

10-3270

10-3342

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

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

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

**SUPPLEMENTAL JOINT APPENDIX
VOLUME IV OF IX (Pages SJA-745 to SJA-967) – PUBLIC VERSION**

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v.

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

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
SOUTHERN DISTRICT OF NEW YORK

-----X	
THE FOOTBALL ASSOCIATION PREMIER	:
LEAGUE LIMITED and BOURNE CO., et al., on	:
Behalf of themselves and all others similarly	:
Situated,	:
	:
Plaintiffs,	:
	:
v.	:
	:
YOUTUBE, INC., YOUTUBE, LLC and	:
GOOGLE INC.,	:
	:
Defendants.	:
-----X	

07 Civ. 3582 (LLS)
(related case no. 07 Civ. 2103 (LLS),
the "Viacom Action")

**DEFENDANTS' "HIGHLY
CONFIDENTIAL" AMENDED
RESPONSES AND
OBJECTIONS TO
PLAINTIFFS' FIRST SET
OF INTERROGATORIES**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure and Rules 26.3 and 33.3 of the Local Civil Rules, defendants YouTube, Inc., YouTube, LLC and Google Inc. (collectively, "YouTube") by its attorneys, hereby responds and objects to Plaintiffs' First Set of Interrogatories as follows:

DEFINITION

All definitions and rules of instructions set forth in Federal Rules of Civil Procedure 26 and 34, and the Uniform Definitions set forth in Local Civil Rules 26.3(c) and (d) shall apply herein, as well as the following additional definition:

1. "Plaintiffs" means, collectively all plaintiffs in this action and in the *Viacom* Action.

GENERAL OBJECTIONS

A. YouTube objects to each interrogatory, definition, and instruction contained in the Interrogatories to the extent that any interrogatory, definition, or instruction purports to impose obligations greater than those imposed by the Federal Rules of Civil Procedure and/or any applicable Local Rules for the Southern District of New York.

B. YouTube objects to each interrogatory to the extent that it is duplicative of Plaintiffs' document requests.

C. YouTube's response to any interrogatory is not an admission or acknowledgement that such interrogatory calls for information that is relevant to the subject matter of this action, and it is without prejudice to YouTube's right to contend at trial or in any other or subsequent proceeding in this action that such response is inadmissible, irrelevant, and/or not the proper basis for discovery.

D. YouTube objects to each interrogatory to the extent that it seeks information that neither is relevant to the claims or defenses in this action nor reasonably calculated to lead to the discovery of admissible evidence.

E. YouTube objects to each interrogatory, definition, and instruction contained in the Interrogatories to the extent that any interrogatory, definition, or instruction contains inaccurate, incomplete, or misleading descriptions of facts, persons, or events underlying this litigation.

F. YouTube objects to each interrogatory to the extent that it calls for the production of material protected from discovery by the attorney-client or attorney work-product privileges, or any other applicable evidentiary privilege. YouTube does not waive, and does not intend to waive, its attorney-client or work-product privileges in its response to these Interrogatories. To the extent that any privileged information is provided inadvertently, YouTube reserves (i) its privileges with respect to such information; (ii) its right to object to the use of such information; and (iii) its right to object to the admissibility of such information.

G. YouTube objects to each interrogatory to the extent that it calls for the production of information in the possession, custody, or control of persons or entities other than YouTube. YouTube has produced and will produce only documents and information in its possession, custody, or control.

H. YouTube objects to each interrogatory to the extent that it seeks cumulative or duplicative information.

I. YouTube objects to each interrogatory to the extent that it is overbroad, unduly burdensome, vague, ambiguous, or oppressive.

J. YouTube reserves the right to rely, at the time of trial or in other proceedings in this action, upon evidence in addition to that provided in the responses to the Interrogatories

regardless of whether, *inter alia*, any evidence is newly discovered or is currently in existence. YouTube is continuing its investigation, and the information provided is true and correct to YouTube's best knowledge at this particular time, but it is subject to correction and modification as new facts are discovered. To the extent that YouTube does discover additional information responsive to the Interrogatories, discovers that any response herein is incorrect, or discovers information that would make any of the responses herein incorrect, YouTube will supplement or amend those responses pursuant to Rules 26(e) and 33.

K. YouTube further objects to each interrogatory to the extent that it exceeds the permissible scope of discovery under Local Rule 33.3(b) (as interpreted by Plaintiffs in their responses to YouTube's interrogatories) in that it is not a "more practical method of obtaining the information sought than a request for production or a deposition," and that it seeks information other than (i) names of witnesses with knowledge of information relevant to the subject matter of the action, (ii) the computation of each category of damage alleged, and (iii) the existence, custodian, location and general description of relevant documents.

L. YouTube objects to all of the interrogatories on the ground that they seek information that: (i) is equally known and/or accessible to Plaintiffs; (ii) may not exist; or (iii) is not retrievable.

M. The foregoing general objections shall be considered as made, to the extent applicable, in response to each of the interrogatories, as if the objections were fully set forth in each response.

SPECIFIC RESPONSES AND OBJECTIONS

INTERROGATORY NO. 1 (SET 1):

Identify each Video Clip that was both (i) removed from the YouTube Website on the grounds, in whole or in part, that it infringed copyright or was uploaded without the

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authorization of the owner of content, or on the grounds, in whole or in part, that it was suspected to have infringed copyright or was uploaded without the authorization of the owner of content; and (ii) removed prior to or without the receipt of a Take Down Complaint concerning the presence of the Video Clip at a particular URL.

RESPONSE TO INTERROGATORY NO. 1 (SET 1):

YouTube objects to this interrogatory as unduly burdensome. There are many millions of clips, out of the tens of millions that have been uploaded to the YouTube service, that have been removed from the YouTube service over the years. These removals have been effected utilizing numerous different processes, and have involved a host of different people making individualized determinations in particularized circumstances. YouTube has no means to identify all of the clips removed under the specific conditions Plaintiffs have identified for YouTube, much less to collect the various categories of additional information sought, to the extent it even exists, for all of them. The request is oppressive.

YouTube further objects to the interrogatory on the grounds that it is overbroad because of the sheer volume of clips for which information is sought, the demand for multiple categories of detailed information for each of those millions of clips, and the fact that the overwhelming majority of removed clips are not those that Plaintiffs have identified as being at issue in this case. The interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Plaintiffs' interrogatory is also vague and ambiguous, particularly in light of the multiple defined terms (and subparts within the defined terms) that it incorporates. The interrogatory is also impermissibly compound, relying on multi-part definitions and conjunctions to pose interrogatory upon interrogatory in this request.

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Subject to, and without waiving the foregoing or its General Objections, YouTube responds:

In an effort to assist copyright holders in protecting their content online, (1) YouTube removed or restricted access to material on the YouTube service at least in part based on considerations of copyright, notably without regard to whether or not such material actually contained content that was authorized by a putative copyright holder to have been present on the service; and (2) removed or restricted access to such material without regard to YouTube's receipt of (i) a notice sent to YouTube under Section 512(c)(3) of the Digital Millennium Copyright Act, or (ii) other communication from a putative copyright holder contending that content at the particular URL for the material infringed its copyright. Discovery that YouTube has already provided reveals considerable evidence of such activity, although in many cases the evidence of removal or restricted access does not necessarily reference specific material by URL. As a result, and given the massive burden involved, YouTube cannot practicably identify the "Video Clips" that were ultimately removed or restricted in a given instance that might be responsive to this interrogatory.

Further, as noted in YouTube's objections, given the frequency with which YouTube has effected these removals or restrictions on behalf of content owners and the nature of the data in YouTube's possession regarding this practice, it is impossible to compile a complete list of the clips satisfying these conditions, let alone the additional detail that Plaintiffs' demand for those clips, assuming such information even exists. Nevertheless, the data contains a non-exhaustive list of URLs for more than thirteen million video clips (being produced concurrently herewith as at Bates No. GOO-ROGDATA 001) that, to the best of its current knowledge, (1) YouTube removed or restricted access to on the YouTube service at least in part based on considerations of

copyright, notably without regard to whether such clips actually contained content that was not authorized by a putative copyright holder to have been present on the service; and (2) removed or restricted access to such clips without regard to YouTube's receipt of (i) a notice sent to YouTube under Section 512(c)(3) of the Digital Millennium Copyright Action, or (ii) other communication from a putative copyright holder contending that content at the particular URL for the clip infringed its copyright. The CD also contains the dates on which those clips were removed or restricted, where available. Despite the parties' agreement to limit fact discovery to January 1, 2008 in all but agreed-upon cases, YouTube has voluntarily determined to produce this information current as of June 5, 2009.

INTERROGATORY NO. 2 (SET 1):

Identify each Video Clip that has ever been flagged (*i.e.*, marked) by users of the YouTube Website as infringing or otherwise violating copyright laws using the Flag as Inappropriate Feature on the YouTube Website (including all versions of that feature that have ever appeared on the YouTube Website), and state whether or not the Video Clip was removed by You in response to the flag.

RESPONSE TO INTERROGATORY NO. 2 (SET 1):

YouTube objects to this interrogatory as vague and ambiguous for multiple reasons, including the defined terms that it incorporates (such as the term "Flag as Inappropriate Feature" which is defined in multiple ways and includes reference to a non-functional URL), and its failure to define the term "user." The interrogatory also includes statements that lack foundation and contain embedded legal conclusions. In particular, YouTube does not know how a user would know whether a clip on the service is "infringing or otherwise violating copyright laws," and does not agree that a hypothetical user would be in a position to make such a representation.

YouTube also objects to the request as overbroad to the extent it calls for information regarding clips that are not among those that Plaintiffs have identified as being at issue in this case, and unduly burdensome to the extent it calls for information regarding “all versions” of the “Flag as Inappropriate Feature” on the service. YouTube objects to the phrase “in response to the flag” as being vague and unduly burdensome. YouTube’s records do not always reflect the reasons why any particular video was removed, and even when they do, the stated reasons are often not exclusive. YouTube’s response to this interrogatory does not imply that videos no longer active on the service were disabled “in response” to any user-flagging protocol. The interrogatory is also impermissibly compound.

Subject to, and without waiving the foregoing or its General Objections, YouTube responds:

Users of the YouTube service do not, by virtue of using the “Flag as Inappropriate Feature,” identify specific clips as raising copyright considerations. Rather, a user who utilizes the functionality, and then selects “infringes my rights” and “infringes my copyright” from subsequent drop down menus, is directed to a page that explains in detail the process under the Digital Millennium Copyright Act (“DMCA”) for submitting removal requests to YouTube and that provides a convenient online form for the easy submission of such requests.

To the extent Plaintiffs seek information regarding a functionality that allowed ordinary users to identify for further review by YouTube specific clips as potentially implicating copyright considerations, such a functionality was operative on the service for a brief period in the fall of 2005. The functionality was discontinued when YouTube concluded that users were not in a position to correctly distinguish between authorized and potentially unauthorized material on the YouTube service, and in light of concerns that users would use the functionality

as a means of censorship, to seek removal of content that they found undesirable, regardless of whether it was authorized to be on the service. During the period in which the functionality was operative, YouTube has records showing that users applied it to at least 53 videos on the service as shown on Exhibit A.

INTERROGATORY NO. 3 (SET 1):

For each removed Video Clip identified in Your response to Interrogatories Nos. 1 and 2, state (i) whether, subsequent to the removal, You received any communications from any person claiming that the Video Clip was not a copyright violation and/or was authorized to be uploaded to YouTube, and describe those communications with specificity (including by identifying the individuals who purported to send the communication and who received them); and if so (ii) whether You subsequently restored the Video Clip to the YouTube Website and Your reasons for doing so or not doing so.

RESPONSE TO INTERROGATORY NO. 3 (SET 1):

Because this interrogatory builds upon the Interrogatory Nos. 1 and 2, it suffers from the same defects and is objectionable on the same grounds as they are. YouTube incorporates and restates those objections here in full.

This interrogatory is further objectionable as unduly burdensome given the millions of videos identified in response to Interrogatory No. 1. As noted, these removals and restrictions have been effected utilizing numerous different processes, and have involved a host of different people making individualized determinations in particularized circumstances. Likewise, to the extent videos have been restored on the service, they have been restored by many different people making individualized determinations in particular circumstances. YouTube has no means to identify the clips removed or restricted under the specific conditions Plaintiffs have

identified, much less to determine whether each of the millions of clips was restored on the service under the specific conditions specified by Plaintiffs, or to supply all of the additional information for any such video meeting all these conditions, to the extent such information even exists for them all. The request is oppressive.

YouTube further objects to the interrogatory on the grounds that it is overbroad because of the sheer volume of clips for which information is sought, the demand for multiple categories of detailed information for each of those millions of clips, and the fact that the overwhelming majority of removed clips are not those that Plaintiffs have identified as being at issue in this case. The interrogatory seeks information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

Plaintiffs' interrogatory is also vague and ambiguous, particularly in light of the multiple defined terms (and subparts within the defined terms) that it incorporates. The interrogatory is also impermissibly compound, relying on multi-part definitions and conjunctions to pose interrogatory upon interrogatory in this request.

Subject to, and without waiving the foregoing or its General Objections, YouTube responds:

Of the more than thirteen million video clips identified in response to Interrogatory Nos. 1 and 2, slightly less than four percent are currently active in some form on the service, as of the date the data was compiled, but their status may have changed since. Other clips may once have been restored and subsequently removed, but YouTube has no readily available means to determine that number or the identity of such videos. Still others may once have been restricted, but are no longer subject to those restrictions. Again, YouTube has no readily available means to assess that phenomenon.

Moreover, YouTube does not generally track the reasons why a particular video clip may have been restored or why restrictions on a given video may have been lifted on the YouTube service, other than in circumstances in which it receives a formal counter-notification under the DMCA.

YouTube has provided in discovery evidence of instances in which YouTube was notified or otherwise learned of information indicating that videos that were removed or restricted on the service based upon copyright considerations should not have been removed or should not have been subject to the restrictions. That evidence, however, does not necessarily reference the specific material involved, or allow YouTube to determine whether the material involved was within the universe of clips that YouTube identified in response to Interrogatory Nos. 1 and 2.

Dated: 1/11/10
New York, NY

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*Attorneys for Defendants YouTube, Inc.,
YouTube, LLC and Google Inc.*

VERIFICATION

I, Micah Schaffer, have read the foregoing Amended Responses and Objections to Plaintiffs' First Set of Interrogatories. I am informed and believe that the answers therein are true and correct to the best of my knowledge, information and belief, based on information currently available to me, and on that ground verify them.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Dated: January 10, 2010

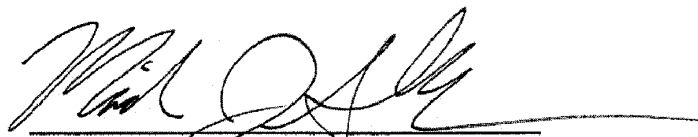

Micah Schaffer

Exhibit A

VIDEO ID	DATE
XaEZx4GM5nE	2005-09-12
XaEZx4GM5nE	2005-09-12
7zFXq7umHEk	2005-09-12
7CXUV3FXGSs	2005-09-12
zr853v bxkU	2005-09-13
s0SSA2JDpTo	2005-09-13
s0SSA2JDpTo	2005-09-13
dDzbdF6-Cmw	2005-09-14
5SNiRZ5KOGA	2005-09-16
YDzyC1RjrGc	2005-09-17
7CXUV3FXGSs	2005-09-18
CtYnfo-1Qz4	2005-09-18
o4rvYUJ80Vw	2005-09-19
h67STeyQHhk	2005-09-19
DxS1ny1ZZKQ	2005-09-19
FVA84sHIdQQ	2005-09-19
oaZ4blN Xhs	2005-09-20
4D2lBd2t48M	2005-09-20
3d2OapilW14	2005-09-20
7XtJZ9YKqwo	2005-09-20
CJ42gp-1Tzy	2005-09-21
aim4MCDJD0o	2005-09-21
ds-Ogg0Izno	2005-09-21
IZ28MDgku2E	2005-09-21
OI OB5Nqkk	2005-09-23
08tgta8dEBk	2005-09-23
mUKJN5w6bsM	2005-09-23
nkrWriI649c	2005-09-23
kliH84ZomMc	2005-09-23
zrHkvQ3qMmA	2005-09-24
apDu 3WiKwo	2005-09-24
lxKCFsR_h-o	2005-09-24
PqcZ8 QzT Q	2005-09-24
UHYZhbsDZhc	2005-09-24
1aEJoEDs7s0	2005-09-24
Z3CXQ3ZZMGU	2005-09-25
4G70Y9wWX2k	2005-09-25
Bet6HRAfAtk	2005-09-25
LUfZjZn7prs	2005-09-25
5Fflpe2P7A8	2005-09-25
MzS02ecGtCQ	2005-09-26

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VIDEO ID	DATE
L9erhKqFK9U	2005-09-26
nvlg8ysQv5I	2005-09-26
vWaW1YPZrgk	2005-09-26
j9ZZ-co6G6c	2005-09-26
uekHuFSZucE	2005-09-26
wwW0 ADwCwQ	2005-09-26
mGo2KOHDPUM	2005-09-26
0xL6FCtBfOU	2005-09-27
UEBOItnl6OY	2005-09-27
0 WS2O5IOqs	2005-09-27
0nbgoyzTBWc	2005-09-27
zTwq5XyE-Ls	2005-09-28

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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	)	Case No. 1:07-cv-02103 (LLS)
LLC,	)	(Related Case No. 1:07-cv-03582 (LLS))
	)	ECF Case
)	
Plaintiffs,	)	DECLARATION OF SUSAN J.
	)	KOHLMANN IN SUPPORT OF
v.	)	VIACOM'S OPPOSITION TO
	)	DEFENDANTS' MOTION FOR
YOUTUBE INC., YOUTUBE, LLC, and	)	SUMMARY JUDGMENT
GOOGLE, INC.,)	
)	
Defendants.)	
)	
)	

I, Susan J. Kohlmann, hereby declare as follows:

1. I am a partner with the law firm Jenner & Block LLP and represent the plaintiffs in the above-captioned action ("Viacom"). I submit this declaration in support of Viacom's Memorandum of Law in Opposition to Defendants' Motion for Summary Judgment. Attached to this declaration are Exhibits referenced in Viacom's Memorandum of Law and Viacom's Counter-Statement in Response to Defendants' Local Rule 56.1 Statement and in Viacom's Supplemental Counter-Statement in Response to Facts Asserted in Defendants' Summary Judgment Memorandum of Law but Omitted from Defendants' Local Rule 56.1 Statement. I make this declaration based on personal knowledge, except where otherwise noted herein.

Wilkins Declaration

2. Attached as Exhibit 1 is the Declaration of Scott B. Wilkins in Support of Viacom's Memorandum of Law in Opposition to Defendants' Motion for Summary Judgment, dated April 28, 2010, and Exhibits 1-47 thereto.

Documents Produced by Defendants

3. The documents listed below in paragraphs 4 through 53 are true and correct copies of documents produced by Defendants in this action, and accordingly are marked by Defendants with a Bates number beginning with the prefix "GOO001-".

4. Attached as Exhibit 1 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-00005708-GOO001-00005721.

5. Attached as Exhibit 2 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-00035137-GOO001-00035138. This email exchange was introduced as Exhibit 6 at the deposition of Franck Chastagnol.

6. Attached as Exhibit 3 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-00040895-GOO001-00040897.

7. Attached as Exhibit 4 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-00189308-GOO001-00189312. This email exchange was introduced as Exhibit 10 at the Rule 30(b)(6) deposition of David King.

8. Attached as Exhibit 5 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-00241143.

9. Attached as Exhibit 6 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-00241682.

10. Attached as Exhibit 7 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-00448911-GOO001-00448913.

11. Attached as Exhibit 8 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-00499589-GOO001-00499595. This email exchange was introduced as Exhibit 25 at the deposition of Omid Kordestani.

12. Attached as Exhibit 9 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-00515280.

13. Attached as Exhibit 10 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-00561391.

14. Attached as Exhibit 11 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-00561394.

15. Attached as Exhibit 12 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-00607526.

16. Attached as Exhibit 13 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-00707687-GOO001-00707689.

17. Attached as Exhibit 14 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-00730943-GOO001-00730975, and a true and correct copy of an associated email attachment produced by Defendants marked with the Bates number range GOO001-00730944-GOO001-00730975. This email exchange was introduced as Exhibit 8 at the deposition of Christopher Maxcy.

18. Attached as Exhibit 15 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-00744627.

19. Attached as Exhibit 16 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-00751570-GOO001-00751571.

20. Attached as Exhibit 17 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-00797743-GOO001-00797746.

21. Attached as Exhibit 18 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-00830262-GOO001-00830263.

22. Attached as Exhibit 19 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-00833914-GOO001-00833916. This email exchange was introduced as Exhibit 6 at the deposition of Varun Kacholia.

23. Attached as Exhibit 20 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-00839838-GOO001-00839841.

24. Attached as Exhibit 21 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-00943107-GOO001-00943108.

25. Attached as Exhibit 22 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-01506851.

26. Attached as Exhibit 23 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-01984461-GOO001-01984467, and a true and correct copy of an associated email attachment produced by Defendants marked with the Bates number range GOO001-01984464-GOO001-01984467.

27. Attached as Exhibit 24 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-02299635-GOO001-02299638, and a true and correct copy of an associated email attachment produced by Defendants marked with the Bates number range GOO001-02299636-GOO001-02299638.

28. Attached as Exhibit 25 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-02302174-GOO001-02302181.

29. Attached as Exhibit 26 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-02302195-GOO001-02302203.

30. Attached as Exhibit 27 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-02463138-GOO001-02463141. This email exchange was introduced as Exhibit 25 at the deposition of Thomas Donohue.

31. Attached as Exhibit 28 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-02604740-GOO001-02604745. This email exchange was introduced as Exhibit 5 at the deposition of Franck.

32. Attached as Exhibit 29 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-02826791, and a true and correct copy of an associated email attachment produced by Defendants marked with the Bates number range GOO001-02826792-GOO001-02826798. This email exchange was introduced as Exhibit 30 at the deposition of David Drummond, Exhibit 19 at the deposition of Eric Schmidt, Exhibit 16 at the deposition of Larry Page, and Exhibit 16 at the deposition of Sergey Brin.

33. Attached as Exhibit 30 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-02925393-GOO001-02925418.

34. Attached as Exhibit 31 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-02975607-GOO001-02975608.

35. Attached as Exhibit 32 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-03419774-GOO001-03419778.

36. Attached as Exhibit 33 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-03630988. This email exchange was introduced as Exhibit 30 at the deposition of Jawed Karim.

37. Attached as Exhibit 34 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-03676696-GOO001-03676717.

38. Attached as Exhibit 35 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-04731508.

39. Attached as Exhibit 36 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-04945320.

40. Attached as Exhibit 37 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-05311155-GOO001-05311159.

41. Attached as Exhibit 38 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-05639863-GOO001-05639865.

42. Attached as Exhibit 39 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-06674342-GOO001-06674347.

43. Attached as Exhibit 40 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-09603446-GOO001-09603455.

44. Attached as Exhibit 41 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-00850320-GOO001-00850323.

45. Attached as Exhibit 42 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-00850304-GOO001-00850305.

46. Attached as Exhibit 43 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-04500216-GOO001-04500217.

47. Attached as Exhibit 44 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-01620064-GOO001-01620087, and true and correct copies of associated email attachments produced by Defendants marked with the Bates number ranges GOO001-01620065-GOO001-01620070 and GOO001-01620071-GOO001-01620087.

48. Attached as Exhibit 45 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-09612404-GOO001-09612405.

49. Attached as Exhibit 46 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-06072619-GOO001-06072622.

50. Attached as Exhibit 47 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-05944464 -GOO001-05944480.

51. Attached as Exhibit 48 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number GOO001-00515036.

52. Attached as Exhibit 49 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-01519246 -GOO001-01519251.

53. Attached as Exhibit 50 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range GOO001-05611423 -GOO001-05611426.

54. Defendants have produced over 800 email messages sent between YouTube and Palisades Media Group. Arthur Chan appeared as a sender, recipient, or cc'd recipient on approximately 250 of those email messages.

Documents Produced by YouTube Co-Founder Jawed Karim

55. In response to a subpoena issued by Viacom in this action on December 7, 2007, YouTube co-founder Jawed Karim produced documents on May 16 and 21, 2008. The

documents listed below in paragraphs 56 through 63 are true and correct copies of documents produced by Jawed Karim and are marked with Bates numbers beginning with the prefix "JK." *See Hohengarten Decl.* ¶¶ 218-221.

56. Attached as Exhibit 51 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range JK00004875-JK00004876.

57. Attached as Exhibit 52 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number JK00008527. This email exchange was introduced as page 1 of Exhibit 30 at the deposition of Jawed Karim.

58. Attached as Exhibit 53 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number JK00008555. This email exchange was introduced as page 2 of Exhibit 30 at the deposition of Jawed Karim.

59. Attached as Exhibit 54 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number JK00008591. This email exchange was introduced as page 3 of Exhibit 30 at the deposition of Jawed Karim.

60. Attached as Exhibit 55 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number JK00008595.

61. Attached as Exhibit 56 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number JK00008614. This email exchange was introduced as page 5 of Exhibit 30 at the deposition of Jawed Karim.

62. Attached as Exhibit 57 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number JK00008621. This email exchange was introduced as page 7 of Exhibit 30 at the deposition of Jawed Karim.

63. Attached as Exhibit 58 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number JK00008631. This email exchange was introduced as page 10 of Exhibit 30 at the deposition of Jawed Karim.

Documents Produced by Viacom

64. The documents listed below in paragraphs 65 through 70 are true and correct copies of documents produced by Viacom in this action, and accordingly are marked with Bates numbers beginning with the prefix "VIA."

65. The documents listed in paragraphs 66 through 70 were retained by the Viacom Plaintiffs in the course of regularly conducted business activity, collected pursuant to the Viacom Plaintiffs' discovery obligations, and produced to Defendants in this litigation.

66. Attached as Exhibit 59 is a true and correct copy of an email exchange produced by Viacom marked with the Bates number range VIA00258309-VIA00258310.

67. Attached as Exhibit 60 is a true and correct copy of an email exchange produced by Viacom marked with the Bates number range VIA00378149-VIA00378150.

68. Attached as Exhibit 61 is a true and correct copy of an email exchange produced by Viacom marked with the Bates number range VIA00613146-VIA00613147.

69. Attached as Exhibit 62 is a true and correct copy of an email exchange produced by Viacom marked with the Bates number range VIA01108775-VIA01108808.

70. Attached as Exhibit 63 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number VIA12603576.

Documents Produced by Third-Party Fanscape

71. In response to a subpoena issued by Defendants in this action on October 30, 2008, third-party Fanscape produced documents marked with Bates numbers beginning with the prefix "FS."

72. Attached as Exhibit 64 is a true and correct copy of an email exchange produced by Defendants marked with the Bates number range FS043563-FS043567. This email exchange was introduced as Exhibit 56 at the deposition of John Eddow.

Deposition Transcripts From This Action

73. Attached as Exhibit 65 are true and correct copies of excerpts from the transcript of the deposition of Roelof Botha taken on August 5, 2009.

74. Attached as Exhibit 66 are true and correct copies of excerpts from the transcript of the deposition of Adam Cahan taken on December 19, 2009.

75. Attached as Exhibit 67 are true and correct copies of excerpts from the transcript of the deposition of Thomas Donohue taken on October 30, 2009.

76. Attached as Exhibit 68 are true and correct copies of excerpts from the transcript of the deposition of Maryrose Dunton taken on August 22, 2008.

77. Attached as Exhibit 69 are true and correct copies of excerpts from the transcript of the deposition of John Eddow taken on November 12, 2009.

78. Attached as Exhibit 70 are true and correct copies of excerpts from the transcript of the deposition of Tina Exarhos taken on February 23, 2009.

79. Attached as Exhibit 71 are true and correct copies of excerpts from the transcript of the deposition of Tom Freston taken on September 11, 2009.

80. Attached as Exhibit 72 are true and correct copies of excerpts from the transcript of the deposition of Michael Fricklas taken on September 22, 2009.

81. Attached as Exhibit 73 are true and correct copies of excerpts from the transcript of the deposition of Michelena Hallie taken on December 10, 2009.

82. Attached as Exhibit 74 are true and correct copies of excerpts from the transcript of the deposition of Mark Ishikawa taken on January 14, 2010.

83. Attached as Exhibit 75 are true and correct copies of excerpts from the transcript of the deposition of Jawed Karim taken on June 9, 2009.

84. Attached as Exhibit 76 are true and correct copies of excerpts from the transcript of the deposition of David King taken on January 13, 2010.

85. Attached as Exhibit 77 are true and correct copies of excerpts from the transcript of the deposition of Andrew Lin taken on July 2, 2009.

86. Attached as Exhibit 78 are true and correct copies of excerpts from the transcript of the deposition of Judy McGrath taken on July 29, 2009.

87. Attached as Exhibit 79 are true and correct copies of excerpts from the transcript of the deposition of Courtney Nieman taken on December 16, 2009.

88. Attached as Exhibit 80 are true and correct copies of excerpts from the transcript of the deposition of Micah Schaffer taken on July 23, 2008.

89. Attached as Exhibit 81 are true and correct copies of excerpts from the transcript of the deposition of Warren Solow taken on December 18, 2009.

90. Attached as Exhibit 82 are true and correct copies of excerpts from the transcript of the deposition of Tamar Teifeld taken on February 18, 2009.

91. Attached as Exhibit 83 are true and correct copies of excerpts from the transcript of the deposition of Kristina Tipton taken on October 29, 2009.

92. Attached as Exhibit 84 are true and correct copies of excerpts from the transcript of the deposition of Megan Wahtera taken on December 4, 2009.

93. Attached as Exhibit 85 are true and correct copies of excerpts from the transcript of the deposition of Michael Wolf taken on April 17, 2009.

94. Attached as Exhibit 86 are true and correct copies of excerpts from the transcript of the deposition of Franck Chastagnol taken on December 10, 2008.

95. Attached as Exhibit 87 are true and correct copies of excerpts from the transcript of the deposition of Scott Hurwitz taken on September 10, 2008.

96. Attached as Exhibit 88 are true and correct copies of excerpts from the transcript of the deposition of Chad Hurley taken on April 22, 2009.

Interrogatory Responses

97. Attached as Exhibit 89 is a true and correct copy of Defendants' supplemental responses to Plaintiffs' Second Set of Interrogatories, served on Viacom on April 28, 2010.

Documents Obtained From Publicly Accessible Portions of Defendants' Websites

98. The following exhibits are true and correct copies of documents printed from publicly accessible portions of the Google and YouTube websites. Each exhibit referenced in paragraphs 99 through 100 below was printed from the YouTube or Google website by an employee of Jenner & Block LLP acting at my direction.

99. Attached as Exhibit 90 is a true and correct copy of an "Official YouTube Blog" posting dated November 14, 2007.

100. Attached as Exhibit 91 is a true and correct copy of the Copyright Infringement Notification page on the YouTube website.

Other Documents

101. Attached as Exhibit 92 is a true and correct copy of a white paper produced by the Electronic Frontier Foundation entitled “Peer-to-Peer File Sharing and Copyright Law: A Primer for Developers.”

102. Attached as Exhibit 93 is a true and correct copy of a letter dated June 9, 2009 from Defendants to the Court waiving an advice of counsel defense.

Community Guidelines

103. I navigated to the YouTube homepage by entering “www.youtube.com” in my Internet browser. At the bottom of that page in small font was a link called “Copyright.” I clicked on that link, and on the left side of the resulting page was a link to YouTube’s “Community Guidelines.” I clicked on that link and was taken to YouTube’s “Community Guidelines” page.

Copyright Tips

104. To arrive at the “Copyright Tips” page, I first performed the three steps that took me to YouTube’s “Community Guidelines” page. *See supra* ¶ 103. I then clicked on a link called “Copyright Tips.”

I declare under penalty of perjury that the foregoing is true and correct. Executed this 30th day of April, 2010, at New York, N.Y.



Susan J. Kohlmann

To: "Margaret Healy" <margaret@youtube.com>, "David G King" <dgking@google.com>
From: "Matthew Liu" <matthew@youtube.com>
Cc: "Kenji Arai" <kenji@youtube.com>
Bcc:
Received Date: 2007-03-30 00:39:02 CST
Subject: Re: Just curious...

David is the new gatekeeper for CYC. Right now we have not been giving the tool to partners without a revenue share contract in place, but at some point we will. Do they already have the CVP tool? It's actually more effective for takedowns if the partner is not interested in revenue share. Of course, CYC also includes fingerprinting that can do automatic takedowns.

Whatever happens, I'd love to participate in meetings/demos on this one David. This is purely for my own self-interest in seeing Crocop in person.

On Mar 28, 2007, at 11:14 PM, Margaret Healy wrote:

> Seriously I think the CYC tool would be great for them- and they
> would actually use the features! Can I pitch this to them?
>
> On 3/28/07, Kenji Arai <kenji@youtube.com> wrote:
> Funny you ask. Margaret and I were just talking about it today.
> Maybe we can get them the CYC tool, get them active on YouTube and
> get them to hook us up with some tickets (especially one with Fedor
> - that would be sweet). Help us make it happen Matt.
>
> -Kenji
>
>
> On 3/28/07, Matthew Liu <matthew@youtube.com> wrote:
> ...and completely irrelevant but how are things going with the UFC?
> I'd love to stay informed about any possible deals we might do with
> them. I'm probably the biggest fan in all of YT of UFC and Pride
> (whom they just bought yesterday).
>
> Thanks,
> Matt
>
>
> Matthew Liu
> Product Manager
> [REDACTED] matthew@youtube.com
>
>
>
>
>
> --
> *****
>
> Kenji Arai
> YouTube
> <http://www.youtube.com>

> Pho [REDACTED]
> Fax [REDACTED]
> kenji@youtube.com
>
> "This email and the information it contains are confidential and
> may be privileged. If you have received this email in error please
> notify me immediately and do not copy it for any purpose, or
> disclose its contents to any other person. Internet communications
> are not secure and, therefore, Google does not accept legal
> responsibility for the contents of this message as it has been
> transmitted over a public network. If you suspect the message may
> have been intercepted or amended please call me."
>
>
>
> --
> Margaret Healy
> margaret@google.com - aim [REDACTED]
> [REDACTED]
>
>
> "This email and the information it contains are confidential and
> may be privileged. If you have received this email in error please
> notify me immediately and do not copy it for any purpose, or
> disclose its contents to any other person. Internet communications
> are not secure and, therefore, Google does not accept legal
> responsibility for the contents of this message as it has been
> transmitted over a public network. If you suspect the message may
> have been intercepted or amended please call me."

Matthew Liu
Product Manager
[REDACTED] | matthew@youtube.com

To: [REDACTED];
'jen@youtube.com' <jen@youtube.com>
From: Joanna Ging <jging@youtube.com>
Cc: [REDACTED];
[REDACTED];
Bcc:
Received Date: 2006-11-27 23:02:00 GMT
Subject: RE: Screenshots/YouTube

Hi Stephanie,

Please find the attached the screenshots of Pulse and Clerks2.

Let me know if you need anything else. Thanks!

Joanna Ging
Media Coordinator
Office: [REDACTED]
Phone: [REDACTED]
Email: jging@youtube.com

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

From: Stephanie L. Hernandez [mailto:[REDACTED]]
Sent: Monday, November 27, 2006 11:27 AM
To: 'Joanna Ging'; jen@youtube.com
Cc: [REDACTED]
Subject: Screenshots/YouTube
Importance: High

Hi Joanna and Jen,

Can you please send screenshots of Clerks 2 asap as these placements only run through tomorrow-

We also need screenshots for Pulse-

Tbanks much!
Stephanie

Stephanie Hernandez
Palisades MediaGroup Inc.
Assistant Interactive Media Planner

1620 26th Street, Suite 2050N, Santa Monica, CA 90404
[REDACTED]

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

From: Joanna Ging [mailto:jging@youtube.com]
Sent: Monday, November 20, 2006 11:37 AM
To: 'Joanna Ging'; [REDACTED]; jen@youtube.com
Cc: [REDACTED]

pmcdowell@youtube.com
Subject: RE: Tags for Genius Products/Clerks 2/YouTube

Hi Stephanie,

I have scheduled the tags and they're set to go live on 11/23.

Thanks!

Joanna Ging
Media Coordinator
Office: [REDACTED]
Phone: [REDACTED]
Email: jging@youtube.com

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

From: Joanna Ging [mailto:jging@youtube.com]
Sent: Friday, November 17, 2006 4:30 PM
To: [REDACTED] 'jen@youtube.com'
Cc: [REDACTED]
Subject: RE: Tags for Genius Products/Clerks 2/YouTube

Hi Stephanie,

Thanks for checking in, I'll schedule them in a bit and will confirm when I'm done. Thanks and have a great weekend!

Joanna Ging
Media Coordinator
Office: [REDACTED]
Phone: [REDACTED]
Email: jging@youtube.com

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

From: [REDACTED]
Sent: Friday, November 17, 2006 4:21 PM
To: [REDACTED] jen@youtube.com; jging@youtube.com
Cc: [REDACTED]
Subject: RE: Tags for Genius Products/Clerks 2/YouTube

Hi there,

Just checking in on tags- please let us know if you need anything else on our end-

Thanks much and have a great weekend!!

Stephanie

Stephanie Hernandez
Palisades MediaGroup Inc.
Assistant Interactive Media Planner

1620 26th Street, Suite 2050N, Santa Monica, CA 90404
[REDACTED]

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

From: [REDACTED]
Sent: Thursday, November 16, 2006 6:02 PM
To: jen@youtube.com; jging@youtube.com
Cc: [REDACTED]
[REDACTED]

Subject: Tags for Genius Products/Clerks 2/YouTube

Hello to all!
Please find attached tags for Clerks 2. Please confirm receipt and let us know if you have any issues with these.
Thank you much,
Stephanie

Attachments:

Clerks 2.ppt
Pulse.ppt

Search Page

[illegible]

YouTube Confidential

Entertainment Watch

[illegible]

YouTube Confidential



Clerks 2 – Entertainment Watch 728x90

You Tube Watch it. Love it.

Home Videos Channels Subscribers Search

SAME DEALERS. DIFFERENT JOINT.

【花楓少年少女】ep02-1

Upload: December 24, 2006
From: SJA-780
Views: 1,234
Likes: 12
Dislikes: 0
Comments: 5
Channel: SJA-780

Comments & Responses

Comments: 5
Responses: 0

Related Videos

1. 【花楓少年少女】ep01-1
2. 【花楓少年少女】ep03-1
3. 【花楓少年少女】ep04-1
4. 【花楓少年少女】ep05-1
5. 【花楓少年少女】ep06-1



YouTube Confidential

YouTube Confidential



To: jen@youtube.com <jen@youtube.com>; jging@youtube.com <jging@youtube.com>
From: [REDACTED]
Cc: [REDACTED]
[REDACTED]

Bcc:
Received Date: 2006-11-17 02:01:59 GMT
Subject: Tags for Genius Products/Clerks 2/YouTube

Hello to all!
Please find attached tags for Clerks 2. Please confirm receipt and let us know if you have any issues with these.
Thank you much,
Stephanie

Attachments:

GeniusProducts-Clerks2 Tags for YouTube.txt

SJA-783

Case 1:07-cv-02103-LLS Document 316-25 Filed 05/21/10 Page 2 of 4

* Note: Never implement a JUMP tag without a corresponding ad tag as this will cause no impressions/clicks to be counted for the associated tag set.

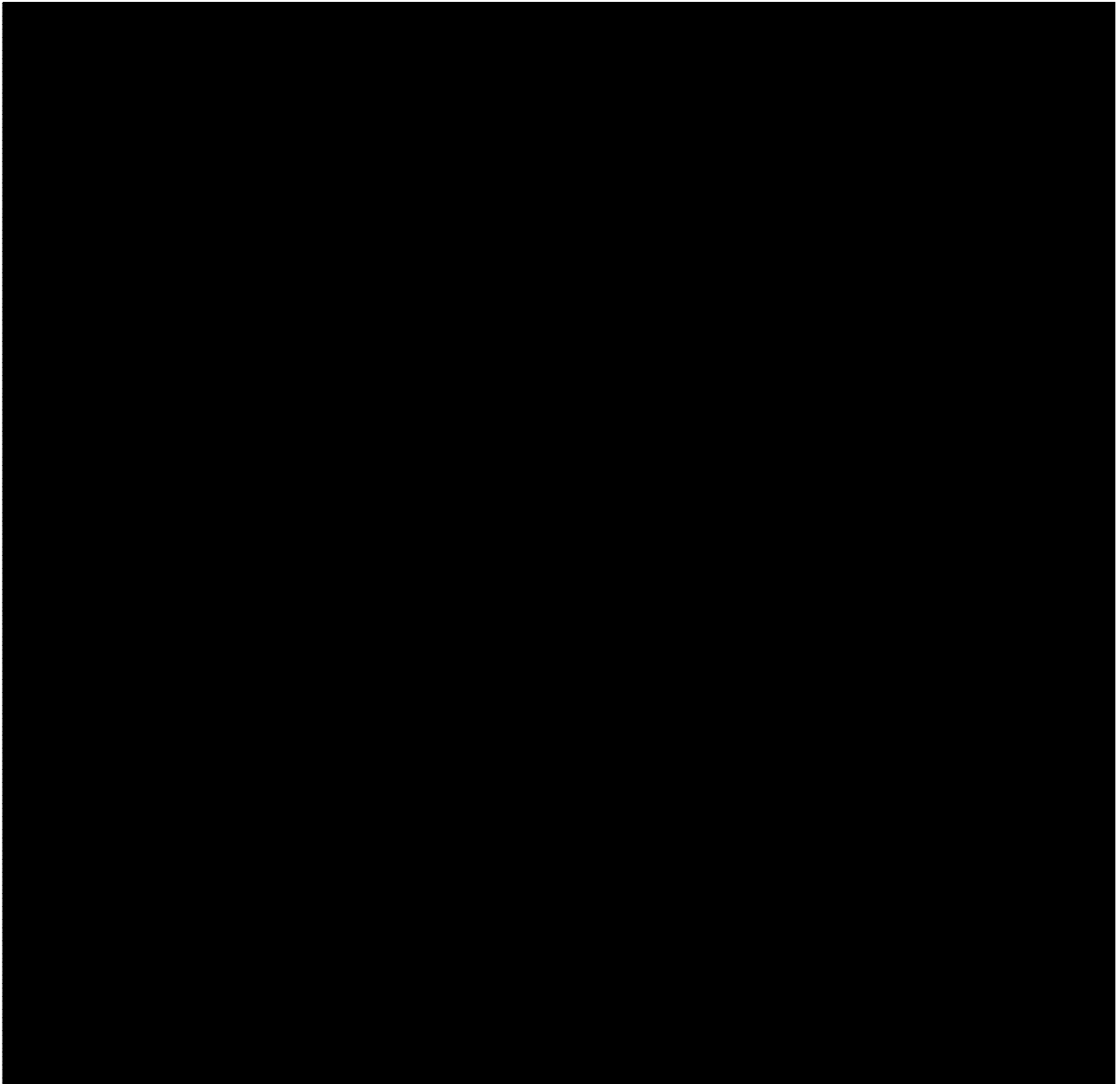
=====

DoubleClick Dart for Advertisers tags for YouTube

Advertiser: Genius Products
Campaign: Clerks 2

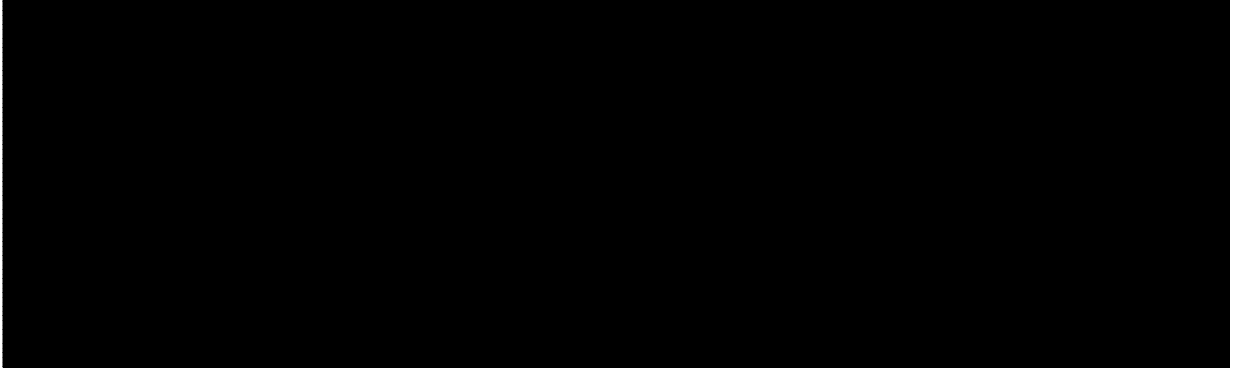
=====

Placement: YouTube_Entertainment A18-24 US_728x90
Run Dates: 11/23/2006 To 11/28/2006

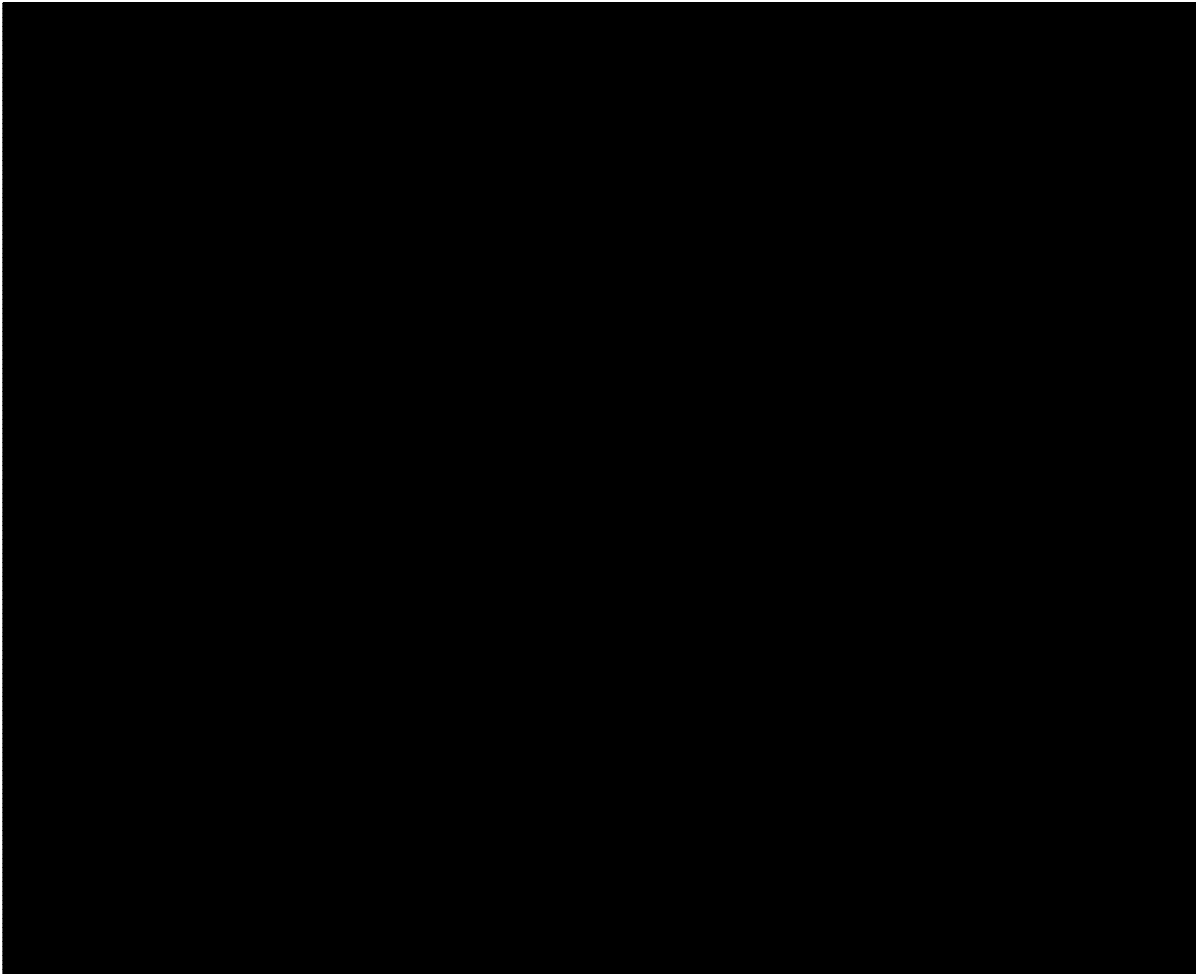


SJA-784

Case 1:07-cv-02103-LLS Document 316-25 Filed 05/21/10 Page 3 of 4

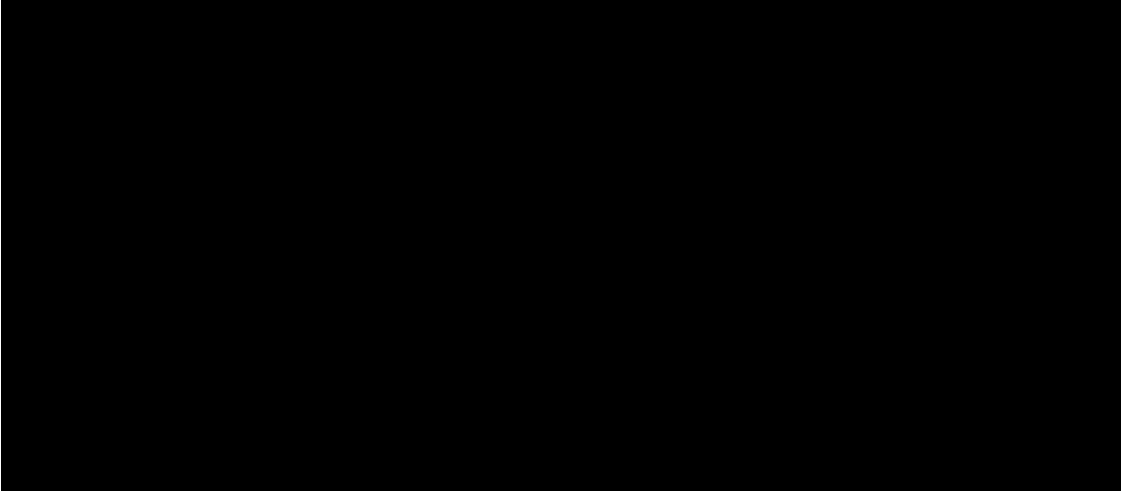


=====
Placement: YouTube_Search Results_728x90
Run Dates: 11/23/2006 To 11/28/2006



SJA-785

Case 1:07-cv-02103-LLS Document 316-25 Filed 05/21/10 Page 4 of 4



=====

To: [REDACTED] 'Joanna Ging'
<jging@youtube.com>; [REDACTED]
From: Jen Sida <jen@youtube.com>
Cc: [REDACTED]
[REDACTED] anna@youtube.com <anna@youtube.com>
Bcc:
Received Date: 2006-12-04 19:15:14 GMT
Subject: RE: Directors Videos URL

That is perfectly fine! Just make sure you send Joanna the link.

Thanks!

jen

Jen Sida | Account Manager |

1000 Cherry Ave. 2nd Floor | San Bruno, Ca 94066

phone: [REDACTED]

fax: [REDACTED]

email: jen@youtube.com

<http://www.youtube.com/>

From: Erin Foxworthy [REDACTED]
Sent: Saturday, December 02, 2006 3:01 PM
To: jen sida; 'Joanna Ging'; [REDACTED]
Cc: [REDACTED]
[REDACTED]
anna@youtube.com
Subject: Re: Directors Videos URL

Hi Jen-

Can we use them next week for Rocky please? Crystal can provide the URL.

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

From: "Jen Sida"
Sent 12/1/2006 3:00:32 PM
To: "Joanna Ging", [REDACTED]
Cc: [REDACTED]
anna@youtube.com
Subject: RE: Directors Videos URL

Hi everyone,

I just wanted to confirm that the Director's Videos are not live on site- we are waiting for you to send the URL of the other film you would like for this placement.

Please let us know if you have any questions.

Thank you,

jen

Jen Sida | Account Manager|
1000 Cherry Ave. 2nd Floor | San Bruno, Ca 94066
pho [REDACTED]
fax [REDACTED]
email: jen@youtube.com
<http://www.youtube.com/>

From: Joanna Ging [mailto:jging@youtube.com]
Sent: Friday, December 01, 2006 1:19 PM
To: [REDACTED] 'Jen Sida'
Cc: [REDACTED]
[REDACTED]

Subject: RE: Directors Videos URL

Hi All,

Please find the screenshot of the 160x600 running.

Arthur,

Can you please confirm for me what you would like to do with the 728x90?

I'll be heading out of the office in a bit but please feel free to call me if you have any questions. Thanks!

Joanna Ging

Media Coordinator

Office:

Phone:

Email: jging@youtube.com

From: Crystal Harris [mailto:[REDACTED]]
Sent: Friday, December 01, 2006 12:31 PM
To: 'Joanna Ging'
Cc: [REDACTED]
Subject: RE: Directors Videos URL

Hey Joanna,

Revised files are attached.

The url is www.riseoftaj.com

Thanks,

Crystal

From: Arthur Chan [mailto:[REDACTED]]
Sent: Friday, December 01, 2006 11:36 AM
To: [REDACTED]; Crystal Harris
Subject: FW: Directors Videos URL

Help..

From: Joanna Ging [mailto:jging@youtube.com]
Sent: Thursday, November 30, 2006 11:14 PM
To: [REDACTED]
Subject: RE: Directors Videos URL

Hey Arthur,

I QAed the files and a few revisions needed:

- 1) Please resize the 160x600 back up file so that it's no larger than 20K.
- 2) We required that the frame rate to be max at 18fps. Please revised the frame rate for the 160x600 swf file, it's current set at 24fps.
- 3) All animations must stop within 15 seconds. Please also fix the 160x600 so it doesn't animate beyond the 15 seconds.

Can you please also provide me the clickthru URL that you would like to use?
Thanks!

Joanna Ging

Media Coordinator

Office: [REDACTED]

Phone: [REDACTED]

Email: jging@youtube.com

From: Arthur Chan [mailto:[REDACTED]]
Sent: Thursday, November 30, 2006 6:37 PM
To: 'Joanna Ging'
Subject: FW: Directors Videos URL

From: Andrew Taylor [mailto:[REDACTED]]
Sent: Thursday, November 30, 2006 6:09 PM
To: 'Sam Cimino'; 'Jen Sida'; [REDACTED]
Cc: 'Anna Nguyen'; [REDACTED]
Subject: RE: Directors Videos URL

Hey Guys,

Attached are the 160x600 and 728x90 creative. Since we have not budgeted for these additional impressions, we hope that you can serve them and give us reporting once this campaign is completed. Regarding the videos, we will need to get back to you tomorrow...

Andrew

From: Sam Cimino [mailto:scimino@youtube.com]
Sent: Thursday, November 30, 2006 5:48 PM

To: 'Jen Sida'; [REDACTED]
Cc: 'Sam Cimino'; 'Anna Nguyen'; [REDACTED]
Subject: RE: Directors Videos URL

Hi Guys,

Just to be clear on this:

A) we've reduced the cost of your current media plan by [REDACTED]

Ok, this is a kick ass make good, guys- we' appreciate your business!

S

From: Jen Sida [mailto:jen@youtube.com]
Sent: Thursday, November 30, 2006 5:31 PM
To: 'Sam Cimino'; efoxworthy@palisadesmedia.com
Cc: 'Sam Cimino'; 'Anna Nguyen'; ataylor@palisadesmedia.com;
slim@palisadesmedia.com
Subject: RE: Directors Videos URL
Importance: High

Hi Everyone,

I have revised the IO to add the following new placements:

Directors Videos- we need the URL for this please

Videos Section- Most Viewed Roadblock Fri-Sunday 160x600- If you choose rich media you will be responsible for 3rd party fees

Director's Video Watch Page- 728x90 banner that will appear above your videos

Revised IO- please reduce all CPM's by half for the original portion. Director's Videos are Value Ad no impressions against it. Videos section Roadblock is [REDACTED] at a [REDACTED] Directors Watch page is Value Ad, no impressions or dollars against this. I know we sign your IO so if you want me to send a revised plan let me know.

Please make sure you reply all so the appropriate people can get the correct information.

Thank you!

Jen Sida | Account Manager |

1000 Cherry Ave, 2nd Floor | San Bruno, Ca 94066

phor [REDACTED]

fax: [REDACTED]

email: jen@youtube.com

<http://www.youtube.com/>

From: Sam Cimino [mailto:scimino@youtube.com]
Sent: Thursday, November 30, 2006 5:26 PM
To: 'Jen Sida'; [REDACTED]
Cc: 'Sam Cimino'; 'Anna Nguyen'; [REDACTED]
Subject: RE: Directors Videos URL

Sorry, and Sam Lim.

From: Jen Sida [mailto:jen@youtube.com]
Sent: Thursday, November 30, 2006 5:12 PM
To: efoxworthy@palisadesmedia.com
Cc: 'Sam Cimino'; 'Anna Nguyen'
Subject: Directors Videos URL

Hi Erin,

Do you have the URL for the video you want to run in this placement? Is it going to be the same trailer as today?

To confirm we will run these videos Fri-Sunday.

Thanks!

jen

Jen Sida | Account Manager|

1000 Cherry Ave. 2nd Floor | San Bruno, Ca 94066

pho 

fax: 

email: jen@youtube.com

<http://www.youtube.com/>

Attachments:

image001.gif

image002.jpg

To: [REDACTED]; 'Erin Foxworthy'
[REDACTED]; 'Joanna Ging' <jging@youtube.com>
From: Jen Sida <jen@youtube.com>
Cc: [REDACTED];
[REDACTED]; anna@youtube.com <anna@youtube.com>
Bcc:
Received Date: 2006-12-04 20:58:42 GMT
Subject: RE: Directors Videos URL

Crystal- Can you let me know what days you wanted to run the Director's placement?

Jen Sida | Account Manager|

1000 Cherry Ave. 2nd Floor | San Bruno, Ca 94066

pho [REDACTED]

fax: [REDACTED]

email: jen@youtube.com

<http://www.youtube.com/>

From: [REDACTED]
Sent: Monday, December 04, 2006 10:16 AM
To: 'Erin Foxworthy'; 'jen sida'; 'Joanna Ging'
Cc: [REDACTED]; anna@youtube.com
Subject: RE: Directors Videos URL

Hey There,

I already sent this last week, but here it is again just in case:

<http://www.youtube.com/watch?v=kt0SWWId2rY>

Thanks,

Crystal

From: Erin Foxworthy [mailto:[REDACTED]]
Sent: Saturday, December 02, 2006 3:01 PM
To: jen sida; 'Joanna Gind'; [REDACTED]
Cc: [REDACTED]
anna@youtube.com
Subject: Re: Directors Videos URL

Hi Jen-

Can we use them next week for Rocky please? Crystal can provide the URL.

-----Original Message-----
From: "Jen Sida"
Sent: 12/1/2006 3:00:32 PM
To: "Joanna Gind"; [REDACTED]
Cc: [REDACTED]
anna@youtube.com
Subject: RE: Directors Videos URL

Hi everyone,

I just wanted to confirm that the Director's Videos are not live on site- we are waiting for you to send the URL of the other film you would like for this placement.

Please let us know if you have any questions.

Thank you,

jen

Jen Sida | Account Manager|
1000 Cherry Ave. 2nd Floor | San Bruno, Ca 94066
phone: [REDACTED]

fax: [REDACTED]

email: jen@youtube.com

<http://www.youtube.com/>

From: Joanna Ging [mailto:jging@youtube.com]

Sent: Friday, December 01, 2006 1:19 PM

To: [REDACTED] 'Jen Sida'

Cc: [REDACTED]

Subject: RE: Directors Videos URL

Hi All,

Please find the screenshot of the 160x600 running.

Arthur,

Can you please confirm for me what you would like to do with the 728x90?

I'll be heading out of the office in a bit but please feel free to call me if you have any questions. Thanks!

Joanna Ging

Media Coordinator

Office: [REDACTED]

Phone: [REDACTED]

Email: jging@youtube.com

From: Crystal Harris [mailto:[REDACTED]]
Sent: Friday, December 01, 2006 12:31 PM
To: 'Joanna Ging'
Cc: [REDACTED]
Subject: RE: Directors Videos URL

Hey Joanna,

Revised files are attached.

The url is www.riseoftaj.com

Thanks,

Crystal

From: Arthur Chan [mailto:[REDACTED]]
Sent: Friday, December 01, 2006 11:36 AM
To: [REDACTED] Crystal Harris
Subject: FW: Directors Videos URL

Help..

From: Joanna Ging [mailto:jging@youtube.com]
Sent: Thursday, November 30, 2006 11:14 PM
To: [REDACTED]
Subject: RE: Directors Videos URL

Hey Arthur,

I QAed the files and a few revisions needed:

- 1) Please resize the 160x600 back up file so that it's no larger than 20K.
- 2) We required that the frame rate to be max at 18fps. Please revised the frame rate for the 160x600 swf file, it's current set at 24fps.
- 3) All animations must stop within 15 seconds. Please also fix the 160x600 so it doesn't animate beyond the 15 seconds.

Can you please also provide me the clickthru URL that you would like to use?
Thanks!

Joanna Ging

Media Coordinator

Office: [REDACTED]

Phone: [REDACTED]

Email: jging@youtube.com

From: Arthur Chan [mailto:[REDACTED]]
Sent: Thursday, November 30, 2006 6:37 PM
To: 'Joanna Ging'
Subject: FW: Directors Videos URL

From: Andrew Taylor [mailto:[REDACTED]]
Sent: Thursday, November 30, 2006 6:09 PM
To: 'Sam Cimino'; 'Jen Sida'; [REDACTED]
Cc: 'Anna Nguyen'; [REDACTED]
Subject: RE: Directors Videos URL

Hey Guys,

Attached are the 160x600 and 728x90 creative. Since we have not budgeted for these additional impressions, we hope that you can serve them and give us reporting once this campaign is completed. Regarding the videos, we will need to get back to you tomorrow...

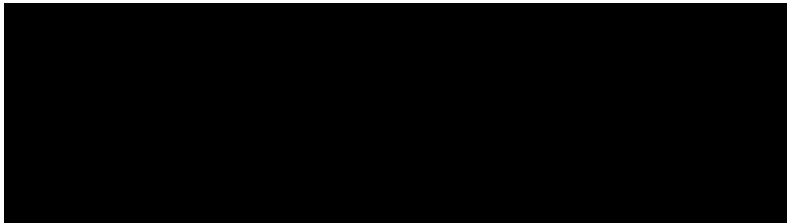
Andrew

From: Sam Cimino [mailto:scimino@youtube.com]
Sent: Thursday, November 30, 2006 5:48 PM
To: 'Jen Sida'; [REDACTED]
Cc: 'Sam Cimino'; 'Anna Nguyen'; [REDACTED]; [REDACTED]
Subject: RE: Directors Videos URL

Hi Guys,

Just to be clear on this:

A) we've reduced the cost of your current media plan by [REDACTED]



Ok, this is a kick ass make good, guys- we' appreciate your business!

S

From: Jen Sida [mailto:jen@youtube.com]
Sent: Thursday, November 30, 2006 5:31 PM
To: 'Sam Cimino'; efoxworthy@palisadesmedia.com
Cc: 'Sam Cimino'; 'Anna Nguyen'; ataylor@palisadesmedia.com;

slim@palisadesmedia.com
Subject: RE: Directors Videos URL
Importance: High

Hi Everyone,

I have revised the IO to add the following new placements:

Directors Videos- we need the URL for this please

Videos Section- Most Viewed Roadblock Fri-Sunday 160x600- If you choose rich media you will be responsible for 3rd party fees

Director's Video Watch Page- 728x90 banner that will appear above your videos

Revised IO- please reduce all CPM's by half for the original portion.
Director's Videos are Value Ad no impressions against it. Videos section Roadblock is [REDACTED] at a [REDACTED] Directors Watch page is Value Ad, no impressions or dollars against this. I know we sign your IO so if you want me to send a revised plan let me know.

Please make sure you reply all so the appropriate people can get the correct information.

Thank you!

Jen Sida | Account Manager|

1000 Cherry Ave. 2nd Floor | San Bruno, Ca 94066

pho [REDACTED]

fax: [REDACTED]

email: jen@youtube.com

<http://www.youtube.com/>

From: Sam Cimino [mailto:scimino@youtube.com]
Sent: Thursday, November 30, 2006 5:26 PM
To: 'Jen Sida'; [REDACTED]
Cc: 'Sam Cimino'; 'Anna Nguyen'; [REDACTED]
Subject: RE: Directors Videos URL

Sorry, and Sam Lim.

From: Jen Sida [mailto:jen@youtube.com]
Sent: Thursday, November 30, 2006 5:12 PM
To: [REDACTED]
Cc: 'Sam Cimino'; 'Anna Nguyen'
Subject: Directors Videos URL

Hi Erin,

Do you have the URL for the video you want to run in this placement? Is it going to be the same trailer as today?

To confirm we will run these videos Fri-Sunday.

Thanks!

jen

Jen Sida | Account Manager|

1000 Cherry Ave. 2nd Floor | San Bruno, Ca 94066

pho [REDACTED]

fax [REDACTED]

SJA-802

Case 1:07-cv-02103-LLS Document 316-27 Filed 05/21/10 Page 9 of 9

email: jen@youtube.com

<http://www.youtube.com/>

Attachments:

image001.gif

image002.jpg

To: 'Kevin Donahue' <kevin@youtube.com>
From: Grant Johmann <grant@wiredset.com>
Cc:
Bcc:
Received Date: 2006-06-05 19:32:06 GMT
Subject: RE: Wiredset - MTV Movie Awards/Jessica Alba

Hi Kevin,

Hope you had a great weekend and thank you for the quick Director's approval. We're digging into it.

We have our first video that we would like to send your way - it's a really funny spot with Jessica Alba for the MTV Movie Awards: <http://www.youtube.com/watch?v=tHh6Yti4Kw4>

The Movie Awards air this Thursday and we'd love for this video to be considered for homepage placement.

Check it out when you can - let me know what you think.

Thanks,
Grant

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

From: Kevin Donahue [mailto:kevin@youtube.com]
Sent: Thursday, June 01, 2006 5:58 PM
To: 'Grant Johmann'
Cc: mark@wiredset.com
Subject: RE: Wiredset - Director's Account

Hi Grant,
Sounds good. I'll go in and approve it later today. Glad to be working with you guys.
Best,
Kevin

From: Grant Johmann [mailto:grant@wiredset.com]
Sent: Thursday, June 01, 2006 2:43 PM
To: 'Kevin Donahue'
Cc: mark@wiredset.com
Subject: RE: Wiredset - Director's Account

Hi Kevin,

Thank you again for your time in speaking with Mark and myself earlier in the week.

As you mentioned, we did sign up for the Director's account. Our user name is Wiredset - Pls approve us so we can start utilizing it.

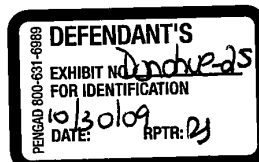
Also, in terms of video, we will be receiving clips and spots for the MTV Movie Awards that air June 8th. We'll be getting them in before the show airs and I'll definitely let you know when we upload them.

Thanks again - looking forward to checking out the Director's acct.

-Grant

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

From: Kevin Donahue [mailto:kevin@youtube.com]



Sent: Thursday, May 25, 2006 5:44 PM
To: 'Grant Johmann'
Subject: RE: YouTube

How's Tuesday at 10 am pst?

From: Grant Johmann [mailto:grant@wiredset.com]
Sent: Thursday, May 25, 2006 1:54 PM
To: 'Kevin Donahue'
Subject: RE: YouTube

Hey Kevin,

That time won't work - we will be on our way toward a Memorial Day weekend.

What time on Tuesday works for you?

-Grant

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

From: Kevin Donahue [mailto:kevin@youtube.com]
Sent: Thursday, May 25, 2006 4:23 PM
To: 'Grant Johmann'
Subject: RE: YouTube

Actually was referring to 3:30 PST. Will that work?

From: Grant Johmann [mailto:grant@wiredset.com]
Sent: Thursday, May 25, 2006 12:22 PM
To: 'Kevin Donahue'
Subject: RE: YouTube

Hi Kevin,

Tomorrow at 3:30pm will work. 3:30pm our time (EST) correct?

-Grant

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

From: Kevin Donahue [mailto:kevin@youtube.com]
Sent: Thursday, May 25, 2006 11:08 AM
To: 'Grant Johmann'
Subject: RE: YouTube

Hi Grant,

Unfortunately I'll have to reschedule our call. Can you do it tomorrow or next week some time? 3:30 pm tomorrow would work for me. Sorry for the inconvenience.

Best,
Kevin

From: Grant Johmann [mailto:grant@wiredset.com]
Sent: Wednesday, May 17, 2006 1:18 PM
To: 'Kevin Donahue'
Subject: RE: YouTube

Perfect. In my calendar.

Talk to you then.

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

From: Kevin Donahue [mailto:kevin@youtube.com]
Sent: Wednesday, May 17, 2006 4:08 PM
To: 'Grant Johmann'
Subject: RE: YouTube

Great. How's 11 am next Thursday then (5/25)?

From: Grant Johmann [mailto:grant@wiredset.com]
Sent: Wednesday, May 17, 2006 12:56 PM
To: 'Kevin Donahue'
Cc: mark@wiredset.com
Subject: RE: YouTube

Hey Kevin,

Great to hear from you. Next Thursday works for me - something between 11am - 2:30pm your time would work great.

Also, our CEO, Mark Ghuneim will join us on the call. Like I said, everyone here is a fan. You'd also be interested to know that we have led some major content partners your way - but more on that for our call.

Looking forward to speaking. Let me know if a time in that range works for you.

Best,
Grant

--

Grant Johmann, VP of Marketing
Wiredset * 425 West 13th Street Suite 504
NY NY 10014

tel: 212.242.3400 * fax: 212.242.3464
W3: wiredset.com * e: grant@wiredset.com

--

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

From: Kevin Donahue [mailto:kevin@youtube.com]
Sent: Tuesday, May 16, 2006 6:59 PM
To: grant@wiredset.com
Subject: YouTube

Hi Grant,
Let's set up a time to talk next week if that works for you. Thurs or Friday next possibly?
Best,
Kevin Donahue
YouTube

Kevin Donahue
VP Programming
71 E. Third Ave | San Mateo, CA | 94401
kevin@youtube.com | [REDACTED]

My YouTube Video Pick of the Day: Ronaldinho - Nike

Attachments:

image001.jpg

To: [REDACTED]
From: "Courtney Nieman" <courtneyni@baytsp.com>
Cc: "Copyright Service" <copyright@youtube.com>
Bcc:
Received Date: 2007-03-07 09:33:26 GMT
Subject: Retraction of Takedown

Dear [REDACTED] (YouTube: LiberalViewer),

Thank you for contacting us about the videos
<http://www.youtube.com/watch?v=nMupwUD8vzk>,
<http://www.youtube.com/watch?v=yOZgLWTSFLk>,
<http://www.youtube.com/watch?v=y08H6Bbm1kY>,
<http://www.youtube.com/watch?v=LzCW4SYvEJk> that were recently removed
from YouTube.

With more than 100,000 unauthorized clips that needed to be removed from
the site, unfortunately, there were isolated errors. We regret the
inconvenience this may have caused and we will continue our ongoing
efforts to convince YouTube to deliver on its promise of a more
practical and effective method of protecting copyrighted content.

If you have further questions, please email to: VIACOM@baytsp.com

BayTSP, Inc. (copyright-compliance@baytsp.com)
ISP-Compliance Feedback
PO Box 1314
Los Gatos, California USA 95031
Fax: 1.408.341.2399
Email: copyright-compliance@baytsp.com.

From: "Bakish, Robert" <bb@viacom.com>
Date: Mon, 17 Jul 2006 15:55:46 -0400
To: "Witt, Jason" <Jason.Witt@mtvstaff.com>
Subject: RE: YouTube Growth is Almost Shocking

In a weird way it might be more than that

>
>From: Witt, Jason
>Sent: Monday, July 17, 2006 3:48 PM
>To: Bakish, Robert
>Subject: RE: YouTube Growth is Almost Shocking

>
>They are right. it's THE VIRTUAL MSO.

>
>From: Bakish, Robert
>Sent: Monday, July 17, 2006 3:16 PM
>To: Witt, Jason
>Subject: RE: YouTube Growth is Almost Shocking

>
>We havent given up but I give it a less than one tenth of a percent chance. Wade will have the conversation but it seems unlikely to yeild anything. Apparently sequoia thinks they have another google on their hands and they want to ride it. Or so im told

>
>From: Witt, Jason
>Sent: Monday, July 17, 2006 2:35 PM
>To: Bakish, Robert
>Subject: RE: YouTube Growth is Almost Shocking

>
>And please tell me that we haven't given up on the M&A

>
>From: Bakish, Robert
>Sent: Monday, July 17, 2006 2:31 PM
>To: Witt, Jason
>Subject: RE: YouTube Growth is Almost Shocking

>
>Thursday? What was thurs?

>
>Yeah amazing

>
>From: Witt, Jason
>Sent: Monday, July 17, 2006 12:50 PM
>To: Bakish, Robert
>Cc: Browning, Nicole - MTVN; Patel, Kruti
>Subject: YouTube Growth is Almost Shocking

>
>100M daily? And I bet the internal # is higher.

>
>How did it go Thursday? Got stuck on Yahoo stuff.

>
>YouTube Growth is Almost Shocking <<http://www.searchenginejournal.com/?p=3641>>

>
> <http://www.searchenginejournal.com/Greg%20Sterling.png>

>
>
>YouTube Growth is Almost Shocking
>
>According to this Reuters article <<http://go.reuters.com/newsArticle.jhtml?type=technologyNews&storyID=12855295&src=rss/technologyNews>> that appeared Sunday, video site YouTube <<http://youtube.com>> is now serving 100 million (yes, that's right) videos daily:
>
>YouTube, the leader in Internet video search, said on Sunday viewers have are now watching more than 100 million videos per day on its site, marking the surge in demand for its "snack-sized" video fare.
>
>Since springing from out of nowhere late last year, YouTube has come to hold the leading position in online video with 29 percent of the U.S. multimedia entertainment market, according to the latest weekly data from Web measurement site Hitwise.
>
>YouTube videos account for 60 percent of all videos watched online, the company said. Videos are delivered free on YouTube and the company is still working on developing advertising and other means of generating revenue to support the business.
>
> http://youtube.com/img/logo_tagline_sm.gif
>
>And what about this: YouTube had 58,000 visitors in August, 2005; how many does it get on a monthly basis today? The site has 20 million uniques. That's less than a year later.
>
>The site has started showing banner ads and has struck a deal with NBC, with suggestions of other such deals in the works. Even though the site has limited revenues, it would probably now fetch an astronomically high purchase price given its growth and growing brand equity.
>
>

Subject: RE: HBK Youtube Clip
From: "Bordo, Sara - Paramount" <EX:/O=VIACOM/OU=PARAMOUNT/CN=RECIPIENTS/CN=BORDOSA>
To: Wahtera, Megan - Paramount; Powell, Amy - Paramount; Teifeld, Tamar - Paramount
Cc: Date: Fri, 28 Sep 2007 20:45:48 +0000

I've just spoken with 3 people up there- working on it.

Sara Bordo
Executive Director
Motion Picture Interactive Marketing
Paramount Pictures
323.956.8499 t
323.862.1107 f

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

From: Wahtera, Megan - Paramount
Sent: Friday, September 28, 2007 1:32 PM
To: Wahtera, Megan - Paramount; Powell, Amy - Paramount; Teifeld, Tamar - Paramount
Cc: Bordo, Sara - Paramount
Subject: RE: HBK Youtube Clip

Apparently the community flagged it as inappropriate and not youtube.
Regardless, Kevin Rodgers is seeing if he can get this taken down.

We should know very soon.

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

From: Wahtera, Megan - Paramount
Sent: Friday, September 28, 2007 1:19 PM
To: Powell, Amy - Paramount; Teifeld, Tamar - Paramount
Cc: Bordo, Sara - Paramount
Subject: RE: HBK Youtube Clip

We are on it. Will keep you posted.

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

From: Powell, Amy - Paramount
Sent: Friday, September 28, 2007 1:04 PM
To: Teifeld, Tamar - Paramount; Wahtera, Megan - Paramount
Subject: RE: HBK Youtube Clip
Importance: High

We need to get the age restriction fixed asap

Amy Powell
Senior Vice President
Interactive Marketing
Paramount Pictures
[REDACTED]

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

From: Teifeld, Tamar - Paramount
Sent: Friday, September 28, 2007 7:27 AM
To: Powell, Amy - Paramount; Wahtera, Megan - Paramount
Subject: RE: HBK Youtube Clip

24,417 views!!! YAY!!

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

From: Powell, Amy - Paramount

Sent: Thu 9/27/2007 5:07 PM

To: Wahtera, Megan - Paramount; Teifeld, Tamar - Paramount

Subject: RE: HBK Youtube Clip

omg

Amy Powell

Senior Vice President

Interactive Marketing

Paramount Pictures



From: Wahtera, Megan - Paramount

Sent: Thursday, September 27, 2007 5:05 PM

To: Teifeld, Tamar - Paramount; Powell, Amy - Paramount

Subject: RE: HBK Youtube Clip

11,031 views!

From: Teifeld, Tamar - Paramount

Sent: Thursday, September 27, 2007 12:32 PM

To: Wahtera, Megan - Paramount; Powell, Amy - Paramount

Subject: RE: HBK Youtube Clip

5,553 views now!!

From: Wahtera, Megan - Paramount

Sent: Thursday, September 27, 2007 9:06 AM

To: Powell, Amy - Paramount

Cc: Teifeld, Tamar - Paramount

Subject: HBK Youtube Clip

<http://youtube.com/watch?v=49zOwm8ojD4>

1324 views

Megan Wahtera

Executive Director

Interactive Marketing

Paramount Pictures

P: 323.956.8516 | F: 323.862.1101

From: "Wolf, Michael" <Michael.Wolf@mtvn.com>
Date: Wed, 5 Jul 2006 19:24:08 -0400
To: "McGrath, Judy" <Judy.McGrath@mtvstaff.com>
Subject: RE: Regarding YouTube

Blair has been consistent about wanting to buy YouTube.

I agree with his approach: we should get our best minds together (Adam, Wade, Nada, Nick, Steve Y., Stefanie) and figure out how to make it a business.

From: McGrath, Judy
Sent: Wednesday, July 05, 2006 7:04 PM
To: Wolf, Michael
Subject: FW: Regarding YouTube

I asked Blair what he thought about YouTube today.....in the past, it merely drove him nuts in a competitive way, and he trashed it....

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

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

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

http://news.com.com/Is+YouTube+a+flash+in+the+pan/2100-1025_3-6089886.html?tag=sas.email

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

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

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

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

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

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

B.

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

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

Subject: RE: Heartbreak Kid Clip
From: Wahtera, Megan - Paramount <EX:/O=VIACOM/OU=PARAMOUNT/CN=RECIPIENTS/CN=WHATERME>
To: Joanna Ging
Cc: Bordo, Sara - Paramount
Date: Fri, 28 Sep 2007 22:47:16 +0000

It is not copyrighted. I will call you momentarily. Please do not remove.

From: jging@google.com [mailto:jging@google.com] On Behalf Of Joanna Ging
Sent: Friday, September 28, 2007 3:44 PM
To: Wahtera, Megan - Paramount
Cc: Bordo, Sara - Paramount
Subject: Re: Heartbreak Kid Clip

Hi Megan,

I just left you a VM but looks like the clip is copyrighted material.

Please let me know if this is the case and I can escalate to the content team for takedown.

Thanks!

On 9/28/07, Wahtera, Megan - Paramount <Megan_Wahtera@paramount.com> wrote:

Hi Joanna,

Left you a vm, but can you call us about the inappropriate clip notice that is up here?

<http://www.youtube.com/watch?v=49zOwm8ojD4>

Thanks!

Megan Wahtera
Executive Director
Interactive Marketing
Paramount Pictures
[REDACTED]

--

Joanna Ging
Media Coordinator
Office: [REDACTED]
Phone: [REDACTED]
Email: jging@youtube.com

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Page 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
VIACOM INTERNATIONAL, INC., COMEDY
PARTNERS, COUNTRY MUSIC
TELEVISION, INC., PARAMOUNT
PICTURES CORPORATION, and BLACK
ENTERTAINMENT TELEVISION, LLC,

Plaintiffs,

vs.

No. 07-CV-2103

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 ADAM CAHAN
PALO ALTO, CALIFORNIA
WEDNESDAY, DECEMBER 9, 2009
JOB NO. 18174

DAVID FELDMAN WORLDWIDE, INC.
450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

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Page 2

1 ADAM CAHAN SAN FRANCISCO, CA DECEMBER 9, 2009

2

3 9:47 A.M.

4

5 HIGHLY CONFIDENTIAL VIDEOTAPED DEPOSITION OF ADAM
6 CAHAN, at WILSON SONSINI GOODRICH & ROSATI, 601 S.
7 California Street, Palo Alto, California, pursuant to
8 notice, before me, KATHERINE E. LAUSTER, CLR, CRR, RPR,
9 CSR License No. 1894.

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1 ADAM CAHAN SAN FRANCISCO, CA DECEMBER 9, 2009

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

3 FOR THE PLAINTIFFS, VIACOM INTERNATIONAL, INC., and
4 the WITNESS:

5 JENNER & BLOCK, LLP
6 By: SUSAN J. KOHLMANN, ESQ.
7 919 Third Avenue
8 37th Floor
9 New York, New York 10022-39908
10 T.212.891.1690
11 F.212.909.0821
12 skohlmann@jenner.com

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

15 WILSON, SONSINI, GOODRICH & ROSATI
16 By: DAVE KRAMER, ESQ.
17 CAROLINE WILSON, ESQ.
18 650 Page Mill Road
19 Palo Alto, California 94304-1050
20 T.650.493.9300
21 F.650.565.5100
22 dkramer@wsgr.com
23 cwilson@wsgr.com

24 FOR THE WITNESS, ADAM CAHAN:

25 SHEPPARD, MULLIN, RICHTER & HAMPTON, LLP
BY: P. CRAIG CARDON, ESQ.
1901 Avenue of the Stars
Suite 1600
Los Angeles, California 90067-6017
Telephone: 310.228.3700
Fax: 310.228.3701
ccardon@sheppardmullin.com

Also Present: ARMANDO CARRASCO, Videographer

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1 ADAM CAHAN SAN FRANCISCO, CA DECEMBER 9, 2009
2 PALO ALTO, CALIFORNIA
3 WEDNESDAY, DECEMBER 9, 2009; 9:47 A.M.
4
09:47:09 5 THE VIDEOGRAPHER: Today's videotaped
09:47:11 6 deposition of Adam Cahan is taken on December 9th,
09:47:14 7 2009, at Wilson, Sonsini, Goodrich & Rosati, 601
09:47:19 8 South California Avenue, Palo Alto, California, in
09:47:22 9 the matter of Viacom, International versus YouTube,
09:47:24 10 Inc., Case Numbers are 07-CV-2103 and 07-CV-3582, in
09:47:34 11 court: Southern District of New York.
09:47:36 12 My name is Armando Carrasco. I represent
09:47:40 13 David Feldman Worldwide, located at 600 Anton
09:47:42 14 Boulevard, Suite 1100, Costa Mesa, California.
09:47:48 15 We are now commencing at 9:47 a.m.
09:47:51 16 Will all present please identify
09:47:53 17 themselves, beginning with the witness?
09:47:55 18 THE WITNESS: Adam Cahan.
09:47:58 19 MR. CARDON: Craig Cardon on behalf of
09:47:59 20 Adam Cahan.
09:48:01 21 MS. KOHLMANN: Susan Kohlmann on behalf of
09:48:03 22 the Viacom plaintiffs.
09:48:06 23 MS. WILSON: Caroline Wilson from Wilson,
09:48:08 24 Sonsini, Goodrich & Rosati on behalf of defendants
09:48:09 25 Google and YouTube.

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Page 5

09:48:12 1 ADAM CAHAN SAN FRANCISCO, CA DECEMBER 9, 2009

09:48:12 2 MR. KRAMER: And Dave Kramer from Wilson

09:48:14 3 Sonsini for defendants.

09:48:16 4 THE VIDEOGRAPHER: Thank you.

09:48:16 5 Will the court reporter please swear in

09:48:16 6 the witness.

09:48:16 7 THE REPORTER: Will you raise your right

09:48:16 8 hand, please.

09:48:16 9 Do you solemnly state, under penalty of

09:48:16 10 perjury, the testimony you are about to receive will

09:48:16 11 be the truth, the whole truth, and nothing but the

09:48:16 12 truth?

09:48:26 13 THE WITNESS: I do.

09:48:26 14

09:48:26 15 ADAM CAHAN,

09:48:26 16 having been sworn as a witness

09:48:26 17 testified as follows:

09:48:26 18

09:48:26 19 EXAMINATION

09:48:27 20 BY MR. KRAMER:

09:48:28 21 Q. Good morning, Mr. Cahan. Could you state

09:48:30 22 your full name and address for the record, please.

09:48:34 23 A. Adam Cahan, [REDACTED]

09:48:36 24 [REDACTED]

09:48:38 25 //

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1 ADAM CAHAN SAN FRANCISCO, CA DECEMBER 9, 2009

15:05:28

15:05:28

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15:06:04

15:06:06

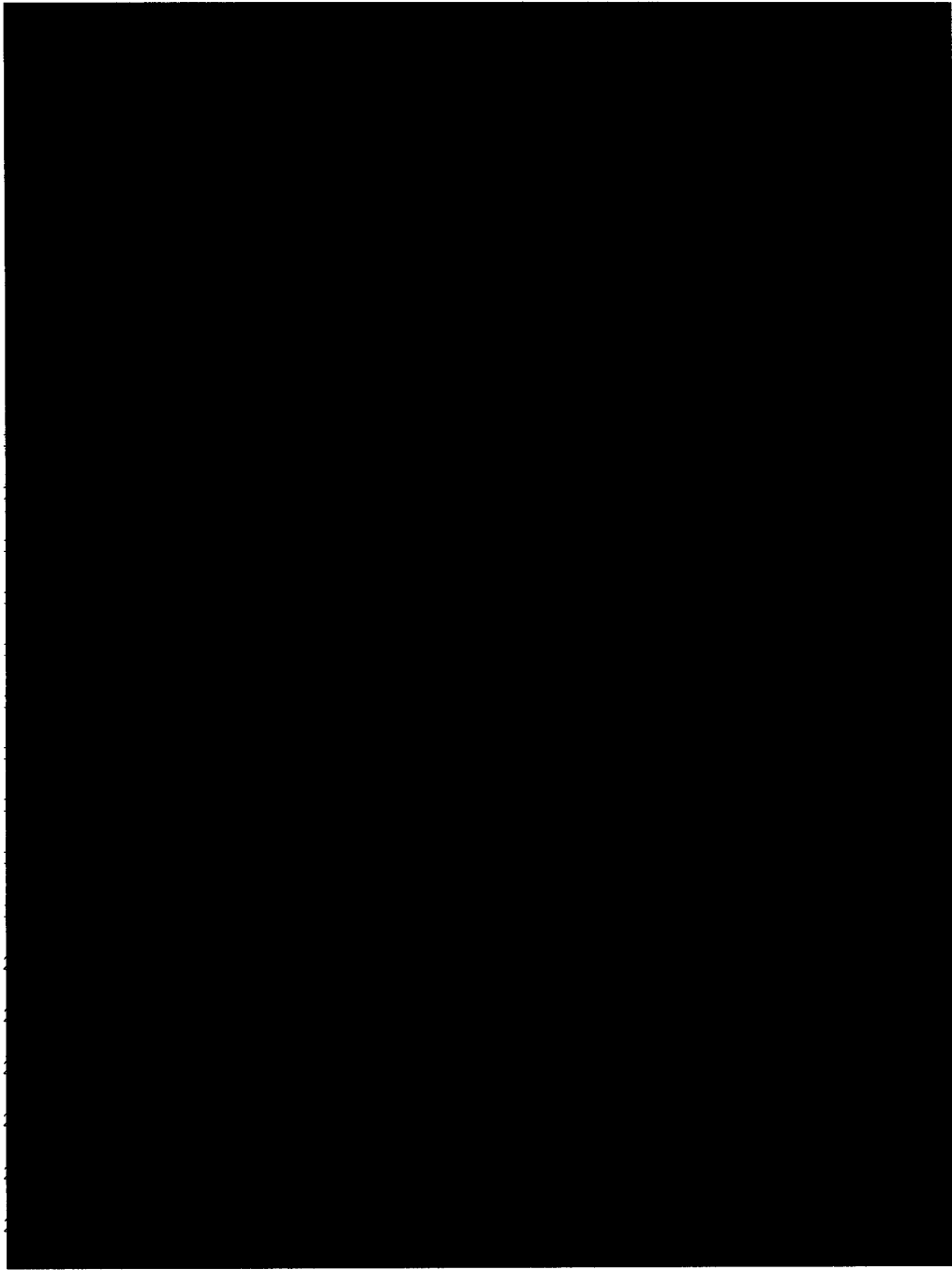
15:06:06

15:06:09

15:06:13

15:06:18

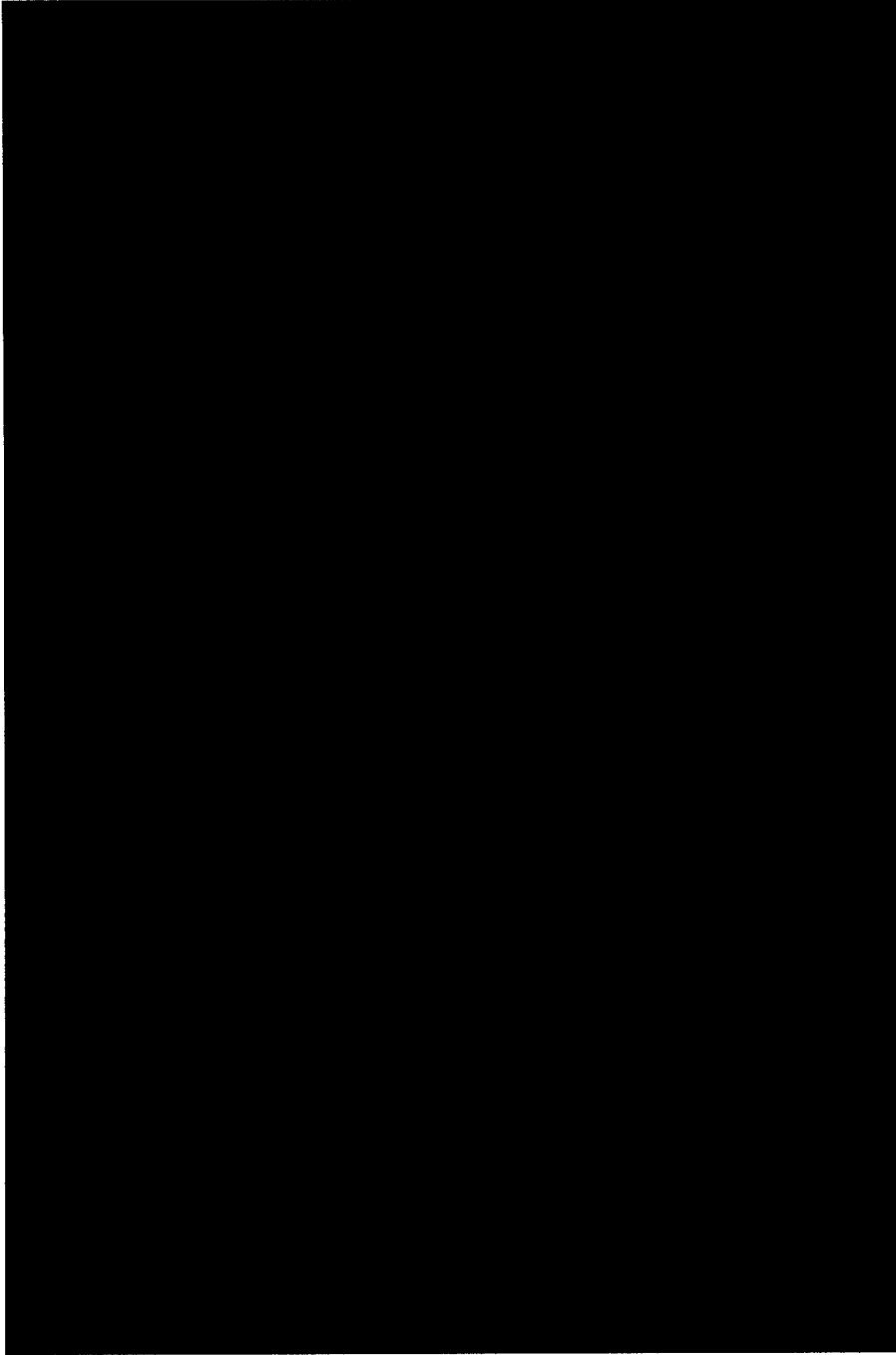
15:06:18



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	1	ADAM CAHAN	SAN FRANCISCO, CA	DECEMBER 9, 2009
15:06:20	2			
15:06:26	3			
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15:07:59	25			

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1 ADAM CAHAN SAN FRANCISCO, CA DECEMBER 9, 2009
15:16:07 2 about the amount of copyright infringement that's
15:16:10 3 going on with YouTube, and that I'm basically
15:16:13 4 expressing to Joan and Tim my concern that there's
15:16:15 5 nothing left that I can do in -- in these
15:16:17 6 negotiations.
15:16:19 7 Q. You said, not referencing the amount of
15:16:23 8 copyright infringement, but the fact of copyright
15:16:26 9 infringement at YouTube, you -- strike that.
15:16:29 10 You said:
15:16:29 11 "Our senior team has expressed grave
15:16:31 12 concern with allowing the copyright
15:16:33 13 infringement to persist any longer."
15:16:36 14 Prior to this time, sir, were there people
15:16:39 15 at Viacom who believed that there was copyright
15:16:41 16 infringement going on at YouTube?
15:16:44 17 MS. KOHLMANN: Objection.
15:16:44 18 MR. CARDON: Objection, speculation, legal
15:16:45 19 conclusion, foundation.
15:16:52 20 THE WITNESS: I mean, yeah, there are
15:16:54 21 people who are concerned at this point that there is
15:16:56 22 significant amount of copyright infringement going
15:16:59 23 on.
15:16:59 24 BY MR. KRAMER:
15:16:59 25 Q. No, sir, that's not my question.

DAVID FELDMAN WORLDWIDE, INC.
450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

X
VIACOM INTERNATIONAL, INC., COMEDY
PARTNERS, COUNTRY MUSIC
TELEVISION, INC., PARAMOUNT
PICTURES CORPORATION, and BLACK
ENTERTAINMENT TELEVISION, LLC,

Plaintiffs,

vs. NO. 07-CV-2103

YOUTUBE, INC., YOUTUBE, LLC,
and GOOGLE, INC.,

Defendants.

X

VIDEOTAPED DEPOSITION OF MICHAEL FRICKLAS
NEW YORK, NEW YORK
TUESDAY, SEPTEMBER 22, 2009

REPORTED BY: JENNIFER OCAMPO-GUZMAN
JOB NO.: 17742

DAVID FELDMAN WORLDWIDE, INC.
450 Seventh Avenue - Ste 2803, New York, NY 10123 (212)705-8585

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SEPTEMBER 22, 2009

9

9:48 a.m.

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12

VIDEOTAPED DEPOSITION OF MICHAEL D.

13

FRICKLAS, held at the offices of MAYER BROWN,

14

1675 Broadway, New York, New York, pursuant

15

to notice, before JENNIFER OCAMPO-GUZMAN,

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Notary Public of the State of New York.

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DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212)705-8585

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

3

FOR THE PLAINTIFFS VIACOM INTERNATIONAL,

4

INC.:

5

SHEARMAN & STERLING, LLP

6

BY: STUART BASKIN, ESQ.

7

(212) 848-4000 sbaskin@shearman.com

8

-and-

9

BY: KIRSTEN CUNHA, ESQ.

10

(212) 848-4320 kirsten.cunha@shearman.com

11

599 Lexington Avenue

12

New York, New York 10022-6069

13

FOR THE DEFENDANTS YOUTUBE, INC., YOUTUBE,

14

LLC and GOOGLE, INC.:

15

MAYER BROWN, LLP

16

BY: ANDREW SCHAPIRO, Esq.

17

(212) 506-2279 aschapiro@mayerbrown.com

18

-and-

19

BY: JASON KIRSCHNER, Esq.

20

1675 Broadway

21

New York, New York 10019-5820

22

(212) 506-2115 jkirschner@mayerbrown.com

23

ALSO PRESENT:

24

NICHOLAS GUZMAN, Videographer

25

MARK C. MORRIL, ESQ. (Viacom)

DAVID FELDMAN WORLDWIDE, INC.

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	1	
09:48:54	2	THE VIDEOGRAPHER: Good morning.
09:49:11	3	This begins tape number 1 in the
09:49:14	4	videotaped deposition of Michael
09:49:15	5	Fricklas on September 22, 2009, in the
09:49:19	6	matter of Viacom International Inc., et
09:49:21	7	al, plaintiffs versus YouTube, Inc., et
09:49:24	8	al, defendants. This case was filed in
09:49:24	9	the United States District Court,
09:49:24	10	Southern District of New York. Case
09:49:30	11	Number 07-CV-2003 (sic).
09:49:33	12	Today's deposition is taking place
09:49:35	13	at Mayer Brown LLP located at 1675
09:49:39	14	Broadway, New York, New York 10019.
09:49:42	15	The time on the record is now 9:48
09:49:46	16	a.m. My name is Nicholas Guzman. I
09:49:49	17	will be the legal video specialist on
09:49:51	18	behalf of David Feldman Court Reporting.
09:49:52	19	The certified court reporter today is
09:49:55	20	Jennifer Ocampo-Guzman, also on behalf
09:49:58	21	of the David Feldman Court Reporting.
09:50:00	22	At this time I will ask counsel to
09:50:02	23	please introduce themselves for the
09:50:03	24	record.
09:50:04	25	MR. SCHAPIRO: I'm Andrew Schapiro

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1
09:50:06 2 for the defendants.
09:50:07 3 MR. KIRSCHNER: I'm Jason Kirschner
09:50:09 4 from Mayer Brown on behalf of the
09:50:11 5 defendants.
09:50:11 6 MR. BASKIN: I'm Stuart Baskin of
09:50:14 7 Shearman & Sterling for Viacom and Mr.
09:50:15 8 Fricklas.
09:50:16 9 MS. CUNHA: Kirsten Cunha from
09:50:19 10 Shearman & Sterling on behalf of the
09:50:19 11 witness and the Viacom plaintiff.
09:50:22 12 MR. MORRIL: Mark Morrill from
09:50:24 13 Viacom.
09:50:24 14 THE VIDEOGRAPHER: For the record
09:50:25 15 will the court reporter please swear in
09:50:27 16 the witness.
09:50:27 17 M I C H A E L D. F R I C K L A S,
09:50:27 18 called as a witness, having been duly sworn
09:50:27 19 by a Notary Public, was examined and
09:50:38 20 testified as follows:
09:50:38 21 THE VIDEOGRAPHER: Counsel, you may
09:50:40 22 proceed.
09:50:40 23 EXAMINATION BY
09:50:40 24 MR. SCHAPIRO:
09:50:40 25 Q. Good morning, Mr. Fricklas.

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1 Fricklas

10:16:36 2 rather than a series of takedown notices as
10:16:40 3 you learned of each clip's presence; that's
10:16:45 4 correct, right?

10:16:46 5 A. Yeah, I mean, I want to set one
10:16:48 6 thing correct, something that I said in
10:16:51 7 answer to an earlier, slightly earlier
10:16:53 8 question and it's also responsive to this
10:16:55 9 one, which is, I don't know that no takedown
10:16:58 10 notices were -- were -- were sent because at
10:16:59 11 various periods of time there were, you know,
10:17:02 12 for example, full motion pictures and full
10:17:06 13 television episodes that were posted and no
10:17:11 14 one -- and those would have been taken down
10:17:13 15 right away. But, otherwise, we were in the
10:17:17 16 midst of negotiations regarding the licensing
10:17:20 17 terms for those clips and determined not to
10:17:23 18 send a takedown notice.

10:17:28 19 Q. I just want to make sure I have the
10:17:41 20 final part of your answer correct.

10:17:45 21 You said you were in the midst of
10:17:48 22 negotiations with regard to licensing terms
10:17:50 23 for those clips and so determined not to send
10:17:53 24 takedown notices as to that?

10:17:55 25 A. In the -- in the period of time

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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.)

VIDEOTAPED DEPOSITION OF MICHELENA HALLIE
NEW YORK, NEW YORK
THURSDAY, DECEMBER 10, 2009
JOB NO. 18264

DAVID FELDMAN WORLDWIDE, INC.
450 Seventh Avenue - Ste 2803, New York, NY 10123 (212)705-8585

1

2

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

3

4

FOR THE PLAINTIFFS VIACOM INTERNATIONAL,
INC.:

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BY: SCOTT WILKENS, ESQ.
Swilkens@jenner.com

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12

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650 Page Mill Road
Palo Alto, CA 94304-1050
BY: MAURA L. REES, ESQ.
Mrees@wsgr.com

13

14

15

16

17

18

ALSO PRESENT:

19

Carlos King, Videographer

20

21

22

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DAVID FELDMAN WORLDWIDE, INC.
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FEDERAL STIPULATIONS

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IT IS HEREBY STIPULATED AND
AGREED by and between the attorneys for
the respective parties herein, that
filing and sealing be and the same are
hereby waived.

IT IS FURTHER STIPULATED AND
AGREED that all objections, except as to
the form of the question, shall be
reserved to the time of the trial.

IT IS FURTHER STIPULATED AND
AGREED that the within deposition may be
sworn to and signed before any officer
authorized to administer an oath, with
the same force and effect as if signed
and sworn to before the Court.

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1 MICHELENA HALLIE

2 THE VIDEOGRAPHER: This is
3 tape number one of the videotaped
4 deposition of Michelena Hallie, in
10:09:05 5 the matter of Viacom
6 International, Inc. versus YouTube
7 Inc., the Football Association
8 Premier League Limited, Bourne
9 Company, et al., versus YouTube
10:09:15 10 Inc. et al., in the United States
11 District Court for the Southern
12 District of New York.

13 This deposition is being
14 held at the offices of Wilson
10:09:23 15 Sonsini, located at 1301 Avenue of
16 the Americas, New York, New York,
17 on December 10th, 2009, at
18 approximately 10:09 a.m.

19 My name is Carlos King, from
10:09:33 20 the firm of David Feldman
21 Worldwide, and I am the legal
22 video specialist. The court
23 reporter is Rebecca Schaumloffel,
24 in association with David Feldman
10:09:42 25 Worldwide.

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1 MICHELENA HALLIE

2 Will counsel please

3 introduce themselves.

4 MS. REES: Maura Rees, from

10:09:45 5 Wilson Sonsini, on behalf of the

6 YouTube defendants.

7 MR. WILKENS: Scott Wilkens,

8 from Jenner & Block LLP, on behalf

9 of the Viacom plaintiffs.

10:09:54 10 THE VIDEOGRAPHER: Will the

11 court reporter please swear in the

12 witness.

13

14 M I C H E L E N A H A L L I E,

15 called as a witness, having been first

16 duly sworn by a Notary Public of the

17 State of New York, was examined and

18 testified as follows:

19

20 DIRECT EXAMINATION

21 BY MS. REES:

22 Q. Good morning.

23 A. Good morning.

24 Q. Could you please state your

10:10:05 25 full name and home address for the

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1 MICHELENA HALLIE

2 include Mind of Mencia for monitoring
3 and removal for full episodes only on
4 YouTube;" is that right?

11:46:42

5 A. That's what it looks like,
6 yep.

7 Q. And do you understand full
8 episodes only to mean that BayTSP was
9 only being authorized to take down full
10 episodes, as opposed to shorter clips,
11 from that show?

11:46:52

12 A. That's how I read this
13 E-mail.

14 Q. In this timeframe,
15 approximately October 17, 2006, why was
16 Viacom only authorizing full episodes
17 of takedowns, for example, for this
18 Mind of Mencia show, as opposed to
19 shorter clips?

11:47:02

20 A. Oh, I haven't had this on.

21 I feel comfortable only
22 testifying to general statements. If
23 we get into details, they might be
24 privileged, and I'd want to talk to

11:47:17

11:47:40

25 Mr. Wilkens. But my recollection, even

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1 MICHELENA HALLIE

2 though, as I said, I wasn't frontlining
3 these decisions, was that these
4 decisions were at least partly because
11:47:58 5 of negotiations with YouTube going on
6 at that time.

7 Q. When you say "negotiations
8 with YouTube," negotiations for what?

9 A. My understanding was that
11:48:15 10 Viacom was, during this general
11 timeframe, negotiating with YouTube for
12 a possible license agreement that would
13 authorize the Viacom material to appear
14 on YouTube.

11:48:33 15 Q. How does the distinction
16 between full episodes takedowns and
17 takedowns of shorter clips from
18 programs affect negotiations with
19 YouTube that were going on at that
11:49:02 20 time?

21 A. As I said, I wasn't directly
22 involved in those negotiations, but I
23 recall that full episodes, versus
24 taking down everything, was relevant in
11:49:21 25 the discussions and the goals.

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1 MICHELENA HALLIE

2 that Viacom, at some point, whether it
3 was December or not, some point prior
4 to the beginning of February 2007,
14:06:57 5 began asking BayTSP to start ramping up
6 to do a large single takedown event?

7 A. I know there was a ramp up
8 during our entire tenure with BayTSP.
9 Because they started off as a pretty
14:07:14 10 small company that never had an
11 assignment -- that hadn't had an
12 assignment nearly up to the scale we
13 were putting forward. But I know that
14 there were takedowns steadily during
14:07:32 15 that entire period from near the
16 beginning through. I don't even know
17 if BayTSP is still involved in it.

18 Q. So when did you stop having
19 involvement with BayTSP, if you did?

14:07:48 20 A. At some point in time --
21 actually, my involvement kind of
22 evolved over time and gradually, my
23 group was not frontlining the process
24 as much. I don't remember when the
14:08:12 25 transition happened.

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1 MICHELENA HALLIE

2 Q. Was there some directive at
3 Viacom, at that time, to try to
4 increase the infringing video counts
14:21:29 5 for the mass YouTube takedown?

6 A. I am not sure it was a
7 directive. The goal was to identify
8 all of the clips on YouTube that met
9 the criteria in place. And I do recall
14:22:00 10 that BayTSP was not fully equipped to
11 find all of the clips and confirm that
12 they were, in fact, our assets in as
13 effective way as we had hoped. It was
14 an evolution of technology.

14:22:34 15 Because as I said before,
16 this was a major assignment for BayTSP
17 in that they did have to ramp up.

18 Q. Did Viacom have a goal of
19 finding 100,000 allegedly infringing
14:22:51 20 clips for the mass takedown at YouTube?

21 A. I don't remember a goal of a
22 particular number.

23 MR. WILKENS: Can we just
24 take a short off-the-record for a
14:23:11 25 second?

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1 MICHELENA HALLIE

2 Did you understand this to
3 mean that the human reviewer had
4 mistakenly marked for takedown
16:35:01 5 something that didn't meet Viacom's
6 criteria for takedown?

7 A. This is a confusing E-mail
8 chain. Cindy's E-mail would suggest,
9 possibly, something different. So I
16:35:25 10 don't -- I don't recall where the
11 possible glitch was here.

12 Q. But it was ultimately
13 determined that the video uploaded by
14 Mr. Asch was taken down in error; is
16:35:45 15 that the case?

16 A. I don't remember.

17 Q. Do you know -- Mr. Ishikawa
18 refers to a change in procedures, and
19 "the procedures that will prevent this
16:36:06 20 from occurring again."

21 Do you know what the change
22 in procedures is that he is referring
23 to?

24 A. I don't remember the
16:36:12 25 specific change here. But this is

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1 MICHELENA HALLIE

2 consistent with my general recollection
3 that it was all part of a ramping up
4 process and that BayTSP was trying to
16:36:23 5 tweak their process to meet our needs.

6 Q. In fact, whatever change in
7 the procedures BayTSP made, didn't
8 prevent mistaken identifications from
9 occurring again, right?

16:36:42 10 MR. WILKENS: Objection to
11 the form of the question.

12 A. I recall that there were
13 erroneous takedowns. I don't know if
14 -- I can't attribute them directly to
16:36:59 15 procedures that BayTSP was
16 implementing. I just don't remember.

17 Q. After the mass takedown of
18 100,000 clips to YouTube that occurred
19 in early February, 2007, there were a
16:37:18 20 number of counter-notices that Viacom
21 received, right?

22 A. Counter-notices received. I
23 don't think I would characterize them
24 as a number. I think it was a very,
16:37:28 25 very small percentage to the 100,000.

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1 MICHELENA HALLIE

2 building up past 2,100 backlog. That
3 suggests to me that we are not
4 progressing effectively and you need to
16:58:44 5 reallocate accordingly."

6 Was it ever your
7 understanding that BayTSP made
8 misidentifications because, at least,
9 Adam Cahan from Viacom was telling them
16:58:57 10 to process videos more quickly?

11 MR. WILKENS: Objection to
12 the form of the question.

13 A. I don't think I ever knew or
14 even thought that that was the case. I
16:59:16 15 think -- when I saw these

16 misidentifications, to me, it was a
17 logical extension of the fact that we
18 were pushing BayTSP really, really
19 hard. That as a result of our

16:59:32 20 significant project, they had to
21 hire -- for some reason, the number 40
22 comes in, during the Christmas holidays
23 to help them to buy new equipment and
24 that it was almost inevitable in the
16:59:47 25 almost vertical ramping up that was

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1 MICHELENA HALLIE

2 happening during that time that
3 misidentifications would occur.

17:00:03 4 Q. You said earlier that you
5 believe that the number of
6 counter-notices that Viacom received
7 was a very small percentage of the
8 number of takedowns it sent. Am I
9 characterizing that correctly?

17:00:14 10 A. That's right.

11 Q. What do you believe to be
12 the percentage of counter-notices that
13 Viacom received as compared to the
14 number of takedowns it sent out?

17:00:28 15 A. All I can do is extrapolate
16 from a document that you showed me that
17 had something like 260 and compare that
18 to the something like 100,000.

17:00:38 19 I don't know if those were
20 the ultimate numbers that the analysis
21 would be, but that's what I gleaned
22 from the documents, at least at one
23 point in time.

17:00:52 24 Q. Is it the case that if a
25 user's video is taken down from YouTube

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MARK ISHIKAWA - HIGHLY CONFIDENTIAL

Page 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

VIACOM INTERNATIONAL, INC., COMEDY
PARTNERS, COUNTRY MUSIC
TELEVISION, INC., PARAMOUNT
PICTURES CORPORATION, and BLACK
ENTERTAINMENT TELEVISION, LLC,

Plaintiffs,

vs.

No. 07-CV-2103

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 MARK ISHIKAWA
PALO ALTO, CALIFORNIA
THURSDAY, JANUARY 14, 2010

JOB NO. 18548

DAVID FELDMAN WORLDWIDE, INC.
450 Seventh Avenue - Ste 2803, New York, NY 10123 (212)705-8585

MARK ISHIKAWA - HIGHLY CONFIDENTIAL

Page 2

1 MARK ISHIKAWA PALO ALTO, CA JANUARY 14, 2010

2 JANUARY 14, 2010

3 10:07 A.M.

4

5 HIGHLY CONFIDENTIAL VIDEOTAPED DEPOSITION OF MARK

6 ISHIKAWA, at WILSON, SONSINI, GOODRICH & ROSATI, 650

7 Page Mill Road, Palo Alto, California, pursuant to

8 notice, before me, KATHERINE E. LAUSTER, CLR, CRR, RPR,

9 CSR License No. 1894.

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DAVID FELDMAN WORLDWIDE, INC.

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MARK ISHIKAWA - HIGHLY CONFIDENTIAL

Page 3

1 MARK ISHIKAWA PALO ALTO, CA JANUARY 14, 2010

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

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DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212)705-8585

MARK ISHIKAWA - HIGHLY CONFIDENTIAL

Page 4

1 MARK ISHIKAWA PALO ALTO, CA JANUARY 14, 2010

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

3 FOR THE WITNESS & BAYTSP:

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osamah@baytsp.com

7

8

9 Also Present:

10 Armando Carasco, Videographer

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MARK ISHIKAWA - HIGHLY CONFIDENTIAL

Page 5

1 MARK ISHIKAWA PALO ALTO, CA JANUARY 14, 2010

2 PALO ALTO, CALIFORNIA

3 THURSDAY, JANUARY 14, 10:07 A.M.

4

10:07:00 5 THE VIDEOGRAPHER: Today's videotaped
10:07:02 6 deposition of Mark Ishikawa is taken on
10:07:06 7 January 14th, 2010, at Wilson, Sonsini, Goodrich &
10:07:09 8 Rosati, 650 Page Mill Road, Palo Alto, California,
10:07:14 9 in the matter of Viacom, International versus
10:07:15 10 YouTube, Incorporated. Case Numbers are 07 CV 2103
10:07:25 11 and 07 CV 3582 in Court Southern District of New
10:07:29 12 York.

10:07:30 13 My name is Armando Carrasco. I represent
10:07:33 14 David Feldman Worldwide, located at 600 Anton
10:07:36 15 Boulevard, Suite 1100, Costa Mesa, California. We
10:07:42 16 are now commencing at 10:08 a.m.

10:07:42 17 Will all present please identify
10:07:44 18 themselves, beginning with the witness.

10:07:47 19 THE WITNESS: Mark Ishikawa.

10:07:50 20 MR. KENDALL: Richard Kendall of Kendall,
10:07:51 21 Brill & Klieger on behalf of the witness.

10:07:56 22 MR. KELLY: Bill Kelly at Kendall, Brill &
10:07:56 23 Klieger on behalf of the witness.

10:07:59 24 MR. HUSSAIN: Osama Hussain, In-House
10:07:59 25 Counsel, BayTSP.

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MARK ISHIKAWA - HIGHLY CONFIDENTIAL

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	1	MARK ISHIKAWA	PALO ALTO, CA	JANUARY 14, 2010
10:08:01	2	MR. COX:	James Cox, Jenner & Block, on	
10:08:03	3	behalf of the Viacom plaintiffs.		
10:08:07	4	MR. PELES:	Gil Peles from Proskauer &	
10:08:07	5	Rose, on behalf of the class.		
10:08:12	6	MR. MANCINI:	John Mancini, Mayer Brown,	
10:08:14	7	on behalf of defendants YouTube and Google.		
10:08:16	8	MR. KIRSCHNER:	Jason Kirschner, Mayer	
10:08:16	9	Brown, on behalf of defendants.		
10:08:16	10	MS. HERNANDEZ:	Christine Hernandez, from	
10:08:16	11	Mayer Brown, for defendants.		
10:08:16	12	THE VIDEOGRAPHER:	Thank you all.	
10:08:16	13	Will the court reporter please swear in		
10:08:16	14	the witness.		
10:08:16	15	THE REPORTER:	Will you raise your right	
10:08:16	16	hand, please.		
10:08:17	17	Do you solemnly state, under penalty of		
10:08:17	18	perjury, the testimony you are about to give will be		
10:08:17	19	the truth, the whole truth, and nothing but the		
10:08:17	20	truth?		
10:08:29	21	THE WITNESS:	Yes.	
10:08:29	22			
10:08:29	23	MARK ISHIKAWA,		
10:08:29	24	having been sworn as a witness		
10:08:29	25	testified as follows:		

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1 MARK ISHIKAWA PALO ALTO, CA JANUARY 14, 2010

12:39:35 2 A. I guess the document does not reflect that

12:39:37 3 start date, so I would have to assume that it's

12:39:40 4 what's in front for the start date. We didn't -- we

12:39:44 5 must not have kept history from the beginning.

12:39:47 6 Q. Okay. So let me turn your attention now

12:39:49 7 back to -- but keep this document before you -- back

12:39:52 8 to BayTSP Exhibit Number 5.

12:39:59 9 A. Okay.

12:39:59 10 Q. About the second or third page in, Bates

12:40:02 11 stamped -7769.

12:40:05 12 A. Okay.

12:40:09 13 Q. In the section called "Special

12:40:11 14 Instructions: Rules on Notice Sending," fourth

12:40:14 15 paragraph down:

12:40:15 16 "There's no action taken for these assets

12:40:17 17 on YouTube because of the implementation

12:40:20 18 of Project 2. All infringements are kept

12:40:23 19 in."

12:40:25 20 Do you see that reference?

12:40:26 21 A. I do see the reference. I don't know what

12:40:29 22 was in that sentence. Appears to have been

12:40:31 23 redacted. Oh, no, I'm sorry. That -- it was kept

12:40:36 24 in a separate folder.

12:40:38 25 Q. Okay. So just to be clear, there does not

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1 MARK ISHIKAWA PALO ALTO, CA JANUARY 14, 2010
12:40:41 2 appear to be any redaction?
12:40:43 3 A. Yes.
12:40:43 4 Q. Okay. So reviewing these two documents
12:40:47 5 together, does this refresh your recollection that,
12:40:49 6 for YouTube, BayTSP was not issuing any takedown
12:40:54 7 notices for any alleged infringements it may have
12:40:59 8 found between December 18th, 2006, and February 2nd,
12:41:04 9 2007?
12:41:04 10 A. I believe those were the instructions.
12:41:07 11 Q. And who gave those instructions?
12:41:09 12 A. I would have to go back to our -- our
12:41:12 13 records.
12:41:13 14 Q. And what was being done with these alleged
12:41:15 15 infringements that were found by BayTSP? They were
12:41:18 16 being accumulated where?
12:41:20 17 A. They were being accumulated within our
12:41:24 18 CIMS client information management system.
12:41:26 19 Q. CIMS, not BVM?
12:41:28 20 A. Correct.
12:41:32 21 Q. And were regular reports being provided to
12:41:35 22 MTVN about this accumulation?
12:41:38 23 A. Yes, they were.
12:41:38 24 Q. And how often were those reports provided?
12:41:42 25 A. They should have been daily, and I need to

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	1	MARK ISHIKAWA	PALO ALTO, CA	JANUARY 14, 2010
16:12:11	2	A.	Yes.	
16:12:12	3	Q.	In the top of this document you state, on	
16:12:14	4		January 24th, 2007:	
16:12:16	5		"Donna, we are cueing up the takedown	
16:12:18	6		notices as instruct by Adam at MTVN. He	
16:12:21	7		wants to hold the notices as part of his	
16:12:24	8		strategy. This instruction was for all	
16:12:27	9		Viacom assets. Please let me know if you	
16:12:30	10		want your assets differently."	
16:12:33	11		See that reference?	
16:12:34	12	A.	Yes.	
16:12:34	13	Q.	And you are responding to an e-mail from	
16:12:39	14		Donna Cooper where she asks you:	
16:12:41	15		"Mark,	
16:12:42	16		"I just want to confirm the YouTube	
16:12:44	17		direction for BET. Are you searching and	
16:12:46	18		sending take down notices with respect to	
16:12:49	19		all occurrences of BET assets,	
16:12:50	20		irrespective of duration or any other	
16:12:53	21		parameter? If not, this is how we would	
16:12:56	22		like -- how we would like to proceed."	
16:12:59	23		See the reference?	
16:13:00	24	A.	Yes, I do.	
16:13:01	25	Q.	You refer here to the fact that you're	

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	1	MARK ISHIKAWA	PALO ALTO, CA	JANUARY 14, 2010
16:13:04	2	cueing up takedown notices as instructed by Adam.		
16:13:07	3	Was that referring to Adam Cahan?		
16:13:10	4	A.	Yes, it is.	
16:13:11	5	Q.	In fact, he's cc'd on your e-mail to Donna	
16:13:16	6	Cooper?		
16:13:17	7	A.	Yes.	
16:13:17	8	Q.	What were his instructions with respect to	
16:13:20	9	"cueing up" the takedown notices?		
16:13:22	10	A.	To not send takedown notices to YouTube at	
16:13:25	11	this point.		
16:13:25	12	Q.	Rather, to cue them up?	
16:13:27	13	A.	To cue them up and hold them.	
16:13:29	14	Q.	And did he give you a date by which he	
16:13:31	15	wanted you to send those out?		
16:13:33	16	A.	No, that was never conveyed to us.	
16:13:35	17	Q.	Did he tell you the reasons why you were	
16:13:37	18	to cue them up and not send them out?		
16:13:39	19	A.	No.	
16:13:40	20	Q.	You go on to state:	
16:13:41	21	"He wants to hold the notices as part of		
16:13:44	22	his strategy."		
16:13:45	23	See those words?		
16:13:46	24	A.	Yes, I do.	
16:13:47	25	Q.	What was his strategy he was conveying to	

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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.)
)

VIDEOTAPED DEPOSITION OF WARREN SOLOW
NEW YORK, NEW YORK
DECEMBER 18TH, 2009

JOB NO. 18304

DAVID FELDMAN WORLDWIDE, INC.
450 Seventh Avenue - Ste 2803, New York, NY 10123 (212)705-8585

1

2

VIDEOTAPED DEPOSITION OF WARREN

3

SOLOW, held at the offices of Wilson,

4

Sonsini, Goodrich & Rosati, PC, 1301

5

Avenue of the Americas New York, New

6

York, pursuant to notice, before

7

Maureen Ratto, Registered Professional

8

Reporter and Notary Public of the State

9

of New York on December 18, 2009, at

10

10:10 a.m.

11

12

13

14

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25

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

2

3 FOR THE PLAINTIFFS:

4 JENNER & BLOCK, LLP

5 BY: SUSAN J. KOHLMANN, ESQ.

6 919 Third Avenue, New York, NY 10022

7 (212)891-1690

8 skohlmann@jenner.com

9

10 FOR THE DEFENDANTS:

11 WILSON, SONSINI, GOODRICH & ROSATI

12 BY: MICHAEL H. RUBIN, ESQ.

13 650 Page Mill Road, Palo Alto, CA 94304

14 650-849-3311

15 MRUBIN@wsgr.com

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09:25:06 1 VIDEOGRAPHER: This is DVD No. 1
2 of the video deposition of Warren Solow
3 in the matter of Viacom International
4 Inc., et al, versus The Football
5 Association Premier League Limited, et
6 al versus YouTube, Inc., et al.

7 This deposition is being held at
8 1301 Avenue of the Americas, New York,
9 New York on December 18, 2009 at
09:27:05 10 approximately 9:51 a.m.

11 My name is Manuel Abreu from the
12 firm of David Feldman Worldwide and I
13 am the legal video specialist. The
14 court reporter is Maureen Ratto, in
09:27:27 15 association with David Feldman
16 Worldwide.

17 Will counsel please introduce
18 themselves?

19 MR. RUBIN: Michael Rubin from
09:52:16 20 Wilson, Sonsini, Goodrich & Rosati for
21 defendants YouTube and Google.

22 MS. KOHLMANN: Susan Kohlmann,
23 Jenner & Block for the Viacom
24 plaintiffs.

25 * * *

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1 W A R R E N S O L O W, having been
2 first duly sworn according to law by
3 the Officer, testifies as follows:

4 DIRECT EXAMINATION BY MR. RUBIN:

09:52:34

5 Q. Good morning, Mr. Solow.

6 A. Good morning.

7 Q. How are you today?

8 A. I'm well. Thank you.

09:52:43

9 Q. Do you understand you're being
10 deposed today in connection with a
11 lawsuit by Viacom Incorporated against
12 Google and YouTube?

13 A. Yes.

09:52:50

14 Q. I want to go over a few ground
15 rules for today's deposition. First,
16 if you need to take a break, let me
17 know and we'll do so.

09:53:02

18 In fact, if anyone in this room
19 needs to take a break let me know and
20 we'll do so, myself included. However,
21 the only request I'll make is that if
22 I'm in the middle of a question, I ask
23 that you finish the answer prior to --
24 prior to us taking a break?

09:53:11

25 Also, please answer my questions

1 We're back on the record.

2 Q. Mr. Solow, do you have an
3 understanding of when Viacom began to
4 instruct BayTSP to start accumulating
13:30:09 5 clips in connection with the mass
6 takedown?

7 MS. KOHLMANN: Objection. Lacks
8 foundation.

9 A. I don't think that there was
13:30:23 10 ever an instruction that said begin
11 accumulating clips.

12 Q. What was the first instruction
13 that Viacom issued to BayTSP in
14 connection with the mass takedown?

13:30:39 15 A. In practical terms it was please
16 monitor YouTube to identify infringing
17 clips.

18 Q. When did that instruction occur?

19 A. I believe BayTSP was always
13:31:33 20 working on strengthening their ability
21 to identify clips and their -- their
22 tools were under development and much
23 of the fall was, I would characterize,
24 as work shopping process and -- and how
13:32:05 25 the project will take off. In terms

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1 of -- of -- of focus on really
2 identifying and being comprehensive
3 and -- and penetrating the -- the
4 YouTube library, I would say that
13:32:31 5 happened in December, sometime.
6 MR. RUBIN: I'd like to
7 introduce Exhibit 4.
8 (Exhibit 4 is received and
9 marked for identification.)
13:33:05 10 Q. Mr. Solow, Exhibit 4 is an
11 exhibit that BayTSP produced in
12 response to a YouTube subpoena bearing
13 Bates number BAYTSP 004289493 through
14 '97. Do you recognize this document?
13:33:58 15 A. Yes.
16 Q. Have you seen this document
17 before?
18 A. I believe so.
19 Q. When did you see this document
13:34:06 20 before?
21 A. Sometime over the last 48 hours.
22 Q. If you would turn to the first
23 page of the document, please? This
24 document describes a project entitled
13:34:24 25 YouTube Video Streaming Project. Do

1 A. I could not follow that
2 question. That was very long. I think
3 I need some help on that question.

14:17:05

4 Q. Didn't Viacom send a DMCA
5 takedown notice for 100,000 plus clips
6 to YouTube on February 2nd, 2007?

7 A. Yes.

14:17:20

8 Q. Had Viacom identified a number
9 of those clips on a rolling basis
10 starting in December of 2006?

11 MS. KOHLMANN: Objection. You
12 can answer.

13 A. Yes.

14:17:30

14 Q. Couldn't Viacom have issued a
15 DMCA takedown notice for the clips that
16 it had identified at any point prior to
17 February 2nd, 2007?

18 A. Yes.

14:17:38

19 MS. KOHLMANN: Objection.

20 THE WITNESS: I'm sorry.

21 MS. KOHLMANN: Go ahead.

22 A. Yes.

14:17:48

23 Q. What was the basis for waiting
24 until February 2nd, 2007 to issue those
25 DMCA takedown notices?

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1 A. The intense desire to finalize
2 an agreement with Google to receive
3 compensation for the exploitations of
4 our content on -- on YouTube.

14:18:08 5 Q. Did you believe you were being
6 harmed during that period of time?

7 MS. KOHLMANN: Objection.

8 A. Viacom believed that there was
9 harm to not controlling the
14:18:21 10 distribution of its content.

11 Q. That wasn't my question.

12 A. That was my answer. I mean --

13 Q. Let me ask it again. Did Viacom
14 believe during the pendency of the
14:18:33 15 December to -- December 19th, 18th,
16 2006 to February 2nd, 2007 period of
17 time that it was being harmed by the
18 presence of its content on the YouTube
19 service?

14:18:44 20 MS. KOHLMANN: Objection. Asked
21 and answered.

22 A. Yes.

23 Q. And at any point in time during
24 that period of time it could have asked
14:18:51 25 YouTube to remove its content, right?

1 if we will go with the 30 seconds or
2 the minute, but that number will assist
3 in the decision making. Isn't that
4 right?

15:29:46

5 MS. KOHLMANN: Objection.

6 Document speaks for itself. You can
7 answer.

8 A. Yes. That is what it says here.

15:30:01

9 Q. As of December 18th, 2006 was

10 Viacom following a takedown protocol
11 such that taking down all clips 30
12 minutes or longer would be a change in
13 the protocols criteria?

15:30:21

14 A. I have no recollection of a 30
15 minute metric.

16 Q. Do you have a recollection of a
17 five minute metric ever being in place?

15:30:39

18 A. No. I think what was -- what
19 was happening during this time period
20 was that we were still -- Viacom was
21 still wrapping its arms around what the
22 characteristics were of a typical
23 infringing clip and that with -- with
24 each day we were learning more about

15:31:07

25 the nature of the infringement on

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1 the -- on the YouTube service.

2 Q. If that were the case, wouldn't
3 Viacom continually strengthen its
4 protocol and lower the threshold for
15:31:24 5 identification of clips?

6 MS. KOHLMANN: Objection as to
7 form. You can answer.

8 A. Yes. That was the case. It
9 wasn't -- it's not an if. That was the
15:31:31 10 case. There is another component to
11 the strengthening that you have to take
12 into account and that is that as you
13 strengthen, and by strengthen I -- I --
14 well, I won't assume. I'm not sure
15:31:45 15 what you mean by strengthen. Can
16 you -- can you clarify?

17 Q. If it's your claim that Viacom
18 modulated its protocol for the location
19 of clips on the YouTube service because
15:31:56 20 it was only at this stage in time that
21 it was becoming aware of clips on that
22 service, wouldn't it go to follow that
23 as it learned more information it would
24 implement protocols that would result
15:32:11 25 in more clips being taken down or

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1 marked for takedown, not fewer?

2 MS. KOHLMANN: Objection as to
3 form. Misstates the record.

4 A. Right. At this date, in
15:32:26 5 December, Viacom was aware that there
6 were clips and for at least a few
7 months that there were clips on YouTube
8 but the -- the nature of the clips was
9 becoming more and more apparent as a
15:32:45 10 deeper dive -- there's a difference
11 between hey, I know that there are
12 clips up there, you know, I've done an
13 ad hoc search and the information that
14 you'll have after you've looked at
15:32:58 15 thousands, right? You know more after
16 a thousand than you do after one and
17 you know more after 10,000 than you do
18 after a thousand. So yes, with time
19 and -- and understanding of the -- of
15:33:12 20 the nature and characteristics of the
21 infringements the time period for the
22 parameters would be strengthened as you
23 said but the -- the countervailing
24 concern is that as you strengthen
15:33:29 25 those -- those parameters you also have

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1 to be careful and mindful of your Q and
2 A process to make sure that -- that the
3 clips are -- are valid takedowns.

4 For example, if -- if you're
15:33:49 5 looking for a whole episode, your QC
6 might not nearly be as -- as robust as
7 it would be if your metric is find your
8 content at 30 seconds. A -- a whole
9 episode is a whole episode. And easier
15:34:15 10 to identify than a 30 second clip that
11 is infringing.

12 Q. Indeed, Mr. Solow, we saw in
13 Exhibit 7 Michelena Hallie's e-mail to
14 Mr. Fricklas and Mr. Cahan that BayTSP
15:34:43 15 in December of 2006 had a roughly 7 to
16 14 percent hit rate for actual alleged
17 infringements. Isn't that right?

18 MS. KOHLMANN: Objection.
19 Document speaks for itself.

15:35:02 20 A. All I see on the face of the
21 document is 50 to 100,000 and a 700,000
22 number. So I don't -- I can't -- no, I
23 don't know.

24 Q. Well, based on those numbers I
15:35:16 25 can represent it's 7 to 14 percent.

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1 MS. KOHLMANN: It's okay.

2 THE WITNESS: Sorry. Here.

3 A. Yes. This appears to be a list
4 of assets.

15:44:50 5 Q. And the purpose of sending this
6 list was to enable BayTSP to find
7 additional alleged infringements on the
8 YouTube service. Isn't that right?

9 MS. KOHLMANN: Objection as to
15:45:05 10 form.

11 A. It was a progression to -- to
12 continue the growth of the project.

13 Q. To increase the number of clips
14 that could be included in the ultimate
15:45:30 15 takedown that was effected on February
16 2nd, 2007, right?

17 MS. KOHLMANN: Objection.

18 A. To be more comprehensive in the
19 identification of our content on the
15:45:43 20 YouTube service.

21 Q. And identify more clips that
22 could be included in the takedown that
23 was effected on February 2nd, 2007,
24 right?

15:45:50 25 MS. KOHLMANN: Objection. You

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1 can answer.

2 A. No. To identify as many --
3 our -- our goal, our ultimate goal here
4 is to identify our content and we are
15:46:01 5 taking steps to do that in a more
6 comprehensive fashion.

7 Q. The ultimate goal from the
8 outset was to identify your content, is
9 that your testimony today?

15:46:10 10 A. Yes.

11 Q. And from the outset, Viacom
12 provided the information BayTSP would
13 need to accomplish that, is that right?

14 MS. KOHLMANN: Objection as to
15:46:25 15 form.

16 A. Could you repeat that question,
17 please?

18 Q. From the outset of the project
19 Viacom provided BayTSP with the
15:46:34 20 information they would need to
21 accomplish your goal?

22 A. Yes. It was -- it was Viacom's
23 intent to provide the tools that our
24 vendor would need to accomplish the
15:46:50 25 task that they had been hired to

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1 MS. KOHLMANN: Same objection.

2 A. I don't understand the question.
3 In what time period or when are we
4 talking?

16:19:33 5 Q. In the fall of 2006?

6 A. I don't have specific
7 recollection of that.

8 Q. Do you have an understanding
9 that in the December 19th, 2006 to
16:19:52 10 February 2nd, 2007 time period Viacom
11 instructed BayTSP to return to those
12 clips that had been passed on, under
13 the previous protocols, to determine if
14 any of those clips should be taken down
16:20:10 15 pursuant to the newly established
16 protocols?

17 MS. KOHLMANN: Objection as to
18 form. You can answer.

19 A. Yes, as we developed additional
16:20:18 20 information and understanding and
21 training, we were more confident with
22 going with a tighter protocol and we
23 instructed them to go back to their --
24 their previous work and -- and
16:20:35 25 reevaluate it, leveraging the

1 information that they had gleaned in
2 the ensuing time.

3 Q. What information had been
4 gleaned in the ensuing time was
16:20:44 5 leveraged other than a shortening of
6 clip length instruction provided by
7 Viacom?

8 MS. KOHLMANN: Objection as to
9 form. You can answer.

16:20:52 10 A. Practical experi- -- the
11 practical experience of their
12 employees, continuing interaction with
13 us about -- about the project, their
14 employees' use of their tool. There
16:21:17 15 were plenty of -- there was plenty of
16 material -- material experience that's
17 gleaned as a project matures.

18 Q. And that was the reason Viacom
19 chose to change the rule for past
16:21:35 20 identifications that they had been
21 aware of from the preexisting protocols
22 to the protocol that was in place for
23 the takedown that ultimately occurred
24 on February 2nd, 2007?

16:21:44 25 MS. KOHLMANN: Objection as to

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1 and answered.

2 A. In context to the number of
3 takedowns, not many.

16:53:42

4 Q. In context to the number of
5 videos of individuals that were taken
6 off of the service without any right,
7 it was a significant number, right?

8 MS. KOHLMANN: Objection to
9 form.

16:53:54

10 A. Comparing the 103,000 number to
11 the number of -- of detected errors, I
12 think it's a small number, significant
13 to each individual affected but
14 mathematically a very small number.

16:54:07

15 Q. Viacom's -- Viacom is serious
16 about the fact that it made those
17 errors presumably?

18 A. Absolutely.

19 MS. KOHLMANN: Objection as to
20 form.

16:54:14

21 You've got to give me a chance.

22 Q. In fact, those errors led to a
23 modification in Viacom's process,
24 didn't it? What could be approved to

16:54:47

25 be taken down and what could not be you

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1 I also act as the copyright
2 administrator, serving a variety of
3 functions in that regard. I would say
4 those are the highlights.

10:31:32 5 Q. Does your job in anyway involve
6 interacting with BayTSP?

7 A. Yes.

8 Q. Do you have supervisory or
9 management responsibility with respect
10:31:51 10 to Viacom's relationship with BayTSP?

11 MS. KOHLMANN: Objection as to
12 form. You can answer.

13 A. I have at times.

14 Q. Do you today?

10:31:58 15 A. Yes, to some extent.

16 Q. When did you begin to have
17 supervisory or management
18 responsibility with respect to Viacom's
19 relationship with BayTSP?

10:32:15 20 A. I believe that officially began
21 in February of 2007.

22 Q. Has there been a period of time
23 between February of 2007 and the
24 present during which you did not have

10:32:43 25 management or supervisory

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1 form. You can answer.

2 A. If we're speaking of the time
3 period of March, 2007, I believe that
4 that was not the case because that
12:02:07 5 project was winding down.

6 Q. Which project was winding down?

7 A. The project that included the
8 monitoring of the four sites and the
9 P2P networks.

12:02:32 10 Q. Why was that project winding
11 down?

12 A. We were reevaluating Bay's
13 ability to -- to scale to the point of
14 handling the four sites, as we
12:03:01 15 developed a more granular understanding
16 of the scale of the infringing content
17 that we were -- conduct that we were
18 identifying on YouTube, Bay was having
19 a -- there was the perception that Bay
12:03:28 20 was having issues managing those as one
21 project, which is the reason why there
22 is a Project 2 on that sheet and why
23 you see YouTube in both columns.

24 Q. And Project 1 what ultimately
12:04:06 25 put into abeyance because of the

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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 TAMAR TEIFELD
PALO ALTO, CALIFORNIA
WEDNESDAY, FEBRUARY 18, 2009

JOB NO. 16515

DAVID FELDMAN WORLDWIDE, INC.
805 Third Avenue, New York, New York 10022 (212)705-8585

1 FEBRUARY 18, 2009

2 9:12 a.m.

3

4 VIDEOTAPED DEPOSITION OF TAMAR TEIFELD,
5 WILSON SONSINI GOODRICH & ROSATI, LLP,
6 601 California Ave., Palo Alto, California,
7 pursuant to notice, and before me,
8 ANDREA M. IGNACIO HOWARD, CLR, RPR, CSR
9 License No. 9830.

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DAVID FELDMAN WORLDWIDE, INC.
805 Third Avenue, New York, New York 10022 (212)705-8585

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

2

3 FOR THE PLAINTIFFS VIACOM INTERNATIONAL INC.:

4 SHEARMAN & STERLING LLP

5 By: KIRSTEN NELSON CUNHA, Esq.

6 599 Lexington Avenue

7 New York, New York 10022-6069

8 (212) 848-4000 kirsten.cunha@shearman.com

9

10 FOR THE DEFENDANTS YOUTUBE, INC., YOUTUBE, LLC and

11 GOOGLE, INC.:

12 WILSON SONSINI GOODRICH & ROSATI, LLP

13 By: MICHAEL H. RUBIN, Esq.

14 CAROLINE WILSON, Esq.

15 650 Page Mill Road

16 Palo alto, California 94304

17 (650) 493-9300 mrubin@wsgr.com

18

19 ALSO PRESENT:

20 PARAMOUNT PICTURES

21 By: PAUL KOENIG, Esq.

22 5555 Melrose Avenue

23 Hollywood, California 90038-3197

24 (323) 956-5882 paul_koenig@paramount.com

25

DAVID FELDMAN WORLDWIDE, INC.
805 Third Avenue, New York, New York 10022 (212)705-8585

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

2

3 ALSO PRESENT: Lou Meadows, Videographer.

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1 TEIFELD

2 PALO ALTO, CALIFORNIA

3 WEDNESDAY, FEBRUARY 18, 2009, 9:12 A.M.

4

5

6 THE VIDEOGRAPHER: On the record.

7 This is today's videotaped deposition of

8 Tamar Teifeld taken on February 18th, 2009, at

9 Wilson, Sonsini, Goodrich & Rosati at 601 California

10 Avenue, Palo Alto, California. In the matter of

11 Viacom International vs. YouTube, Incorporated, et al.

12 Case No. 07-CV-2103. In the United States

13 District Court, in the Southern District of New York.

14 My name is Lou Meadows representing

15 David-Feldman Worldwide. Located at 600 Anton

16 Boulevard, Suite 1100, Costa Mesa, California.

17 We are now commencing at 9:08 a.m.

18 Will all present please identify yourselves

19 and state who you represent on the record.

20 THE REPORTER: I'm not getting anything.

21 THE VIDEOGRAPHER: There.

22 THE REPORTER: Thank you.

23 THE VIDEOGRAPHER: Sorry.

24 MR. RUBIN: Michael Rubin for defendants.

25 MS. WILSON: Caroline Wilson for defendants.

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1 TEIFELD

2 MS. CUNHA: Kirsten Cunha from Shearman &
3 Sterling on behalf of the plaintiffs.

4 MR. KOENIG: Paul Koenig from Paramount
5 Pictures on behalf of the plaintiff.

6 THE WITNESS: Tamar Teifeld, Paramount
7 Pictures.

8 THE VIDEOGRAPHER: Thank you.

9 If there are no stipulations, the court
10 reporter may now administer the oath.

11

12 TAMAR TEIFELD,
13 having been sworn as a witness, testified as follows:

14

15 EXAMINATION BY MR. RUBIN

16 MR. RUBIN: Q. Good morning, Ms. Teifeld.

17 My name is Michael Rubin. How are you?

18 A Good. How are you?

19 Q Good.

20 I want to go over some ground rules for how
21 we're going to have this deposition today. As you can
22 see, there's both a video camera and a court reporter
23 here.

24 The video camera we don't need to help out.

25 It will take care of itself. But in order to get

1 TEIFELD

09:55:08 2 A Megan Wahtera has.

09:55:11 3 Q Do you know the name of that account?

09:55:13 4 A I don't.

09:55:13 5 Q In connection with what campaign, was that
09:55:16 6 account created?

09:55:21 7 A "The Heartbreak Kid."

09:55:24 8 Q And why was it created?

09:55:28 9 A It was a situation where we wanted to market
09:55:34 10 to people that are sensitive to overt advertising.

09:55:39 11 Q And why would the creation of a separate
09:55:44 12 account do that, achieve that goal?

09:55:46 13 A Because there's very tech-savvy people that
09:55:51 14 can watch videos on YouTube and figure out if an IP --
09:55:55 15 where an IP address comes from. And if it says
09:55:58 16 "Paramount Pictures," then they're aware that it's
09:56:01 17 advertise -- that they're being advertised to.

09:56:02 18 Q I'm not sure I follow.

09:56:03 19 Could you explain what you mean by
09:56:05 20 "tech-savvy people" figuring out IP addresses?

09:56:08 21 A Well, if we're posting a video that, you
09:56:12 22 know, we want -- we want it to look like a user
09:56:17 23 created it to make it more susceptible for someone to
09:56:23 24 click on it and watch it, then we don't necessarily
09:56:27 25 want them to see right away that it's coming from

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1 TEIFELD

09:56:31 2 Paramount so that they don't feel like it's part of a
09:56:35 3 marketing strategy.

09:56:36 4 Q Does that mean that you would use a user name
09:56:39 5 that, unlike Paraccount, didn't have the possibility
09:56:43 6 of evoking Paramount Pictures?

09:56:45 7 A Possibly, yes.

09:56:45 8 Q Are there other steps that Paramount would
09:56:49 9 take to disguise the origins of the video?

09:56:54 10 A I wouldn't say we disguised it.

09:56:56 11 Q You testified that -- that certain users
09:57:01 12 wouldn't want to watch videos if they knew they came
09:57:03 13 from Paramount.

09:57:04 14 A Uh-huh.

09:57:05 15 Q Other than using a user name that didn't
09:57:08 16 evoke Paramount to achieve that purpose, were any
09:57:13 17 other steps taken towards that end?

09:57:16 18 A I don't recall specifically.

09:57:18 19 Q You mentioned IP addresses --

09:57:21 20 A Uh-huh.

09:57:22 21 Q -- in connection with -- with your answer
09:57:24 22 earlier.

09:57:26 23 Did you mean to say that sometimes you didn't
09:57:28 24 upload them from a Paramount-owned IP address?

09:57:33 25 A Yes.

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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.	)	Case No.
YOUTUBE, INC., YOUTUBE, LLC,	)	07CV-2103
and GOOGLE, INC.,)	
Defendants.)	
<hr/>		
THE FOOTBALL ASSOCIATION PREMIER)	
LEAGUE LIMITED, BOURNE CO., et al.,)	
on behalf of themselves and all)	
others similarly situated,)	
Plaintiffs,)	
vs.)	Case No.
YOUTUBE, INC., YOUTUBE, LLC, and)	07CV-3582
GOOGLE, INC.,)	
Defendants.)	
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DEPOSITION OF KRISTINA TIPTON

NEW YORK, NEW YORK

Thursday, October 29, 2009

REPORTED BY:
ERICA RUGGIERI, CSR, RPR
JOB NO: 17863

DAVID FELDMAN WORLDWIDE, INC.
450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

1

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October 29, 2009

5

9:36 a.m.

6

7

VIDEOTAPED DEPOSITION OF KRISTINA

8

TIPTON, held at the offices of Wilson

9

Sonsini Goodrich & Rosati, 1301 Avenue of

10

the Americas, New York, New York, pursuant

11

to notice, before before Erica L.

12

Ruggieri, Registered Professional Reporter

13

and Notary Public of the State of New

14

York.

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DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

1

2

A P P E A R A N C E S

3

4

FOR THE VIACOM PLAINTIFFS and THE WITNESS:

5

6

SHEARMAN & STERLING, LLP

7

BY: KIRSTEN NELSON CUNHA, ESQ.

8

599 Lexington Avenue

9

New York, New York 10022

10

Kirsten.cunha@shearman.com

11

12

FOR THE DEFENDANTS YOUTUBE, INC., YOUTUBE,

13

LLC and GOOGLE, INC.:

14

15

WILSON SONSINI GOODRICH & ROSATI

16

BY: MAURA L. REES, ESQ.

17

650 Page Mill Road

18

Palo Alto, CA 94304

19

Mrees@wsgr.com

20

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22

23

ALSO PRESENT:

24

CARLOS KING, Videographer

25

DAVID FELDMAN WORLDWIDE, INC.
450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

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IT IS HEREBY STIPULATED AND AGREED, by and between the attorneys for the respective parties herein, that filing and sealing be and the same are hereby waived.

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to the form of the question, shall be reserved to the time of the trial.

IT IS FURTHER STIPULATED AND AGREED that the within deposition may be sworn to and signed before any officer authorized to administer an oath, with the same force and effect as if signed and sworn to before the Court.

DAVID FELDMAN WORLDWIDE, INC.
450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

1
2 THE VIDEOGRAPHER: This is tape
3 number one of the videotaped
4 deposition of Kristina Tipton, in the
10:03:38 5 matter Viacom International, Inc. et
6 al, versus YouTube, Inc. et al., The
7 Football Association Premier League
8 Limited, Bourne Company, et al.,
9 versus YouTube, Inc. et al., in the
10:03:52 10 United States District Court, for the
11 Southern District of New York.

12 This deposition is being held at
13 the offices of Wilson Sonsini, located
14 at 1301 Avenue of the Americas, on
10:04:00 15 October 29th, 2009 at approximately
16 10:04 a.m.

17 My name is Carlos King from the
18 firm of David Feldman Worldwide, and
19 I'm the legal video specialist. The
10:04:10 20 court reporter is Erica Ruggieri, in
21 association with David Feldman
22 Worldwide.

23 Will counsel please introduce
24 themselves.

10:04:18 25 MS. REES: Maura Rees, from

DAVID FELDMAN WORLDWIDE, INC.
450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

1 TIPTON

2 Wilson Sonsini, on behalf of the
3 YouTube defendants.

10:04:24

4 MS. CUNHA: Kirsten Cunha from
5 Shearman & Sterling, on behalf of the
6 witness and the Viacom Plaintiffs.

7 THE VIDEOGRAPHER: Will the
8 court reporter please swear in the
9 witness.

10 K R I S T I N A T I P T O N , called as
11 a witness, having been duly sworn by a
12 Notary Public, was examined and
13 testified as follows:

14 EXAMINATION BY

10:04:37

15 MS. REES:

16 Q. Good morning.

17 A. Good morning.

18 Q. Could you please state your name
19 and your address for the record.

10:04:45

20 A. My home address?

21 Q. Yes.

22 A. My name is Kristina Tipton, and

23

24

10:04:57

25 Q. Do you understand that you are

1 TIPTON

2 stealth marketing campaigns, what kind of
3 marketing campaigns would you work on for
4 those?

10:14:18

5 A. There are a lot of elements. We
6 would try to maximize publicity by doing
7 exclusive clips, by setting up interviews
8 with the stars of the film, by
9 distributing the standard film assets,
10 including the elements on the EPK,
11 electronic press kit.

10:14:33

12 Q. And what would generally be
13 included in an electronic press kit?

10:15:07

14 A. There are often five to 10 clips
15 from the film, the trailer and interviews
16 from the junket. It's a press junket.

17 Q. Are you familiar with the phrase
18 "seeding," as in seeding a clip online,
19 S-E-E-D?

10:15:37

20 A. It was used, yes.

21 Q. What does seeding mean?

22 A. I think it varied sometimes, but
23 usually it just meant posting.

10:15:56

24 Q. Can you give me some examples of
25 the different websites where Paramount

1 TIPTON

2 Q. When you say "specially
3 approved," who approves them?

4 A. It would have to go through the
10:33:35 5 publicity team, through film makers,
6 through the creative team and through the
7 interactive, through Amy Powell.

8 Q. And then the next line after
9 that is "Viral videos."

10:33:56 10 Do you see that?

11 A. Yes.

12 Q. In the context of this Hot Rod
13 campaign, what did viral videos consist
14 of?

10:34:03 15 A. I don't recall.

16 Q. Do you have an understanding
17 generally of what viral videos are, as a
18 category?

19 A. Generally, yes.

10:34:15 20 Q. And what is that?

21 A. They are videos that we felt had
22 potential for being passed along or talked
23 about more extensively online.

24 Q. Did the viral videos have to be
10:34:47 25 approved in the same manner that you just

1 TIPTON

2 U.S., or did you ever have international
3 responsibilities as well?

4 A. We were focused on the U.S.

03:59:54

5 MS. REES: Exhibit 53.

6 (Tipton Exhibit 53, e-mail
7 chain, marked for identification, as
8 of this date.)

9 (Witness reviews document.)

04:00:49

10 Q. Do you recognize Exhibit 53?

11 A. I wasn't included on part of it,
12 but I recognize the part that I was
13 included on.

04:01:04

14 Q. So for the part that you were
15 included on, it appears it starts on the
16 second page, with the numbers ending 036;
17 is that right?

18 A. Yes.

04:01:19

19 Q. And what was the purpose of you
20 sending this e-mail that starts in the
21 middle of the second page of the exhibit?

22 A. I don't recall this particular
23 instance, but it appears that our
24 Paraccount primary YouTube account was
04:01:33 25 disabled, and we were trying to get it

1 TIPTON

2 back up and running.

3 Q. Did that happen on more than one
4 occasion?

04:01:44 5 A. I don't recall.

6 Q. Did you ever find out how the
7 Paraccount became disabled?

8 A. I don't recall.

9 Q. Was it because BayTSP took down
04:01:52 10 clips in the Paraccount?

11 A. I don't recall.

12 Q. Did you ever speak with anyone
13 at BayTSP about the Paraccount being
14 disabled?

04:02:02 15 A. I don't recall.

16 Q. Was the Paraccount reinstated
17 after it was disabled?

18 A. I don't recall, specifically,
19 when it was, but I know it was at some
04:02:34 20 point before I was gone from Paramount,
21 so.

22 Q. In the context of marketing, are
23 you familiar with something called a call
24 to action?

04:03:04 25 A. Yes.

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450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

MEGAN WAHTERA - HIGHLY CONFIDENTIAL

Page 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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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.

-----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 MEGAN WAHTERA
SAN FRANCISCO, CALIFORNIA
FRIDAY, DECEMBER 4, 2009

JOB NO. 18262

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212)705-8585

MEGAN WAHTERA - HIGHLY CONFIDENTIAL

Page 2

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

2 DECEMBER 4, 2009

3 10:27 A.M.

4

5 HIGHLY CONFIDENTIAL VIDEOTAPED DEPOSITION OF MEGAN
6 WAHTERA, at WILSON SONSINI GOODRICH & ROSATI, 1 Market
7 Plaza, San Francisco, California, pursuant to notice,
8 before me, KATHERINE E. LAUSTER, CLR, CRR, RPR, CSR
9 License No. 1894.

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DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212)705-8585

MEGAN WAHTERA - HIGHLY CONFIDENTIAL

Page 3

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

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

3 FOR THE PLAINTIFFS, VIACOM INTERNATIONAL, INC., and
4 the WITNESS:

5 JENNER & BLOCK, LLP
6 By: SCOTT B. WILKENS, ESQ.
7 1099 New York Avenue, NW
8 Suite 900
9 Washington, DC 20001
10 T.202.639.6000
11 F.202.661.4832
12 swilkens@jenner.com

13 and

14 PARAMOUNT PICTURES MOTION PICTURE GROUP
15 INTERACTIVE MARKETING
16 By: PAUL KOENIG, ESQ.
17 5555 Melrose Avenue
18 Hollywood, California 90038-3197
19 T.323.956.5882
20 F.323.862.2875
21 paul_koenig@paramount.com

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

24 WILSON, SONSINI, GOODRICH & ROSATI
25 By: MICHAEL H. RUBIN, ESQ.
CAROLINE WILSON, ESQ.
650 Page Mill Road
Palo Alto, California 94304-1050
T.650.493.9300
F.650.493.6811
mrubin@wsgr.com
cwilson@wsgr.com

Also Present: JOSEPH SKORMAN, Videographer

DAVID FELDMAN WORLDWIDE, INC.

450 Seventh Avenue - Ste 2803, New York, NY 10123 (212)705-8585

MEGAN WAHTERA - HIGHLY CONFIDENTIAL

Page 4

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

2 SAN FRANCISCO, CALIFORNIA

3 FRIDAY, DECEMBER 4, 2009; 10:27 A.M.

4

10:27:10 5 THE VIDEOGRAPHER: Today's videotaped

10:27:11 6 deposition of Megan Wahtera --

10:27:16 7 THE WITNESS: Correct.

10:27:17 8 THE VIDEOGRAPHER: -- is taken on

10:27:18 9 December 4th, 2009, at 1 Market Plaza, Spear Tower,

10:27:24 10 Suite 3 -- I'm sorry -- 3000 -- 3300, San Francisco,

10:27:28 11 California, in the matter of Viacom International,

10:27:36 12 Inc., et al., versus YouTube, Inc., et al., and also

10:27:42 13 the Football Association Premier, et al., versus

10:27:48 14 YouTube, Inc., et al. The Case Number is 07-CV-2103

10:27:55 15 and for the second it is 07-CV-3582, in the court of

10:28:03 16 the Southern District of New York.

10:28:07 17 My name is Joseph Skorman. I represent

10:28:10 18 David Feldman Worldwide, located at 600 Anton

10:28:14 19 Boulevard, Suite 1100, Costa Mesa, California.

10:28:21 20 We are now commencing at 10:27 a.m.

10:28:28 21 Will all present please identify

10:28:30 22 themselves, beginning with the witness.

10:28:35 23 THE WITNESS: Megan Wahtera.

10:28:37 24 MR. WILKENS: Scott Wilkens, Jenner and

10:28:39 25 Block, LLP, for the Viacom plaintiffs and the

DAVID FELDMAN WORLDWIDE, INC.

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MEGAN WAHTERA - HIGHLY CONFIDENTIAL

Page 5

1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009
10:28:43 2 witness.
10:28:44 3 MR. KOENIG: Paul Koenig, Paramount
10:28:45 4 Pictures, for the Viacom plaintiffs and the
10:28:45 5 witness.
10:28:46 6 MR. RUBIN: Michael Rubin, Wilson,
10:28:49 7 Sonsini, Goodrich & Rosati, for defendants YouTube
10:28:50 8 and Google.
10:28:54 9 MS. WILSON: Caroline Wilson, also FROM
10:28:54 10 Wilson, Sonsini, Goodrich & Rosati, for the
10:28:55 11 defendants.
10:28:57 12 THE VIDEOGRAPHER: Thank you.
10:28:57 13 Would the court reporter please swear in
10:28:57 14 the witness.
10:28:57 15 THE REPORTER: Will you raise your right
10:28:57 16 hand, please.
10:28:57 17 Do you solemnly state, under penalty of
10:28:57 18 perjury, the testimony you are about to give will be
10:28:57 19 the truth, the whole truth, and nothing but the
10:28:57 20 truth?
10:29:07 21 THE WITNESS: I do.
10:29:07 22
10:29:07 23 MEGAN WAHTERA,
10:29:07 24 having been sworn as a witness,
10:29:07 25 testified as follows:

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MEGAN WAHTERA - HIGHLY CONFIDENTIAL

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1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

10:51:37 2 BY MR. RUBIN:

10:51:37 3 Q. But in fact you are sure, based on what

10:51:38 4 you just said, that you didn't tell YouTube every

10:51:41 5 time; isn't that right?

10:51:42 6 A. Are we talking about a great pick clip

10:51:44 7 specifically, or. . . .

10:51:45 8 Q. You just testified that you didn't tell

10:51:46 9 YouTube at the time you uploaded that video, didn't

10:51:49 10 you?

10:51:49 11 A. No, I told them a few days later.

10:51:51 12 Q. All right. Why did you tell them a few

10:51:53 13 days later?

10:51:55 14 A. From what I recall, the clip was a

10:51:57 15 failure, so we were trying to get their help to

10:52:01 16 garner views and keep it up.

10:52:23 17 Q. Do you have a -- have you ever registered

10:52:26 18 for a gmail.com account?

10:52:28 19 A. Not that I can recall.

10:52:30 20 Q. But you do recall registering for the

10:52:32 21 Yahoo e-mail address?

10:52:34 22 A. I recall, yes, using Yahoo for that one.

10:52:40 23 Q. For that one?

10:52:41 24 A. Yes.

10:52:42 25 Q. For the "Heartbreak Kid" clip --

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	1	MEGAN WAHTERA	SAN FRANCISCO, CA	DECEMBER 4, 2009
12:03:00	2	A.	That's it.	
12:03:01	3	Q.	Just videos for "The Heartbreak Kid"?	
12:03:03	4	A.	Oh, no, videos.	
12:03:06	5	Q.	Videos related to what?	
12:03:08	6	A.	Our films.	
12:03:08	7	Q.	What types of videos related to Paramount	
12:03:10	8		Picture films?	
12:03:12	9	A.	Lots of different types of videos.	
12:03:13	10		Trailers, clips, EPK materials, you name it.	
12:03:18	11	Q.	What's an "EPK"?	
12:03:19	12	A.	An electronic press kit.	
12:03:22	13	Q.	So the Isolon drive houses all manner of	
12:03:26	14		promotional materials?	
12:03:28	15	A.	No, not necessarily. We have a video	
12:03:31	16		encoder, so the person who digitized our videos,	
12:03:34	17		it's his -- it's his folder.	
12:03:35	18	Q.	Who is your video encoder?	
12:03:37	19	A.	We don't have one currently, actually.	
12:03:40	20	Q.	Who was your video encoder?	
12:03:43	21	A.	Les Hidvegi.	
12:03:44	22	Q.	Les Hidvegi?	
12:03:47	23	A.	Yes.	
12:03:49	24	Q.	Where does he store the videos that he	
12:03:51	25		encoded?	

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	1	MEGAN WAHTERA	SAN FRANCISCO, CA	DECEMBER 4, 2009
13:21:01	2	A.	There is no origin.	I made it up.
13:21:04	3	Q.	Why did you make up that name?	
13:21:06	4	A.	I wanted this piece of video to appear to	
13:21:09	5		the end user as something that was not from the	
13:21:13	6		studio.	
13:21:14	7	Q.	Why?	
13:21:16	8	A.	This particular film and clips in general	
13:21:19	9		were not doing very well, if I recall correctly, and	
13:21:22	10		so I -- we took a different -- we experimented with	
13:21:25	11		our approach in getting success.	
13:21:35	12	Q.	You wanted this film not to appear as if	
13:21:38	13		it was from the studio to whom?	
13:21:41	14	A.	To the people watching it.	
13:21:42	15	Q.	And to YouTube; right?	
13:21:44	16	A.	No. That was never my intent.	
13:21:48	17	Q.	Why did you register a unique e-mail	
13:21:50	18		address in connection with the upload of this video?	
13:21:52	19	A.	Because a lot of people who watch clips,	
13:21:55	20		like an audience -- and just general audiences or, I	
13:21:58	21		don't know, specific audiences -- it's very easy for	
13:22:02	22		them to find out through technical ways who uploaded	
13:22:06	23		the clip, so I didn't want it to be from Paramount's	
13:22:10	24		e-mail.	
13:22:10	25	Q.	How is it possible for a user of the	

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1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009
13:38:35 2 creating the Yahoo account --
13:38:37 3 A. Uh-huh.
13:38:37 4 Q. -- because you didn't want the video to be
13:38:40 5 associated with Paramount; isn't that right?
13:38:43 6 A. That is correct.
13:38:46 7 Q. You didn't want anyone to be able to tell
13:38:49 8 that the video was Paramount content; right?
13:38:52 9 MR. WILKENS: Objection to the form.
13:38:53 10 THE WITNESS: I didn't want the people
13:38:54 11 viewing the content to be able to tell that it was
13:38:59 12 from Paramount, the -- the audience that we were
13:39:02 13 looking --
13:39:02 14 BY MR. RUBIN:
13:39:02 15 Q. You didn't --
13:39:02 16 A. -- to get.
13:39:02 17 Q. You didn't want the audience to be able to
13:39:05 18 tell that Paramount had uploaded the content to
13:39:08 19 YouTube?
13:39:08 20 A. Correct.
13:39:08 21 Q. You didn't want anyone to know that the
13:39:10 22 content -- that Paramount had uploaded the content
13:39:13 23 to YouTube; right?
13:39:14 24 A. I was mostly concerned with the audience.
13:39:16 25 Q. But you were also interested in making

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	1	MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009
13:39:18	2	sure nobody knew; right?
13:39:20	3	A. No, that wasn't my objective.
13:39:21	4	Q. You went to great lengths to hide the fact
13:39:24	5	that Paramount wasn't the uploader of that content;
13:39:27	6	right?
13:39:27	7	A. I did, so that audience would see it as
13:39:29	8	cool.
13:39:30	9	Q. You created a new Yahoo e-mail account;
13:39:33	10	correct?
13:39:33	11	A. Correct.
13:39:33	12	Q. And you created a brand new YouTube
13:39:36	13	account; right?
13:39:37	14	A. Correct.
13:39:37	15	Q. From separate locations; correct?
13:39:41	16	A. (Nods head.)
13:39:42	17	Q. And you uploaded the account from off lot
13:39:44	18	at Paramount; right?
13:39:46	19	A. That is correct.
13:39:46	20	Q. All in an effort to obscure the source of
13:39:49	21	the content; right?
13:39:50	22	A. That is correct.
13:39:54	23	Q. Was that video successful?
13:39:57	24	A. If I recall correctly, it was not.
13:40:14	25	Q. What do you recall about that video?

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1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

13:53:45 2 A. I don't know.

13:53:46 3 Q. You've never -- you've never investigated

13:53:49 4 whether Paramount owned a copyright to a film?

13:53:52 5 A. No, it's not part of my job

13:53:55 6 responsibility.

13:53:56 7 Q. Have you ever delegated that to someone

13:53:59 8 else and had them return results to you?

13:54:02 9 A. Not that I'm aware of.

13:54:05 10 MR. RUBIN: I'd like to introduce Wahtera

13:54:07 11 16.

13:54:07 12 (Wahtera Deposition Exhibit Number 16 was

13:54:07 13 marked for identification.)

13:54:17 14 THE WITNESS: Thank you.

13:54:21 15 BY MR. RUBIN:

13:54:22 16 Q. Miss Wahtera, Exhibit 16 is a document

13:54:24 17 produced by Viacom in this action, bearing Bates

13:54:27 18 number VIA12603576.

13:54:34 19 Do you recognize this document?

13:54:35 20 A. I recognize it.

13:54:39 21 Q. You sent this e-mail to Joanna Ging at

13:54:40 22 YouTube on September 28, 2007; right?

13:54:49 23 A. It appears so, yes.

13:54:50 24 Q. And that was the same date of the e-mail

13:54:52 25 we were looking at in Exhibit 15, wasn't it?

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1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

13:54:56 2 A. Okay. Yes.

13:55:03 3 Q. And you'd called Miss Ging prior to

13:55:07 4 sending her this e-mail, didn't you?

13:55:10 5 A. It appears that I did.

13:55:12 6 Q. You were contacting Miss Ging to bring the

13:55:16 7 appropriate -- pardon me.

13:55:18 8 You were contacting Miss Ging to bring the

13:55:21 9 inappropriate clip notice on "The Heartbreak Kid"

13:55:24 10 clip we've been discussing to her attention; right?

13:55:27 11 A. Yes.

13:55:28 12 Q. That was the purpose of your contacting

13:55:30 13 her; isn't it?

13:55:31 14 A. Yes.

13:55:31 15 Q. There was no other reason why you were

13:55:33 16 contacting her, was there?

13:55:35 17 A. Not that I'm aware of.

13:55:37 18 Q. And what was the -- Miss Ging's response

13:55:40 19 to you?

13:55:41 20 A. (Reading:)

13:55:41 21 "Hi Megan.

13:55:43 22 "I just left you a voicemail -- VM -- but

13:55:45 23 looks like the clip is copyrighted

13:55:49 24 material.

13:55:49 25 "Please let me know if this is the case

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1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009

13:55:52 2 and I can escalate to the content team for

13:55:54 3 takedown.

13:55:55 4 Q. What was Miss Ging saying to you?

13:55:58 5 A. She was saying it was copyrighted.

13:55:59 6 Q. And what was her proposed solution?

13:56:03 7 A. A takedown.

13:56:04 8 Q. What was your response to Miss Ging?

13:56:06 9 A. I essentially told her, no, that we didn't

13:56:09 10 want it removed.

13:56:10 11 Q. That's not what you said here, is it?

13:56:11 12 A. I said:

13:56:12 13 "It is not copyrighted. We will call you

13:56:14 14 momentarily. Please do not remove."

13:56:17 15 Q. Was that "Heartbreak Kid" clip

13:56:19 16 copyrighted?

13:56:21 17 MR. WILKENS: Objection to the form.

13:56:21 18 THE WITNESS: I don't know, to be fair. I

13:56:22 19 don't know.

13:56:23 20 BY MR. RUBIN:

13:56:23 21 Q. What was the basis of your representation

13:56:25 22 of the copyright status of that "Heartbreak Kid"

13:56:28 23 clip to Miss Ging?

13:56:29 24 A. Joanna was going to escalate having it

13:56:32 25 removed, and we were telling them that we didn't

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1 MEGAN WAHTERA SAN FRANCISCO, CA DECEMBER 4, 2009
13:56:35 2 want it removed.
13:56:36 3 Q. I didn't ask you why you said it.
13:56:38 4 A. Oh.
13:56:38 5 Q. I asked you what the basis was for your
13:56:40 6 statement.
13:56:45 7 A. I don't know, because I don't remember --
13:56:48 8 I don't remember what was in my -- what was going on
13:56:51 9 when I wrote this.
13:56:52 10 Q. You didn't know, one way or the other, at
13:56:54 11 the time you sent this e-mail, whether "The
13:56:56 12 Heartbreak Kid" clip was copyrighted, did you?
13:56:58 13 MR. WILKENS: Objection to the form.
13:57:00 14 THE WITNESS: No.
13:57:01 15 BY MR. RUBIN:
13:57:01 16 Q. And you didn't do any investigation as to
13:57:04 17 the copyright status of the "The Heartbreak Kid"
13:57:06 18 movie or that clip prior to sending this e-mail to
13:57:10 19 Miss Ging, did you?
13:57:10 20 A. I did not.
13:57:11 21 Q. In fact --
13:57:12 22 A. I was there more as --
13:57:14 23 Q. And in fact, you've never, to your
13:57:16 24 knowledge, ever done such investigation for any
13:57:18 25 film; right?

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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

x

VIACOM INTERNATIONAL, INC., COMEDY
PARTNERS, COUNTRY MUSIC TELEVISION,
INC., PARAMOUNT PICTURES CORPORATION,
and BLACK ENTERTAINMENT TELEVISION,
LLC,

Plaintiffs,

vs. NO. 07-CV-2103

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

VIDEOTAPED DEPOSITION OF MICHAEL WOLF
NEW YORK, NEW YORK
FRIDAY, APRIL 17, 2009

JOB NO.: 16687

DAVID FELDMAN WORLDWIDE, INC.
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APRIL 17, 2009
10:02 a.m.

VIDEOTAPED DEPOSITION OF MICHAEL
WOLF, held at the offices of CAHILL GORDON &
REINDEL, LLP, 80 Pine Street, New York, New
York, pursuant to subpoena, before JENNIFER
OCAMPO-GUZMAN, a Shorthand Reporter and
Notary Public of the State of New York.

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

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4

FOR THE PLAINTIFFS VIACOM INTERNATIONAL,
INC.:

6

JENNER & BLOCK, LLP

7

BY: SUSAN J. KOHLMANN, ESQ.

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919 Third Avenue, 37th Floor

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New York, New York 10022-3908

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(212) 891-1690 skohlmann@jenner.com

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12

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

13

14

WILSON SONSINI GOODRICH & ROSATI, PC

15

BY: BART E. VOLKMER, ESQ.

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APPEARANCES (Continued):

3

4

FOR THE DEPONENT:

5

CAHILL GORDON & REINDEL, LLP

6

BY: ADAM ZUROFSKY, ESQ.

7

BY: CHRISTOPHER A. GORMAN, ESQ.

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11

(212) 701-3119 cgorman@cahill.com

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ALSO PRESENT:

15

CARLOS KING, Videographer

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	1	
10:04:14	2	THE VIDEOGRAPHER: This is tape
10:04:15	3	number 1 of the videotaped deposition of
10:04:17	4	Michael Wolf in the matter Viacom
10:04:23	5	International, Inc., the Football
10:04:25	6	Association Premiere League Limited, et
10:04:25	7	al., versus YouTube Inc., YouTube, LLC
10:04:28	8	and Google, Inc.
10:04:29	9	This deposition is being held at 80
10:04:34	10	Pine Street, New York, New York on
10:04:35	11	April 17, 2009, at approximately 10:02
10:04:38	12	a.m.
10:04:38	13	My name is Carlos King from the
10:04:41	14	firm of David Feldman Worldwide, and I
10:04:44	15	am the legal video specialist. The
10:04:46	16	court reporter is Jennifer Ocampo-Guzman
10:04:48	17	in association with David Feldman
10:04:50	18	Worldwide.
10:04:51	19	Will counsel please introduce
10:04:52	20	themselves.
10:04:52	21	MR. VOLKMER: Bart Volkmer from
10:04:54	22	Wilson Sonsini Goodrich & Rosati
10:04:54	23	representing defendants Google and
10:04:58	24	YouTube.
10:04:58	25	MR. ZUROFSKY: Adam Zurofsky from

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10:04:58 2 Cahill Gordon & Reindel, LLP, with my

10:05:00 3 associate Chris Gorman, representing the

10:05:01 4 witness.

10:05:02 5 MS. KOHLMANN: Susan Kohlmann from

10:05:06 6 Jenner & Block, LLP, representing

10:05:07 7 Viacom.

10:05:07 8 MR. VOLKMER: Good morning, Mr.

10:05:08 9 Wolf. Could you please state your name

10:05:10 10 and home address for the record, please?

10:05:14 11 THE WITNESS: Michael J. Wolf, 1010

10:05:14 12 Fifth Avenue.

10:05:17 13 MR. VOLKMER: I know that you've

10:05:17 14 been deposed before and I know you know

10:05:20 15 the routine, but I'd like to go over a

10:05:22 16 few of the ground rules today.

10:05:23 17 First, the court reporter is taking

10:05:25 18 down everything that we say, so please

10:05:27 19 answer audibly instead of nodding your

10:05:27 20 head or shaking your head.

10:05:31 21 THE WITNESS: Okay.

10:05:31 22 MR. VOLKMER: And your attorney may

10:05:32 23 be making objections throughout the

10:05:32 24 course of the deposition from time to

10:05:34 25 time, and even though he's making

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1 Wolf

11:48:18 2 foundation.

11:48:21 3 A. At the time I would have need --

11:48:28 4 needed to see -- I mean, again, I don't know

11:48:33 5 whether I agree. On one side I believed that

11:48:35 6 it was an acquisition that would be

11:48:37 7 important; on the other side I would have

11:48:40 8 needed to see much more financial information

11:48:44 9 and information about the business model

11:48:47 10 before I could have gone ahead, and, and

11:48:50 11 believed that this was an acquisition that

11:48:52 12 Viacom should complete.

11:48:53 13 Q. From a business perspective, the

11:49:07 14 individuals listed at the top of this e-mail

11:49:08 15 came to the conclusion that such an

11:49:10 16 acquisition would be viable though, right?

11:49:13 17 MR. ZUROFSKY: Objection to form,

11:49:14 18 foundation, vague.

11:49:15 19 MS. KOHLMANN: Objection.

11:49:16 20 MR. ZUROFSKY: The document speaks

11:49:17 21 for itself. Go on.

11:49:19 22 A. I don't see anywhere where it says

11:49:21 23 "viable."

11:49:21 24 Q. What was the function of the group

11:49:30 25 that was convened over the second weekend in

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1 Wolf

11:49:33 2 July of 2006, to look at the YouTube, at a
11:49:37 3 potential YouTube acquisition?

11:49:39 4 MR. ZUROFSKY: Objection to form,
11:49:40 5 asked and answered.

11:49:40 6 MS. KOHLMANN: Objection.

11:49:43 7 MR. ZUROFSKY: Yes, the last
11:49:44 8 document.

11:50:08 9 A. If you look at the previous
11:50:09 10 document, the document marked Wolf 6 ID 41709
11:50:17 11 it says, the fifth paragraph down, "The key
11:50:29 12 question we now need to consider, how could
11:50:33 13 we create a business model for YouTube?"

11:50:35 14 Q. Okay. And what was the answer from
11:50:41 15 that group that you convened?

11:50:46 16 A. Ultimately the answer was no.

11:50:48 17 Q. The group came back with the
11:50:51 18 answer, no, we can't create a business model
11:50:54 19 for YouTube?

11:50:56 20 A. To the best of my recollection, we
11:50:59 21 did not pursue the acquisition and so we did
11:51:04 22 not continue to have negotiations around the
11:51:07 23 acquisition, so the group did not say that we
11:51:13 24 should buy YouTube.

11:51:16 25 Q. You convened a group to come back

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1 Wolf

11:51:21 2 and answer the question of whether we, and
11:51:25 3 that's MTV Networks, could create a business
11:51:28 4 model for YouTube and they had a session over
11:51:30 5 the weekend and they reported back to you; is
11:51:32 6 that right?

11:51:32 7 A. That's correct.

11:51:32 8 Q. And you're saying that their
11:51:35 9 recommendation, after meeting over the
11:51:37 10 weekend, was that MTV Networks could not
11:51:40 11 build a business model --

11:51:42 12 MR. ZUROFSKY: Objection.

11:51:43 13 Q. -- around YouTube?

11:51:44 14 MR. ZUROFSKY: Objection,
11:51:45 15 misstates, foundation, form.

11:51:47 16 Go ahead.

11:51:48 17 MS. KOHLMANN: Objection.

11:51:54 18 THE WITNESS: Could you read me
11:51:55 19 back the question, please, it's just a
11:51:56 20 lot of questions so I'm having trouble
11:51:59 21 remembering which one I'm answering.

11:52:01 22 (A portion of the record was read.)

11:52:20 23 A. To the best, to the best of my
11:52:26 24 recollection, they did not believe that we
11:52:35 25 could build a sufficient business model that

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1 Wolf

11:52:39 2 would justify an acquisition.

11:52:41 3 Q. But doesn't Mr. Cahan state at the
11:52:54 4 conclusion of that weekend, after meeting
11:52:56 5 with the individuals that we've been
11:52:58 6 discussing, that we all believe this is a
11:53:01 7 transformative acquisition that we should
11:53:03 8 pursue?

11:53:05 9 MR. ZUROFSKY: Objection, the
11:53:05 10 document speaks for itself, asked and
11:53:07 11 answered.

11:53:07 12 MS. KOHLMANN: Objection.

11:53:09 13 MR. ZUROFSKY: Form.

11:53:09 14 A. I didn't write this memo, so I
11:53:12 15 don't know specifically what Mr. Cahan means.

11:53:15 16 Q. But he's reporting back to you the
11:53:19 17 results of a group consensus regarding an
11:53:25 18 acquisition of YouTube by Viacom, right?

11:53:28 19 MS. KOHLMANN: Objection.

11:53:29 20 MR. ZUROFSKY: Objection,
11:53:30 21 misstates, foundation.

11:53:31 22 A. I don't know if that was the
11:53:46 23 consensus. He is reporting back.

11:53:48 24 Q. And he's reporting back, "We all
11:53:51 25 believe this is a transformative acquisition

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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,	)	Case No. 1:07-cv-02103 (LLS)
and BLACK ENTERTAINMENT TELEVISION	)	(Related Case No. 1:07-cv-03582 (LLS))
LLC,	)	ECF Case
)	
Plaintiffs,	)	DECLARATION OF SCOTT B.
	)	WILKENS IN SUPPORT OF
v.	)	VIACOM'S OPPOSITION TO
	)	DEFENDANTS' MOTION FOR
	)	SUMMARY JUDGMENT
YOUTUBE INC., YOUTUBE, LLC, and)	
GOOGLE, INC.,)	
)	
Defendants.)	
)	
)	

I, Scott B. Wilkens, hereby declare as follows:

1. I am a partner with the law firm Jenner & Block LLP and represent the plaintiffs in the above-captioned action ("Viacom"). I submit this declaration in support of Viacom's Opposition to Defendants' Motion for Summary Judgment. I make this declaration based on personal knowledge, except where otherwise noted herein.

Viacom Clips In Suit

2. Attached as Exhibits 1 through 20 are true and correct copies of 20 of the Clips in Suit at issue in this action. These clips were captured from YouTube by personnel working at the direction of Jenner & Block. For the Court's convenience, each clip is attached in two forms: the "A" version is in the original format in which the clip was captured and the "B" version is in MPEG format. The YouTube Video ID for each clip, the duration of each clip, and the name of the Viacom Work in Suit from which each clip was copied are listed in the table below:

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<u><i>Exhibit</i></u>	<u><i>Video ID</i></u>	<u><i>Duration</i></u> <u><i>(minutes:seconds)</i></u>	<u><i>Work in Suit</i></u>
1	Mey5E9B-hHs	10:56	South Park, Episode 1102
2	2zXpVsZEk0Q	3:05	Grease
3	CnWrOdaeZfM	9:58	Daria, Episode 101
4	iZaKWmLYUas	9:39	The Godfather
5	6nJNHYOsxXo	3:35	MTV Video Music Awards, 2007
6	L5wQ_ehw14A	10:20	Dora the Explorer, Episode 119
7	JZJuAWslb44	9:43	How to Lose a Guy in 10 Days
8	7uHO3jdxdkA	6:02	Beavis & Butthead, Episode 303
9	Bwf8ETBW64U	7:57	Braveheart
10	jeL4-kTIAJY	4:37	Chappelle's Show, Episode 102
11	39FNJprqvXs	1:45	Titanic
12	aTRZ26db1XY	9:10	Clarissa Explains It All, Episode 103
13	B5UOfWjv6hs	2:34	Raiders of the Lost Ark
14	EdcIXGe4Oco	4:14	The Hills, Episode 102
15	iLkyOWykXGs	9:53	Beverly Hills Cop
16	j8Wxc0uVcs4	3:51	BET Awards, 2006
17	9tLPoJ47lG0	9:59	The Addams Family
18	GE7z11qMobE	2:55	Spongebob Squarepants, Episode 4A
19	CAI8KEOaTgg	96:26	An Inconvenient Truth
20	1WLhUJSxIbk	1:59	The Daily Show with Jon Stewart, Episode 12003

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3. During the course of discovery, Defendants produced data showing the duration of each Viacom Clip in Suit. The data were produced with the Bates numbers GOO DBDATA 001 and GOO DBDATA 023. Pursuant to Fed. R. Evid. § 1006, and based on a review of the data performed at my direction: none of Viacom's Clips in Suit is less than ten seconds in length; approximately 97 percent of the Clips in Suit are over 30 seconds in length; approximately 86 percent of them are over one minute in length; approximately 55 percent of them are over three minutes in length; approximately 41 percent are over five minutes in length; and approximately 17 percent are over nine minutes in length.

4. The Clips in Suit include instances of full episodes of television shows or full motion pictures uploaded to YouTube serially, in segments of under 10 minutes each. Attached as Exhibit 21 is a true and correct copy of a video produced by Viacom in this litigation, created at the direction of Jenner & Block, showing the YouTube website being used to search for and watch the entirety of the Paramount motion picture "Mean Girls." Attached as Exhibits 22 through 31 are true and correct copies of the ten Clips in Suit that are being watched in Exhibit 21. The YouTube Video IDs for Exhibits 22 through 31 are listed in the table below:

<u>Exhibit</u>	<u>Video ID</u>
22	n_E9j6cg1s8
23	n-LwttN-zbk
24	V5z6T-lhSHU
25	Uh8DVzXT3I4
26	tZqbFBYFitw

<u>Exhibit</u>	<u>Video ID</u>
27	MhvvSFka-XU
28	XCsjYApY9C4
29	xLdABJMFmBY
30	Q2SjQBYAiUY
31	UtiQdMIPhXc

5. Based on the data and review described in ¶ 3 above, approximately 3,400 Clips in Suit are between 9 minutes 50 seconds and 10 minutes in length.

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6. Defendants assert that two of Viacom's Clips in Suit are only three and five seconds long. *See* Declaration of Michael Rubin in Support of Defendants' Motion for Summary Judgment, ¶ 15 (citing Video IDs "iA_YOiYmoNo" and "_dtnyvBmOTw"). Each of these Clips in Suit is in fact over three minutes long. Attached as Exhibit 32 is a true and correct copy of the video clip with the Video ID "iA_YOiYmoNo," which is a 3 minute 46 second segment of Episode 102 of the Comedy Central show "Comic Groove." Attached as Exhibit 33 is a true and correct copy the video clip with the "YouTube Video ID _dtnyvBmOTw," which is a 4 minute 48 second segment of Episode 4003 of the Comedy Central show "The Colbert Report." Attached as Exhibit 34 is a true and correct copy of an excerpt of the data Defendants produced for these two clips showing that they are each over three minutes long.

YouTube Director Accounts and Branded Channels Used By Viacom

7. Attached as Exhibit 35 is a true and correct copy of a document produced by Defendants marked with the Bates number GOO001-01855543 - 44, which identifies "paraccount" as a YouTube "Director Account" or branded channel used by Viacom.

8. Attached as Exhibit 36 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-01855929 - 35, which identifies "MTV2" as a YouTube "Director Account" or branded channel used by Viacom.

9. Attached as Exhibit 37 is a true and correct copy of a document produced by Defendants marked with the Bates number GOO001-01857954 - 55, which identifies "mtv2allthatrocks" as a YouTube "Director Account" or branded channel used by Viacom.

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10. Attached as Exhibit 38 is a true and correct copy of a document produced by Defendants marked with the Bates number GOO001-03413745 - 48, which identifies “beheard” as a YouTube “Director Account” or branded channel used by Viacom.

11. Attached as Exhibit 39 is a true and correct copy of a document produced by Defendants marked with the Bates number GOO001-00858714 - 15, which identifies “Spiketv” as a YouTube “Director Account” or branded channel used by Viacom.

12. Attached as Exhibit 40 is a true and correct copy of a document produced by Defendants marked with the Bates number GOO001-01864135 - 37, which identifies “VH1staff” as a YouTube “Director Account” or branded channel used by Viacom.

13. Attached as Exhibit 41 is a true and correct copy of a document produced by Defendants marked with the Bates number range GOO001-01868561 - 62, which identifies “ParamountVantage” as a YouTube “Director Account” or branded channel used by Viacom.

14. Attached as Exhibit 42 is a true and correct copy of a document produced by Defendants marked with the Bates number GOO001-05167419, which identifies “ParamountClassics” as a YouTube “Director Account” or branded channel used by Viacom.

15. Attached as Exhibit 43 is a true and correct copy of a document produced by Defendants marked with the Bates number GOO001-01600695, which identifies “bestweekever” as a YouTube “Director Account” or branded channel used by Viacom.

16. Attached as Exhibits 44 and 45 are a true and correct copy of excerpts from the transcript of the deposition of Amy Powell taken on December 15, 2009 and a true and correct copy of a screenshot of the YouTube channel page for the account name “theloveguru,” which identify “theloveguru” as a YouTube “Director Account” or branded channel used by Viacom.

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17. Attached as Exhibits 46 and 47 are a true and correct copy of excerpts from the transcript of the deposition of Matthew Waite taken on October 8, 2009 and a true and correct copy of a screenshot of the YouTube channel page for the account name “strangewildernessuk,” which identify “strangewildernessuk” as a YouTube “Director Account” or branded channel used by Viacom.

Number of Clips Uploaded to Certain YouTube Accounts

18. During the course of discovery, Defendants produced data regarding videos that have been removed from the YouTube website, including the YouTube account name used to upload a video and the title, tags, and categories associated with the video (“Removed Video Data”). The data were produced with the Bates number GOO DBDATA 001.

19. Pursuant to Fed. R. Evid. § 1006, based on the Removed Video Data, and based on the publicly accessible YouTube account information for the YouTube accounts identified in the following paragraphs, Jenner & Block personnel acting at my direction summed the total number of all clips of Viacom content uploaded to those YouTube accounts, through May 1, 2008. None of the video clips listed in this paragraph are asserted by Viacom as Clips in Suit in this action, as to which Viacom has made copyright infringement claims.

a. YouTube director accounts and branded channels used by Viacom, as identified *supra* at ¶¶ 7-17

<u>Account Name</u>	<u>Number of Clips</u>
paraccount	120
MTV2	10
mtv2allthatrocks	42

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<u><i>Account Name</i></u>	<u><i>Number of Clips</i></u>
beheard	45
Spiketv	159
VH1staff	36
ParamountVantage	2
ParamountClassics	6
Bestweekever	140
theloveguru	32
strangewildernessuk	17
<i>TOTAL</i>	<i>609</i>

For the account “paraccount,” Defendants’ Removed Videos Data shows that a total of 24 clips had been removed from the paraccount as of May 1, 2008. A screenshot of the YouTube channel page for the account dated May 28, 2009, and attached as Exhibit 30 to the Declaration of Andrew H. Schapiro, shows that 96 videos were still active on the account as of May 28, 2009. The number in the table above is a sum of the 24 removed clips and the 96 active clips.

b. YouTube accounts identified in Defendants’ Memorandum of Law as “lack[ing] any discernable connection to Viacom.”

<u><i>Account Name</i></u>	<u><i>Number of Clips</i></u>
MysticalGirl8	2
Demansr	3
Tesderiw	5
GossipGirl40	3
Snackboard	7

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<u><i>Account Name</i></u>	<u><i>Number of Clips</i></u>
Keithhn	5
<i>TOTAL</i>	<i>25</i>

For the account name “Keithhn,” which is no longer publicly accessible on YouTube, the Removed Video Data show that the account was used to upload 120 clips. Based on the Removed Video Data for these clips, it appears that only five of them are Viacom content. For all other account names in the table above, the number of clips listed is the total number of all clips uploaded to the account.

YouTube Video Viewing Records for YouTube’s Co-Founders and Employees

20. For more than two years, Viacom has sought to obtain discovery of the non-anonymized YouTube video viewing records for YouTube’s co-founders and certain other YouTube employee accounts. Viacom submitted letters to the Court on this issue on more than one occasion, and the parties engaged in lengthy negotiations over the scope of viewing records that would be produced. On April 28, 2010, Defendants produced on a disk in readable form non-anonymized YouTube viewing records for certain YouTube, Viacom and Class Plaintiff employee accounts. The Viacom Plaintiffs have not yet been able to analyze that data. Notably, Defendants have refused to produce any viewing records for co-founder Jawed Karim beyond October 2005.

I declare under penalty of perjury that the foregoing is true and correct. Executed this
28 day of April, 2010, at Washington, DC.



Scott B. Wilkens

To: Kevin Donahue <kevin@youtube.com>
From: Kristina_Tipton@paramount.com <Kristina_Tipton@paramount.com>
Cc: Sara_Bordo@paramount.com <Sara_Bordo@paramount.com>;
Megan_Crowell@paramount.com <Megan_Crowell@paramount.com>; Kristina_Griswold@paramount.com
<Kristina_Griswold@paramount.com>; Tamar_Teifeld@paramount.com <Tamar_Teifeld@paramount.com>
Bcc:
Received Date: 2006-06-01 00:19:40 GMT
Subject: RE: YouTube & Paramount

Hi Kevin,

I finally got around to setting up an account. My user name and password are below. Let me know if you need any other info to approve the account.

Username: paraccount
[REDACTED]

Thanks so much!

Kristina Tipton
Coordinator, Interactive Promotions & Publicity
Paramount Pictures
323-956-8453

----- Replied by Kristina Tipton on 5/30/2006 6:33:38 PM -----

From: "Kevin Donahue"
05/12/2006 11:35 AM
To:
Cc: , , ,
Subject: RE: YouTube & Paramount

Hi Kristina,

Thx to all of you for your time on Wednesday. Here's the link to the Director account sign up:
www.youtube.com/director Let me know when you've signed up and I'll then approve it on this side. We can then follow up with some more specific discussions re: promotional plans and specific content.

Best,
Kevin

From: Kristina_Tipton@paramount.com [mailto:Kristina_Tipton@paramount.com]
Sent: Thursday, May 11, 2006 2:42 PM
To: kevin@youtube.com
Cc: Sara_Bordo@paramount.com; Megan_Crowell@paramount.com; Kristina_Griswold@paramount.com;
Tamar_Teifeld@paramount.com

Subject: YouTube & Paramount

Hi Kevin,

Pleasure meeting you yesterday! I just wanted to follow up on our next steps for getting director accounts for posting. Thank you so much for your time and insight. I look forward to working with you!

Best,

Kristina Tipton
Coordinator, Interactive Promotions & Publicity
Paramount Pictures
323-956-8453

To: Kevin Donahue <kevin@youtube.com>
From: Lam, Cuong <Cuong.Lam@mtvstaff.com>
Cc:
Bcc:
Received Date: 2006-03-02 00:12:02 GMT
Subject: RE: MTV2 / "Create Your Own Andy Milonakis Rap" Contest

I uploaded Andy as well. Is it not showing up? It is uploaded, but says "processing" while Wonder says "live." I would like The Andy Milonakis Show clip promoted first. That would be great. Please let me know when it's live... Definitely want to let everyone here know about the great promotion.

Thanks,
cuong.

From: Kevin Donahue [mailto:kevin@youtube.com]
Sent: Wednesday, March 01, 2006 7:10 PM
To: Lam, Cuong
Subject: RE: MTV2 / "Create Your Own Andy Milonakis Rap" Contest

Cuong,

Cool - we saw that you uploaded WonderShowzen. Can you upload the Andy M video now also? Which one would you like to have us promote first? We'd like to do one at a time on our home page. Thx. - Kevin

From: Lam, Cuong [mailto:Cuong.Lam@mtvstaff.com]
Sent: Wednesday, March 01, 2006 3:50 PM
To: Kevin Donahue
Subject: RE: MTV2 / "Create Your Own Andy Milonakis Rap" Contest

Hi Kevin:

Both videos are uploaded. They're being "processed." But please let me know when if there is an issue. And definitely let me know when they're being promoted, particularly on the homepage. Thanks again.

best,
cuong.

From: Kevin Donahue [mailto:kevin@youtube.com]

Sent: Wednesday, March 01, 2006 6:27 PM
To: Lam, Cuong
Cc: Apmann, Todd
Subject: RE: MTV2 / "Create Your Own Andy Milonakis Rap" Contest

We just gave the former MTV2 user a different user name. You can now create the MTV2 account. Please create it asap so no one else gets it. :-)

Thx!

Kevin

From: Lam, Cuong [mailto:Cuong.Lam@mtvstaff.com]
Sent: Wednesday, March 01, 2006 2:45 PM
To: Kevin Donahue
Cc: Apmann, Todd
Subject: RE: MTV2 / "Create Your Own Andy Milonakis Rap" Contest

Hi Kevin:

You may have to boot user "MTV2" off. And most likely MTV as well. Please let me know when that's done so we can sign up, upload the clips and get the clips promoted.

Thanks!

cuong.

From: Kevin Donahue [mailto:kevin@youtube.com]
Sent: Wednesday, March 01, 2006 4:00 PM
To: Lam, Cuong
Cc: Apmann, Todd
Subject: RE: MTV2 / "Create Your Own Andy Milonakis Rap" Contest

Cuong,

One more thing - can you re-upload the videos under the MTV or MTV2 username? I don't know if you've created accounts with those names yet. If you try and find out that another user has already done so, we can boot that user off of the name and give it to you guys. We want to be very clear that MTV is sanctioning our use of this content.

Best,
Kevin

From: Kevin Donahue [mailto:kevin@youtube.com]
Sent: Wednesday, March 01, 2006 12:52 PM
To: 'Lam, Cuong'
Cc: 'Apmann, Todd'
Subject: RE: MTV2 / "Create Your Own Andy Milonakis Rap" Contest

Cuong,

Thx for sending the links. We'd be happy to feature these. Can you send me your logo and the URL's for both the Andy M website and the WonderShowzen site? We'd like to designate MTV as an "official partner" and feature these on our home page with the MTV logo (or MTV2?) and links to the appropriate websites below the logo. I've attached a couple of gifs that will give you an idea of what we have in mind. One is the home page and shows how we'll call out "official partners" and the other gif is the watch page and shows how we'll include logo and a link.

Best,
Kevin

From: Lam, Cuong [mailto:Cuong.Lam@mtvstaff.com]
Sent: Wednesday, March 01, 2006 12:02 PM
To: Kevin Donahue
Cc: Apmann, Todd
Subject: RE: MTV2 / "Create Your Own Andy Milonakis Rap" Contest

Hi Kevin:

Good to meet you. We're working with T3 on both shows and on the ad buy on YouTube.com. We uploaded the Wonder Showzen and The Andy Milonakis Show videos onto your site. They are located at the below links. Can you promote those links?

Wonder Showzen:

http://www.youtube.com/watch?v=lvA6oabsA_E

The Andy Milonakis Show:

<http://www.youtube.com/watch?v=x-lgybtxczk>

Thanks,

cuong.

From: Apmann, Todd
Sent: Wednesday, March 01, 2006 2:55 PM
To: 'Kevin Donahue'
Cc: Lam, Cuong
Subject: RE: MTV2 / "Create Your Own Andy Milonakis Rap" Contest

Hey Kevin-

Meet Cuong Lam, who's working with T-3 on our tune-in promotions for Andy Milonakis. T-3 has uploaded the video, but he can give you more detail on that, as well as a few questions he has.

Thanks!

Todd

From: Kevin Donahue [mailto:kevin@youtube.com]
Sent: Wednesday, March 01, 2006 2:21 PM
To: Apmann, Todd
Subject: RE: MTV2 / "Create Your Own Andy Milonakis Rap" Contest

Todd,

As we've discussed, I am planning on providing you with some suggestions on the various ways we can work together in an ongoing way to promote MTV and MTV2, but I was wondering if you'd be interested in doing something right away that's simple. I've been talking to Andrea Nelson at T-3 about featuring one of the Andy Milonakis clips on our home page and sending you guys the traffic (back to the Andy M website). Problem is I haven't been able to access the clips from the ftp site that T-3 sent me to. We could do this today if I can get my hands on a clip. Do you have one you could email me? I'm sure we could provide you with hundreds of thousands or maybe millions of views very quickly. We're anxious to get started in this simple way with content partners and whoever works with us first will probably get a lot of additional press/attention. What do you think?

Best,

Kevin

From: Apmann, Todd [mailto:Todd.Apmann@mtvstaff.com]
Sent: Friday, February 24, 2006 12:08 PM
To: Kevin Donahue
Subject: RE: MTV2 / "Create Your Own Andy Milonakis Rap" Contest

great, thanks! since march 1st is only next wednesday, i'm gonna wait until then to send you specifics on the milonakis contest, rather than send you something and then recall it if MSN actually comes in as a sponsor.

does that work?

From: Kevin Donahue [mailto:kevin@youtube.com]
Sent: Thursday, February 23, 2006 5:36 PM
To: Apmann, Todd
Subject: RE: MTV2 / "Create Your Own Andy Milonakis Rap" Contest

No problem. Thx for the clarification. If T-3 is authorized to represent MTV-2, I'm happy to promote the Milonakis clips on the home page asap as I mentioned. We can chat tomorrow in more detail about things.

Best,
Kevin

From: Apmann, Todd [mailto:Todd.Apmann@mtvstaff.com]
Sent: Thursday, February 23, 2006 1:57 PM
To: Kevin Donahue
Subject: RE: MTV2 / "Create Your Own Andy Milonakis Rap" Contest

Thanks Kevin. No one talks to anyone in these big media companies anyway! I just left a message for Cuong Lam, the guy at MTV2 who's most likely working with T-3 on the media buys (they're focusing more on tune-in rather than the contest).

I'll chat with him and then hit you back. You and I will be dealing directly on the logistics of the contest, though we may package an overall deal that includes those media buys.

Let's touch base tomorrow. Sorry for the confusion.

From: Kevin Donahue [mailto:kevin@youtube.com]
Sent: Thursday, February 23, 2006 4:46 PM
To: Apmann, Todd
Subject: RE: MTV2 / "Create Your Own Andy Milonakis Rap" Contest

Hey Todd,

Andrea Nelson from T-3 contacted us and requested rates on advertising for the Andy Milonakis show and WonderShowzen. I just wanted to keep you in the loop, though I assume you're aware of this but wanted to check. Also wanted to get your thoughts on whether you'd like us to work directly with you only, or with agencies like this on ad buys and promotions. Andrea also said T-3 has Milonakis clips that we can use on YouTube. I wanted to check in with you regarding this and see if you are authorizing this. If so, I'd like to start right away by featuring some of them on our home page. We receive 15-20 million video views every day now and videos featured on the home page get millions of views pretty quickly. From my perspective, it would be great for us to have them on the site, especially if the username listed is "MTV" or "MTV-2." With that user name you would then have a profile that you could use to promote new videos and photos in an ongoing way. I'd be happy to feature some of the clips today or tomorrow if you're interested. Let me know what you think. I'll also have some more detailed thoughts on working together for you soon.

Best,

Kevin

From: Apmann, Todd [mailto:Todd.Apmann@mtvstaff.com]
Sent: Wednesday, February 15, 2006 9:32 AM
To: Kevin Donahue
Subject: MTV2 / "Create Your Own Andy Milonakis Rap" Contest

Hey Kevin-

Great talking to you last week! I'm very excited about all the different possibilities of working with YouTube for MTV2 and MTV. Wanted to give you a heads up that MSN may come in as a national sponsor of the Andy Milonakis contest, in which case they will be the official video upload / contest entry destination.

I'd prefer to work with YouTube for all of it, though, and will know for sure by March 1st. However, I will send you a proposal by end of next week regardless so we'll have all the details worked out in plenty of time. Even if MSN does come in, I'd still like to work with you on the contest in any way possible.

Also, I am the person you should talk to about getting MTV & MTV2 video content on a regular basis. Please

send me a few bullet points on how you envision this partnership and we'll start conversations from there.

Thanks so much,

Todd

Todd Apmann

Director, Grassroots Marketing

MTV - MTV2 - MTV HITS - MTV JAMS

212.846.6942

todd.apmann@mtvstaff.com

SJA-932

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To: Kevin Donahue <kevin@youtube.com>; Sabrina Caluori <sabrina@deep-focus.net>
From: Lisa Baldini <lisa@deep-focus.net>
Cc: Lauren Puglia <lauren@deep-focus.net>
Bcc:
Received Date: 2006-06-23 21:58:57 GMT
Subject: RE: MTV2 Director Profile

Sorry for that. It's MTV2AllThatRocks.

Lisa Baldini
PR Coordinator
Deep Focus
20 Jay St. Suite 1110
Brooklyn, NY 11201
p: 718-797-3618 x232
f: 718-797-1577
e:lisa@deep-focus.net

From: Kevin Donahue [mailto:kevin@youtube.com]
Sent: Friday, June 23, 2006 7:57 PM
To: Sabrina Caluori
Cc: Lisa Baldini; Lauren Puglia
Subject: RE: MTV2 Director Profile

Sabrina,

I can't find that user name. Are you sure that's the correct user name? Please login to your account and send me a link to the profile/channel page. Thx.

- Kevin

From: Sabrina Caluori [mailto:sabrina@deep-focus.net]
Sent: Friday, June 23, 2006 4:48 PM
To: Kevin Donahue
Cc: Lisa Baldini; Lauren Puglia
Subject: MTV2 Director Profile

Hey Kevin,

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We uploaded a Director profile called AllThatRocksMTV2. Can you help us expedite the approval process?

Thanks!
Sabrina

Sabrina Caluori // Account Director
DEEP FOCUS 20 Jay St. Suite 1110 Brooklyn, NY 11201
718-797-3618 ext. 212 // sabrina@deep-focus.net

To: Jaimie Byrne <jbyrne@youtube.com>; Bordo, Sara <Sara_Bordo@Paramount.com>
From: Tipton, Kristina <Kristina_Tipton@Paramount.com>
Cc: Andy Tress <tress@youtube.com>; Caity Noonan <cnoonan@youtube.com>;
Wahtera, Megan - Paramount <Megan_Wahtera@Paramount.com>
Bcc:
Received Date: 2006-10-26 22:23:38 GMT
Subject: RE: Confirmation

Hi Jamie,

We have a group set up at: <http://youtube.com/group/beheard>

This was set up using our profile at <http://youtube.com/beheard>

Username: beheard

Password: 

Let me know if you need any other information.

Thanks,

Kristina Tipton

323-956-8453

From: Jaimie Byrne [mailto:jbyrne@youtube.com]
Sent: Wednesday, October 25, 2006 8:29 PM
To: Bordo, Sara
Cc: 'Andy Tress'; 'Caity Noonan'; Tipton, Kristina; Wahtera, Megan - Paramount
Subject: RE: Confirmation

Please let me know when this is set-up so I can make the URL change.

Thanks!

Jamie

From: Bordo, Sara [mailto:Sara_Bordo@Paramount.com]
Sent: Wednesday, October 25, 2006 9:14 AM
To: Jamie Byrne
Cc: Andy Tress; Caity Noonan; Tipton, Kristina; Wahtera, Megan - Paramount
Subject: Confirmation

This note is to confirm that we do not want the brand channel and wish our www.youtube.com/beheard to direct to our Group asap. Thank you!

Sara Bordo

Director, Motion Picture Interactive Marketing

Paramount Pictures

323.956.8499

323.862.1107

From: Jamie Byrne [mailto:jbyrne@youtube.com]
Sent: Wednesday, October 18, 2006 7:00 PM
To: Bordo, Sara
Cc: 'Andy Tress'; 'Caity Noonan'
Subject: FW: Revised Freedom Writers Proposal

Sara:

Here is the overview for the Freedom Writers channel and group. It should provide most of the information you need to help understand how the different components work.

In thinking through our conversation earlier - you placed a lot of emphasis on the ability to have consumers talk about the clips and write comments on the channel; you also wanted the ability to moderate these comments. This functionality is really delivered on by Groups more than it is in the Channel. I'm pretty confident that between the Group and Channel, we can make sure we have a really interactive, immersive environment for the users.

We might want to consider having the <http://www.youtube.com/beheard> URL actually drive consumers directly to the group instead of the channel. There will be more interactivity in the channel and I think it might be the more natural hub.

We can discuss in more detail tomorrow or Friday.

Thanks.

Jamie

From: Caity Noonan [mailto:cnoonan@youtube.com]
Sent: Wednesday, October 18, 2006 6:37 PM
To: 'Jamie Byrne'
Subject: Revised Freedom Writers Proposal

Hey Sara-

Sorry for the delay, I have been working with Andy on the Freedom Writers proposal and he asked that I sent you this revised media plan. I have also attached our step by step document for creating a Brand Channel. It includes the specs for each unit and goes through the process so you will be able to completely customize your page. It also includes screenshots of the Group page. Andy and Jamie will walk you through the process of how these are related. Thanks!

Caity

Caity Noonan | Account Manager |

1000 Cherry Ave. Suite 200 | San Bruno, CA 94066 |

cell: 

fax: 

SJA-937

Case 1:07-cv-02103-LLS Document 320-39 Filed 05/21/10 Page 4 of 4

email: cnoonan@youtube.com

<http://www.youtube.com>

Attachments:

image001.jpg

SJA-938

Case 1:07-cv-02103-LLS Document 320-40 Filed 05/21/10 Page 1 of 2

To: 'Vicky Fang' <Vicky.Fang@mtvnmix.com>
From: Kevin Donahue <kevin@youtube.com>
Cc:
Bcc:
Received Date: 2006-07-13 00:24:00 CST
Subject: RE: spiketv user name now available

Hi Vicky,

Let's schedule a phone call tomorrow to discuss all of this on the phone. I'm sure my answers and directions will be more clear that way.
:-) What times work for you tomorrow? Thx.

Best,
Kevin

From: Vicky Fang [mailto:Vicky.Fang@mtvnmix.com]
Sent: Monday, July 10, 2006 8:40 AM
To: Kevin Donahue
Subject: Re: spiketv user name now available

Hi, Kevin - I have a few questions.

I am trying to set up the director options at youtube.com/my_profile_director but keep receiving an error on my description even though I am entering a valid description between 10-100 words. Do you have any insight?

Is there a way to transfer my existing videos (placed under another user name) to my new account without losing view/comments/ratings?

Can you show me an example of a Director's account video so that I can see how logo is used, etc?

Thanks! Any other suggestions much appreciated.

-Vicky

On 7/6/06 3:47 PM, "Kevin Donahue" wrote:

No problem.

From: Vicky Fang [mailto:Vicky.Fang@mtvnmix.com]

Sent: Thursday, July 06, 2006 12:25 PM
To: Kevin Donahue
Subject: Re: spiketv user name now available

Thanks, Kevin

On 7/6/06 12:38 PM, "Kevin Donahue" wrote:
Hi Vicky,

The user name "spikeTV" has been made available. You can go ahead and sign up again at www.youtube.com/director and use that user name now. Then I'll accept the account and you'll be good to go. Thx.

Best,
Kevin

Kevin Donahue
VP Content
YouTube
71 E. Third Ave | San Mateo, CA | 94401
kevin@youtube.com | [REDACTED]

My YouTube Video Pick of the Day: Ronaldinho - Nike

Attachments:

image001.gif

To: 'Maryrose Dunton' <maryrose@youtube.com>
From: Kevin Donahue <kevin@youtube.com>
Cc:
Bcc:
Received Date: 2006-08-28 22:33:00 GMT
Subject: list of user names

Maryrose,

Here's the first list of the user names for the Director accounts to be promoted through the new "partner video" slots. I'll have a handful of others in the next few days most likely as well. Chad and I spoke and decided to remove the film studios from this list as they have money to pay for advertising and we don't want to get in the way of that.

So be sure not to include any film studios in this. Thx!

Best,
Kevin

E!: eentertainmentTV

G4TV: g4tv

Current TV: current

TNA Wrestling: tnawrestling

CW Network: warnerbrosmedia

Warner Brothers TV: warnerbrostvhiram

Ripe.TV: ripetv

NBC: nbc

Spike TV: spiketv

Sci Fi Channel: scifichannel

National Geographic Channel: twt2006

Showtime: showtime

Charlie Rose Show: charlierose

Martha Stewart Show: marthastewart

VH1: vh1staff

MTV2: mtv2

PBS: pbs

ABC News/Good Morning America: abcnews

BBC Comedy: bbccomedy

Music

TVT Records: tvtrerecords

Hollywood Records: hollywoodrec

SubPop Records: subpoprecords

Beggars Group: beggars

Barsuk Records: barsukrecords

East West Records: eastwestrecords

Epic Records: epicrecords

Southbeat Records: southbeatrecords

Metal Blade Records: evilersnocone

Drive-Thru Records: brendenmendez

Atlantic Records: atlanticgroup

We Put Out Records: weputout

Games

Gametrailers.com: gametrailers

GSN, the games network: gsnvideos

MTV Games: mtvgames

Other

Playboy: playboy

Houston Chronicle: houstonchronicle

Forbes.com: forbes

Washington Post Interactive: washingtonpost

SJA-942

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SJA-943

Case 1:07-cv-02103-LLS Document 320-42 Filed 05/21/10 Page 1 of 2

Director Account Partners (and user names by category) 8/25/06

Movies

Dimension Films: (user name) dimensionfilms
Warner Brothers: warnerbrosonline
Fox Searchlight: foxsearchlight
Palm Pictures: erikmartin
Warner Brothers Studios: metallo2006
Paramount Vantage: paramountvantage
Paramount Pictures: paracount
Sony Pictures Classics: sonypicturesclassics
The Weinstein Company: weinsteincompany
Sony Pictures: sonypictures
Sony Pictures Home Entertainment: sphe
Disney/Buena Vista Pictures: (talk to jack pan)
20th Century Fox: foxmovies
Lions Gate Films: lionsgate

TV

E!: eentertainmentTV
G4TV: g4tv
Current TV: current
TNA Wrestling: tnawrestling
CW Network: warnerbrosmidia
Warner Brothers TV: warnerbrostvhiram
Ripe TV: ripeTV
NBC: NBC
Spike TV: spiketv
Sci Fi Channel: scifichannel
National Geographic Channel: twt2006
Showtime: showtime
Charlie Rose Show: charlierose
Martha Stewart Show: marthastewart
VH1: vh1staff
MTV2: mtv2
PBS: pbs
ABC News/Good Morning America: abcnews
Fox News: (talk to Jeremy Steinberg/Scott Margolis)
BBC Comedy: bbccomedy

Music

TVT Records: tvtrekords
Hollywood Records: hollywoodrec
SubPop Records: subpoprecords
Beggars Group: beggars
Barsuk Records: barsukrecords
East West Records: eastwestrecords
Capitol Records: (talk to Ashley jax)
Epic Records
Island Records
Southbeat Records
Metal Blade Records
Drive-Thru Records
Atlantic Records
We Put Out Records

Games

EA
Gametrailers.com
Vivendi Games
Sierra Games
GSN, the games network
Rockstar Games
MTV Games

Other

Playboy
Houston Chronicle
Forbes.com
Washington Post Interactive

Major Media co's & top brands signed to date

6/12/06

The following closed under "Director" account agreement terms.

ad revenue to YouTube

1. Sony Pictures Home Entertainment (no content yet)
2. Sony Pictures Digital (no content yet)
3. Sony Pictures Classics <http://www.youtube.com/profile?user=SonyPicturesClassics>
4. Paramount Theatrical (no content yet)
5. Paramount Classics <http://www.youtube.com/profile?user=paramountclassics>
6. Fox Searchlight Pictures <http://www.youtube.com/profile?user=foxsearchlight>
7. Dimension Films <http://www.youtube.com/profile?user=dimensionfilms>
8. The Weinstein Company <http://www.youtube.com/profile?user=theweinsteincompany>
9. CBS Television <http://www.youtube.com/profile?user=cbs>
10. CBS Digital Media (no content yet)
11. G4TV <http://www.youtube.com/profile?user=G4TV>
12. Current TV <http://www.youtube.com/profile?user=current>
13. Warner Brothers Games <http://youtube.com/profile?user=metallo2006>
14. Warner Bros. Online (no content yet)
15. Playboy Digital Media <http://www.youtube.com/profile?user=playboy>
16. TNA Wrestling <http://www.youtube.com/profile?user=tnawrestling>
17. Forbes.com <http://www.youtube.com/profile?user=forbes>
18. IDT (major animation/anime distributor – no content yet)
19. Hollywood Records http://www.youtube.com/profile_videos?user=hollywoodrec
20. Capitol Records <http://www.youtube.com/profile?user=TheVinesrock>
21. Epic Records (no content yet)
22. Tooth & Nail Records <http://youtube.com/profile?user=toothandnail>
23. Drive Thru Records <http://youtube.com/profile?user=brendenmendez>
24. SubPop Records <http://youtube.com/profile?user=subpoprecords>
25. Gametrailers.com (MTV -owned) <http://www.youtube.com/profile?user=gametrailers>
26. Game Daily <http://www.youtube.com/profile?user=gamedaily>
27. TVT records <http://www.youtube.com/profile?user=tvtreports>
28. Mediazone (no content yet)
29. Ripe.tv <http://www.youtube.com/profile?user=RIPETV>
30. Groovevolt.com (no content yet)
31. Palm Pictures <http://youtube.com/profile?user=erikmartin>
32. SF Film Society <http://youtube.com/profile?user=sffs>

To: 'Brent Hurley' <brent@youtube.com>; 'Steve Chen' <steve@youtube.com>; 'Chad Hurley' <chad@youtube.com>; chris@youtube.com <chris@youtube.com>; JULIE@YOUTUBE.COM <JULIE@YOUTUBE.COM>
From: Kevin Donahue <kevin@youtube.com>
Cc:
Bcc:
Received Date: 2006-02-17 17:38:14 GMT
Subject: RE: Best Week Ever Contact Info

Cool. I'll get in touch with them to develop a formal relationship.

From: Brent Hurley [mailto:brent@youtube.com]
Sent: Friday, February 17, 2006 1:03 AM
To: 'Steve Chen'; 'Chad Hurley'; KEVIN@YOUTUBE.COM; chris@youtube.com; JULIE@YOUTUBE.COM
Subject: FW: Best Week Ever Contact Info

The guys at VH1's show The Best Week Ever love using YouTube. Username: Bestweekever

Just another example of a pro content owner utilizing our service.

I told Jim that we hope to roll out a pro account version of YouTube soon.

From: Jazwiecki, Jim [mailto:Jim.Jazwiecki@mtvmix.com]
Sent: Thursday, February 16, 2006 11:34 AM
To: brent@youtube.com
Subject: Best Week Ever Contact Info

Jim Jazwiecki
212-654-8791

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.)

YOUTUBE INC., YOUTUBE, LLC AND)
GOOGLE, INC.,)

DEFENDANTS.)

CASE NO.
07-CV-2103

-----)
THE FOOTBALL ASSOCIATION PREMIER)
LEAGUE LIMITED, BOURNE CO., ET AL.,)
ON BEHALF OF THEMSELVES AND ALL)
OTHERS SIMILARLY SITUATED,)

PLAINTIFFS,)

VS.)

YOUTUBE, INC., YOUTUBE, LLC, AND)
GOOGLE, INC.,)

DEFENDANTS.)

CASE NO.
07-CV-3582

VIDEOTAPED DEPOSITION OF AMY POWELL
TAKEN ON TUESDAY, DECEMBER 15, 2009

JOB NO. 18310

DAVID FELDMAN WORLDWIDE, INC.
450 Seventh Avenue - Ste 2803, New York, NY 10123 (212)705-8585

1	UNITED STATES DISTRICT COURT		
2	FOR THE SOUTHERN DISTRICT OF NEW YORK		
3	VIACOM INTERNATIONAL, INC., COMEDY)	
4	PARTNERS, COUNTRY MUSIC TELEVISION,)	
5	INC., PARAMOUNT PICTURES CORPORATION,)	
6	AND BLACK ENTERTAINMENT TELEVISION,)	
7	LLC,)	
8)	
9	PLAINTIFFS,	)	CASE NO.
10		)	07-CV-2103
11	VS.)	
12)	
13	YOUTUBE INC., YOUTUBE, LLC AND)	
14	GOOGLE, INC.,)	
15)	
16	DEFENDANTS.)	
17	-----)	
18)	
19	THE FOOTBALL ASSOCIATION PREMIER)	
20	LEAGUE LIMITED, BOURNE CO., ET AL.,)	
21	ON BEHALF OF THEMSELVES AND ALL)	
22	OTHERS SIMILARLY SITUATED,	)	CASE NO.
23		)	07-CV-3582
24	PLAINTIFFS,)	
25)	
26	VS.)	
27)	
28	YOUTUBE, INC., YOUTUBE, LLC, AND)	
29	GOOGLE, INC.,)	
30)	
31	DEFENDANTS.)	
32	-----)	
33)	
34	Videotaped deposition of AMY HOWELL, taken on		
35	behalf of the Defendants, at 350 South Grand Avenue,		
36	Suite 2500, Los Angeles, California, on Tuesday,		
37	December 15, 2009, at 9:25 a.m., before NIKKI ROY,		
38	CSR. No. 3052.		

DAVID FELDMAN WORLDWIDE, INC.
450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

1 APPEARANCES:

2

3 FOR THE PLAINTIFFS:

4

5 JENNER & BLOCK, LLP
6 BY: SUSAN J. KOHLMANN, ESQ.
7 919 Third Avenue
8 37th Floor
9 New York, New York 10022-3908
10 212.891.1600
11 skohlmann@jenner.com

9

10 FOR DEFENDANT GOOGLE:

11 WILSON SONSINI GOODRICH & ROSATI
12 BY: BART E. VOLKMER, ESQ.
13 650 Page Mill Road
14 Palo Alto, California 94304-1050
15 650.565.3508
16 bvolkmer@wsgr.com

15

16 ALSO PRESENT:

16

17 PAUL KOENIG, Paramount
18 REBECCA PRENTICE, General Counsel, Paramount
19 SCOTT McNAIR, Videographer

18

19

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1 I N D E X

2

3 WITNESS

4 AMY POWELL

5 EXAMINATION

PAGE

6 BY MR. VOLKMER

8, 140

7

8 E X H I B I T S

9

10	NO.	PAGE	DESCRIPTION
11	Exhibit 1	30	E-Mail Bates VIA 01987932
12	Exhibit 2	35	E-Mail Bates VIA 00366274 through VIA 00366287
13	Exhibit 3	65	E-Mail Bates VIA 003353643
14	Exhibit 4	71	E-Mail Bates VIA 00345822
15	Exhibit 5	90	E-Mail Bates VIA 00373855 through VIA 00373859
16	Exhibit 6	106	E-Mail Bates VIA 00429987 through VIA 00429989
17	Exhibit 7	109	Screen shot
18	Exhibit 8	118	E-Mail Bates VIA 00434221 and VIA 00434222
19	Exhibit 9	124	E-Mail Bates VIA 00871835 and VIA 00861856
20	Exhibit 10	128	Screen shot
21	Exhibit 11	135	E-Mail Bates VIA 00429320
22			
23			
24			
25			

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1 I N D E X (CONTINUED):

2

3 EXHIBITS (CONTINUED)

4	NO.	PAGE	DESCRIPTION
5	Exhibit 12	140	E-Mail Bates VIA 01987927 and VIA 01987928
6			
7	Exhibit 13	146	E-Mail Bates VIA 11918237
8	Exhibit 14	158	E-Mail Bates VIA 00353953
9	Exhibit 15	163	E-Mail Bates VIA 00374212 and VIA 00374213
10	Exhibit 16	174	E-Mail Bates BAYTSP 003724421
11			
12	Exhibit 17	179	E-Mail Bates VIA 11562371 and VIA 11562372
13	Exhibit 18	195	E-Mail Bates BAYTSP 003742450 through BAYTSP 003742452
14			
15	Exhibit 19	203	E-Mail Bates BAYTSP 004173643
16			
17	Exhibit 20	204	E-Mail Bates VIA 00431656
18	Exhibit 21	208	E-Mail Bates VIA 11786487
19	Exhibit 22	215	E-Mail Bates VIA 11786486
20	Exhibit 23	217	E-Mail Bates BAYTSP 003715561
21	Exhibit 24	218	E-Mail Bates VIA 00374792 through VIA 00374796
22			
23	Exhibit 25	224	E-Mail Bates VIA 11786564 and VIA 11786565
24	Exhibit 26	227	E-Mail Bates BAYTSP 003732680 and BAYTSP 003732681
25			

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1 I N D E X (CONTINUED):

2

3 EXHIBITS (CONTINUED)

4	NO.	PAGE	DESCRIPTION
5	Exhibit 27	239	E-Mail Bates VIA 16074297 through VIA 16074300
6			
7	Exhibit 28	250	E-Mail Bates BAYTSP 003716491
8	Exhibit 29	250	Screen shot
9	Exhibit 30	255	E-Mail Bates BAYTSP 003733247
10			
11	Exhibit 31	258	E-Mail Bates VIA 11788213 through VIA 11788227
12	Exhibit 32	265	E-Mail Bates BAYTSP 003718927
13			
14	Exhibit 33	267	E-Mail Bates VIA 00689157
15	Exhibit 34	267	Screen shot
16	Exhibit 35	269	E-Mail Bates VIA 00608131
17	Exhibit 36	273	E-Mail Bates VIA 00372294
18	Exhibit 37	279	E-Mail Bates VIA 00430652
19	Exhibit 38	284	E-Mail Bates VIA 00433646
20	Exhibit 39	284	Screen shot
21	Exhibit 40	290	CD

22

UNANSWERED QUESTIONS

23

(None)

24

25

DAVID FELDMAN WORLDWIDE, INC.
450 Seventh Avenue - Ste 2803, New York, NY 10123 (212)705-8585

Page 7

1 LOS ANGELES, CALIFORNIA, TUESDAY, DECEMBER 15, 2009

2 9:25 a.m.

3

09:21:28 4 THE VIDEOGRAPHER: Good morning. Today's
09:24:47 5 videotaped deposition of Amy Powell is being taken on
09:24:51 6 December 15th, 2009 at 350 South Grand Avenue on the
09:24:58 7 24th floor in Los Angeles, California in the matter
09:25:01 8 of Viacom International, Incorporated, et al. versus
09:25:06 9 YouTube, Incorporated, et al., case number which is
09:25:10 10 07-CV-2203.

09:25:16 11 This case is before the United States
09:25:19 12 District Court for the Southern District of New York.

09:25:21 13 My name is Scott McNair. I represent David
09:25:25 14 Feldman Worldwide located at 600 Anton Boulevard in
09:25:29 15 Costa Mesa, California.

09:25:31 16 We're now commencing at 9:25 a.m.

09:25:34 17 Would counsel please identify yourselves for
09:25:37 18 the record.

09:25:37 19 MR. VOLKMER: Bart Volkmer from Wilson
09:25:40 20 Sonsini Goodrich & Ross representing Google and
09:25:44 21 YouTube.

09:25:44 22 MS. KOHLMANN: Susan Kohlmann from Jenner &
09:25:47 23 Block representing the Viacom plaintiffs. And I'm
09:25:48 24 here today with Rebecca Prentice and Paul Koenig of
09:25:52 25 Paramount.

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09:25:53 1 THE VIDEOGRAPHER: And would the court
09:25:54 2 reporter please swear in the witness.

3

4

AMY POWELL,

5

called as a deponent and sworn in by

6

the deposition officer, was examined

7

and testified as follows:

8

9

EXAMINATION

10

BY MR. VOLKMER:

09:26:09 11 Q. Morning, Ms. Powell. Could you please state
09:26:13 12 your name and address for the record.

09:26:14 13 A. My name is Amy Powell, [REDACTED]

09:26:19 14 [REDACTED]

09:26:20 15 Q. And you understand that you're testifying
09:26:22 16 under oath today the same as if you were in a
09:26:25 17 courtroom?

09:26:25 18 A. Yes.

09:26:25 19 Q. And do you have any health problems that
09:26:27 20 would impair your ability to testify today?

09:26:29 21 A. No.

09:26:29 22 Q. Are you on any medications that would impair
09:26:32 23 your ability to testify today?

09:26:33 24 A. No.

09:26:33 25 Q. I'm sure you know the drill but -- from your

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10:17:12 1 A. I truly don't remember the specifics.

10:17:16 2 Q. Do you know what time frame that campaign

10:17:21 3 occurred in?

10:17:22 4 A. I don't recall.

10:17:28 5 Q. Do you remember when the film Stop Loss was

10:17:30 6 released?

10:17:31 7 A. No.

10:17:31 8 Q. Do you remember the quarter in which it was

10:17:35 9 released?

10:17:36 10 A. No.

10:17:36 11 Q. What about Iron Man, the first Iron Man, did

10:17:44 12 Paramount use YouTube to promote that film?

10:17:46 13 MS. KOHLMANN: Objection as to form.

10:17:48 14 You can answer.

10:17:48 15 THE WITNESS: We would have uploaded the

10:17:50 16 approved materials, yes.

10:17:51 17 BY MR. VOLKMER:

10:17:56 18 Q. How about Indiana Jones and The Kingdom of

10:18:01 19 the Crystal Skull?

10:18:01 20 MS. KOHLMANN: Objection.

10:18:01 21 You can answer.

10:18:01 22 THE WITNESS: I don't recall.

10:18:03 23 BY MR. VOLKMER:

10:18:08 24 Q. The Love Guru, did Paramount use YouTube to

10:18:12 25 promote that film?

DAVID FELDMAN WORLDWIDE, INC.
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10:18:13 1 MS. KOHLMANN: Objection.

10:18:14 2 You can answer.

10:18:14 3 THE WITNESS: Yes, we had a paid advertising

10:18:16 4 campaign in place.

10:18:17 5 BY MR. VOLKMER:

10:18:19 6 Q. Aside from the paid advertising campaign,

10:18:21 7 did Paramount upload clips or trailers from The Love

10:18:26 8 Guru to YouTube?

10:18:28 9 MS. KOHLMANN: Objection as to form.

10:18:30 10 You can answer.

10:18:30 11 THE WITNESS: Our paid advertising campaign

10:18:34 12 encapsulated an area where our approved materials

10:18:38 13 were unloaded.

10:18:40 14 BY MR. VOLKMER:

10:18:40 15 Q. Right. But was there any uploading that

10:18:42 16 occurred outside of the context of the paid

10:18:47 17 advertising campaign?

10:18:48 18 MS. KOHLMANN: Objection.

10:18:49 19 You can answer.

10:18:49 20 THE WITNESS: The paid advertising campaign

10:18:53 21 included a -- again a channel, if you will, where our

10:18:57 22 paid -- where our approved materials were uploaded.

10:19:02 23 BY MR. VOLKMER:

10:19:02 24 Q. Right. And I want you to set that to one

10:19:04 25 side.

DAVID FELDMAN WORLDWIDE, INC.
450 Seventh Avenue - Ste 2803, New York, NY 10123 (212)705-8585

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

VIACOM INTERNATIONAL INC., COMEDY)	
PARTNERS, COUNTRY MUSIC)	
TELEVISION, INC., PARAMOUNT)	
PICTURES CORPORATION, and BLACK)	
ENTERTAINMENT TELEVISION LLC,)	
)	
Plaintiffs,)	
)	
vs.	)	Case No.
	)	1:07CV02103
YOUTUBE, INC., YOUTUBE, LLC,)	
and GOOGLE, INC.,)	
)	
Defendants.)	

VIDEOTAPED DEPOSITION OF MATTHEW WAITE

New York, New York

Thursday, October 8th, 2009

REPORTED BY:
ERICA RUGGIERI, CSR, RPR
JOB NO: 17844

DAVID FELDMAN WORLDWIDE, INC.
450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

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October 8, 2009

9:30 a.m.

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

DAVID FELDMAN WORLDWIDE, INC.
450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

1

2

A P P E A R A N C E S

3

4

FOR THE PLAINTIFFS:

5

JENNER & BLOCK, LLP

6

1099 New York Avenue, NW

7

Suite 900

8

Washington, DC 20001-4412

9

BY: SCOTT WILKENS, ESQ.

10

Swilkens@jenner.com

11

12

FOR THE DEFENDANTS

13

MAYER BROWN, LLP

14

BY: CHRISTINE M. HERNANDEZ, ESQ.

15

1675 Broadway

16

New York, New York 10019

17

Chernandez@mayerbrown.com

18

19

20

21

22

ALSO PRESENT:

23

CARLOS KING, Videographer

24

25

DAVID FELDMAN WORLDWIDE, INC.
450 Seventh Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

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IT IS HEREBY STIPULATED AND AGREED, by and between the attorneys for the respective parties herein, that filing and sealing be and the same are hereby waived.

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to the form of the question, shall be reserved to the time of the trial.

IT IS FURTHER STIPULATED AND AGREED that the within deposition may be sworn to and signed before any officer authorized to administer an oath, with the same force and effect as if signed and sworn to before the Court.

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1
2 THE VIDEOGRAPHER: This is tape
3 number one of the videotape deposition
4 of Matthew Waite, in the matter of
09:35:32 5 Viacom International, Inc., et al.
6 versus YouTube, Inc., et al., in the
7 United States District Court, for the
8 Southern District of New York, case
9 number 07CV2103.

09:36:04 10 This deposition is being held
11 at the offices of Mayer Brown, LLP,
12 1675 Broadway, New York, New York, on
13 Wednesday, October 8th, 2009, at
14 approximately 9:33 a.m.

15 My name is Carlos King
16 from David Feldman Worldwide, and I am
17 the legal video specialist. The court
18 reporter is Erica Ruggieri, in
19 association with David Feldman
09:36:30 20 Worldwide.

21 Will counsel please introduce
22 themselves.

23 MS. HERNANDEZ: Christine
24 Hernandez, Mayer Brown LLP, for
09:33:40 25 defendants.

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1 WAITE

2 MR. WILKENS: Scoot Wilkens,
3 Jenner & Block LLP, for the Viacom
4 Plaintiffs.

09:33:49

5 THE VIDEOGRAPHER: Will the
6 court reporter please swear in the
7 witness.

8 M A T T H E W W A I T E , called as a
9 witness, having been first duly sworn
10 by a Notary Public, was examined and
11 testified as follows:

12 EXAMINATION BY

13 MS. HERNANDEZ:

14 Q. Good morning, Mr. Waite.

09:34:41

15 A. Good morning.

16 Q. Can you please state your full
17 name and address for the record.

18 A. My name is Matthew Waite,
19 W-A-I-T-E. And my address is [REDACTED]

09:34:53

20 [REDACTED]
21 Q. And how long have you lived in
22 London?

23 A. For approximately five years.

24 Q. Have you ever been deposed
25 before?

09:35:11

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1 WAITE

2 A. There's a large list of websites
3 that I have worked with. I don't think I
4 could list every single one.

09:44:40 5 Q. Okay. Is one of the websites
6 YouTube.com?

7 A. I have delivered creative to
8 them before, yes.

9 Q. What about Ifilm.com?

09:44:55 10 A. I don't recall.

11 Q. And what advertising have you
12 delivered to YouTube.com?

13 A. I have delivered channels which
14 have been bought through our media agency.
09:45:25 15 So that's -- there would be a branded
16 channel within YouTube for a specific
17 film, and that would be a call to action
18 and some footage.

19 Q. So is your testimony that a
09:45:41 20 media agency purchased a channel on
21 YouTube?

22 A. Yes.

23 Q. And what's the basis for that
24 statement?

09:45:54 25 What's the basis for your

1 WAITE

2 A. I think so, yes.

3 Q. And what movie was that?

4 A. Strange Wilderness.

09:50:54 5 Q. who created the Strange
6 Wilderness YouTube channel?

7 A. It was a joint effort between
8 myself and the creative agency used to
9 deliver the media.

09:51:12 10 Q. And who was the creative agency?

11 A. I think, again, it was
12 Tea Creative.

13 Q. And do you know who actually
14 created the YouTube account associated
09:51:36 15 with Strange Wilderness?

16 A. I don't recall.

17 Q. Do you recall the name of that
18 account?

19 MR. WILKENS: Objection to the
09:51:44 20 form.

21 A. Not 100 percent I don't. I
22 could speculate.

23 Q. Do you have a -- do you have any
24 recollection as to what the user name
09:51:56 25 might have been?

1 WAITE

2 A. I think it's something similar
3 to Strange Wilderness UK.

09:52:12 4 Q. And were videos uploaded to this
5 Strange Wilderness account that we are
6 discussing?

7 A. Yes.

8 Q. About how many videos?

09:52:22 9 A. I don't recall the entire line.

10 Q. Who uploaded them?

11 A. Possibly myself and possibly the
12 creative agency.

09:52:40 13 Q. Do you specifically remember
14 uploading videos yourself to the Strange
15 Wilderness account?

16 A. Yes.

17 Q. Yes?

18 A. Yes, I do.

09:52:47 19 Q. Do you recall about how many
20 videos you uploaded?

21 A. No.

22 Q. And the videos that you uploaded
23 to Strange Wilderness were authorized to
24 be on YouTube by Paramount, right?

09:53:10 25 MR. WILKENS: Objection to the

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From: strangewildernessuk | July 24, 2008 | 51,095 views

Strange Wilderness Synopsis:

The story follows the hosts (Zahn and Covert) of fictional wildlife TV show Strange Wilderness, which is headed toward extinction because of bad ratings; they hatch a scheme to find the one animal that can save the show - Bigfoot. [\(more info\)](#)

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Strange Wilderness Synopsis:

The story follows the hosts (Zahn and Covert) of fictional wildlife TV show Strange Wilderness, which is headed toward extinction because of bad ratings; they hatch a scheme to find the one animal that can save the show - Bigfoot.

On DVD 4 August - Only at HMV

Country: United Kingdom



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