitioning over, so  
12 17:41:04 this is -- these are the -- the brainstorming of these  
13 17:41:08 tools that I interjected and passed over to folks like  
14 17:41:13 Maryrose and then the other engineers to actually  
15 17:41:14 implement.

16 17:41:15 Q Who -- who was the project manager?

17 17:41:17 A I believe it was Maryrose.

18 17:41:19 Q And do you know which engineers worked with  
19 17:41:22 her?

20 17:41:22 A I don't recall, no.

21 17:41:25 Q Okay. So in Phase I of this plan that you  
22 17:41:30 came up with, you notice the last bullet says "Ability  
23 17:41:35 to save searches and have newly added video results  
24 17:41:42 emailed to you on a user-defined frequency"; do you  
25 17:41:44 see that?

1 HURLEY

2 17:41:45 A Yes.

3 17:41:45 Q Can you describe to me what that feature was  
4 17:41:47 intended to be?

5 17:41:48 MR. INGBER: Hold on a second. I just want  
6 17:41:50 to caution the witness that to the extent your  
7 17:41:53 testimony will reveal privileged attorney-client  
8 17:41:56 communications, don't answer, but otherwise you can go  
9 17:41:58 ahead and answer.

10 17:41:59 THE WITNESS: Again, this was a feature  
11 17:42:05 directed primarily at the content owners making it  
12 17:42:08 easier for them to monitor their content so it  
13 17:42:13 would -- they could define at their direction what --  
14 17:42:18 what keywords that they would like to save as sort of  
15 17:42:22 a predefined search, and then could e-mail to them so  
16 17:42:27 they could just look at -- look at -- they could --  
17 17:42:31 the vision was that they could define the searches,  
18 17:42:35 the frequency that they receive these e-mails so they  
19 17:42:38 could get them daily, weekly, monthly, but it would  
20 17:42:42 be, again, at their direction.

21 17:42:44 Q So I just want to get clarity on how this  
22 17:42:47 worked. I'm going to give you a hypothetical, and you  
23 17:42:49 tell me if this is accurate.

24 17:42:51 A Okay.

25 17:42:52 Q Okay.

1 HURLEY

2 17:42:52 So I'm a content owner, and I am using this

3 17:42:59 CVP tool to take down clips of The Daily Show.

4 17:43:06 A Okay.

5 17:43:06 Q And to -- as part of my effort in the search

6 17:43:11 that I have to undergo to find these clips on YouTube

7 17:43:14 and get them taken down, I use a keyword search, and I

8 17:43:20 search for the key words "Daily Show."

9 17:43:24 So does this feature then provide that

10 17:43:29 whenever a video is subsequently uploaded with the tag

11 17:43:35 that includes the words "Daily Show," I can get an

12 17:43:40 e-mail telling me that that's happened?

13 17:43:42 MR. INGBER: Objection to form.

14 17:43:43 You can answer it.

15 17:43:45 THE WITNESS: I believe that was the -- the

16 17:43:48 vision, but I don't believe this was ever a feature

17 17:43:54 that ever came to life.

18 17:43:55 MR. VERRILLI: Right.

19 17:43:56 Q Never happened; correct?

20 17:43:57 A Yeah.

21 17:43:57 Q Okay. Do you know why?

22 17:44:00 MR. INGBER: Again, don't answer if you're

23 17:44:04 going to reveal any communications with counsel.

24 17:44:06 THE WITNESS: Again, after submitting these

25 17:44:13 suggestions for -- for tools that we could create, I

1 HURLEY

2 17:44:17 dropped off of it, so I didn't actually implement the

3 17:44:20 program. So I couldn't say why some features were

4 17:44:26 adopted and others were not, because I wasn't actually

5 17:44:30 implementing the program myself.

6 17:44:33 MR. VERRILLI: Q. In your communication with

7 17:44:34 Maryrose Dunton about this program that we're

8 17:44:37 discussing, did she ever tell you that she hated the

9 17:44:40 e-mail feature that we've been discussing?

10 17:44:44 A I don't recall.

11 17:44:46 Q Were you aware that, in fact, she hated this

12 17:44:49 feature?

13 17:44:50 A I don't recall.

14 17:44:52 Q So it's possible she did tell you?

15 17:44:54 MR. INGBER: Objection; asked and answered.

16 17:44:57 THE WITNESS: No, I don't recall receiving.

17 17:45:03 MR. VERRILLI: Q. Were you aware that she

18 17:45:06 referred to the content owners who would benefit to

19 17:45:10 this e-mail fingers as "A-holes."

20 17:45:15 MR. INGBER: Objection.

21 17:45:15 THE WITNESS: No, I'm not aware of that. I

22 17:45:20 don't recall that.

23 17:45:20 MR. VERRILLI: Q. Were you aware that she

24 17:45:23 did not want to do anything to help the content owners

25 17:45:25 she referred to as "A-holes"?

1 HURLEY

2 17:45:25 MR. INGBER: Objection to form. I don't know

3 17:45:27 what you're talking about, but to the extent it

4 17:45:30 mischaracterizes a document or testimony --

5 17:45:35 MR. VERRILLI: You really don't want me to

6 17:45:36 pull out this document; do you? I mean, you know, you

7 17:45:40 had World War III last week about it.

8 17:45:44 MR. INGBER: I'm not going to tell you how to

9 17:45:46 conduct your deposition, but you're asking questions

10 17:45:50 and apparently referring to testimony or a document,

11 17:45:53 and so I'm just preserving my objection for the

12 17:45:55 record.

13 17:45:55 MR. VERRILLI: Fine.

14 17:45:56 Q And all I want to know is whether you were

15 17:45:57 aware of these things.

16 17:45:58 A I don't recall.

17 17:45:59 Q Were you aware she actively discouraged

18 17:46:02 rolling out this e-mail feature behind your back?

19 17:46:05 MR. INGBER: Objection to form.

20 17:46:06 THE WITNESS: No, I don't recall.

21 17:46:07 MR. VERRILLI: Q. Were you aware that

22 17:46:12 Matt Rizzo also actively opposed rolling out this

23 17:46:16 e-mail feature?

24 17:46:17 MR. INGBER: Objection.

25 17:46:17 THE WITNESS: No, I don't recall. Again, I

1 HURLEY

2 17:46:19 wasn't -- I wasn't implementing these suggestions.

3 17:46:24 MR. VERRILLI: Q. Were you aware that

4 17:46:25 Maryrose Dunton and Matt Rizzo agreed together to try

5 17:46:31 to delay the rollout of this e-mail feature?

6 17:46:34 MR. INGBER: Objection.

7 17:46:35 THE WITNESS: Again, I -- I don't know,

8 17:46:38 because I wasn't implementing these suggestions. I

9 17:46:42 don't know why some were implemented and others were

10 17:46:45 not.

11 17:46:45 MR. VERRILLI: Q. How many employees were

12 17:46:46 there at YouTube during this March 2006 time frame?

13 17:47:01 A I don't recall specifically, but if I had --

14 17:47:03 I would -- I would say probably around 30.

15 17:47:06 Q Okay. And Matt Rizzo was one of them?

16 17:47:10 A I can't recall specifically when he was

17 17:47:12 hired.

18 17:47:13 Q You know who he is?

19 17:47:14 A Yes.

20 17:47:15 Q And he's -- he was an employee of YouTube?

21 17:47:17 A Yes.

22 17:47:17 Q He still is an employee of YouTube?

23 17:47:20 A Yes.

24 17:47:20 Q He's an engineer?

25 17:47:22 A Yes.

1 HURLEY

2 17:47:22 Q Okay. Were you aware that he referred to the

3 17:47:26 content owners who would benefit from this e-mail

4 17:47:30 system as "assholes"?

5 17:47:33 MR. INGBER: Objection to form.

6 17:47:33 THE WITNESS: No, I'm not aware.

7 17:47:35 MR. VERRILLI: Q. Were you aware that

8 17:47:36 Maryrose Dunton and Matt Rizzo agreed to go to Chad

9 17:47:41 Hurley and tell him that YouTube should not implement

10 17:47:46 this e-mail feature?

11 17:47:48 MR. INGBER: Same objection to the extent

12 17:47:51 you're mischaracterizing documents in this case.

13 17:47:55 THE WITNESS: Yeah. Again, I can't recall.

14 17:47:58 I wasn't -- I wasn't part of those conversations, so I

15 17:48:02 don't --

16 17:48:02 MR. VERRILLI: Q. Well, did your brother

17 17:48:03 Chad ever come to you and ask you about this e-mail

18 17:48:07 notification system?

19 17:48:10 A I don't recall.

20 17:48:10 Q Okay. Now, in this -- back to the document.

21 17:48:17 There's Phase II here described.

22 17:48:20 A Uh-huh.

23 17:48:21 Q The first bullet point says "Voluntary

24 17:48:26 monitoring and removal by YouTube by potentially

25 17:48:30 infringing videos"; do you see that?



**Redacted at the request of Defendants pending a meet and confer and, if applicable, further action of the Court.**

**PAGES SJA-550 TO SJA-570  
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**Redacted at the request of Defendants pending a meet and confer and, if applicable, further action of the Court.**

**PAGES SJA-572 TO SJA-618  
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UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

VIACOM INTERNATIONAL, INC., COMEDY )  
PARTNERS, COUNTRY MUSIC. )  
TELEVISION, INC., PARAMOUNT )  
PICTURES CORPORATION, and BLACK )  
ENTERTAINMENT TELEVISION, LLC, )  
Plaintiffs, )  
vs. ) NO. 07-CV-2103  
YOUTUBE, INC., YOUTUBE, LLC, )  
and GOOGLE, INC., )  
Defendants. )  

---

THE FOOTBALL ASSOCIATION PREMIER )  
LEAGUE LIMITED, BOURNE CO., et al., )  
on behalf of themselves and all )  
others similarly situated, )  
Plaintiffs, )  
vs. ) NO. 07-CV-3582  
YOUTUBE, INC., YOUTUBE, LLC, and )  
GOOGLE, INC., )  
Defendants. )  

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VIDEOTAPED DEPOSITION OF VANCE IKEZOYE  
PALO ALTO, CALIFORNIA  
THURSDAY, SEPTEMBER 10, 2009

JOB NO. 17619

DAVID FELDMAN WORLDWIDE, INC.  
450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

1 SEPTEMBER 10, 2009

2 9:40 a.m.

3

4 VIDEOTAPED DEPOSITION OF VANCE IKEZOYE,  
5 WILSON SONSINI GOODRICH & ROSATI,  
6 650 Page Mill Road, Palo Alto, California,  
7 pursuant to notice, and before me,  
8 ANDREA M. IGNACIO HOWARD, CLR, RPR, CRR, CSR  
9 License No. 9830.

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DAVID FELDMAN WORLDWIDE, INC.  
450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

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2

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13               By:   BENJAMIN GALDSTON, Esq.

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18       FOR THE DEFENDANTS YOUTUBE, INC., YOUTUBE, LLC and

19       GOOGLE, INC.:

20               WILSON SONSINI GOODRICH & ROSATI, LLP

21               By:   MAURA REES, Esq.

22               650 Page Mill Road

23               Menlo Park, California 94304

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25

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123   (212) 705-8585

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

2

3           FOR THE DEPONENT:

4                   BLY LAW FIRM, PC

5                   By:   William Bly, Esq.

6                   11601 Wilshire Boulevard, Suite 500

7                   Los Angeles, California 90025

8                   (888) 893-6189

9

10           ALSO PRESENT:   Kelly Truelove, Consultant

11                               Armando Carrasco, Videographer.

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DAVID FELDMAN WORLDWIDE, INC.

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1 IKEZOYE, V.

2 PALO ALTO, CALIFORNIA

3 THURSDAY, SEPTEMBER 10, 2009

4 9:40 A.M.

5

09:43:26 6

09:43:26 7 THE VIDEOGRAPHER: Today's video deposition  
09:43:28 8 of Vance Ikezoye is taken on September 10th, 2009, at  
09:43:35 9 Wilson, Sonsini, Goodrich & Rosati, 601 South  
09:43:37 10 California Avenue, Palo Alto, California. In the  
09:43:41 11 Matter of Viacom International vs. YouTube,  
09:43:41 12 Incorporated, and The Football Association.

09:43:46 13 Case No. is 07-CV-2203 and 07-CV-3502, in the  
09:43:56 14 Court of Southern District of New York.

09:43:56 15 My name is Armando Carrasco. I represent  
09:44:00 16 David Feldman Worldwide located at 600 Anton  
09:44:02 17 Boulevard, Suite 1100, in Costa Mesa, California.

09:44:04 18 We are now commencing at 9:40 a.m.

09:44:13 19 Will all -- all present please identify  
09:44:15 20 themselves, beginning with the witness.

09:44:17 21 MR. IKEZOYE: Vance Ikezoye, CEO of Audible  
09:44:21 22 Magic Corporation.

09:44:21 23 MR. BLY: I'm Bill Bly of Bly Law Firm. I'm  
09:44:24 24 representing the witness and Audible Magic.

09:44:27 25 MS. REES: Maura Rees of Wilson, Sonsini,

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1 IKEZOYE, V.

09:44:31 2 Goodrich & Rosati representing the YouTube defendants.

09:44:31 3 MR. GALDSTON: Good morning.

09:44:32 4 Benjamin Galdston of Bernstein, Litowitz,

09:44:35 5 Berger & Grossmann on behalf of the Plaintiffs in the

09:44:35 6 Class Action.

09:44:37 7 MR. TRUELOVE: Kelley Truelove, consultant

09:44:40 8 for Viacom plaintiffs.

09:44:42 9 MR. PLATZER: Luke Platzer of Jenner & Block

09:44:44 10 for the Viacom plaintiffs.

09:44:44 11 MR. DESANCTIS: I'm Michael DeSanctis of

09:44:47 12 Jenner & Block for the Viacom plaintiffs.

09:44:50 13 THE VIDEOGRAPHER: Thank you.

09:44:50 14 Will the court reporter please swear in the

09:44:52 15 witness.

09:45:01 16

09:45:01 17 VANCE IKEZOYE,

09:45:01 18 having been sworn as a witness,

09:45:01 19 testified as follows:

09:45:01 20

09:45:02 21 EXAMINATION BY MR. DESANCTIS

09:45:02 22 MR. DESANCTIS: Good morning.

09:45:04 23 Q Would you please state and spell your name

09:45:08 24 for the record.

09:45:10 25 A Vance Ikezoye, I-K-E-Z-O-Y-E.

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1 IKEZOYE, V.

09:50:54 2 copyrighted music, and then we also sell services to  
09:50:59 3 various digital media companies, like Web 2.0 social  
09:51:04 4 networks, to identify copyrighted content that is  
09:51:07 5 being uploaded by users.

09:51:16 6 Q Looking at the last of the services that you  
09:51:27 7 just mentioned, the digital -- the work that you do  
09:51:30 8 for digital media services, when did YouTube --  
09:51:33 9 sorry -- when did Audible Magic begin providing those  
09:51:36 10 kinds of services?

09:51:41 11 A To Web 2.0 companies or to just anybody in  
09:51:45 12 the space?

09:51:46 13 Q Let's just start generally with anybody in  
09:51:47 14 the space.

09:51:48 15 A We started providing some of the services to  
09:51:52 16 the peer-to-peer companies in, I believe, 2004, in the  
09:52:00 17 2004 time frame, and for those companies we helped the  
09:52:11 18 peer-to-peer companies identify content that their  
09:52:14 19 users were introducing into their networks.

09:52:18 20 Q Okay. In the 2004 time frame that you're  
09:52:24 21 talking about, was your client base primarily  
09:52:28 22 peer-to-peer services?

09:52:29 23 A Yes.

09:52:29 24 Q Can you describe -- well, actually strike  
09:52:33 25 that.

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1 IKEZOYE, V.

09:52:33 2 Can you identify who some of those  
09:52:35 3 peer-to-peer services were? Who were your customers  
09:52:38 4 in the 2004 time frame?

09:52:42 5 A Yes. Yeah, iMesh was one of our customers  
09:52:50 6 who was a peer-to-peer company, and later we had --  
09:52:54 7 Kaza was a customer of ours.

09:52:56 8 Q And what exactly is a peer-to-peer service?

09:53:00 9 A A peer-to-peer service is a peer-to-peer --  
09:53:02 10 it's an application that allows the sharing and  
09:53:08 11 transmittal of -- of copyrighted files between users.  
09:53:15 12 Similar to Naps- -- the way Napster originally was.  
09:53:20 13 So users could download this application, download  
09:53:24 14 files, copyrighted movie and music files, and then  
09:53:28 15 also they can make those available to other users.

09:53:34 16 Q Did there come a time when Audible Magic  
09:53:37 17 began providing these -- these copyright  
09:53:47 18 identification services to digital media services  
09:53:49 19 other than peer-to-peer networks?

09:53:51 20 A Yes, we did do that.

09:53:53 21 Q Okay. Can you describe how or the type of  
09:53:58 22 customer that Audible Magic next started servicing?

09:54:03 23 A We started servicing some of the more -- the  
09:54:06 24 classic Web 2.0 social network companies, where some  
09:54:12 25 people call it user-generated content, where users may

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09:54:19 2 have audio or video files, and they upload these files  
09:54:22 3 to websites, and these websites then allow other users  
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09:54:32 5 Q Do you recall who Audible Magic's first  
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09:54:44 7 MS. REES: Objection; vague and ambiguous.

09:54:46 8 THE WITNESS: Our first customer that we  
09:54:49 9 announced was MySpace.

09:54:59 10 MR. DESANCTIS: Q. Do you recall when that  
09:55:00 11 announcement was?

09:55:01 12 A The -- the first quarter of 2007.

09:55:09 13 Q Did additional customers -- actually, when I  
09:55:24 14 say "customer" -- do you prefer customer or client?

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09:55:28 16 Q Okay. Did additional customers follow  
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09:55:41 23 You can talk about the ones that are publicly  
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09:55:44 25 THE WITNESS: Right.

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1 IKEZOYE, V.

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09:56:03 4 was a customer. In total, I believe we had over --  
09:56:10 5 over the period of 30 plus customers.

09:56:15 6 MR. DESANCTIS: Q. When you say "over the  
09:56:16 7 period," what period are you talking about?

09:56:18 8 A From -- from 2006 through today.

09:56:26 9 Q And when you say "30 plus customers," do you  
09:56:29 10 mean 30 plus customers in the social network space  
09:56:34 11 that you were describing, or are you now talking about  
09:56:38 12 a broader space of clients?

09:56:41 13 A No, the Web 2.0 social networking space.

09:56:47 14 Q Okay. Who are Audible -- Audible Magic's  
09:57:04 15 primary competitors for content identification  
09:57:07 16 services in the Web 2.0 space?

09:57:12 17 A It changed over time, but some of the  
09:57:16 18 people -- some of the companies that were in the space  
09:57:17 19 were Gracenote, Volvo, Auditude, and there are  
09:57:26 20 probably other customers that I can't remember names  
09:57:34 21 of.

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09:57:53 3 Q And has that -- has that always been your

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09:57:59 5 2006, or was there a time when there was a competitor

09:58:02 6 who had a larger customer base in the 2.0 space than

09:58:06 7 Audible Magic had?

09:58:09 8 A I believe from the very beginning we were --

09:58:14 9 we were the leader in the space.

09:58:32 10 Q We'll obviously be talking more about this as

09:58:35 11 the day goes on, but can you describe, in a very

09:58:39 12 general sense, what it is Audible Magic does for its

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09:58:50 15 A We use a technology called fingerprinting,

09:58:55 16 and what fingerprinting is, is a mechanism to uniquely

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09:59:06 18 There are -- these fingerprints are

09:59:09 19 measurements of the content that become unique to a

09:59:12 20 sound recording or to a soundtrack or to a -- an

09:59:17 21 image, and so we work with copyright holders to

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09:59:26 23 We take these measurements, and then we put these

09:59:29 24 measurements into a database.

09:59:31 25 Then with our customers, the UGC sites, we

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1 IKEZOYE, V.

09:59:37 2 give them software to take measurements of unknown  
09:59:40 3 content, and when -- after they take these  
09:59:43 4 measurements, then we can compare it to our database  
09:59:45 5 of known references and identify and match the  
09:59:49 6 content.

09:59:50 7 The way we provide services to the Web 2.0  
09:59:54 8 customers is, they do have software. Users may upload  
09:59:58 9 content to these sites, and they use our services  
10:00:02 10 to -- to identify the -- the -- the copyrighted  
10:00:08 11 content using our services.

10:00:10 12 Q In your answer you spoke of Audible Magic and  
10:00:23 13 the customer taking measurements of pieces of content.  
10:00:28 14 Is that the fingerprint that you mentioned first, or  
10:00:31 15 is the measurement something other than the  
10:00:34 16 fingerprint?

10:00:35 17 I'm just trying to make sure we have the same  
10:00:37 18 terminology.

10:00:38 19 A It's the fingerprint. The fingerprint is a  
10:00:40 20 series of measurements of characteristics of a piece  
10:00:43 21 of audio or video.

10:00:44 22 Q Okay. And are you familiar with the fact  
10:00:53 23 that there are fingerprints referred to as "audio  
10:01:00 24 fingerprints" and others referred to as "video  
10:01:04 25 fingerprints"?

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1 IKEZOYE, V.

10:01:04 2 A Yes.

10:01:04 3 Q Could you explain what the difference is, not  
10:01:07 4 in hypertechnical terms, but generally.

10:01:10 5 A Well, audio fingerprints are taking  
10:01:12 6 measurements of the -- the sound -- the sound on a --  
10:01:14 7 on a piece of content, whether it's music or speech or  
10:01:18 8 silence or sound effects. Video fingerprints tend to  
10:01:23 9 refer in -- in kind of, from my perspective, as  
10:01:29 10 fingerprints of the images of the video image itself.

10:02:24 11 Q I'll show you, Mr. Ikezoye, a document that  
10:02:26 12 we're going to be marking as Ikezoye Exhibit 1.

10:02:29 13 (Document marked Ikezoye Exhibit 1  
10:02:40 14 for identification.)

10:02:40 15 MR. DESANCTIS: I'll ask you to take a quick  
10:02:48 16 look at it.

10:02:52 17 Q Do you recognize this document?

10:02:53 18 A Yes.

10:02:54 19 Q What is it?

10:02:57 20 A It was a declaration that -- that I provided  
10:03:02 21 for a case regarding Aimster.

10:03:08 22 Q On the last page of the exhibit, is that your  
10:03:14 23 signature?

10:03:15 24 A Yes.

10:03:15 25 Q And this was signed by you on September 10th,

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1 IKEZOYE, V.

10:03:21 2 2002; is that correct?

10:03:22 3 A That's correct.

10:03:24 4 Q Was Audible Magic a party in the Aimster  
10:03:30 5 litigation?

10:03:32 6 A No.

10:03:32 7 Q Do you recall why it was that you submitted  
10:03:34 8 this declaration if Audible Magic was not a party?

10:03:36 9 A That we provide technology and services that  
10:03:40 10 were relevant to the -- to the -- the technical issues  
10:03:47 11 regarding this litigation, and so we provided this  
10:03:52 12 information to make people aware of some of our  
10:03:54 13 services.

10:03:55 14 Q And have you looked at this declaration since  
10:04:10 15 you filed it in September of 2002?

10:04:13 16 A No.

10:04:13 17 Q Okay. I'm gonna ask you to just very quickly  
10:04:18 18 review it and let me know if there is anything in here  
10:04:22 19 that -- that you now think was not true or accurate  
10:04:30 20 when it was submitted or whether you still think  
10:04:33 21 everything in here was true at that time, to the best  
10:04:38 22 of your recollection.

10:04:47 23 MR. BLY: You're asking whether it was true  
10:04:49 24 at the time, not whether anything has changed since?

10:04:51 25 MR. DESANCTIS: Right. Obviously things

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1 IKEZOYE, V.

10:04:54 2 might have changed since, but...

10:05:08 3 THE WITNESS: Okay.

10:05:10 4 MR. DESANCTIS: Q. As you look at this  
10:05:11 5 today, is there any reason that you believe that  
10:05:15 6 anything in here was not accurate at the time it was  
10:05:17 7 filed?

10:05:19 8 A No.

10:05:19 9 Q Okay. Just put that aside for the moment.

10:05:33 10 Showing you, Mr. Ikezoye, what I'm marking as  
10:05:35 11 Ikezoye Exhibit 2.

10:05:42 12 (Document marked Ikezoye Exhibit 2

10:05:42 13 for identification.)

10:05:42 14 MR. DESANCTIS: I'd ask you to take a moment  
10:05:53 15 to familiarize yourself with this document.

10:06:40 16 THE WITNESS: Okay.

10:06:41 17 MR. DESANCTIS: Q. Do you recognize this  
10:06:41 18 document?

10:06:42 19 A Yes.

10:06:42 20 Q What is it?

10:06:43 21 A It's a declaration that we made in the  
10:06:49 22 MGM vs. Grokster case.

10:06:52 23 Q And was Audible Magic a party in the case?

10:06:57 24 A No, we were not.

10:06:58 25 Q Do you recall, then, why Audible Magic

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10:03:15 24 A Yes.

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10:03:40 10 were relevant to the -- to the -- the technical issues  
10:03:47 11 regarding this litigation, and so we provided this  
10:03:52 12 information to make people aware of some of our  
10:03:54 13 services.

10:03:55 14 Q And have you looked at this declaration since  
10:04:10 15 you filed it in September of 2002?

10:04:13 16 A No.

10:04:13 17 Q Okay. I'm gonna ask you to just very quickly  
10:04:18 18 review it and let me know if there is anything in here  
10:04:22 19 that -- that you now think was not true or accurate  
10:04:30 20 when it was submitted or whether you still think  
10:04:33 21 everything in here was true at that time, to the best  
10:04:38 22 of your recollection.

10:04:47 23 MR. BLY: You're asking whether it was true  
10:04:49 24 at the time, not whether anything has changed since?

10:04:51 25 MR. DESANCTIS: Right. Obviously things

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10:04:54 2 might have changed since, but...

10:05:08 3 THE WITNESS: Okay.

10:05:10 4 MR. DESANCTIS: Q. As you look at this  
10:05:11 5 today, is there any reason that you believe that  
10:05:15 6 anything in here was not accurate at the time it was  
10:05:17 7 filed?

10:05:19 8 A No.

10:05:19 9 Q Okay. Just put that aside for the moment.

10:05:33 10 Showing you, Mr. Ikezoye, what I'm marking as  
10:05:35 11 Ikezoye Exhibit 2.

10:05:42 12 (Document marked Ikezoye Exhibit 2

10:05:42 13 for identification.)

10:05:42 14 MR. DESANCTIS: I'd ask you to take a moment  
10:05:53 15 to familiarize yourself with this document.

10:06:40 16 THE WITNESS: Okay.

10:06:41 17 MR. DESANCTIS: Q. Do you recognize this  
10:06:41 18 document?

10:06:42 19 A Yes.

10:06:42 20 Q What is it?

10:06:43 21 A It's a declaration that we made in the  
10:06:49 22 MGM vs. Grokster case.

10:06:52 23 Q And was Audible Magic a party in the case?

10:06:57 24 A No, we were not.

10:06:58 25 Q Do you recall, then, why Audible Magic

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10:07:00 2 submitted -- or why you submitted this declaration in  
10:07:03 3 that case?

10:07:06 4 A Because we, again, we wanted to make -- grow  
10:07:12 5 awareness of our services and our capabilities to the  
10:07:16 6 market.

10:07:17 7 Q If you could flip to the last page. It's  
10:07:28 8 dated February 2, 2006, and is that your signature  
10:07:31 9 underneath it?

10:07:32 10 A Yes, it is.

10:07:33 11 Q Okay. I'm going to ask you the same question  
10:07:36 12 that I asked you about the last document, which is, is  
10:07:39 13 there -- as you sit here today, is there any reason to  
10:07:42 14 think that anything in this declaration was inaccurate  
10:07:46 15 at the time it was submitted? And if you want to take  
10:07:50 16 a minute to look through it again, feel free.

10:08:40 17 A Okay.

10:08:49 18 Q Then, as you sit here today, Mr. Ikezoye, is  
10:08:52 19 there any reason to -- that you know of why anything  
10:08:54 20 in this -- or let me withdraw that and rephrase.

10:08:59 21 As you sit here today, do you have any reason  
10:09:07 22 to believe, Mr. Ikezoye, that anything in that  
10:09:10 23 declaration was inaccurate at the time it was  
10:09:12 24 submitted?

10:09:12 25 A No.

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10:09:17 2 Q Direct your attention to paragraph 18 of the  
10:09:29 3 exhibit, which is on page five. The last sentence of  
10:09:39 4 that paragraph states, "The Audible Magic iMesh filter  
10:09:44 5 has scaled seamlessly to 5 million lookups per day and  
10:09:50 6 easily could scale to meet the needs of any network in  
10:09:52 7 use today."

10:09:53 8 Can you first explain what the Audible Magic  
10:09:57 9 iMesh filter was that you were talking about here in  
10:09:59 10 this paragraph?

10:10:01 11 A We had provided iMesh a -- software and  
10:10:09 12 services that they integrated in their software  
10:10:14 13 application that users used, and so the service was to  
10:10:21 14 identify content that was being uploaded or downloaded  
10:10:25 15 within this network.

10:10:27 16 Q And iMesh -- is iMesh an example of one of  
10:10:34 17 the Web 2.0 sites that we were talking about earlier  
10:10:36 18 this morning?

10:10:37 19 A No, it's a peer-to-peer network, file sharing  
10:10:40 20 network provider.

10:10:42 21 Q Okay. And what does it mean or what did you  
10:10:46 22 mean when you said "the filter has scaled seamlessly  
10:10:50 23 to 5 million lookups per day"?

10:10:56 24 Actually, let me break that down. Let's  
10:10:58 25 start with, what does "5 million lookups per

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10:11:02 2 day" mean?

10:11:04 3 A It means a lookup is when we have -- we're  
10:11:08 4 presented with an unknown file and we're looking that  
10:11:11 5 up and trying to match the characteristics against a  
10:11:14 6 database of known content. So one lookup is one  
10:11:18 7 unknown file being -- trying to be identified.

10:11:22 8 Q Okay. Let me just try to make sure I  
10:11:24 9 understand that.

10:11:25 10 Who submits the unknown file to Audible  
10:11:29 11 Magic?

10:11:31 12 A The iMesh application. So millions of users  
10:11:35 13 had the iMesh application, piece of software running  
10:11:38 14 on their computers. Our library was integrated in  
10:11:43 15 that piece of software that users used, and so the  
10:11:49 16 application automatically, when a file was gonna be  
10:11:54 17 shared or was downloaded, we would take measurements  
10:11:59 18 and then the application itself would automatically go  
10:12:02 19 do a lookup against our servers. So users didn't have  
10:12:07 20 to operate -- it was all operated within --  
10:12:09 21 automatically within the software itself.

10:12:13 22 Q So when measurements were taken of -- of a  
10:12:40 23 file to be downloaded on iMesh, does that mean -- is  
10:12:44 24 that the same way of saying a fingerprint was made of  
10:12:46 25 the file?

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10:12:47 2 A Yeah, a fingerprint was taken, as well as  
10:12:49 3 other information about the file --

10:12:51 4 Q Okay.

10:12:52 5 A -- and we --

10:12:53 6 Q What other information was taken?

10:12:55 7 A I believe we would take the -- the metadata  
10:12:59 8 title of the -- the file, and I also believe that we  
10:13:03 9 would take a -- a -- information -- a hash of the  
10:13:08 10 file.

10:13:08 11 Q Okay. An MD5 hash?

10:13:12 12 A Yes.

10:13:12 13 Q And what then, if anything, would Audible  
10:13:17 14 Magic compare that fingerprint and additional  
10:13:19 15 information against?

10:13:21 16 A We had a database of -- of fingerprints, as  
10:13:28 17 well as associated MD5 hashes, and so we would compare  
10:13:35 18 that against known hashes and then also known  
10:13:39 19 fingerprints.

10:13:42 20 Q And at that time, what fingerprints were in  
10:14:01 21 your database of fingerprints?

10:14:09 22 A At the time, according to this, it looks like  
10:14:11 23 we had about 6 million copyrighted songs in our  
10:14:15 24 database. So fingerprints were about that many songs.

10:14:18 25 Q And from whom were those fingerprints

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10:14:19 2 provided?

10:14:24 3 A The music -- music labels, both the major  
10:14:27 4 music labels -- Sony, BMG, Universal, Warner, and  
10:14:34 5 EMI -- as well as a number of independent record  
10:14:39 6 labels.

10:14:40 7 Q Okay. So continuing through the process,  
10:14:52 8 what would happen if a file to be downloaded on iMesh  
10:15:00 9 matched the fingerprint of a fingerprint that was in  
10:15:03 10 your database having been supplied from a record  
10:15:05 11 company?

10:15:08 12 A We would get the identification after the  
10:15:11 13 fingerprint was submitted to our central servers, and  
10:15:15 14 we would respond to that client with an identification  
10:15:21 15 that said a -- with a block or allow rule, and for  
10:15:28 16 everything in the database, at this time, everything  
10:15:31 17 in the database had a block rule, and so we would tell  
10:15:35 18 the -- the client to block that file from being  
10:15:40 19 downloaded or uploaded.

10:15:41 20 Q Okay. When you said everything in the  
10:15:49 21 database had a block rule, who made that rule?

10:15:51 22 A The record label themselves when they  
10:15:53 23 submitted it.

10:15:54 24 Q Okay. So the record label would provide  
10:15:56 25 instructions as to whether -- whether the file to be

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10:40:23 2 Q Okay. Are they all in one big database or  
10:40:25 3 are there different databases?

10:40:29 4 A We have a -- a -- a main database that  
10:40:33 5 contains all of the content submitted by copyright  
10:40:37 6 holders, so we have one master database. We also have  
10:40:44 7 other smaller databases that are -- contain subsets of  
10:40:51 8 that master database that are used in different  
10:40:54 9 applications or with different customers.

10:41:01 10 Q Does that master database or main database  
10:41:03 11 have a particular name that I should use so that we  
10:41:06 12 know we're talking about the same thing?

10:41:08 13 A We can call it a "master database."

10:41:10 14 Q Okay. Is there something called a commercial  
10:41:29 15 music database or commercial music library?

10:41:32 16 A Yes. It's -- we refer to our -- all of our  
10:41:40 17 fingerprints or registrations of -- from the music  
10:41:44 18 labels as our commercial music database.

10:41:47 19 Q Okay. So what fingerprints populate -- what  
10:41:50 20 types of fingerprints would populate the commercial  
10:41:53 21 music database?

10:41:54 22 A They are fingerprints of commercially  
10:41:56 23 available musical sound recordings received from  
10:42:03 24 record companies, majors and independents.

10:42:07 25 Q Approximately how many fingerprints -- or

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10:53:20 2 show, those would each be unique titles in our  
10:53:23 3 database.

10:53:54 4 Q Okay. Let's go back to the libraries we were  
10:53:57 5 discussing a moment ago.

10:53:58 6 When did Audible Magic first create the  
10:54:03 7 commercial music library?

10:54:06 8 A It probably started in -- where we acquired  
10:54:10 9 most of the content in 2002 or 2003.

10:54:27 10 Q And when did Audible Magic begin populating  
10:54:33 11 the TV movie database?

10:54:40 12 A Probably, early 2006 we started with -- we  
10:54:46 13 started that effort.

10:54:52 14 Q Can you describe how that effort was started.

10:54:56 15 A We were working on a video fingerprinting  
10:55:03 16 technology and needed some sample files to begin to  
10:55:09 17 use to -- for testing, and so we used DVDs to generate  
10:55:16 18 some of the fingerprints.

10:56:11 19 (Document marked Ikezoye Exhibit 4  
10:56:12 20 for identification.)

10:56:12 21 MR. DESANCTIS: Let me show you, Mr. Ikezoye,  
10:56:17 22 what has been marked as Ikezoye Exhibit 4.

10:56:21 23 MR. BLY: Michael, if I could interrupt here  
10:56:23 24 for a moment. When we were prepping for the  
10:56:26 25 deposition yesterday, we realized that there were a

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11:48:16 2 of the works deployed for a particular application or  
11:48:19 3 a customer.

11:48:23 4 In some cases, certain customers, as an  
11:48:27 5 example, might only want to search a music database  
11:48:31 6 and not a film and television database, therefore we  
11:48:35 7 only extract from the master database the music  
11:48:39 8 fingerprints to be deployed.

11:48:47 9 Q When a customer submits a lookup fingerprint  
11:48:55 10 for matching purposes, does the customer select or is  
11:49:00 11 it up to the customer to dictate what fingerprints and  
11:49:05 12 what databases that lookup will be matched against?

11:49:09 13 A Yes. In our business model, the customer,  
11:49:12 14 the -- the site, the Web 2.0 customer, the UGC site  
11:49:18 15 pays us, and in that -- in that agreement, we --  
11:49:24 16 the -- the customer tells us what databases to deploy,  
11:49:31 17 even what fingerprints, and what titles to deploy.

11:49:34 18 Q Are there some customers who instruct Audible  
11:49:50 19 Magic when they submit a lookup fingerprint to -- to  
11:49:55 20 run that fingerprint for matching purposes against the  
11:49:58 21 entirety of the, say, the film and TV database?

11:49:58 22 A Yes.

11:50:23 23 (Document marked Ikezoye Exhibit 5  
11:50:23 24 for identification.)

11:50:23 25 MR. DESANCTIS: Let me show you what's marked

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11:59:06 2 Do you recall when Audible Magic and YouTube  
11:59:19 3 first discussed a -- a customer relationship?

11:59:25 4 A I believe the first contact between Audible  
11:59:28 5 Magic and -- and YouTube were in the first half of  
11:59:33 6 2006.

11:59:48 7 Q And do you recall whether YouTube first  
11:59:52 8 reached out to Audible Magic or whether Audible Magic  
11:59:55 9 first reached out to YouTube?

11:59:57 10 A I believe YouTube reached out to Audible  
12:00:03 11 Magic as a -- and I think they were referred to us by  
12:00:07 12 Warner, somebody from Warner Music Group.

12:00:12 13 Q Before your first contact with YouTube, had  
12:00:14 14 you had any discussions with -- with others about --  
12:00:23 15 about obtaining YouTube as a customer?

12:00:29 16 A With others?

12:00:30 17 Q Perhaps the MPAA. Did you have -- do you  
12:00:31 18 recall any conversations with anyone at the MPAA  
12:00:35 19 about --

12:00:37 20 A I don't recall. It could have happened, but  
12:00:40 21 I don't recall.

12:00:40 22 Q Okay.

12:01:15 23 (Document marked Ikezoye Exhibit 6  
12:01:16 24 for identification.)

12:01:16 25 MR. DESANCTIS: Q. Let me show you,

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12:01:17 2 Mr. Ikezoye, what's been marked as Ikezoye No. 6.

12:01:23 3 Take a moment to look this over, and I'll state for

12:01:26 4 the record, in the meantime, that this is a -- what

12:01:29 5 has been marked as Exhibit 6 is a two-page document

12:01:34 6 bearing the Bates Nos. AM2090 through 2091.

12:01:48 7 A Okay.

12:01:52 8 Q Do you recognize this, Mr. Ikezoye, as an

12:01:55 9 e-mail from Chris Maxcy to Michael McTeague and CCing

12:02:03 10 Jim Schrempp and you?

12:02:07 11 A Yes.

12:02:07 12 Q Do you recall this particular e-mail?

12:02:11 13 A Not specifically. Not specifically.

12:02:16 14 Q If you turn to the second page, it actually

12:02:21 15 begins at the very bottom of the first page, the

12:02:24 16 e-mail from Chris Maxcy dated April 4, 2006, to you.

12:02:31 17 It begins, "Hi, Vance. George White at Warner Music

12:02:34 18 forwarded your contact information to me. I had a

12:02:37 19 business development for YouTube and would be

12:02:39 20 interested in speaking with you or someone on your

12:02:41 21 team about partnership opportunities between Audible

12:02:43 22 Magic and YouTube."

12:02:45 23 As far as you recall, Mr. Ikezoye, was this

12:02:48 24 the first contact between Audible Magic and YouTube?

12:02:55 25 A Yes.

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12:05:06 2 At some point, YouTube did actually begin  
12:05:09 3 using Audible Magic's content identification services;  
12:05:12 4 correct?

12:05:13 5 A Yes.

12:05:14 6 Q Do you recall when it was that YouTube went  
12:05:21 7 live with the service, so to speak, and actually  
12:05:24 8 started using Audible Magic for content ID purposes?

12:05:28 9 A I believe early 2007.

12:05:31 10 Q Okay. And do you recall when it was or was  
12:05:44 11 there a time between April 2006 and early 2007 when  
12:05:50 12 YouTube began testing, in some way, the Audible Magic  
12:05:57 13 service?

12:05:57 14 A Yes, I believe July or August of 2006 we had  
12:06:05 15 issued a test license agreement to YouTube, and the  
12:06:11 16 technical teams were doing some evaluation.

12:06:19 17 Q Do you recall -- do you recall what happened,  
12:06:23 18 if anything, in between July 4th, 2006, and July or  
12:06:29 19 August -- I'm sorry. Let me back up. I misspoke.

12:06:35 20 Do you recall what, if anything, happened  
12:06:39 21 between Audible Magic and YouTube between April 4,  
12:06:45 22 2006, the date of this e-mail, and July or August of  
12:06:49 23 2006 when YouTube began testing Audible Magic's  
12:06:52 24 services?

12:06:53 25 A I believe there were various meetings and

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12:14:36 2 Q Okay. And is it also the case that you don't  
12:14:40 3 remember who any specific conversations would have  
12:14:44 4 been with?

12:14:45 5 A My guess, it would be with George White.  
12:14:48 6 George White was a general contact of -- of ours at  
12:14:51 7 Warner Music related to these kinds of deals.

12:15:43 8 MR. DESANCTIS: Okay. Can I ask the court  
12:15:45 9 reporter how much time is remaining on this tape?

12:15:48 10 THE VIDEOGRAPHER: We have 15 minutes.

12:15:52 11 MR. DESANCTIS: Okay.

12:16:05 12 (Document marked Ikezoye Exhibit 8

12:16:06 13 for identification.)

12:16:06 14 MR. DESANCTIS: Q. Let me show you what has  
12:16:11 15 been marked, Mr. Ikezoye, as Ikezoye Exhibit No. 8.  
12:16:15 16 This is a multi-page document beginning with Bates  
12:16:19 17 No. AM917 through 928. I'll ask the witness to take a  
12:16:50 18 look through the document, which I'll note for the  
12:16:53 19 record he's doing.

12:16:54 20 A Yes.

12:16:54 21 Q Do you recognize this, Mr. Ikezoye, as a --  
12:17:01 22 the topmost document, as an e-mail from Franck  
12:17:07 23 Chastagnol to Jim -- Jim Schrempp, CCing you and  
12:17:12 24 others, dated September 18th, 2006?

12:17:14 25 A Yes.

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12:17:14 2 Q Okay. Do you know who Franck Chastagnol is?

12:17:21 3 A I believe he was a -- the technical contact  
12:17:24 4 at YouTube for the integration of Audible Magic into  
12:17:31 5 their services.

12:17:34 6 Q Was he the principal contact for Audible  
12:17:36 7 Magic at YouTube?

12:17:36 8 A I believe he was.

12:17:38 9 Q Okay. Did you have discussions directly with  
12:17:44 10 Mr. Chastagnol about the integration of Audible Magic  
12:17:48 11 with YouTube?

12:17:49 12 A No, he was -- he was our technical contact.

12:17:52 13 Q Okay. And who at Audible Magic would have  
12:17:58 14 been -- would have had those discussions with  
12:18:00 15 Mr. Chastagnol about the technical integration of the  
12:18:05 16 two systems?

12:18:06 17 A Jim Schrempp, our VP of engineering at the  
12:18:10 18 time, would have been the prime contact at this point  
12:18:12 19 in the -- in the relationship with YouTube.

12:18:16 20 Q Okay. In about the middle of this page is a  
12:18:22 21 bold heading that reads "Requirements for integration  
12:18:24 22 with Audible Magic Phase I database set up."

12:18:33 23 And this appears to continue for -- onto the  
12:18:37 24 third page. Do you know what this part of the  
12:18:46 25 document is?

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12:18:47 2 A It appears to be a document that lays out  
12:18:52 3 specifications for the integration of our services  
12:18:59 4 with YouTube.

12:19:06 5 Q Let me direct your attention to the bottom of  
12:19:33 6 the first page. There's a bold heading "Fingerprint  
12:19:38 7 match API." What does "API" mean?

12:19:41 8 A Application Programming Interface.

12:19:42 9 Q And what is that?

12:19:44 10 A It is a definition for the way computer  
12:19:49 11 programs communicate and interact, so it's an  
12:19:54 12 interface, a program interface, so it's the -- the  
12:19:57 13 definition of the way the calls and the programs  
12:20:01 14 interact.

12:20:02 15 Q Okay. And the first bullet point says, "A  
12:20:06 16 single match API call should have ability to query  
12:20:10 17 against Warner DB and/or YouTube DB."

12:20:15 18 Can you explain what that means?

12:20:17 19 A It appears to say that when we get a -- when  
12:20:21 20 a match -- when an unknown is sent, that -- that  
12:20:30 21 the -- the way -- the API call should be defined. It  
12:20:34 22 should be able to query against both -- be looked up  
12:20:40 23 against both the Warner database and/or the YouTube  
12:20:44 24 database.

12:20:44 25 Q Okay. Can you explain, I don't think we've

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12:20:46 2 discussed yet, what is the Warner database?

12:20:51 3 A In this context, it is -- in the Phase I  
12:20:56 4 above, it has the Warner database, the database with  
12:21:02 5 Warner Music content.

12:21:04 6 Q Was that a custom database developed  
12:21:08 7 specifically for YouTube, or is that a database of  
12:21:12 8 Audible Magic's that was for use with all of its  
12:21:15 9 customers?

12:21:17 10 A As I talked about before, we have a master  
12:21:20 11 database, and we can segment that database and set up  
12:21:24 12 custom databases.

12:21:27 13 In this case, the Warner database would be we  
12:21:32 14 would take out -- we would copy all of the  
12:21:38 15 fingerprints of content that was owned by Warner --  
12:21:44 16 registered by Warner Music and put that in a special  
12:21:46 17 database.

12:21:47 18 So it would be -- had been a custom database  
12:21:50 19 for this YouTube implementation.

12:21:51 20 Q Okay. And what is the YouTube DB?

12:22:02 21 A I -- I believe that the YouTube DB, in this  
12:22:08 22 time frame, was a database that was specifically for  
12:22:13 23 YouTube, and we, I believe, called it a submitted  
12:22:18 24 content database. So it gave the capability of  
12:22:25 25 YouTube to -- to take content and -- and generate

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12:22:29 2 fingerprints and put them into a separate database.

12:22:41 3 Q Okay. So that -- so is that another example

12:22:44 4 of a customized database designed specifically for one

12:22:48 5 customer, in this case YouTube?

12:22:52 6 A Yeah. In this case, actually, we -- in most

12:23:01 7 cases, our database is -- the content is supplied by a

12:23:08 8 copyright holder to us and then we deploy it in a

12:23:10 9 database. In this case, in a YouTube database or a

12:23:13 10 submitted content database, the site itself can submit

12:23:16 11 fingerprints into a database.

12:23:21 12 Q Okay. And is that -- is that what -- is that

12:23:23 13 how the YouTube database worked?

12:23:24 14 A I believe that is what this is referring to.

12:23:27 15 Q Okay. What kind of fingerprints would

12:23:31 16 YouTube submit into the YouTube database?

12:23:36 17 A We provided the -- the feature, the

12:23:40 18 functionality to let them register content. What they

12:23:45 19 registered, we -- we really didn't know why or what

12:23:50 20 was registered.

12:23:50 21 Q When you say "registered," I don't think

12:23:54 22 that's a term we discussed before.

12:23:55 23 A I mean, put in the database, deployed in the

12:23:57 24 database. So what content they deployed -- they

12:23:59 25 register -- they put in this database, we didn't know.

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1 IKEZOYE, V.

13:24:50 2 Q And it begins, "Gentleman, Vance has signed  
13:24:55 3 the agreement. Enclosed is the final."

13:25:00 4 Do you see that?

13:25:00 5 A Yes.

13:25:00 6 Q Do you know what agreement this is talking  
13:25:02 7 about?

13:25:02 8 A It's referring to the -- the service  
13:25:05 9 agreement that we signed with YouTube.

13:25:07 10 Q Okay. And turning your attention to the  
13:25:12 11 third page of the exhibit, is this the final version  
13:25:18 12 of the agreement, the service agreement between  
13:25:23 13 YouTube and Audible Magic?

13:25:25 14 A It appears to be, yes.

13:25:30 15 Q Okay. Okay.

13:25:37 16 Is it -- is it normal that when Audible Magic  
13:25:43 17 gets a new customer, it would take a number of months  
13:25:51 18 to negotiate a service agreement?

13:25:57 19 A Can you repeat that question? Is it --

13:25:58 20 Q Sure. Let me -- let me state it another way.

13:26:01 21 We had seen earlier that the first contact  
13:26:03 22 between YouTube and Audible Magic was in April of '06;  
13:26:07 23 correct?

13:26:09 24 A Yes.

13:26:09 25 Q This contract is dated October '06.

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1 IKEZOYE, V.

13:38:19 2 database that was getting transactions in the first  
13:38:22 3 quarter of 2007.

13:38:26 4 Q And when the -- at that time, in the first  
13:38:37 5 quarter 2007, when the Audible Magic service went live  
13:38:43 6 on YouTube, do you recall what fingerprints YouTube  
13:38:50 7 had requested that their custom database be populated  
13:38:53 8 with?

13:38:54 9 A My recollection is that it was Universal  
13:38:57 10 Music content that was populating the database.

13:39:01 11 Q Do you recall why it was Universal Music?

13:39:05 12 A No.

13:39:05 13 Q Okay. Do you know -- did it always -- did it  
13:39:10 14 remain Universal Music or was -- were more  
13:39:15 15 fingerprints ever added to that?

13:39:17 16 A Other fingerprints were added over time.

13:39:19 17 Q Okay.

13:39:38 18 (Document marked Ikezoye Exhibit 10  
13:39:38 19 for identification.)

13:39:38 20 MR. DESANCTIS: Let me show you what's being  
13:39:42 21 marked as Ikezoye Exhibit 10. I'll ask you to take a  
13:39:47 22 quick look at it. This is a multi-page document  
13:39:50 23 bearing the Bates No. AM836 through 844.

13:40:36 24 Q I'm just gonna ask you a couple of questions  
13:40:39 25 about the first couple of pages.

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1 IKEZOYE, V.

13:40:41 2 A Okay.

13:40:42 3 Q Do you recognize this, Mr. Ikezoye, as the --

13:40:49 4 a chain of e-mails between people at Audible Magic and

13:40:54 5 people at YouTube?

13:40:55 6 A Yes.

13:40:55 7 Q And the topmost e-mail is from Franck

13:41:04 8 Chastagnol to Jim Schrempp, CC to Vance Ikezoye, dated

13:41:13 9 August 17th, 2006, correct?

13:41:17 10 A Yes.

13:41:17 11 Q I'd like to direct your attention to the

13:41:18 12 bottom of the first page. This is from Franck

13:41:22 13 Chastagnol to Jim Schrempp, CCed to you, dated

13:41:27 14 August 16, 2006.

13:41:37 15 At the bottom, Mr. Chastagnol writes,

13:41:37 16 "Initially we will ask you to populate the reference

13:41:46 17 fingerprint database with the catalog of only one of

13:41:48 18 those companies. By the way, I assume this is

13:41:51 19 something you can do; correct? But as we sign new

13:41:54 20 contracts, we will add catalogs from other companies."

13:42:07 21 Do you understand what is meant by "signing

13:42:10 22 new contracts"?

13:42:14 23 MS. REES: Objection; calls for speculation.

13:42:15 24 MR. DESANCTIS: Q. Well, I -- I'm asking --

13:42:16 25 I'm asking if you understood what is meant by this.

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1 IKEZOYE, V.

13:42:20 2 You were CCed on it.

13:42:22 3 A Yeah, I believe it was a great licensing  
13:42:24 4 agreement between the companies.

13:42:25 5 Q Between what companies?

13:42:29 6 A YouTube and content owners.

13:42:30 7 Q Okay. So your understanding of the  
13:42:31 8 arrangement -- is it your understanding of the  
13:42:36 9 arrangement that as YouTube signed new contracts with  
13:42:39 10 content owners, YouTube would then request that that  
13:42:45 11 content owners' fingerprints be put into the YouTube  
13:42:51 12 custom database?

13:42:52 13 MS. REES: Objection; calls for speculation;  
13:42:53 14 hypothetical.

13:42:53 15 THE WITNESS: That was my understanding, and  
13:42:56 16 yes.

13:42:57 17 MR. DESANCTIS: Okay.

13:43:00 18 Q Is that -- is that hypothetical, or is that  
13:43:04 19 actually what happened, if you know?

13:43:06 20 MS. REES: Objection; calls for speculation.

13:43:14 21 THE WITNESS: I know, in general, that the  
13:43:16 22 database was a subset. I don't know if every piece of  
13:43:18 23 content in there was related to a company that had a  
13:43:21 24 licensing agreement.

13:43:23 25 MR. DESANCTIS: Okay.

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1 IKEZOYE, V.

14:02:32 2 proposed that Audible Magic could also provide film  
14:02:37 3 and TV fingerprinting services, in addition to the  
14:02:42 4 music fingerprinting services, were you ever given an  
14:02:46 5 explanation from Maxcy or others why they were  
14:02:49 6 declining that offer?

14:02:51 7 A No.

14:02:51 8 Q Do you recall whether -- do you recall when  
14:03:13 9 the first time it was -- actually, let me withdraw  
14:03:19 10 that and ask it another way to be more clear.

14:03:21 11 When was the first time you recall Audible  
14:03:31 12 Magic proposing to YouTube that Audible Magic could  
14:03:34 13 include services for film and TV fingerprinting?

14:03:42 14 A I don't remember specifically when. My  
14:03:46 15 recollection is more of phone conversations, trying to  
14:03:55 16 sell and get some interest in using some of our other  
14:04:00 17 services, and there might have been other proposals  
14:04:08 18 more formally given. I can't remember the dates,  
14:04:12 19 though.

14:04:14 20 Q Okay. So when YouTube would submit a lookup  
14:04:27 21 fingerprint to Audible Magic, Audible Magic would then  
14:04:33 22 run that fingerprint against the fingerprints in the  
14:04:38 23 YouTube custom database; correct?

14:04:42 24 A Yes.

14:04:42 25 Q And only against the YouTube custom database?

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14:04:49 2 A No, those transactions were run against the  
14:04:51 3 YouTube custom database and the -- our YouTube  
14:04:55 4 submitted database, or in the terminology before, the  
14:04:58 5 YouTube database.

14:05:00 6 Q Okay. So it was run against the YouTube  
14:05:03 7 custom database and what we'll call the YouTube  
14:05:07 8 submitted content database?

14:05:09 9 A Yes.

14:05:09 10 Q Okay. And is the YouTube submitted content  
14:05:22 11 database the database that you testified about earlier  
14:05:25 12 that contained fingerprints submitted by YouTube?

14:05:30 13 A Yes.

14:05:30 14 Q Was YouTube the first to have such a  
14:05:33 15 submitted content database, the first customer?

14:05:39 16 A I believe so.

14:05:41 17 Q Okay. What was the -- what -- what -- what  
14:05:44 18 function does the submitted content database serve  
14:05:49 19 where the customer is providing its own fingerprints?

14:05:53 20 A Well, I don't know specifically for YouTube,  
14:05:57 21 but I can -- I know how certain other customers use  
14:06:02 22 it.

14:06:02 23 Q And how is that?

14:06:05 24 A Some customers use it to -- to -- if -- if a  
14:06:12 25 piece of content that the fingerprint isn't

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1 IKEZOYE, V.

14:17:20 2 Q Okay. Let me direct your attention,

14:18:17 3 Mr. Ikezoye, to what's already been marked as

14:18:20 4 Exhibit -- Ikezoye Exhibit 9.

14:18:28 5 Do you have that document?

14:18:29 6 A Yes, I do.

14:18:29 7 Q Can I ask you to turn to page five of the --

14:18:46 8 I'm sorry. This is the e-mail attached -- with

14:18:48 9 attached to it the final copy of the service agreement

14:18:51 10 between YouTube and Audible Magic; correct?

14:18:53 11 A Correct.

14:18:53 12 Q Can I ask you, please, to turn to page five

14:18:56 13 of that contract?

14:19:08 14 I'd ask you to read these terms in Section 4,

14:19:13 15 under the title "Fees," and I'm going to ask you some

14:19:23 16 questions about it.

14:19:39 17 A Okay.

14:19:39 18 Q Do these terms accurately reflect what

14:19:44 19 YouTube pays Audible Magic for the content ID services

14:19:49 20 Audible Magic renders?

14:19:52 21 A Yes.

14:19:52 22 Q Okay. Are there any additional fees or

14:19:55 23 payments that YouTube makes to Audible Magic that are

14:19:59 24 not listed here in Section 4 of the contract?

14:20:03 25 A There you -- there use -- there -- during the

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14:20:07 2 whole period of our relationship, no. There were some  
14:20:10 3 other fees that YouTube was paying us.

14:20:13 4 Q What were those?

14:20:15 5 A They were paying us for fees for services  
14:20:18 6 for -- to add Google Video to the service.

14:20:25 7 Q Do you recall what -- the size of those fees,  
14:20:33 8 approximately?

14:20:34 9 A I -- I -- they're around 20,000 -- \$20,000 to  
14:20:37 10 \$30,000, I believe, a month, I think.

14:20:40 11 Q And is YouTube or Google still paying those  
14:20:45 12 fees to -- to Audible Magic today?

14:20:53 13 A No.

14:20:53 14 Q When did it stop?

14:20:57 15 A Earlier this year, I believe.

14:20:59 16 Q Why did -- why did YouTube or Google stop  
14:21:02 17 paying those Google Video fees to Audible Magic?

14:21:11 18 A I believe Google shut down Google Video.  
14:21:16 19 That's my recollection.

14:21:18 20 Q Okay. So what -- what services was -- were  
14:21:21 21 Audible Magic providing to Google Video for these  
14:21:26 22 fees?

14:21:27 23 A Primarily, being able to use our -- to be  
14:21:31 24 able to provide a similar kind of transaction from  
14:21:36 25 YouTube for -- to our custom YouTube database, music

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14:21:40 2 database, to -- for Google Video as well.

14:21:46 3 Q Okay.

14:22:15 4 A Can I make one thing -- going back?

14:22:17 5 Q Yes.

14:22:18 6 A The Google Video contract seems to be 20,000,  
14:22:21 7 but I don't know that for sure.

14:22:23 8 Q Okay. Is there a separate written contract  
14:22:26 9 between Audible Magic and Google Video?

14:22:29 10 A Yes; there was an amendment to this contract.

14:22:34 11 Q Okay. Then -- then putting the Google Video  
14:22:56 12 contract aside and just looking at the Audible Magic  
14:22:58 13 relationship, can you -- can -- can you tell us what  
14:23:06 14 the fees are -- what they were and what they are today  
14:23:12 15 that YouTube is paying Audible Magic?

14:23:16 16 A When we originally did the agreement for the  
14:23:19 17 first period, the original term, it was \$20,000 per  
14:23:24 18 month, and then there's a period of -- from  
14:23:32 19 January 1st, 2008, through December 31st, 2008, where  
14:23:36 20 the fees went up to \$25,000 a month, and then there  
14:23:40 21 was an extension for 2009 and there is an option on an  
14:23:47 22 extension for 2010.

14:23:50 23 Q And was there a -- any sort of one-time lump  
14:23:59 24 sum additional fee owed to Audible Magic from YouTube  
14:24:03 25 at the beginning of the contract?

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14:24:05 2 A Yeah, there was a \$200,000 amount due that  
14:24:14 3 needed to be paid on execution.

14:24:16 4 Q Okay. So -- and did YouTube actually pay  
14:24:19 5 Audible Magic \$200,000 on execution of the contract?

14:24:22 6 A I believe so.

14:24:23 7 Q Okay. Is YouTube still using Audible Magic  
14:24:31 8 content ID services today?

14:24:34 9 A Yes.

14:24:34 10 Q Is it still being governed by this same  
14:24:37 11 contract?

14:24:38 12 A Yes.

14:24:38 13 Q Okay. Do you know what it would cost YouTube  
14:25:05 14 to include in its custom database fingerprints from  
14:25:15 15 Audible Magic's film and TV reference database?

14:25:24 16 A Not specifically, because the way our pricing  
14:25:27 17 would go for this would be, we would need to  
14:25:29 18 understand the transaction volume, and so  
14:25:34 19 understanding the transaction volume, I could give you  
14:25:37 20 a price.

14:25:38 21 Q Okay. If you assumed that the transaction  
14:25:41 22 volume -- volume was the same as the transaction  
14:25:47 23 volume covered in the existing contract that we're  
14:25:50 24 looking at now, can you approximate what that price  
14:25:55 25 would be?

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1 IKEZOYE, V.

14:25:56 2 A My guess would be at least double the price  
14:25:59 3 that's listed here.

14:26:00 4 Q Okay. Does that mean double the monthly fees  
14:26:19 5 and double the one-time start-up fee? In other words,  
14:26:22 6 would there be a new one-time start-up fee?

14:26:25 7 A It's all subject to negotiation, but we  
14:26:27 8 probably wouldn't have a start-up fee, that one-time  
14:26:30 9 fee. We would double the monthly fee.

14:26:34 10 Q I -- I'm sorry. You said you probably would  
14:26:36 11 not have --

14:26:36 12 A Would not.

14:26:36 13 Q -- a start-up fee?

14:26:37 14 A We probably would not have a start-up fee.

14:26:40 15 Q But you would double the monthly fee?

14:26:45 16 A Right.

14:26:45 17 Q Okay. Do you recall whether YouTube's  
14:27:24 18 testing of Audible Magic's content ID services began  
14:27:30 19 at the time this contract was executed or whether it  
14:27:33 20 began prior to that?

14:27:35 21 A I believe it was prior to the execution of  
14:27:37 22 this contract.

14:28:14 23 MR. DESANCTIS: Okay. Can we go off the  
14:28:15 24 record for two minutes and just take a very short  
14:28:21 25 break.

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1 IKEZOYE, V.

14:44:09 2 Q Okay.

14:44:09 3 A But it wasn't that the technology of the  
14:44:11 4 systems had to be -- it wasn't rocket science or  
14:44:15 5 anything. We would just have to have it deployed.

14:44:19 6 Q I see.

14:44:20 7 So the technology was in place, it just  
14:44:22 8 hadn't been deployed?

14:44:24 9 A Right. Basically, yes.

14:44:26 10 Q Okay. And, well, what -- now I'm unclear.

14:44:35 11 Looking at the late 2005 time frame, to say  
14:44:39 12 that the -- the technology was in place, but it hadn't  
14:44:42 13 been deployed, what -- what does that mean exactly?

14:44:44 14 A It just means that we have the capability of  
14:44:49 15 taking a fingerprint, using our content identification  
14:44:53 16 fingerprinting technology to identify copyrighted  
14:44:57 17 content and to do a lookup against an ID server and to  
14:45:04 18 respond with an identification and business rules.  
14:45:08 19 That core technology has been working for years before  
14:45:14 20 that point.

14:45:15 21 Q Since when?

14:45:19 22 A That basic techno- -- that basic structure  
14:45:24 23 and architecture, Replicheck, you know, 2003 or 2004,  
14:45:33 24 it hadn't been deployed specifically to identify audio  
14:45:40 25 on a video, but the technology is the same.

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1 IKEZOYE, V.

14:45:45 2 Q Okay. Can you just clarify that very last  
14:45:54 3 sentence by saying "the technology is the same"?

14:45:59 4 A Up until, you know, the 2000 -- late  
14:46:04 5 2005/2006 time frame, the technology that had been  
14:46:07 6 primarily used to identify audio files, MP3 files for  
14:46:16 7 copyrighted content. All that we did in doing these  
14:46:20 8 video files, was to take out the soundtrack, the audio  
14:46:26 9 track of the video and apply the same technology,  
14:46:30 10 which is identifying the audio.

14:46:32 11 So around that 2005/2006 time frame is when  
14:46:37 12 we had implemented the capability to do that  
14:46:41 13 soundtrack, take that soundtrack off and apply our  
14:46:46 14 base technology.

14:46:47 15 Q I see.

14:46:48 16 And could you have implemented that  
14:46:50 17 technology earlier, had a customer asked you to do so?

14:46:56 18 A Yes.

14:46:56 19 Q Okay. How much earlier in the history of  
14:47:06 20 Audible Magic's development?

14:47:07 21 A My guess is that easily the beginning of 2005  
14:47:11 22 and probably 2004 kind of time frame.

14:47:16 23 Q Okay.

14:47:58 24 (Document marked Ikezoye Exhibit 14  
14:47:59 25 for identification.)

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15:12:09 2 were removed before or after YouTube went live with  
15:12:17 3 the Audible Magic -- Audible Magic services?

15:12:21 4 A No, I can't remember.

15:12:23 5 Q Okay. Can I direct your attention back to  
15:12:38 6 Exhibit 14. On the second page, bearing the Bates No.  
15:12:50 7 AM4625, could you look at the middle e-mail and tell  
15:12:58 8 me if that refreshes your recollection?

15:13:00 9 A Well, reading this, it looks like David King  
15:13:06 10 from YouTube directed Lou, who was building the  
15:13:09 11 databases, to remove the Warner content from our --  
15:13:12 12 the database build that we did for YouTube.

15:13:16 13 Q Okay. And do you recall why?

15:13:20 14 A No.

15:13:21 15 Q Okay. Mr. Ikezoye, I'm gonna change gears  
15:15:05 16 here and ask you questions about a different period of  
15:15:12 17 time and on -- and on a different topic.

15:15:14 18 Do you recall ever making a proposal to  
15:15:19 19 YouTube proposing that Audible Magic implement tests  
15:15:30 20 to fingerprint -- to look for fingerprint matches with  
15:15:37 21 content from MPAA members?

15:15:42 22 A Yes, I -- I -- I remember a document that we  
15:15:50 23 proposed that I don't remember the time frame of that.

15:15:52 24 Q Okay. When -- when -- I'm sorry.

15:15:53 25 I said MPAA. What's your understanding of

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1 IKEZOYE, V.

15:15:55 2 what MPAA is?

15:15:58 3 A The Motion Picture Association of America.

15:16:00 4 Q And its members are?

15:16:03 5 A The film studios.

15:16:06 6 Q Okay. Do you know if Paramount is a member?

15:16:09 7 A Through Viacom, yes.

15:16:10 8 Q Okay.

15:16:20 9 (Document marked Ikezoye Exhibit 17

15:16:21 10 for identification.)

15:16:21 11 MR. DESANCTIS: I'll show you, Mr. Ikezoye,

15:16:24 12 what is -- has been marked as Exhibit 17.

15:16:37 13 Q Is this the proposal that Audible Magic made

15:16:42 14 to YouTube concerning searches for content owned by

15:16:46 15 MPAA members?

15:16:48 16 A It is a proposal that we wrote about -- yes,

15:16:54 17 about a pilot test.

15:16:56 18 Q Okay. When you say "we wrote," were you

15:17:02 19 involved in writing this proposal?

15:17:03 20 A Most likely, yes.

15:17:04 21 Q Okay. And it's dated October 9th, 2006. Do

15:17:09 22 you have any reason to believe that that's not when

15:17:10 23 this proposal was created?

15:17:13 24 A No.

15:17:13 25 Q Okay. And do you recall ever making this

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1                                   IKEZOYE, V.

15:20:32       2           was Chris Maxcy.

15:20:34       3           Q     And what was the reception at YouTube to your

15:20:54       4           proposals for searching of content owned by MPAA

15:21:00       5           members?

15:21:01       6                     MS. REES:  Objection; mischaracterizes

15:21:03       7           testimony; lacks foundation.

15:21:04       8                     THE WITNESS:  While they were never accepted,

15:21:10       9           I don't believe there was much conversation regarding

15:21:12      10          it.

15:21:13      11                     MR. DESANCTIS:  Q.  Is that because -- is

15:21:17      12          that because YouTube never showed much interest in the

15:21:20      13          proposals, or is there another reason?

15:21:23      14                     MS. REES:  Same objections.

15:21:24      15                     THE WITNESS:  Sorry.

15:21:26      16                     MS. REES:  Also vague.

15:21:34      17                     THE WITNESS:  My perception was -- is that

15:21:37      18          there was no -- there wasn't the interest in -- in

15:21:43      19          utilizing us for anything more than music.

15:21:46      20                     MR. DESANCTIS:  Okay.

15:21:48      21           Q     Do you know why?

15:21:59      22           A     No.

15:21:59      23           Q     And has YouTube, in fact, ever used Audible

15:22:03      24          Magic for more than music?

15:22:04      25                     MS. REES:  Objection; asked and answered.

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15:23:32 2 for -- related to searching Audible Magic's databases

15:23:37 3 for materials owned by MPAA members?

15:23:42 4 A Not that I'm aware of.

15:23:44 5 Q In Exhibit 17 that we've been looking at, the

15:24:16 6 sixth black bullet point down bears the header "MPAA

15:24:19 7 test."

15:24:19 8 Do you see that?

15:24:21 9 A Yes.

15:24:21 10 Q And the third white bullet point below that

15:24:28 11 reads, "Audible Magic will subsidize its development

15:24:32 12 cost for the modification of its service."

15:24:35 13 What does that mean?

15:24:38 14 A This kind of statement would mean that if we

15:24:41 15 had any development costs to implement the test and to

15:24:45 16 modify our existing service to YouTube, that we would

15:24:51 17 subsidize and pay for some of the development costs.

15:24:57 18 Q And not pass that cost on to YouTube?

15:25:01 19 A Correct.

15:25:02 20 Q Okay. Why was Audible Magic willing to

15:25:12 21 subsidize those development costs and not pass those

15:25:15 22 on to YouTube?

15:25:19 23 A Because we would hopefully be able to sell

15:25:22 24 the incremental -- the service and get more revenue

15:25:25 25 from YouTube longer term.

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15:25:27 2 Q And the next black bullet point down says,  
15:25:40 3 "Test cost \$10,000"; do you see that?

15:25:44 4 A Yes.

15:25:44 5 Q Is that the cost to Audible Magic or to  
15:25:49 6 YouTube?

15:25:53 7 A That would be the cost to somebody to help  
15:25:56 8 pay for this, this whole process that we've outlined  
15:26:00 9 above.

15:26:00 10 Q Okay. And would that be the total cost for  
15:26:02 11 this process?

15:26:03 12 A That's what -- the costs that we wanted to  
15:26:06 13 charge, yes.

15:26:07 14 Q Do you recall whether you ever communicated  
15:26:16 15 to YouTube that such a test would cost \$10,000 and  
15:26:23 16 that Audible Magic was willing to subsidize its  
15:26:27 17 development costs?

15:26:29 18 A I don't know if this was communicated to  
15:26:31 19 YouTube.

15:26:32 20 Q Okay. The -- that same bullet point we were  
15:26:52 21 looking at previously that reads "Audible Magic will  
15:26:54 22 subsidize its development costs for the modification  
15:26:57 23 of its service," what type of modification might have  
15:27:01 24 been required in October of 2006 in order to perform  
15:27:06 25 this test?

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1 IKEZOYE, V.

15:27:09 2 A Well, in the -- in this overview, we were  
15:27:11 3 talking about having fingerprint generation tools  
15:27:18 4 available to the studios to generate fingerprints, and  
15:27:22 5 there may have -- may or may not have been fingerprint  
15:27:27 6 modifications necessary for that. We would have to  
15:27:31 7 deploy other servers beyond the music database for  
15:27:38 8 this, and so there -- there might have been some costs  
15:27:43 9 with respect to that.

15:27:45 10 Q Okay. And would you -- would those  
15:27:49 11 modifications have been extensive based on the state  
15:27:53 12 of Audible Magic's technology in October 2006?

15:27:58 13 MS. REES: Objection; vague as to  
15:28:01 14 "extensive."

15:28:02 15 THE WITNESS: No. They were small changes,  
15:28:07 16 and so we could -- we could do all this.

15:28:10 17 MR. DESANCTIS: Q. Do you know whether  
15:28:15 18 Audible Magic ever actually made those kinds of  
15:28:18 19 changes, whether -- whether in the context of this  
15:28:21 20 proposal or -- or anything else?

15:28:28 21 A Well, today we do offer services to identify  
15:28:31 22 both music and film and television shows, and we  
15:28:34 23 provide tools to -- to studios, film and television  
15:28:41 24 studios and to fingerprint content and provide  
15:28:44 25 those -- that fingerprints -- those fingerprints to

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1 IKEZOYE, V.

15:49:29 2 (Document marked Ikezoye Exhibit 18

15:49:33 3 for identification.)

15:49:33 4 MR. DESANCTIS: Q. Let me show you, sir,

15:49:34 5 what's been marked as Exhibit 18.

15:49:36 6 A Okay.

15:49:36 7 Q This is a two-page document --

15:49:41 8 A Okay.

15:49:42 9 Q -- bearing the -- take -- take a look at it,

15:49:46 10 and for the record I'll state that it bears the Bates

15:49:49 11 Nos. G00001-739564 through '65.

15:49:59 12 And, Mr. Ikezoye, I'd like to direct your

15:50:06 13 attention to the last e-mail in this chain --

15:50:08 14 A Yep.

15:50:08 15 Q -- on page two.

15:50:13 16 A Okay.

15:50:14 17 Q Does this refresh your recollection of ever

15:50:16 18 having been introduced to Adam Cahan?

15:50:20 19 A Well, obviously, yes, but I did receive an

15:50:25 20 e-mail introduction to Adam at MT -- at MTV Viacom.

15:50:31 21 Q Okay. The e-mail at the bottom of the chain

15:50:38 22 with -- the last e-mail in this document, on page two,

15:50:42 23 is from Chris Maxcy to you, copied to Adam Cahan,

15:50:50 24 dated December 5th, 2006, and the second -- starting

15:50:54 25 with the second sentence, it reads, "We are

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1 IKEZOYE, V.

15:51:00 2 confidently talking to Adam and his team about a  
15:51:06 3 partnership and wanted to get the two of you  
15:51:09 4 connected. Adam has a number of questions regarding  
15:51:12 5 how Viacom can get its content into the AM database."

15:51:19 6 Do you recall being involved in discussions  
15:51:26 7 with Viacom and YouTube regarding a potential  
15:51:32 8 partnership between Viacom and YouTube?

15:51:36 9 A I remember that -- that we were introduced to  
15:51:41 10 Viacom and MTV about getting their content into our  
15:51:46 11 database, and this refreshes my memory that, actually,  
15:51:51 12 Chris at -- Maxcy at YouTube made the introduction.

15:51:55 13 I do know, subsequently, that we did start to  
15:51:59 14 get their content in our database.

15:52:01 15 Q And was this introduction -- did this lead to  
15:52:07 16 the first time that -- that Audible Magic had dealt  
15:52:08 17 with Viacom, or had -- had you dealt with Viacom  
15:52:11 18 previously?

15:52:15 19 A This might have been the first substantial  
15:52:18 20 conversation with Viacom. I might have been in some  
15:52:21 21 meetings where somebody from Viacom was in the  
15:52:26 22 meeting, but this is probably the first -- the most  
15:52:29 23 substantial introductions and discussions.

15:52:32 24 Q What, if anything, do you recall about the  
15:52:37 25 dis- -- the discussions that you were involved in

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1 IKEZOYE, V.

15:52:40 2 regarding a potential partnership between Viacom and  
15:52:44 3 YouTube?

15:52:51 4 A I don't know if I knew that much about  
15:52:53 5 exactly what YouTube and Viacom were -- were talking  
15:52:57 6 about, what kind of relationship. I think, from this  
15:53:01 7 point on, it was mostly a focus between Audible Magic  
15:53:05 8 and Viacom or MTV to start getting content into our  
15:53:13 9 database. Chris might have backed out from that  
15:53:20 10 point.

15:53:20 11 Q What do you mean Chris backed out?

15:53:23 12 A Out of the -- out of this -- in this point  
15:53:27 13 about the conversation. He might have just left it to  
15:53:29 14 us. I'm not sure he was copied after that.

15:53:33 15 Q I see.

15:53:36 16 This is dated December 5th, 2006.

15:53:42 17 Do you recall when it was that Viacom  
15:53:45 18 ultimately provided finger- -- began providing  
15:53:50 19 fingerprints to Audible Magic?

15:53:51 20 A In the late first quarter of 2007 or early  
15:53:54 21 second quarter of 2007, I believe. We have a report.

15:54:04 22 Q Yeah, if you want to --

15:54:05 23 A Yeah.

15:54:05 24 Q -- refer to that report --

15:54:06 25 A Yeah.

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1 IKEZOYE, V.

15:54:06 2 Q -- that you reference, you -- you certainly  
15:54:10 3 can.

15:54:11 4 A Yeah.

15:54:11 5 Q I think it was --

15:54:13 6 A 4A. Yeah, 4A kind of shows content  
15:54:23 7 starting -- looks like April was the biggest load.  
15:54:29 8 Yeah, April of 2007.

15:54:39 9 Q In April of 2007?

15:54:41 10 A Yes.

15:54:41 11 Q Okay.

15:54:42 12 A That's when the big bulk of fingerprints were  
15:54:45 13 starting to get registered.

15:54:47 14 Q And do you recall who you were dealing with  
15:54:49 15 at Viacom at that time? Was it Adam Cahan or someone  
15:54:53 16 else?

15:54:53 17 A I believe we did -- I had a lot of  
15:54:55 18 conversations with Nick Rockwell, and we had some on  
15:54:58 19 and off conversations with -- with Joe Simon, but I  
15:55:05 20 think Nick was the -- our prime contact.

15:55:07 21 Q And do you know if by that time, April 2007,  
15:55:11 22 Viacom and YouTube had, in fact, entered into a  
15:55:14 23 partnership together?

15:55:17 24 A No, I don't know that.

15:55:18 25 Q Okay. Do you know why Chris Maxcy introduced

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1 IKEZOYE, V.

16:01:32 2 indicated on that first e-mail on the first page of  
16:01:37 3 this exhibit, and they're named Long -- Long From  
16:01:42 4 Video Proposal 3-10-07.pdf, and Music Type 3 Proposal  
16:01:49 5 3-9-07.pdf.

16:01:51 6 Do you know what those are?

16:01:54 7 A Yeah, their proposals look -- that are  
16:01:58 8 attached here for identifying long-form video, as well  
16:02:01 9 as a more intensive advanced search of music.

16:02:06 10 Q What does long-form video mean?

16:02:08 11 A Generally, long-form video refers to longer  
16:02:13 12 pieces than just clips of a -- of a video. Whole  
16:02:18 13 videos or whole TV shows are generally viewed --  
16:02:21 14 described as long-form content.

16:02:23 15 Q Okay. And what was the "Music Type 3"? What  
16:02:30 16 does that mean?

16:02:32 17 A We have a more advanced service for  
16:02:38 18 identifying music. Again, where, instead of a file  
16:02:45 19 being the whole song, if there was a subset of the  
16:02:47 20 song, say, 30 or 40 seconds of the song, we could  
16:02:55 21 still identify it.

16:02:55 22 Q And were these proposals that Audible Magic  
16:03:07 23 made to YouTube?

16:03:11 24 A Yes. From the look of this, yes, we made the  
16:03:13 25 formal proposal to them to do both.

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1 IKEZOYE, V.

16:03:16 2 Q Okay. Other than this document, do you  
16:03:18 3 recall those proposals? Do -- do you recall being  
16:03:20 4 involved with those proposals?

16:03:21 5 A I think I was probably copied on it and --  
16:03:26 6 and so, as I mentioned, we were always looking for  
16:03:29 7 opportunities to sell more services to our customers  
16:03:34 8 and YouTube also, and so, yes, this is one of the  
16:03:39 9 times that we talked about it.

16:03:41 10 Q And do you know whether YouTube ever accepted  
16:03:47 11 this proposal, these proposals?

16:03:50 12 A We are not providing any services today, so  
16:03:53 13 we didn't sell them on these proposals.

16:03:56 14 Q Are you providing these services to any  
16:03:59 15 customers?

16:04:02 16 A Yes.

16:04:02 17 Q Are you providing them to any UGC customers?

16:04:08 18 A Yes.

16:04:08 19 Q Can you testify as to which UG -- for which  
16:04:42 20 UGC customers you're providing these services, the  
16:04:46 21 long-form video, and the music type three?

16:04:49 22 MR. BLY: Objection to the extent that it  
16:04:50 23 calls for the identity of customers that are subject  
16:04:52 24 to a confidentiality agreement.

16:04:55 25 You can name the ones that have been publicly

1 IKEZOYE, V.

16:04:59 2 announced.

16:05:00 3 THE WITNESS: Yeah.

16:05:05 4 Veoh was a customer of these services,  
16:05:09 5 Microsoft was a -- Soapbox was a customer of these  
16:05:12 6 services.

16:05:14 7 MR. DESANCTIS: Q. Any others that you're --  
16:05:15 8 that you can discuss?

16:05:23 9 A For some of the services, the long -- I think  
16:05:26 10 for the music, I think Nokia was a customer. I think  
16:05:30 11 we had a report, actually, that indicated some of the  
16:05:33 12 people that were using all these services.

16:05:36 13 Q Okay. And when you -- when you mention Veoh  
16:05:42 14 and Microsoft, I think this is the first mention of  
16:05:45 15 Veoh. What is Veoh?

16:05:46 16 A Veoh was a UGC site. Veoh was a video  
16:05:48 17 sharing site very similar to YouTube.

16:05:51 18 Q And when you said Veoh was a customer of  
16:06:00 19 these services, Microsoft Soapbox was a customer of  
16:06:03 20 these services, do you mean both the long-form video  
16:06:05 21 and the music type three?

16:06:10 22 A They were, for sure, the -- the video, and  
16:06:17 23 I'm unsure about the music.

16:06:18 24 Q Do you recall when it was that Veoh began  
16:06:20 25 using the long-form video service?

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1 IKEZOYE, V.

16:06:26 2 A I believe they used it from the beginning,  
16:06:28 3 and -- but I'm not sure when that was exactly started.

16:06:34 4 Q Yeah.

16:06:34 5 Do you mean the beginning of Audible Magic's  
16:06:36 6 relationship with Veoh?

16:06:37 7 A Yes, from the -- from the -- the initial  
16:06:39 8 service was using that.

16:06:41 9 Q Okay.

16:06:48 10 A Five, five.

16:07:06 11 So it was at least August 2007. I don't know  
16:07:10 12 why this -- that's when all this started.

16:07:25 13 (Document marked Ikezoye Exhibit 20  
16:07:25 14 for identification.)

16:07:25 15 MR. DESANCTIS: Show you, Mr. Ikezoye, what's  
16:07:28 16 been marked as Exhibit 20.

16:07:34 17 Q Do you recognize this?

16:07:35 18 A Yes, it's a -- our content services agreement  
16:07:39 19 with -- between Audible Magic and Veoh.

16:07:43 20 Q Okay. Do you recall, Mr. Ikezoye, when  
16:07:55 21 Soapbox, which is owned by Microsoft, first began  
16:08:00 22 using the long-form video service?

16:08:06 23 A No, I don't recall exactly when.

16:08:31 24 Q Okay.

16:09:03 25 ///

1 IKEZOYE, V.

16:10:33 2 audio fingerprinting service?

16:10:34 3 A It was an audio fingerprinting service.

16:10:38 4 Q Okay. But it was used to find matches with  
16:10:45 5 video files?

16:10:51 6 A Yes.

16:10:51 7 Q So how is it that a -- or why is it, if it's  
16:10:59 8 true, that an audio fingerprint would be effective in  
16:11:07 9 identifying a video file --

16:11:13 10 A Because --

16:11:13 11 Q -- if you agree that it is?

16:11:16 12 A It is.

16:11:16 13 Q Let me ask you that first.

16:11:18 14 Is it effective in identifying a video file?

16:11:21 15 A Yes, it is effective.

16:11:22 16 Q Why?

16:11:23 17 A Because you're just trying to identify a TV  
16:11:25 18 show or a movie, and a -- and a movie or a TV show has  
16:11:32 19 two components that can be used to identify it.

16:11:35 20 The video image or the soundtrack attached to  
16:11:39 21 it, they both will really uniquely identify one of  
16:11:45 22 those, that piece of content. And we use the  
16:11:53 23 soundtrack, the audio track of the video or the movie  
16:11:59 24 and it -- we found that it was doing a very good job  
16:12:01 25 at identifying TV and film content.

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1 IKEZOYE, V.

16:27:29 2 (Document marked Ikezoye Exhibit 24

16:27:30 3 for identification.)

16:27:30 4 MR. DESANCTIS: Let me show you, Mr. Ikezoye,  
16:27:32 5 what's been marked as Exhibit 24. This is a one-page  
16:27:35 6 document bearing the Bates No. AM4623. Please take a  
16:27:51 7 look at this document.

16:27:59 8 THE WITNESS: Okay.

16:28:03 9 MR. DESANCTIS: Q. Do you recognize this as  
16:28:04 10 an e-mail from Lou Kvitek of Audible Magic to David  
16:28:12 11 King of YouTube?

16:28:15 12 A Yes.

16:28:15 13 Q Dated February 16th, 2007?

16:28:17 14 A Yes.

16:28:17 15 Q In it Mr. Kvitek describes, to use his words,  
16:28:23 16 "A summary of what we can do to address TV show  
16:28:27 17 soundtrack lookup. The first being content owner  
16:28:34 18 (i.e., Viacom) submit soundtracks with metadata to  
16:28:38 19 Audible Magic for registration in our video clip  
16:28:41 20 lookup database."

16:28:42 21 Do you see that?

16:28:43 22 A Yes.

16:28:43 23 Q He then offers additional -- additional  
16:28:54 24 information of what Audible Magic can -- can do for  
16:28:57 25 YouTube, and about three-quarters of the way to the

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1 IKEZOYE, V.

16:29:00 2 bottom of the text, he says, "We have this type of  
16:29:04 3 lookup server ready to deploy. We need only order and  
16:29:08 4 install the servers and get content from the owners."

16:29:12 5 As the CEO of Audible Magic, do you agree  
16:29:16 6 that in February of 2007 Audible Magic had the type of  
16:29:24 7 lookup servers ready to deploy that are described in  
16:29:27 8 this e-mail?

16:29:28 9 MS. REES: Objection; lacks foundation.

16:29:31 10 THE WITNESS: We do -- did, at this time,  
16:29:33 11 have the technology and software ready to deploy.

16:29:37 12 MR. DESANCTIS: Q. And what does it mean  
16:29:38 13 that "we need only to order and install the servers"?

16:29:43 14 A That just means we needed to order and  
16:29:48 15 install the hardware computers to run the software on.

16:29:50 16 Q And -- and -- and to get content from the  
16:29:53 17 owners, what does that mean?

16:29:54 18 A And ensure that we got the reference  
16:29:57 19 fingerprints and the reference content from the  
16:29:59 20 copyright owners.

16:30:00 21 Q And, to your knowledge, did YouTube ever  
16:30:12 22 pursue the proposed services in this e-mail from  
16:30:17 23 Audible Magic?

16:30:20 24 A From its production -- putting it in  
16:30:23 25 production point of view, no, they -- they did not.

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

-----X  
VIACOM INTERNATIONAL, INC., COMEDY  
PARTNERS, COUNTY 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  
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.

-----X

HIGHLY CONFIDENTIAL  
VIDEOTAPED DEPOSITION OF ZAHAVAH LEVINE  
SAN FRANCISCO, CALIFORNIA  
THURSDAY, APRIL 2, 2009

BY: KATHERINE E. LAUSTER, CSR 1894, RPR, CRR, CLR

Job No. 16721

LEVINE

APRIL 2, 2009

10:23 A.M.

HIGHLY CONFIDENTIAL VIDEOTAPED DEPOSITION OF  
ZAHAVAH LEVINE, at SHEARMAN & STERLING, 525 Market  
Street, Suite 1500, San Francisco, California, pursuant  
to notice, before me, KATHERINE E. LAUSTER, CLR, CRR,  
RPR, CSR License No. 1894.

LEVINE

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Also Present: Lou Meadows, Videographer

1 LEVINE  
2  
3 SAN FRANCISCO, CALIFORNIA  
4  
5 THURSDAY, APRIL 2, 2009; 10:23 A.M.  
6  
7 10:23:32 THE VIDEOGRAPHER: On the record.  
8 10:23:33 This is today's videotaped deposition of  
9 10:23:37 Zahavah Levine, taken on April 2nd, 2009, at  
10 10:23:42 Shearman & Sterling, 525 Market Street, 15th floor,  
11 10:23:46 in San Francisco, California.  
12 10:23:47 In the matter of Viacom International vs.  
13 10:23:49 YouTube, Inc., and The Football Association Premier  
14 10:23:49 League Limited, et al., vs. YouTube, Inc., et al.,  
15 10:23:56 Case Number 07-CV-2103 and 07-CV-3582, in the United  
16 10:24:06 States District Court For the Southern District of  
17 10:24:06 New York.  
18 10:24:09 My name is Lou Meadows, and I represent  
19 10:24:12 David-Feldman Worldwide, located at 600 Anton  
20 10:24:16 Boulevard, Suite 1100, in Costa Mesa, California.  
21 10:24:23 We are now commencing at 10:22 a.m.  
22 10:24:23 Will all present please identify  
23 10:24:25 themselves and state whom they represent.  
24 10:24:28 MR. HART: Bill Hart, Proskauer Rose, for  
25 10:24:29 the class plaintiffs.

1 LEVINE

2 10:24:32 MR. COX: Jay Cox, Jenner and Block, for

3 10:24:33 the Viacom Company.

4 10:24:35 MR. KRAMER: Dave Kramer for YouTube and

5 10:24:37 Google. With me is Maura Rees from my firm, and Tim

6 10:24:38 Alger of Google.

7 10:24:41 THE VIDEOGRAPHER: Sir, I can barely hear

8 10:24:44 you. Could you raise your microphone up?

9 10:24:46 MR. KRAMER: Yeah. Hm, that's never

10 10:24:46 happened.

11 10:24:46 Dave Kramer, Wilson Sonsini, for Google

12 10:24:51 and YouTube. With me is Maura Rees from my firm and

13 10:24:56 Tim Alger from Google.

14 10:24:57 THE VIDEOGRAPHER: Okay.

15 10:25:00 THE WITNESS: Zahavah Levine from YouTube.

16 10:25:01 THE VIDEOGRAPHER: If there are no

17 10:25:01 stipulations, the court reporter may now administer

18 10:25:01 the oath.

19 10:25:01 THE REPORTER: Will you raise your right

20 10:25:01 hand, please.

21 10:25:01 Do you solemnly state, under penalty of

22 10:25:01 perjury, the testimony you are about to give will be

23 10:25:01 the truth, the whole truth, and nothing but the

24 10:25:01 truth?

25 10:25:10 THE WITNESS: I do.

1 LEVINE

2 10:25:10 ZAHAVAH LEVINE,

3 10:25:10 having been sworn as a witness

4 10:25:10 testified as follows:

5 10:25:10

6 10:25:10 EXAMINATION

7 10:25:10 BY MR. HART:

8 10:25:12 Q. Good morning, Miss Levine.

9 10:25:15 A. Morning.

10 10:25:15 Q. Are you employed?

11 10:25:16 A. Yes.

12 10:25:17 Q. By whom?

13 10:25:18 A. Google.

14 10:25:19 Q. How long have you been employed by

15 10:25:21 Google?

16 10:25:24 A. Since Google acquired YouTube in, I

17 10:25:28 believe, November 2006.

18 10:25:30 Q. Okay. What's your current job title?

19 10:25:33 A. Associate general counsel for YouTube of

20 10:25:37 Google.

21 10:25:42 Q. Has your job title changed in any way

22 10:25:44 since you have been employed by Google?

23 10:25:48 MR. KRAMER: Objection. Vague.

24 10:25:53 THE WITNESS: Yes. So I was associate

25 10:25:57 general counsel.

1 LEVINE

2 10:25:57 BY MR. HART:

3 10:25:58 Q. Uh-huh.

4 10:25:58 A. For Google. Then I was associate general

5 10:26:01 counsel, YouTube, for Google.

6 10:26:05 Q. Uh-huh.

7 10:26:06 A. And I also have the title of chief

8 10:26:08 counsel, YouTube.

9 10:26:10 Q. Okay. And when did you assume the title  
10 10:26:13 of chief counsel, YouTube?

11 10:26:15 A. That was -- so I have two titles. One is  
12 10:26:19 a YouTube title, and one is a Google title. So the  
13 10:26:23 chief counsel, YouTube was immediately prior -- post  
14 10:26:26 the acquisition.

15 10:26:27 Q. Got you. Thank you.

16 10:26:34 I'm going to mark and ask the court  
17 10:26:36 reporter to mark Exhibit 1, and she'll show that to  
18 10:26:39 you as soon as she marks it.

19 10:26:50 (Levine Exhibit Number 1 was marked for  
20 10:26:50 identification.)

21 BY MR. HART:

22 10:26:51 Q. And just take a brief minute to page  
23 10:26:54 through it, and the question will be, or is: Would  
24 10:26:58 you identify this document, Exhibit 1 for us,  
25 10:27:01 please?



1 LEVINE

2 10:27:02 A. This is a resume that I prepared after --  
3 10:27:08 or immediately, I think, before the acquisition  
4 10:27:11 closed, so Google could determine how to place me in  
5 10:27:16 its organization.

6 10:27:17 Q. Got you. And does it accurately reflect  
7 10:27:19 your employment history prior to the acquisition by  
8 10:27:25 Google?

9 10:27:25 MR. KRAMER: Are you just asking her  
10 10:27:29 whether each of the jobs that she's had is reflected  
11 10:27:32 accurately --

12 10:27:33 MR. HART: Yeah.

13 10:27:34 MR. KRAMER: -- or are you asking if the  
14 10:27:35 entire thing is accurate?

15 10:27:37 MR. HART: You know, we'll stick with the  
16 10:27:39 prior point of history right now.

17 10:27:41 MR. KRAMER: Yes.

18 10:27:41 BY MR. HART:

19 10:27:41 Q. Is it accurately reflected in this resume,  
20 10:27:45 Exhibit 1?

21 10:27:46 A. I don't, upon looking at this now, see any  
22 10:27:48 inaccuracies.

23 10:27:49 Q. Okay. Fair enough.

24 10:27:52 It says under the heading "Associate  
25 10:27:58 General Counsel RealNetworks, Inc.," on page 1 -- do

1 LEVINE

11:17:17 2 pornography?

11:17:18 3 A. At -- at -- at some point, yes.

11:17:20 4 Q. Okay. And is -- how are those guidelines  
11:17:25 5 effectuated or implemented at YouTube, other than  
11:17:28 6 having a guideline?

11:17:31 7 MR. KRAMER: So in answering this  
11:17:34 8 question, I'd like you to be careful not to reveal  
11:17:38 9 privileged communications between yourself, other  
11:17:40 10 lawyers, and your client, that is, employers of  
11:17:43 11 YouTube.

11:17:44 12 I think he's asking -- not asking for you  
11:17:45 13 to do so.

11:17:46 14 MR. HART: No.

11:17:46 15 MR. KRAMER: I think he's asking for the  
11:17:47 16 facts about --

11:17:48 17 MR. HART: Uh-huh.

11:17:48 18 MR. KRAMER: -- what goes on at YouTube to  
11:17:49 19 implement the -- the pornography policy.

11:17:52 20 MR. HART: Uh-huh.

11:17:54 21 THE WITNESS: So generally speaking, the  
11:17:57 22 way that we handle pornography on YouTube is through  
11:18:02 23 a -- a system of community flagging.

11:18:05 24 BY MR. HART:

11:18:06 25 Q. Uh-huh. What is that?

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1 LEVINE

2 11:18:12 A. Users, viewers of YouTube --

3 11:18:16 Q. Uh-huh.

4 11:18:16 A. -- have the ability to flag content when

5 11:18:21 they're watching it, or that they believe is --

6 11:18:25 violates our terms of service.

7 11:18:27 Q. Okay.

8 11:18:27 A. And then that content goes into a re- --

9 11:18:33 gets reviewed --

10 11:18:34 Q. Uh-huh.

11 11:18:35 A. -- by --

12 11:18:39 MR. HART: David's giving me hints.

13 11:18:41 MR. KRAMER: No, you're -- you're saying

14 11:18:41 "okay" and "uh-huh" as she's answering the question,

15 11:18:44 rather than letting her finish the answer.

16 11:18:48 MR. HART: Sorry.

17 11:18:50 MR. KRAMER: I know it's not intentional.

18 11:18:50 I am sure I do stuff like that too, but I'd just

19 11:18:52 like her to be able to finish the answer without

20 11:18:55 being interrupted by an "uh-huh" or an "okay." I

21 11:18:58 know you didn't do it on purpose.

22 11:19:00 BY MR. HART:

23 11:19:01 Q. I'm not saying a thing. Please continue.

24 11:19:04 A. So there are -- there -- a group of

25 11:19:06 employees --

1 LEVINE

2 11:19:07 Q. Uh-huh.

3 11:19:08 A. -- who will review flagged content and do  
4 11:19:10 their best to make a determination as to whether it,  
5 11:19:13 in fact, violates the terms of service policy at  
6 11:19:19 issue, in this example, whether it's pornography.

7 11:19:25 Q. Okay. Have you completed your answer?

8 11:19:27 A. Yes.

9 11:19:27 Q. Thank you.

10 11:19:34 When you say content is "flagged," is it  
11 11:19:37 flagged by the user? And in doing so, does the flag  
12 11:19:43 send some message of some sort to somebody  
13 11:19:50 internally, YouTube, to review the flagged content?

14 11:19:59 MR. KRAMER: The question is vague as to  
15 11:20:00 "user."

16 11:20:01 THE WITNESS: Yeah, there is -- there's  
17 11:20:03 many parts -- there's many parts of that.

18 BY MR. HART:

19 11:20:06 Q. Uh-huh.

20 11:20:07 A. So why don't you ask each part separately?

21 11:20:09 Q. Okay. I -- my question is actually  
22 11:20:10 simpler than it sounded. So let me just rephrase  
23 11:20:13 it, which is: Can you just explain very briefly how  
24 11:20:16 the flagging system operates functionally?

25 11:20:19 A. Yes.

1 LEVINE

11:20:20 2 MR. KRAMER: Calls for -- doesn't call for  
11:20:22 3 speculation.

11:20:22 4 THE WITNESS: Well --

11:20:22 5 MR. KRAMER: Go ahead.

11:20:22 6 THE WITNESS: -- at a -- at a general  
11:20:24 7 level, I mean, I'm not an engineer. I'm not  
11:20:25 8 qualified --

11:20:25 9 BY MR. HART:

11:20:26 10 Q. No, no, no.

11:20:28 11 A. General level, a -- somebody viewing --  
11:20:30 12 anybody that's viewing content --

11:20:32 13 Q. Uh-huh.

11:20:32 14 A. -- has the ability to check a box that  
11:20:35 15 says -- indicates they believe it's a violation of  
11:20:39 16 YouTube's terms of service.

11:20:42 17 And such checking -- generally speaking,  
11:20:49 18 there's -- it gets a little complicated, but,  
11:20:52 19 generally speaking, might result in the review of  
11:20:55 20 that content by an employee of YouTube.

11:20:59 21 Q. Okay. That -- that was really the point  
11:21:01 22 of my question. You mean by a viewer checking  
11:21:05 23 something or flagging something, does it, in some  
11:21:09 24 way, send a signal to someone at YouTube to take a  
11:21:14 25 look at the particular video that has been so

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1 LEVINE

11:23:19 2 speculation.

11:23:20 3 THE WITNESS: I believe in the early days  
11:23:21 4 it -- it may have.

11:23:23 5 BY MR. HART:

11:23:23 6 Q. Do you -- do you know when that changed?

11:23:30 7 MR. KRAMER: Calls for speculation and  
11:23:32 8 lacks foundation.

11:23:42 9 THE WITNESS: I'm not exactly sure.

11:23:44 10 BY MR. HART:

11:23:48 11 Q. Can you approximate in relation to the  
11:23:51 12 Google acquisition?

11:23:54 13 MR. KRAMER: Same objections. Calls for  
11:23:55 14 speculation, lacks foundation.

11:24:02 15 THE WITNESS: No.

11:24:03 16 BY MR. HART:

11:24:05 17 Q. Okay. How does YouTube implement its  
11:24:10 18 content policy against violent videos?

11:24:17 19 A. It's the same way that I already  
11:24:20 20 described.

11:24:21 21 Q. Community flagging?

11:24:22 22 A. Yes.

11:24:23 23 Q. Okay. Was there, at any time, any person  
11:24:28 24 or persons functioning at YouTube who were  
11:24:31 25 proactively looking on YouTube for violent videos

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1 LEVINE

2 13:23:58 (Levine Exhibit Number 4 was marked for

3 13:23:58 identification.)

4 13:23:59 BY MR. HART:

5 13:24:38 Q. I guess, to save time, to the extent that

6 13:24:42 you can --

7 13:24:42 A. Okay.

8 13:24:43 Q. -- the two threshold questions are whether

9 13:24:45 you can identify what we've just marked as Exhibit

10 13:24:48 4, and whether you were involved in any way in its

11 13:24:52 negotiation.

12 13:24:53 MR. KRAMER: Take those one at a time.

13 13:25:03 THE WITNESS: Yes, this appears to be a

14 13:25:05 content license with Wind-Up Records.

15 13:25:08 BY MR. HART:

16 13:25:09 Q. And were you involved in negotiating any

17 13:25:11 sort of content license with Wind-Up Records for

18 13:25:15 YouTube?

19 13:25:15 A. I don't think I was the primary negotiator

20 13:25:16 on this deal, but I may have been consulted a couple

21 13:25:20 of times.

22 13:25:21 Q. You were aware that a deal --

23 13:25:22 A. I am aware that we had --

24 13:25:22 Q. -- had to be struck --

25 13:25:22 A. Yeah. Yes, I was aware that a deal had

1 LEVINE

2 16:00:37 don't know how they were able to discern.

3 16:00:40 Q. Uh-huh. And do you have any knowledge

4 16:00:50 about what search terms were used, or -- yeah, what

5 16:00:58 search terms were used?

6 16:01:00 A. Specifically?

7 16:01:02 Q. Or generally, how did -- how did -- you

8 16:01:04 said they searched metadata. I guess my question

9 16:01:10 is: Do you know how they knew what to search?

10 16:01:15 MR. KRAMER: Objection. Assumes facts,

11 16:01:17 calls for speculation.

12 16:01:19 And again, he's not asking -- he's not

13 16:01:24 asking you to reveal the substance of

14 16:01:26 attorney-client communications. So you -- to the

15 16:01:31 extent he is, I instruct you not to answer the

16 16:01:34 question.

17 16:01:34 BY MR. HART:

18 16:01:35 Q. I'm not --

19 16:01:36 A. Yeah. I don't know specifically any

20 16:01:41 particular searches.

21 16:01:43 Q. Uh-huh.

22 16:01:43 A. I can speculate as to what I think they

23 16:01:46 probably or might have done.

24 16:01:47 Q. And what's that?

25 16:01:48 A. Perhaps they would have put in "American



1 LEVINE

2 16:01:51 Idol," for example, if they were scanning for

3 16:01:57 American Idol.

4 16:01:58 Q. And why do you speculate that they might

5 16:02:01 have done that?

6 16:02:11 A. Because if somebody did upload an

7 16:02:13 unauthorized copy of American Idol and wanted other

8 16:02:17 people to view it, they might use that -- those

9 16:02:23 words in the metadata so other -- so it would come

10 16:02:26 up among other results in the search results.

11 16:02:30 Q. Right. But why would someone at YouTube

12 16:02:36 decide to search for American Idol, as opposed to

13 16:02:40 all of the other possible searches that they could

14 16:02:44 do?

15 16:02:45 A. I think I --

16 16:02:46 MR. KRAMER: Hang on. Calls for

17 16:02:47 speculation. Incomplete hypothetical. The question

18 16:02:57 is vague.

19 16:02:57 BY MR. HART:

20 16:03:00 Q. But other than that, Miss Levine?

21 16:03:04 A. Well, for -- so with respect to American

22 16:03:12 Idol --

23 16:03:13 Q. Uh-huh.

24 16:03:13 A. -- American Idol -- American Idol, I -- I

25 16:03:23 recall was a company --

1 LEVINE

2 16:15:57 THE WITNESS: I -- I don't recall any

3 16:15:58 conversations --

4 BY MR. HART:

5 16:15:59 Q. Okay.

6 16:15:59 A. -- about it.

7 16:16:00 Q. Now, did there come a point at YouTube  
8 16:16:02 when there was a decision made to stop any sort of  
9 16:16:05 proactive scanning of content for potential  
10 16:16:10 copyright infringement?

11 16:16:28 MR. KRAMER: I'll object to the form of  
12 16:16:29 the question.

13 16:16:30 You can answer.

14 16:16:35 THE WITNESS: I -- I don't recall a  
15 16:16:37 specific time where a decision was made --

16 16:16:40 BY MR. HART:

17 16:16:40 Q. Uh-huh.

18 16:16:40 A. -- not to do that.

19 16:16:42 Q. Uh-huh. Did there come a point in time  
20 16:16:45 when YouTube, in fact, stopped proactively scanning  
21 16:16:49 for potentially copyright infringing content on the  
22 16:16:54 YouTube site?

23 16:17:07 A. There's a sort of an assumption in your  
24 16:17:09 question that there was an ongoing policy to do  
25 16:17:13 that, which I don't necessarily think was the

1 LEVINE

2 16:17:16 ongoing policy. I think that in the early days  
3 16:17:19 there were some efforts made to do that on behalf  
4 16:17:25 of -- at certain times, you know, and at some point  
5 16:17:31 we stopped making those efforts.

6 16:17:34 Q. Uh-huh. Do you know why, when you say  
7 16:17:38 "we," YouTube stopped making those efforts?

8 16:17:41 MR. KRAMER: Let me object to that  
9 16:17:42 question to the extent it calls for the disclosure  
10 16:17:45 of confidential legal communications between  
11 16:17:48 counsel, and between you and your client. To the  
12 16:17:50 extent there is a non-legal reason, you can answer  
13 16:17:53 the question.

14 16:17:57 MR. HART: Right now I just asked her if  
15 16:17:59 she knows why. I didn't ask her to tell me what the  
16 16:18:02 why was.

17 16:18:03 MR. KRAMER: Okay.

18 16:18:05 THE WITNESS: More or less.

19 16:18:06 BY MR. HART:

20 16:18:07 Q. Okay. Can you tell me why?

21 16:18:13 MR. KRAMER: Same instruction.

22 16:18:17 THE WITNESS: We found that we were  
23 16:18:19 not very good at determining when content on the  
24 16:18:24 site was or was not authorized by the copyright  
25 16:18:31 owner.

1 LEVINE

2 17:30:40 BY MR. HART:

3 17:30:41 Q. Okay. Let me show you what we've marked  
4 17:30:43 as Exhibit 24, and ask you if you have ever seen  
5 17:30:50 that document before.

6 17:31:56 Have you had a chance to read that e-mail  
7 17:31:58 yet?

8 17:31:58 A. Yes, I have.

9 17:31:59 Q. Okay. See where it says:  
10 17:32:01 Even if a video of a certain program is  
11 17:32:03 deleted, the same content is uploaded  
12 17:32:06 again, over and over?

13 17:32:07 A. Yes.

14 17:32:09 Q. Is that a problem at YouTube?

15 17:32:11 MR. KRAMER: Wait. The question is vague.  
16 17:32:14 It's vague -- the question is vague. I'll object to  
17 17:32:17 the form of the question.

18 17:32:33 THE WITNESS: I don't know what this  
19 17:32:35 gentleman is talking about, because I can't read his  
20 17:32:38 mind -- or her. I don't know if it's a man or a  
21 17:32:41 woman.

22 23:59:57 BY MR. HART:

23 17:32:43 Q. Uh-huh.

24 17:32:45 A. But I don't -- my guess is that they're  
25 17:32:48 not talking about identical content being uploaded

1 LEVINE

2 17:32:51 again and again.

3 17:32:52 Q. Uh-huh. Because otherwise an MD5 hash

4 17:32:58 would catch it?

5 17:33:00 A. Correct.

6 17:33:00 Q. And what if the first video is three

7 17:33:05 minutes of a program, and the next upload of

8 17:33:13 essentially the same content is edited to be two

9 17:33:16 minutes and 59 seconds? I think you told us earlier

10 17:33:21 the MD5 hash won't catch that, will it?

11 17:33:25 A. Probably not.

12 17:33:27 Q. Does YouTube fingerprint content that has

13 17:33:34 been identified pursuant to DMCA take-downs --

14 17:33:39 notices?

15 17:33:40 MR. KRAMER: Objection to the term

16 17:33:42 "fingerprinting" as vague.

17 17:33:44 MR. HART: Uh-huh.

18 17:34:01 THE WITNESS: Not as a general matter, no.

19 17:34:03 BY MR. HART:

20 17:34:05 Q. Does it do that for premium content

21 17:34:08 partners?

22 17:34:10 A. No, no, not as a general matter, no.

23 17:34:13 Q. Okay. Does the three strike rule apply to

24 17:34:22 your premium content partners?

25 17:34:28 MR. KRAMER: Objection. Today?

1 LEVINE

2 18:11:27 MR. KRAMER: She can answer.

3 18:11:27 BY MR. HART:

4 18:11:28 Q. Uh-huh.

5 18:11:30 A. I'm aware of the decision being discussed

6 18:11:33 in this e-mail.

7 18:11:34 Q. Okay. Did you take part in that decision?

8 18:11:43 MR. KRAMER: Objection. Question is

9 18:11:44 vague.

10 18:11:45 You can answer.

11 18:11:48 THE WITNESS: So I think it was the

12 18:11:50 process of that decision, the attorney-client

13 18:11:53 privilege.

14 18:11:54 MR. KRAMER: To the extent -- okay. Let

15 18:11:56 me --

16 18:11:58 THE WITNESS: And that how the decision

17 18:11:58 was made, I think was attorney-client privilege.

18 18:12:00 BY MR. HART:

19 18:12:01 Q. I simply asked whether you took part in

20 18:12:03 the decision so far.

21 18:12:05 MR. KRAMER: Right. I think the question

22 18:12:07 simply is whether or not you participated in the

23 18:12:09 decision over whether to continue to show ads on all

24 18:12:15 watch pages for user-generated content.

25 18:12:18 I would instruct you not, in the course --



1 LEVINE

2 18:13:09 involved in it.

3 18:13:10 BY MR. HART:

4 18:13:12 Q. Do you know the reason why that decision

5 18:13:14 was made?

6 18:13:15 MR. KRAMER: Okay. So same instruction.

7 18:13:17 MR. HART: All right.

8 18:13:18 MR. KRAMER: To the extent that there are

9 18:13:19 legal -- to the extent that there are privileged

10 18:13:21 communications to which you were a party, you're not

11 18:13:24 to reveal those, but to the extent there were

12 18:13:27 communications of a nonlegal nature, you can -- you

13 18:13:30 can disclose -- discuss those.

14 18:13:32 THE WITNESS: Okay. That's sort of hard

15 18:13:33 in my head, so I need to think about this for a

16 18:13:36 second.

17 18:13:37 BY MR. HART:

18 18:13:39 Q. Keep in mind, all I asked right now is:

19 18:13:41 Do you know the reason why the decision was made?

20 18:13:44 A. Well --

21 18:13:45 Q. Not --

22 18:13:45 A. Okay.

23 18:13:46 MR. KRAMER: Not what the decisions were?

24 18:13:48 MR. HART: Didn't ask that yet.

25 18:13:49 MR. KRAMER: Okay. You're right.



1 LEVINE

2 18:14:48 business.

3 18:14:49 Q. Uh-huh. Okay. Does YouTube currently  
4 18:14:51 feature advertising on the search results pages of  
5 18:14:55 the YouTube site?

6 18:14:57 MR. KRAMER: Objection. The question is  
7 18:14:58 vague as to "feature."

8 18:14:59 BY MR. HART:

9 18:15:02 Q. All right. Fair enough. Let me rephrase  
10 18:15:04 that question. David's been such a nice guy today.  
11 18:15:08 Does YouTube currently have advertising on  
12 18:15:11 the search results pages of the YouTube website?

13 18:15:16 MR. KRAMER: Calls for speculation.

14 18:15:18 MR. HART: That's where I draw the line,  
15 18:15:20 David.

16 18:15:20 BY MR. HART:

17 18:15:21 Q. Go ahead.

18 18:15:22 A. Oftentimes it does.

19 18:15:23 Q. Uh-huh. And I show you what had been  
20 18:15:25 previously marked as Exhibit 15 (sic) at the Reider  
21 18:15:31 or Reider -- Reider deposition?

22 18:15:40 (Hands document.) One for you, two for  
23 18:15:43 you.

24 18:15:51 And ask you if this Reider Exhibit 13 is a  
25 18:15:58 fair representation of an ad appearing on a search

1 LEVINE

2 18:17:09 answer, but a nontechnical one would be better --

3 18:17:12 why the advertising that's shown on Reider Exhibit

4 18:17:16 13 is sports-related, and the content that the

5 18:17:19 advertising is being shown with on the search

6 18:17:24 results page is English Premier League content,

7 18:17:29 which is also generally sports-related?

8 18:17:34 MR. KRAMER: Calls for speculation, lacks

9 18:17:36 foundation, assumes facts.

10 18:17:43 THE WITNESS: Can you ask a shorter

11 18:17:44 question or --

12 BY MR. HART:

13 18:17:45 Q. Uh-huh.

14 18:17:46 A. -- be more specific?

15 18:17:47 Q. Is it just a coincidence that the

16 18:17:49 advertising is Puma or for Puma, which is a

17 18:17:53 sports -- sportswear company, and it appears in

18 18:18:01 conjunction with search results that are for the

19 18:18:03 English Premier League, which is a British football,

20 18:18:08 sports-oriented subject?

21 18:18:10 MR. KRAMER: Same objections. That is,

22 18:18:12 assumes facts, calls for speculation, lacks

23 18:18:15 foundation.

24 18:18:19 THE WITNESS: So the advertising that we

25 18:18:21 run in search results --

1 LEVINE

2 18:18:22 BY MR. HART:

3 18:18:22 Q. Uh-huh.

4 18:18:23 A. -- to my knowledge, does not have anything

5 18:18:25 to do with the search results.

6 18:18:27 Q. So your testimony is that, to your

7 18:18:28 knowledge, this is just a coincidence?

8 18:18:31 MR. KRAMER: Same objections.

9 18:18:32 THE WITNESS: No, I'm going to repeat what

10 18:18:34 I said. It has nothing to do with the search

11 18:18:36 results.

12 18:18:36 MR. KRAMER: I -- I -- go ahead.

13 18:18:40 THE WITNESS: It's not tied to the search

14 18:18:42 results.

15 01:59:57 BY MR. HART:

16 18:18:43 Q. Okay. What is it tied to?

17 18:18:45 MR. KRAMER: Objection. Calls for

18 18:18:46 speculation, assumes facts, lacks foundation to the

19 18:18:50 extent you're referring to this document. I just --

20 18:18:52 I don't know what this document is.

21 18:18:54 BY MR. HART:

22 18:18:55 Q. Uh-huh. Do you know what it is tied to?

23 18:19:04 A. I believe that it is tied in some way, I

24 18:19:07 don't know exactly how, to the search term that the

25 18:19:10 user enters.

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 SUZANNE REIDER  
SAN FRANCISCO, CALIFORNIA  
FRIDAY, OCTOBER 3, 2008

BY: ANDREA M. IGNACIO HOWARD, CSR, RPR, CLR  
CSR LICENSE NO. 9830  
JOB NO. 15910

OCTOBER 3, 2008

9:01 a.m.

VIDEOTAPED DEPOSITION OF SUZANNE REIDER,  
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.:

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FOR THE LEAD PLAINTIFFS AND PROSPECTIVE CLASS:

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

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

MAYER BROWN LLP

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DAVID MCGILL, Esq.

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ALSO PRESENT:

GOOGLE

By: ADAM L. BAREA, Litigation Counsel

1600 Amphitheater Parkway

Mountain View, California 94043

(650) 214-4879 adambarea@google.com

LOU MEADOWS, Videographer.

---oOo---

1 REIDER

2 09:03:22 produced on -- on a rolling basis, some of which may

3 09:03:25 related -- may have related to -- to Ms. Reider, so we

4 09:03:29 will certainly -- certainly object to any attempt to

5 09:03:31 redepose her.

6 09:03:33 We think this is the one opportunity that you

7 09:03:35 will have, and you have a full day to ask whatever

8 09:03:40 questions you'd like, and I think there's no reason

9 09:03:41 to -- to come back here after we go through today.

10 09:03:44 MR. BROWNE: Okay. Your objection is noted,

11 09:03:45 but I will point out that you gave us the date for

12 09:03:49 Ms. Reider's deposition on September 5th.

13 09:03:52 At no time since then have you said that

14 09:03:54 there's a substantial number of her documents that we

15 09:03:56 have not seen, and producing them to us on the day

16 09:03:58 before the deposition, I think it's pretty clear we

17 09:04:01 didn't have an opportunity to review them.

18 09:04:04 So we've both stated our positions. Our

19 09:04:08 position is that we're keeping the deposition open.

20 09:04:10 Q And with that, Ms. Reider, can you state your

21 09:04:12 full name and address for the record.

22 09:04:13 A Suzanne Reider, 924 Church Street,

23 09:04:18 San Francisco, California 94114.

24 09:04:18 Q Okay. And are you currently employed?

25 09:04:21 A Yes, I am.



1 REIDER

2 09:04:21 Q Where at?

3 09:04:22 A Google.

4 09:04:22 Q Okay. What's your title?

5 09:04:23 A My current title is director of sales.

6 09:04:26 Q And when did you first come to be employed at  
7 09:04:29 Google?

8 09:04:29 A I started working at Google when the  
9 09:04:33 acquisition closed, which was November 18th of 2006.

10 09:04:36 Q And prior to that, where were you employed?

11 09:04:38 A Prior to that I was a YouTube employee, and  
12 09:04:41 prior to that I was a SVP general manager for CNET  
13 09:04:46 Networks here in San Francisco managing the games,  
14 09:04:52 television, and music properties.

15 09:04:54 Q And what was your title at YouTube?

16 09:04:59 A I was hired at YouTube as the chief marketing  
17 09:05:01 officer.

18 09:05:01 Q When were you hired?

19 09:05:02 A In September of 2006.

20 09:05:05 Q Did there come a time when your title changed  
21 09:05:12 at YouTube?

22 09:05:13 A My title has changed at YouTube four, five  
23 09:05:15 times.

24 09:05:15 Q Okay. The first change from chief marketing  
25 09:05:18 officer, what did you change to from that?

1 REIDER

2 09:05:24 A I think from the chief marketing officer,  
3 09:05:25 after the acquisition, it changed to director of sales  
4 09:05:30 and marketing.

5 09:05:31 Q Approximately when did that change take  
6 09:05:33 place?

7 09:05:40 A I mean, probably weeks after the acquisition.  
8 09:05:43 There's very few C-level titles at Google. I think  
9 09:05:49 Eric Schmidt has one, and our CFO has one. So -- and  
10 09:05:53 I think the title changing, you -- that comes in the  
11 09:05:55 form of what's on your business card. It comes in the  
12 09:05:58 form of what's on our intranet within Google, but  
13 09:06:02 titles at Google change quite frequently.

14 09:06:05 Q Other than the change to director of sales  
15 09:06:07 and marketing, did you have any other titles --  
16 09:06:10 changes to your job title?

17 09:06:12 A Yeah. The -- the marketing. We hired  
18 09:06:15 somebody to take the -- so I was hired at YouTube to  
19 09:06:18 be the place where sales and marketing came together,  
20 09:06:21 which is possible within a smaller company.

21 09:06:24 But when we were acquired by Google, about  
22 09:06:29 two weeks into the job, it became clear to me that I  
23 09:06:33 couldn't physically be on the marketing side of the  
24 09:06:35 company and the sales side of the company at the same  
25 09:06:37 time.

1 REIDER

2 09:06:38 And so I focused more on the -- the sales  
3 09:06:44 side, and we began to look for somebody to take the  
4 09:06:46 marketing position. And -- and then when he came  
5 09:06:51 onboard, which I think was the fall, probably, of '07,  
6 09:06:59 then I was able to fully move over into just the sales  
7 09:07:04 area.

8 09:07:04 Q And the "he" that you mentioned, who were you  
9 09:07:07 referring to?

10 09:07:10 A A guy named Chris Di Cesare.

11 09:07:14 Q Okay. So when you moved over in the fall of  
12 09:07:16 '07 into just the sales area, I take it your title  
13 09:07:20 also changed at that time?

14 09:07:21 A Yes. But again, I mean, I cared -- I still  
15 09:07:23 had business cards that say "Head of Sales and  
16 09:07:28 Marketing," "Director of Sales and Marketing." People  
17 09:07:28 still introduce me at conferences sometimes as Head of  
18 09:07:30 Sales and Marketing.

19 09:07:31 So we're -- it's not -- Google's not a big  
20 09:07:32 title place. It's really -- it -- it really doesn't  
21 09:07:35 matter that much I guess is what I'm saying.

22 09:07:37 Q But did you have an understanding that your  
23 09:07:39 actual job title had changed at that time?

24 09:07:41 A My job title?

25 09:07:42 Q Uh-huh.

1 REIDER

2 09:07:45 A Nobody ever told me that my title was  
3 09:07:46 changing. You go onto MOMA, which is our intranet,  
4 09:07:52 and I made an adjustment, out of respect for the  
5 09:07:55 gentleman that we had hired as our head of marketing,  
6 09:07:57 to make sure that it was clear that he was going to be  
7 09:07:59 taking on the marketing side and that I would maintain  
8 09:08:02 the sales side.

9 09:08:03 Q And did that unjust- -- adjustment that you  
10 09:08:03 made include changing your job title?

11 09:08:05 A I actually don't recall --

12 09:08:06 Q Okay.

13 09:08:07 A -- and I can't recall, thinking about our  
14 09:08:08 intranet right now, what my title is on it. I think  
15 09:08:10 it might still say "Director of Sales and Marketing."  
16 09:08:14 But I report up into Tim Armstrong, who is the  
17 09:08:18 president of North American Sales and Commerce, and  
18 09:08:21 Tim is on the sales side.

19 09:08:24 But at Google we also have an -- a very -- we  
20 09:08:28 have a business marketing practice that is within the  
21 09:08:32 sales. So there's consumer marketing and there's  
22 09:08:36 sales marketing, and I still have a tremendous amount  
23 09:08:38 of influence on the business marketing side for  
24 09:08:42 YouTube.

25 09:08:46 Q What is the difference between the consumer

1 REIDER

2 09:43:30 website. So it's -- it's a little silly because it

3 09:43:39 really just means an ad. A display ad is an ad.

4 09:43:47 Q And does YouTube currently sell display

5 09:43:50 advertisements?

6 09:43:51 A Yes.

7 09:43:51 Q And where on the YouTube website do the

8 09:43:54 display advertisements appear?

9 09:43:57 A So, today, you see display ads on the search  
10 09:44:05 results page, on the Watch Page, and on a number of  
11 09:44:12 other, what we call, browse pages.

12 09:44:18 Q Anywhere else?

13 09:44:25 A I mean, there -- I guess you could call the  
14 09:44:29 Homepage ad a display. It's really a click-to-play  
15 09:44:34 video ad, but you could call it a display ad when it's  
16 09:44:38 just sitting there and nobody clicks on it. I mean,  
17 09:44:40 again, it's a use -- it's a loose term that we use  
18 09:44:44 just to talk about advertising display ads.

19 09:44:46 Q Could a display ad include a video and text?

20 09:44:50 Would -- would both of those fall under the rubric of  
21 09:44:52 display ad?

22 09:44:54 A Usually a video ad would be called a video  
23 09:45:00 ad, and a display ad would be called a display ad,  
24 09:45:06 but -- go ahead.

25 09:45:08 Q Have you heard of a term called "Banner

1 REIDER

2 10:09:49 today, on the Watch Pages?

3 10:09:54 A No.

4 10:09:56 Q None at all?

5 10:09:58 A YouTube doesn't serve ads onto Watch Pages

6 10:10:03 unless we have a specific relationship with the

7 10:10:05 content partner for that page.

8 10:10:09 Q Just so there's no ambiguity at all, does

9 10:10:13 that mean that there are not -- there are no

10 10:10:16 advertisements on Watch Pages unless YouTube has a

11 10:10:19 specific relationship with the content partner for

12 10:10:21 that page?

13 10:10:25 MR. WILLEN: Objection.

14 10:10:25 You've asked the question; she's answered it,

15 10:10:27 but go ahead.

16 10:10:28 THE WITNESS: There is ambiguity, because it

17 10:10:30 is perfectly possible that somebody who's uploaded a

18 10:10:36 video to YouTube has embedded whatever they want to

19 10:10:42 embed within their video.

20 10:10:44 MR. BROWNE: Q. But YouTube wouldn't receive

21 10:10:46 any money from that type of advertiser; right?

22 10:10:50 A No.

23 10:10:50 Q Now, was there a time, at any point in time,

24 10:11:01 that -- that YouTube did serve advertisements on the

25 10:11:04 Watch Page?

1 REIDER

10:11:04 2 A Yes.

10:11:04 3 Q And when did they do that?

10:11:07 4 A It was happening when I joined the company.

10:11:12 5 Q And that was approximately September of 2006?

10:11:17 6 A Yes.

10:11:17 7 Q What types of -- what format did the

10:11:23 8 advertisements take on the Watch Pages as of that

10:11:27 9 time, September 2006?

10:11:32 10 A From what I recall, again, this is over two

10:11:36 11 years ago now, it was what is called a display ad or a

10:11:39 12 banner ad or a 728 x 90.

10:11:45 13 Q And that ad was, at that time in

10:11:53 14 September 2006, was displayed on the Watch Page

10:11:55 15 regardless of whether YouTube had a direct

10:11:58 16 relationship with the content provider; is that

10:11:59 17 correct?

10:12:00 18 A That's correct. I believe so.

10:12:04 19 Q And did YouTube --

10:12:04 20 THE VIDEOGRAPHER: I'm getting BlackBerry

10:12:04 21 interference right now.

10:12:17 22 THE WITNESS: It's not me.

10:12:17 23 (Discussion off the record.)

10:14:47 24 MR. BROWNE: Q. And during the time that

10:14:48 25 YouTube displayed ads on the Watch Page page,

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1 REIDER

10:14:53 2 regardless of whether YouTube had a direct  
10:14:59 3 relationship with the content provider, did YouTube  
10:15:01 4 receive revenue from those ads?

10:15:04 5 A Yes.

10:15:04 6 Q And that revenue went directly to YouTube?

10:15:14 7 MR. WILLEN: Objection as to what you mean by  
10:15:16 8 "directly."

10:15:20 9 THE WITNESS: I have to think about that  
10:15:29 10 because in a -- so can you ask your question again.

10:15:32 11 MR. BROWNE: Q. And the revenue that was  
10:15:34 12 received from those advertisements that played on the  
10:15:36 13 Watch Page, did that revenue go directly to YouTube?

10:15:41 14 MR. WILLEN: Same objection.

10:15:43 15 THE WITNESS: So it depends on the type of  
10:15:48 16 the ad if the revenue would have gone directly to  
10:15:51 17 YouTube.

10:15:51 18 MR. BROWNE: Q. In certain situations, at  
10:15:54 19 least, would the revenue have gone directly to  
10:15:57 20 YouTube?

10:15:57 21 A In certain situations, with a certain type of  
10:16:00 22 ad campaign, it would have gone directly to YouTube.

10:16:02 23 Q In what type of situations and what types of  
10:16:07 24 ad campaigns would that revenue have gone directly to  
10:16:10 25 YouTube?

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1 REIDER

2 10:16:13 A If it was what's called direct sold.

3 10:16:17 Q What does that mean?

4 10:16:21 A It means there was no other entity involved,  
5 10:16:24 that a YouTube salesperson would have sold it.

6 10:16:27 Q Are there any other types of situations where  
7 10:16:31 the revenue from that advertisement playing on the  
8 10:16:37 Watch Page would have gone directly to YouTube?

9 10:16:40 A I think that's the question I just answered.

10 10:16:42 Q Oh, you did, and you said, "Direct sold." I  
11 10:16:43 just want to make sure, are there other types other  
12 10:16:47 than direct sold?

13 10:16:49 A Are -- I just want to make sure I understand  
14 10:16:51 the question.

15 10:16:51 You're asking if there are other types, other  
16 10:16:54 than direct sold, that would occur on that?

17 10:16:59 Q Let me just take a step back --

18 10:17:00 A Yeah.

19 10:17:00 Q -- and try to explain a little bit so we're  
20 10:17:03 clear.

21 10:17:03 You said in certain situations the revenue  
22 10:17:05 would go directly to YouTube.

23 10:17:05 A Uh-huh.

24 10:17:08 Q In sum and substance I asked you, what are  
25 10:17:10 those situations, and we talked about the direct sold

1 REIDER

2 10:17:12 situation.

3 10:17:13 A Uh-huh.

4 10:17:13 Q Now I just want to know, are there other

5 10:17:15 situations?

6 10:17:16 A So when it's not direct sold?

7 10:17:17 Q Right.

8 10:17:18 A So, yes, when it's not direct sold, then

9 10:17:21 somebody else would also share in that revenue,

10 10:17:23 another company would also share in that revenue.

11 10:17:25 Q And when you say "share in that reven- --

12 10:17:28 revenue," do you mean, then, that the other company

13 10:17:31 would get some of that revenue --

14 10:17:33 A Uh-huh.

15 10:17:33 Q -- and YouTube would also get a portion of

16 10:17:35 that revenue?

17 10:17:37 A Yes.

18 10:17:37 Q Did there come a time when -- when YouTube

19 10:17:41 stopped displaying advertisements on -- on the Watch

20 10:17:49 Pages for content when YouTube didn't have a direct

21 10:17:53 relationship with a content provider?

22 10:17:56 A Yes.

23 10:17:57 Q When did that happen?

24 10:18:01 A I don't recall the exact date of when that

25 10:18:04 happened, but it was early in 2007.

1 REIDER

14:17:16 2 Q And there is -- is there a larger purpose for  
14:17:19 3 that education? What do you hope to achieve by  
14:17:23 4 educating advertisers on that information?

14:17:25 5 A That they become interested and that they  
14:17:27 6 invite their Google sales rep to come and pay a visit  
14:17:30 7 to see, then, okay, yeah, I understand. Big picture,  
14:17:33 8 this is what it is, and can Sally come see me and --  
14:17:38 9 and help me understand how for me, as a manufacturer  
14:17:41 10 of shampoo, what kind of audience I can reach and how  
14:17:46 11 I would actually leverage this platform and market.

14:17:50 12 Q And then to ultimately purchase advertising?

14:17:53 13 A That's what I mean. An ad sales rep, their  
14:17:58 14 job is to sell advertising, so yes.

14:18:11 15 Q Give me one second; okay.

14:18:35 16 I'm going to introduce -- what are we? 8?

14:18:41 17 THE REPORTER: 9.

14:18:41 18 MR. BROWNE: 9. Exhibit 9.

14:18:43 19 (Document marked Reider Exhibit 9  
14:18:58 20 for identification.)

14:18:58 21 THE WITNESS: Thank you.

14:18:59 22 MR. BROWNE: Q. Now, Ms. Reider, I've --

14:19:12 23 MR. WILLEN: My copy has no Bates number on  
14:19:14 24 it.

14:19:14 25 THE WITNESS: Mine either.

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1 REIDER

14:19:15 2 MR. BROWNE: It's actually -- doesn't have a  
14:19:18 3 Bates number. I'll just represent to you that it's a  
14:19:20 4 page that I printed out from the web- -- the YouTube  
14:19:22 5 website a day or so ago.

14:19:30 6 MR. WILLEN: Can you -- can you give us a  
14:19:31 7 little bit more information about the circumstances  
14:19:33 8 under which you printed the page off the website?

14:19:36 9 MR. BROWNE: Not to be --

14:19:41 10 THE REPORTER: Okay. I can't hear you. A  
14:19:44 11 BlackBerry is totally going off.

14:19:46 12 MR. BROWNE: Probably for the best that my  
14:19:47 13 answer there got covered up.

14:19:56 14 Just -- you know what, I handed out the wrong  
14:20:02 15 one anyway. Yours says "InVideo"; doesn't it?

14:20:05 16 A Mine says "YouTube InVideo Ads."

14:20:05 17 Q Can we swap 9 out for this one?

14:20:08 18 A YouTube video ads you want to go to?

14:20:11 19 MR. WILLEN: Sorry about that. I missed what  
14:20:12 20 you just said.

14:20:13 21 MR. BROWNE: Well, you know what, I -- I  
14:20:14 22 handed out the wrong one by mistake. I want to hand  
14:20:18 23 out this one instead.

14:20:19 24 Could we just replace that Exhibit 9 with  
14:20:22 25 this one?

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1 REIDER

14:20:22 2 THE WITNESS: You want me to take this  
14:20:23 3 sticker off?

14:20:24 4 MR. BROWNE: I'm not sure how the court  
14:20:26 5 reporter wants to do it actually.

14:20:27 6 THE WITNESS: What do you want to do?

14:20:29 7 MR. WILLEN: If I use this one, are you going  
14:20:31 8 to use this one?

14:20:32 9 MR. BROWNE: Probably not. Maybe if you  
14:20:34 10 could just set it on that chair. I think I probably  
14:20:37 11 won't use it. It's actually --

14:20:41 12 THE WITNESS: Would you like me to put my  
14:20:43 13 Exhibit 9 sticker on the new one?

14:20:44 14 MR. BROWNE: Wow, we're going to have to pay  
14:20:46 15 you for the transcript.

14:20:47 16 THE WITNESS: All right. This?

14:20:49 17 MR. BROWNE: All right. Thank you.

14:20:50 18 THE WITNESS: All right.

14:20:52 19 MR. BROWNE: So -- okay.

14:20:53 20 MR. WILLEN: So again, I'm going to say that  
14:20:55 21 this new Exhibit 9 also doesn't have a Bates stamp on  
14:20:58 22 it, so I just ask Mr. Browne to provide us with some  
14:21:01 23 information about the circumstances under which he  
14:21:04 24 obtained the document.

14:21:05 25 MR. BROWNE: Yeah. I'm -- I'm happy to do

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1 REIDER

14:21:07 2 that.

14:21:07 3 I went to the YouTube website and went onto  
14:21:12 4 the online media kit, and I clicked on a link there  
14:21:15 5 and this came up, and I printed it out.

14:21:19 6 MR. WILLEN: Okay. Well, we'll -- we'll  
14:21:20 7 lodge a conditional foundational objection to your  
14:21:25 8 document, go back and verify it, but you're free to  
14:21:29 9 ask questions about it.

14:21:30 10 MR. BROWNE: Okay.

14:21:31 11 Q And before that little interlude, Ms. Reider,  
14:21:35 12 we were talking about the online media kit that  
14:21:38 13 YouTube -- that YouTube has and its purposes. And  
14:21:41 14 Exhibit 9 is just a page I've printed out from the  
14:21:46 15 YouTube website, and if you look at the bottom there  
14:21:48 16 it says "YouTube Stats (US)"; do you see that?

14:21:51 17 A Uh-huh, yes, I see that.

14:21:52 18 Q And you say they're the "#1 entertainment  
14:21:55 19 site on the Internet"?

14:21:56 20 A According to "Nielsen//NetRatings December  
14:21:58 21 '07."

14:21:59 22 Q Yes, that's right.

14:22:00 23 Now, why is that something to include on the  
14:22:05 24 YouTube online media kit?

14:22:07 25 A So the -- the context of this, see in the

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1 REIDER

14:22:09 2 upper-left where it says "YouTube Videocracy"? So  
14:22:13 3 there was an event that we held in February of 2008 in  
14:22:17 4 New York called Videocracy, and it was an event where  
14:22:24 5 we invited dozens of content partners to come and  
14:22:28 6 participate. And it was -- it was really our  
14:22:31 7 coming-out party to the advertising community where we  
14:22:37 8 highlighted our content partners. And I know this is  
14:22:43 9 not an exhibit, but in this YouTube InVideo Ads you  
14:22:47 10 can see all the content partners that we're  
14:22:49 11 highlighting here.

14:22:49 12 So it was an event for our content partners  
14:22:53 13 and to introduce our advertisers to our content  
14:22:57 14 partners. And so the reason that we would say "#1  
14:23:00 15 entertainment site on the Internet," or "#6 largest  
14:23:03 16 audience on the Internet," because the original form  
14:23:03 17 of that was a little piece of collateral that was  
14:23:05 18 actually handed out at this event, was so that our  
14:23:08 19 content partners would feel really good about  
14:23:10 20 partnering with us.

14:23:12 21 Because it's like they're opening up a store  
14:23:15 22 in the largest mall there is, and that's where -- this  
14:23:18 23 is really to make our content partners feel really  
14:23:21 24 spectacular about, you know, being at this event and  
14:23:25 25 also, generally, so that advertisers understand this

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1 REIDER

14:23:29 2 is a platform that matters, and it would be meaningful  
14:23:34 3 to figure out how to play here and engage with our  
14:23:38 4 content partners.

14:23:41 5 Q And you see there it says "68 million unique  
14:23:44 6 monthly visitors"?

14:23:45 7 A Yeah.

14:23:45 8 Q Again, that's according to Nielsen.

14:23:48 9 Did you include that information for the same  
14:23:53 10 types of reasons that you just gave me, or for  
14:23:56 11 different reasons?

14:23:57 12 A Well, it's the same. It's from -- I mean, we  
14:23:59 13 consider our partners to be advertisers and also to be  
14:24:01 14 content partners, and so both of them need to feel  
14:24:05 15 that this is a viable platform on -- on which they  
14:24:10 16 want to participate. Advertisers need to come and run  
14:24:12 17 ads, and partners need to come here and have the  
14:24:17 18 content.

14:24:17 19 Q Now, up there on the -- on the top of this  
14:24:20 20 Exhibit 9 it says "YouTube Video Ads," and then "Drive  
14:24:24 21 engagement and awareness with high-profile placements  
14:24:28 22 on YouTube's Search Results pages and Homepage"; do  
14:24:30 23 you see that?

14:24:31 24 A Yes.

14:24:31 25 Q What -- what does that reference there to

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1 REIDER

2 15:00:38 ambiguous.

3 15:00:39 THE WITNESS: Which I'll answer with, every

4 15:00:44 campaign is set up in a different way.

5 15:00:47 MR. BROWNE: Q. Well, have there been

6 15:00:50 instances that you have told advertisers that there

7 15:00:54 can be an indirect link between their advertisements

8 15:00:57 and the particular searches that YouTube users do on

9 15:01:01 the YouTube search page?

10 15:01:02 A If you go back to that piece of collateral

11 15:01:05 that you had printed out from Videocracy and think

12 15:01:09 about that for a minute, at the -- that where we

13 15:01:12 highlight that we have content partners in news or in

14 15:01:15 sports or in wherever, that we tell advertisers that

15 15:01:20 if you want to buy against music content, you can buy

16 15:01:23 against music content.

17 15:01:29 Q And that would be, if we're thinking back to

18 15:01:32 Exhibit 9 when we -- which was the online media kit

19 15:01:37 and it referenced search and category pages, that,

20 15:01:39 what you just gave me an example of, will be a

21 15:01:43 category search category?

22 15:01:43 A InVideo. Actually, I was thinking about the

23 15:01:46 InVideo that we were looking at first.

24 15:01:48 Q When a -- when an advertiser has the ability

25 15:01:50 to or when YouTube has the ability to link

1 REIDER

2 15:01:52 advertisements to, as you put it, sports and

3 15:01:56 music --

4 15:01:56 A Uh-huh.

5 15:01:56 Q -- isn't that -- correct me if I'm wrong, but

6 15:01:59 isn't that what you call a -- a -- a category?

7 15:02:02 A So I don't know how this was set up in the

8 15:02:06 system. I don't know exactly what the -- what this

9 15:02:09 is, other than what we're looking at. But if somebody

10 15:02:13 searches for "auto," then it's possible -- or for

11 15:02:22 "fast cars," then it's possible that an automotive

12 15:02:27 manufacturer would be able to serve an automotive ad.

13 15:02:33 Q Do -- do you mind just flipping back

14 15:02:34 to -- through that stack to Reider Exhibit 9, which

15 15:02:38 was the one-page --

16 15:02:39 A Yeah.

17 15:02:39 Q -- document called "YouTube Video Ads." And

18 15:02:42 the second bullet point up from the word "features,"

19 15:02:46 it says there "Search and category pages present

20 15:02:50 content related to user interest at the moment of

21 15:02:52 relevance" and then it goes on.

22 15:02:52 A Uh-huh.

23 15:02:55 Q Do you see that?

24 15:02:55 A "Features"; where am I?

25 15:02:59 Q I'm sorry.

1 REIDER

17:08:48 2 The time is 5:08 p.m.

17:08:50 3 (Recess taken.)

17:12:06 4 THE VIDEOGRAPHER: On the record.

17:12:07 5 The time is 5:11 p.m.

17:12:09 6 Please continue.

17:12:09 7 MS. CUNHA: Okay.

17:12:13 8 Q So my -- my question to you is, why did you  
17:12:17 9 put "Client attorney privilege" on this e-mail?

17:12:20 10 A Okay. And it was a long time ago. I think I  
17:12:24 11 may have thought that I had CCed one of our attorneys,  
17:12:29 12 Zahavah, but actually I don't -- I don't have any idea  
17:12:34 13 why I put that on there.

17:12:35 14 Q Okay.

17:12:36 15 If you could just quickly turn back to  
17:12:37 16 Exhibit 17. I just have a couple of more questions.

17:12:40 17 A Is that the rate card?

17:12:41 18 Q That's the rate card; correct.

17:12:43 19 A Okay.

17:12:46 20 Q Do you see under -- it says "run of site,"  
17:12:50 21 and then there's an indication for "ROS." It's on the  
17:12:54 22 first page of the rate card.

17:12:55 23 A First page. Okay. I'm there.

17:12:57 24 Q What is "run of site"? What does that mean?

17:13:00 25 A Run of site means that the advertiser has --

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1 REIDER

17:13:02 2 there's no guarantee. There's no commitment about  
17:13:05 3 where the ad is gonna show up. It can go run of site  
17:13:09 4 anywhere on the sight. It's total up to us, our  
17:13:14 5 discretion. They don't get to say at all.

17:13:16 6 Q And what do you understand the part that  
17:13:20 7 refers to vertical level one, vertical level two,  
17:13:22 8 vertical level three? Do you see that?

17:13:23 9 A Yeah.

17:13:23 10 Q What does that mean?

17:13:24 11 A I had to remind myself of that too, because  
17:13:28 12 that doesn't -- that's part -- we don't do that  
17:13:30 13 anymore, but I believe what that was was levels of  
17:13:33 14 targeting.

17:13:34 15 So if you just want the broad category of  
17:13:37 16 entertainment, that would be vertical level one. If  
17:13:40 17 you want to go a little deeper and you want, like,  
17:13:44 18 music, that would be number two. If you want to go a  
17:13:47 19 little deeper -- but we don't do that anymore, and I  
17:13:49 20 also had to remind myself of what that was.

17:13:57 21 Q And final question, does YouTube sell ads on  
17:14:00 22 registration pages?

17:14:01 23 A I don't -- I would have to look if we sell --  
17:14:07 24 I don't think we sell ads on registration pages,  
17:14:10 25 because it would deter the user from registering, in

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

IN RE: AIMSTER COPYRIGHT  
LITIGATION

MASTER FILE NO. 01 C 8933

MDL 1425

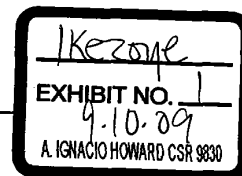
JUDGE MARVIN E. ASPEN

DECLARATION OF VANCE IKEZOYE  
IN SUPPORT OF PLAINTIFFS'  
PROPOSED PRELIMINARY  
INJUNCTION ORDER

DECLARATION OF VANCE IKEZOYE

I, Vance Ikezoye, the undersigned, declare:

1. I am the President and Chief Executive Officer of Audible Magic Corporation. I make this declaration in support of Plaintiffs' Proposed Preliminary Injunction Order in order to demonstrate that, contrary to the public statements by the defendants in this matter, there are methods presently available to prevent unauthorized recordings from being distributed on peer-to-peer systems like those operated by defendants. I have personal knowledge of the following facts and, if called and sworn as a witness, could competently testify thereto.



1           2.     Audible Magic is a technology and services company that provides content  
2 management and information services to the media and entertainment industries. The company  
3 offers a range of standard information services as well as customized project development  
4 based upon its patented media identification and classification technology, its media monitoring  
5 and management software, and an extensive and continually updated reference database of  
6 copyrighted music. One of the services Audible Magic currently provides is monitoring radio  
7 broadcasts for customers such as SESAC, a major performing rights organization. Audible  
8 Magic is using its fingerprinting technology (described more fully below) to identify the songs  
9 broadcast by terrestrial radio stations, to assist in determining royalty distributions to artists.  
10 Audible Magic also utilizes its fingerprinting technology in a song copyright verification  
11 service to the CD replication industry (companies that duplicate CDs) to enable them to identify  
12 copyrighted recordings prior to reproduction. The replicators then utilize this information to  
13 ensure that the customer has authorization from the copyright holders to copy the recordings.  
14  
15

16  
17           3.     The core of Audible Magic's work is audio recognition technology that classifies  
18 sound based on its perceptual characteristics. A company called Muscle Fish, LLC, which  
19 began in 1992 and which Audible Magic acquired in July 2000, originally developed the  
20 technology. This technology relies on Mel-Filtered Cepstral Coefficients ("MFCCs"), which  
21 are measurements that accurately characterize and model audio in the same way the ear  
22 perceives sound. When a person hears any sound, the human ear perceives the spectra of the  
23 sound. (A spectrum measures amplitude as a function of frequency.) We have found that  
24 measuring the shape of the spectrum is the method of identifying uniqueness in a segment of  
25 audio that is the most accurate and robust, i.e., able to work in many different environments and  
26 despite changes in format and acoustic and digital modifications. Thus, Audible Magic's  
27  
28

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1 technology analyzes the shape of the spectrum inherent in a digital audio file. The MFCC  
2 describes the shape of that spectrum, adjusted for the way that the human ear actually perceives  
3 sound.

4  
5 4. The analysis performed by this technology produces a set of numeric values called  
6 a "feature vector" or "digital fingerprint," which is absolutely unique to a particular master  
7 recording. In essence, each digital fingerprint identifies a master recording, much as a human  
8 fingerprint identifies a person. The fingerprinting technology works on all forms of audio,  
9 regardless of the digital format into which the audio has been encoded.  
10

11  
12 5. The fingerprint remains constant through typical audio processing, such as the  
13 compression that occurs when an audio file is encoded into digital formats, including MP3, the  
14 most popular format. Thus, one fingerprint can be used to recognize all manipulated forms of  
15 the original audio, just as law enforcement technology permits identification of a suspect even  
16 if a fingerprint is smeared. The fingerprints are accurate enough that they can differentiate  
17 between various live and studio performances of a single song.  
18

19  
20 6. Audible Magic's technology also accurately identifies songs regardless of the bit  
21 rate of the file. The bit rate is the number of bits (small pieces of data) that occur in a given  
22 amount of time, usually a second. Thus, a bit rate is usually expressed in some multiple of bits  
23 per second - for example, kilobits, or thousands of bits per second (Kbps). The higher the bit  
24 rate, the larger the file and the better the sound quality. Users can set the bit rate at several  
25 different levels, but the identification technology will work in a range of bit rates from highly  
26 compressed 20 Kbps to CD quality, over 300 Kbps. This range includes the bit rates used by  
27  
28

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1 regular users of P2P services, who generally prefer the higher quality that comes with higher bit  
2 rates, usually at least 56 Kbps and more often much higher.

3  
4 7. The fingerprints are very small. Only 20 seconds of a master recording is needed  
5 to create the fingerprint. A typical reference fingerprint is around one kilobyte (1 Kb), whereas  
6 a typical file encoded in MP3, the most popular digital format for sound recordings, is about  
7 three megabytes (3Mb), 3,000 times larger than the fingerprint, and a typical WAV file  
8 (another popular digital format for sound recordings) is about 30 megabytes (30 Mb), 30,000  
9 times larger than the fingerprint. The small size of the fingerprint makes it much easier to store  
10 and much faster to transmit and check the fingerprints of unknown audio files against a  
11 reference database of fingerprints of known recordings.  
12  
13

14 8. The fingerprint technology is very secure and cannot be tampered with. As long as  
15 the audio is not distorted to the point that the listening experience is significantly affected, the  
16 fingerprint will positively identify the recording.  
17  
18

19 9. I am familiar with peer-to-peer systems ("P2P") like the ones operated by  
20 defendants in this case. We understand the basic technology and architectures; and have  
21 discussed designs to apply Audible Magic's technology to P2P. Audible Magic's technology  
22 can be used to block unauthorized recordings from being distributed and copied in this type of  
23 system, as described below.  
24  
25

26 10. First, Audible Magic possesses a database of fingerprints from approximately 3.4  
27 million copyrighted songs. This database roughly represents the music available for purchase in  
28 North America and consists of music from the five major and over 500 independent music



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1 labels. Fingerprints from this large archive would be used to populate an Audible Magic  
2 Identification Server with a reference database. Then, the company's fingerprinting software  
3 would be installed either on each user's computer or on a server operated by the system operator  
4 (e.g., Aimster/Madster). In either case, the fingerprinting technology would create a fingerprint  
5 of each digital recording that a user sought to distribute and transmit it over the Internet to the  
6 reference database, located on the Audible Magic Identification Server. The unknown  
7 fingerprint is then compared to the fingerprints in the reference database.  
8

9  
10 11. What happens next depends on whether the system is designed as a "filter-in"  
11 system or a "filter-out" system. In a "filter-in" system, the reference database would include  
12 fingerprints of only those recordings that the copyright holders have authorized for distribution.  
13 In that case, if the fingerprint of the unknown audio file matches a fingerprint in the reference  
14 database, the user would be permitted to distribute and copy the audio file, but would be  
15 blocked from distributing it if there is no match. (The blocking could occur by disabling the  
16 unauthorized file on the user's hard drive.) If a "filter-out" system was desired, the reference  
17 database would include fingerprints of those recordings that are not authorized for distribution,  
18 and a match would prevent distribution, while no match would permit distribution.  
19  
20

21 12. The Audible Magic technology can easily handle millions of requests for  
22 identification against a reference database of hundreds of thousands of recordings. Audible  
23 Magic's technology currently achieves above 98% correct identification rates, with an  
24 insignificant level of false positive identifications. Our goal, which we are continually working  
25 towards, is 100% correct identification. In addition, when combined with other file  
26  
27  
28

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F-818

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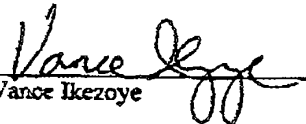
Audible Magic

408 399 6406

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1 identification methods such as MD5 hashes, a comprehensive system would make the entire  
2 verification even faster, more accurate, and less expensive.  
3

4 I declare under penalty of perjury under the laws of the United States that the  
5 foregoing is true and correct and that this Declaration was executed on September 10, 2002,  
6 at Los Gatos, California.  
7

8  
9   
10 Vance Ikezoye  
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