

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 VIII OF IX (Pages SJA-1788 to SJA-2085) – PUBLIC VERSION**

Paul M. Smith
William M. Hohengarten
Scott B. Wilkens
Matthew S. Hellman
JENNER & BLOCK LLP
1099 New York Avenue, NW
Washington, DC 20001
(202) 639-6000

Theodore B. Olson
Matthew D. McGill
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, NW
Washington, DC 20036
(202) 955-8500

Attorneys for Plaintiffs-Appellants (10-3270)
(Counsel continued on inside cover)

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.

Susan J. Kohlmann
JENNER & BLOCK LLP
919 Third Avenue
New York, NY 10022
(212) 891-1600

Stuart J. Baskin
SHEARMAN & STERLING LLP
599 Lexington Avenue
New York, NY 10022
(212) 848-4000

Attorneys for Plaintiffs-Appellants (10-3270)

Max W. Berger
John C. Browne
BERNSTEIN LITOWITZ BERGER
& GROSSMANN LLP
1285 Avenue of the Americas
New York, NY 10019
(212) 554-1400

Charles S. Sims
William M. Hart
Noah Siskind Gitterman
Elizabeth A. Figueira
PROSKAUER ROSE LLP
1585 Broadway
New York, NY 10036
(212) 969-3000

Attorneys for Plaintiffs-Appellants (10-3342)

Andrew H. Schapiro
A. John P. Mancini
Brian M. Willen
MAYER BROWN LLP
1675 Broadway
New York, NY 10019
(212) 506-2500

David H. Kramer
Michael H. Rubin
Bart E. Volkmer
WILSON SONSINI GOODRICH
& ROSATI PC
650 Page Mill Road
Palo Alto, CA 94304
(650) 493-9300

Attorneys for Defendants-Appellees

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Schapiro Exhibit 155

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 DANIEL HILL
SAN FRANCISCO, CALIFORNIA
FRIDAY, MARCH 13, 2009

BY: ANDREA M. IGNACIO HOWARD, CSR, RPR, CLR
JOB NO. 16594

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

1 MARCH 13, 2009

2 9:33 A.M.

3

4 VIDEOTAPED DEPOSITION OF DANIEL HILL,
5 WILSON SONSINI GOODRICH & ROSATI, LLP,
6 One Market Street, Spear Tower, San Francisco
7 California, pursuant to notice, and before,
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 CAL IV ENTERTAINMENT:

4 GIRARD GIBBS LLP

5 By: CHRISTINA C. SHARP, Esq.

6 601 California Street, 14th Floor

7 San Francisco, California 94108-2819

8 (415) 981-4800 chc@girardgibbs.com

9

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

11 GOOGLE, INC.:

12 MAYER BROWN LLP

13 By: GREGORY FRANTZ, Esq.

14 ILANA D. GOLANT, Esq.

15 1675 Broadway

16 New York, New York 10019-5820

17 (212) 506-2423 gfrantz@mayerbrown.com;

18 igolant@mayerbrown.com

19

20 ALSO PRESENT: Lou Meadows, Videographer.

21

22 ---oOo---

23

24

25

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

1 HILL

11:37:38 2 Q And what do you know now?

11:37:41 3 MS. SHARP: Form.

11:37:43 4 THE WITNESS: That it did not help Carey Ott,
11:37:47 5 and it was not properly licensed.

11:37:53 6 MR. FRANTZ: Q. What do you mean by "it was
11:37:55 7 not properly licensed"?

11:37:58 8 A I don't believe we issued a license, and I
11:38:03 9 don't believe that we can control the -- the content
11:38:11 10 over YouTube at this time, and that is detrimental to
11:38:17 11 Cal IV.

11:38:18 12 Q And when you say you don't believe it helped
11:38:25 13 Carey Ott, why do you say that?

11:38:29 14 A Because his -- his content was posted. It
11:38:35 15 was intended for possible promotion. His album did
11:38:40 16 not get the exposure that was intended, and
11:38:45 17 subsequently we had to drop Carey from our roster.

11:38:53 18 Q And do you attribute the circumstances you
11:38:56 19 just described to the posting of his works on YouTube?

11:38:59 20 MS. SHARP: Form.

11:39:00 21 THE WITNESS: I don't believe that it helped
11:39:03 22 Carey.

11:39:05 23 MR. FRANTZ: Q. Do you believe it harmed
11:39:07 24 Carey?

11:39:08 25 A Yes.

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1 HILL

11:39:08 2 Q How so?

11:39:09 3 A It made the music available for free on
11:39:15 4 YouTube and dis-incentivized people from going out and
11:39:27 5 buying Carey's music.

11:39:29 6 Q Did you ever attempt to substantiate that
11:39:35 7 with an analysis of any data?

11:39:42 8 A No.

11:39:42 9 Q Other than the Carey Ott situation, were
11:39:45 10 there other instances in which you allowed content to
11:39:49 11 remain on YouTube?

11:39:51 12 MS. SHARP: Form.

11:39:52 13 THE WITNESS: There was a situation where
11:40:03 14 Universal Music or Universal Records, I believe,
11:40:09 15 requested that YouTube repost several videos on
11:40:15 16 YouTube.

11:40:19 17 We chose not to fight Universal on the
11:40:25 18 posting of those videos. It's arguable whether they
11:40:32 19 had the right. But at the time, we felt that we did
11:40:35 20 not want to enter into a dispute with Universal with
11:40:41 21 those videos posted.

11:40:47 22 But I would not permit them to be posted now.

11:40:52 23 MR. FRANTZ: Q. Can you explain what you
11:40:53 24 mean by it was arguable whether Universal had the
11:40:59 25 right to post the videos on YouTube?

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1 HILL

11:41:01 2 A Well, Universal apparently claimed that they
11:41:06 3 had the right to post those videos, and I would
11:41:08 4 dispute that.

11:41:11 5 Q Your position is they did not have the right
11:41:14 6 to post the videos?

11:41:15 7 A That is correct.

11:41:15 8 Q And do you understand what their position is
11:41:20 9 as to the right to post the works on YouTube?

11:41:23 10 MS. SHARP: Form.

11:41:29 11 THE WITNESS: No. Only their insistence to
11:41:32 12 post the videos, as they did in their request.

11:41:44 13 MR. FRANTZ: Q. Did they give you any
11:41:45 14 evidence that they, in fact, had a right to post the
11:41:47 15 works on YouTube?

11:41:50 16 A Not that I can recall.

11:41:51 17 Q And yet you allowed them to post the works on
11:41:55 18 YouTube without taking them down. Why is that?

11:41:57 19 A Well, we had taken them down. We -- we had
11:42:00 20 them taken down. That's why they requested for them
11:42:04 21 to be reposted.

11:42:06 22 I made a judgment call not to dispute their
11:42:20 23 claim at that time, because I didn't feel that it was
11:42:31 24 in our best interests at that time to dispute the
11:42:37 25 claim.

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1 HILL

11:42:37 2 Q Why did you believe it was not in your best
11:42:40 3 interests to dispute the claim?

11:42:42 4 MS. SHARP: Caution the witness as to the
11:42:43 5 attorney-client privilege.

11:42:45 6 THE WITNESS: It was something that we had
11:42:48 7 discussed with our attorneys and made a determination.

11:42:51 8 MR. FRANTZ: Q. And you say you wouldn't
11:43:04 9 reach the same decision if a similar circumstance were
11:43:09 10 permitted -- were to occur in the present; is that
11:43:12 11 correct?

11:43:16 12 MS. SHARP: Form.

11:43:17 13 THE WITNESS: That's correct.

11:43:17 14 MR. FRANTZ: Q. And why is that?

11:43:19 15 A Because I -- I think that there are -- there
11:43:27 16 are too many issues that still need to be worked out
11:43:32 17 in regards to licensing work on YouTube, and I think
11:43:39 18 it's detrimental to -- to us to allow works to be up
11:43:48 19 there. That's it.

11:43:58 20 Q What are those issues that need to be worked
11:44:01 21 out?

11:44:06 22 A Control over our works and -- and
11:44:20 23 compensation for the creators for the works.

11:44:26 24 Q Weren't you aware of those issues when you
11:44:32 25 had decided to allow Universal to keep the clips up on

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1 HILL

11:44:37 2 YouTube?

11:44:39 3 A Yes.

11:44:39 4 Q Has your opinion on those issues changed as a
11:44:47 5 result of the experience with Universal?

11:44:56 6 A My opinions have not changed in regards to
11:45:02 7 the infringement of YouTube and the songs being
11:45:10 8 present on YouTube. This is something that we are
11:45:15 9 working out.

11:45:18 10 Our licenses and contracts are something that
11:45:29 11 are changing and must change in light of the new
11:45:38 12 technology. And -- and we are in the process of
11:45:49 13 reviewing all of our licenses and contracts, and we'll
11:45:54 14 adjust them in counsel with our attorneys as we see
11:46:03 15 it's to our benefit and the benefit of our
11:46:08 16 songwriters.

11:46:10 17 Q And when you say the licenses and contracts
11:46:12 18 are something that "must change in light of the new
11:46:14 19 technology," what do you mean by that?

11:46:19 20 A Anything that's left for interpretation, such
11:46:24 21 as digital rights, streaming, downloading, obviously
11:46:29 22 these issues are evolving as we speak. And we need to
11:46:37 23 be able to address the issues of theft and
11:46:45 24 infringement on our rights and decide what the best
11:46:56 25 course of action is as these technological innovations

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1 HILL

11:47:03 2 evolve.

11:47:04 3 Q Do you believe that your current licenses
11:47:07 4 sometimes leave ambiguity as to whether a work can be
11:47:10 5 posted on YouTube?

11:47:30 6 A I believe that in the past licenses have not
11:47:46 7 anticipated developments such as YouTube, and our
11:47:56 8 contracts are evolving. Certain entities may
11:48:08 9 interpret certain -- certain aspects of licenses and
11:48:18 10 assume that they allow certain uses which were not
11:48:31 11 intended by Cal IV.

11:48:34 12 Q I think we're -- we're out of tape now, so
11:48:38 13 why don't we take a break.

11:48:40 14 A All right.

11:48:40 15 THE VIDEOGRAPHER: This marks the end of
11:48:42 16 videotape number one.

11:48:43 17 Off the record.

11:48:44 18 The time is 11:47 a.m.

11:48:46 19 (Recess taken.)

12:04:37 20 THE VIDEOGRAPHER: On the record.
12:04:38 21 This marks the beginning of videotape number
12:04:40 22 two in the deposition of Daniel Hill on March 13,
12:04:40 23 2009.

12:04:46 24 The time is 12:03 p.m.

12:04:49 25 Please continue.

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1 HILL

12:04:49 2 MR. FRANTZ: Q. Mr. Hill, you testified
12:04:51 3 earlier that your company is in the process of
12:04:54 4 reviewing all of its licenses to account for new
12:04:56 5 technology such as YouTube; correct?

12:04:58 6 MS. SHARP: Form.

12:04:59 7 THE WITNESS: Yes.

12:04:59 8 MR. FRANTZ: Q. When did that process of
12:05:01 9 review begin?

12:05:03 10 A It is ongoing.

12:05:07 11 Q And when did it begin?

12:05:11 12 A It began when we realized that there are
12:05:18 13 problems with YouTube and our rights on YouTube.

12:05:30 14 Q And when was that?

12:05:34 15 A That would be around the time that we
12:05:40 16 filed -- a bit before we filed for the class action
12:05:47 17 lawsuit.

12:05:48 18 Q Are you referring to the Tennessee action?

12:05:50 19 A Yes.

12:05:50 20 Q And when you say you "realized there are
12:05:54 21 problems with YouTube and our rights on YouTube," what
12:05:59 22 did you mean by that?

12:06:02 23 A We realized that, excuse me, there were and
12:06:10 24 are works up on YouTube that are our copyrights that
12:06:19 25 we are not being compensated for.

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SJA-1799

Schapiro Exhibit 156

*Blue Jean
Blue*

DVD SYNCHRONIZATION LICENSE AGREEMENT

License Agreement entered into this 16 day of April, 2008, between **EAGLE ROCK ENTERTAINMENT**, whose address is 22 W. 38th Street, New York, N.Y. 10018 Attn: Melissa Roy (hereinafter referred to as "Licensee") and **STAGE THREE MUSIC (U.S.) INC. d/b/a STAGE THREE SONGS (ASCAP)** whose address is 1616 Vista del Mar, 2nd Fl., Los Angeles, CA 90028 (hereinafter referred to as "Publisher").

Publisher, to the extent indicated herein, **owns and/or controls 100%** of the worldwide copyrights in and to the musical Compositions hereinafter designated. Licensee is a potential user of the Compositions in the production and distribution of the DVD Program below, and desires to use said Compositions as part of the Program. Publisher is willing to grant to Licensee a synchronization license, which will permit Licensee, to use the Compositions for the purposes contemplated, subject to the terms and conditions of this License. Upon the terms, conditions and covenants herein, it is agreed:

1. COMPOSITION(S): SEE ATTACHED SCHEDULE
2. WORDS & MUSIC BY: SEE ATTACHED SCHEDULE
3. TITLE ("Program" or "DVD"): "ZZ TOP-LIVE FROM TEXAS"/# EV30252-9/EVBRD 33316-9
4. ARTIST: ZZ TOP
5. TERRITORY: UNITED STATES AND CANADA
6. TERM: The term shall commence upon the release date of the Program, **June 24, 2008** and shall continue for a period of ten (10) years.
7. USE & TIMING: Up to 1 full performance use of each of the Compositions, and for use behind bonus material, up to 3 uses each of the four (4) Compositions listed on the attached Schedule
8. ADVANCE: [REDACTED]
9. GRANT OF RIGHTS

Video/DVD Publisher hereby grants to Licensee and its successors and assigns the non-exclusive, limited right, license, privilege, and authority to cause the fixing of or the synchronization of the Composition in and as part of the Program on audiovisual contrivances such as video cassettes, video tapes, video discs and similar compact audiovisual devices reproducing Videos of the entire Program in substantially its original form ("Videos" or "DVD's") during the Term and in the Licensed Territory, including use in trailers/promotions for the Program only, in all media. The License granted to Licensee herein shall also include the right to reproduce, and to sell, lease, license, or otherwise distribute and make such Video available to the public by sale or other transfer of ownership as a device intended primarily for "home use" (as such term is commonly understood in the entertainment industry). Provided the Licensee is not then in breach of any of the terms or conditions of this Agreement, Licensee shall have the right, for six (6) months following the end of the Term, to sell off its remaining inventory of the Program provided Licensee accounts to Publisher.

10. ACCOUNTINGS & AUDITS

(a) In consideration for the rights which are subject to this License, Licensee hereby agrees to pay to Publisher, and Publisher agrees to accept a royalty equal to [REDACTED] for all copies of the Program manufactured and distributed by Licensee or under its authority, and not returned, in the Territory during the Term. Licensee shall send an immediate up-to-date accounting and payment, and thereafter shall account to Publisher quarterly, within forty-five (45) days after the end of each March 31st, June 30th, September 30th and December 31st period, on the basis of DVD's made and

distributed. In the event Licensee fails to account to Publisher and pay royalties as herein provided, Publisher or our agent may give written notice to Licensee that, unless the default is remedied within thirty (30) days from the date of the notice, this license will be automatically terminated. Such termination shall render either the making or the distribution, or both, of all copies of DVD's for which the royalties have not been paid, actionable as acts of infringement under and fully subject to the remedies provided by the Copyright Act.

(b) Licensee agrees to maintain accurate books and records with respect to the Composition. Publisher and/or our designated representatives shall, upon thirty (30) days' written notice, have the right to inspect Licensee's books and records with respect to each statement for a period of three (3) years after the date such statement is rendered, and not more than once during any calendar year and only once with respect to any statement rendered hereunder. Any such inspection shall be made by a certified public accountant appointed by Publisher and shall take place during Licensee's normal business hours at Licensee's principal place of business or such other place where Licensee maintains the books and records which relate to Licensor's statements hereunder and which are necessary to verify the accuracy of the statement or statements in question.

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17. **INTEGRATION** This agreement shall be governed by and construed and enforced in accordance with the laws of the State of California applicable to agreements made and to be wholly performed therein.

IN WITNESS WHEREOF, the parties have caused the foregoing to be executed as of the date first above written.

EAGLE ROCK ENTERTAINMENT

By: 

STAGE THREE MUSIC (U.S.) INC.

By: 

SJA-1802

An Authorized Signatory

An Authorized Signatory

SP08010
Page 3 of 4

Highly Confidential

ST00105025

SCHEDULE AZZ TOP-LIVE FROM TEXAS DVD:

<u>COMPOSITION</u>	<u>WRITER(S)</u>	<u>STAGE THREE SHARE</u>
GOT ME UNDER PRESSURE	Gibbons/Hill/Beard	100%
WAITIN' FOR THE BUS	Gibbons/Hill	100%
JESUS JUST LEFT CHICAGO	Gibbons/Hill/Beard	100%
I'M BAD I'M NATIONWIDE	Gibbons/Hill/Beard	100%
PINCUSHION	Gibbons/Hill/Beard	100%
CHEAP SUNGLASSES	Gibbons/Hill/Beard	100%
PEARL NECKLACE	Gibbons/Hill/Beard	100%
HEARD IT ON THE X	Gibbons/Hill/Beard	100%
JUST GOT PAID	Gibbons/Ham	100%
ROUGH BOY	Gibbons/Hill/Beard	100%
BLUE JEAN BLUES	Gibbons/Hill/Beard	100%
GIMME ALL YOUR LOVIN'	Gibbons/Hill/Beard	100%
SHARP DRESSED MAN	Gibbons/Hill/Beard	100%
LEGS	Gibbons/Hill/Beard	100%
TUBE SHAKE BOOGIE	Gibbons/Hill/Beard	100%
LA GRANGE	Gibbons/Hill/Beard	100%
BARB-B-Q	Gibbons/Ham	100%
TUSH	Gibbons/Hill/Beard	100%

TRACKS USED AS BACKGROUND TRACK TO BONUS MATERIAL

GIMME ALL YOUR LOVIN'	Gibbons/Hill/Beard	100%
WAITIN' FOR THE BUS	Gibbons/Hill/Beard	100%
JESUS JUST LEFT CHICAGO	Gibbons/Hill/Beard	100%
JUST GOT PAID	Gibbons/Ham	100%

*Back up in
"Blue Jean Blues"
song file*

SJA-1804

Schapiro Exhibit 157

From: Mary Ann Slim

Sent: Wednesday, April 08, 2009 1:51 PM

To: Steve Lewis; Alan Kading

Subject: "Stuck In The Middle With You" - C1000 Supermarket Ad in Holland - Possible Soundalike

Importance: High

Hi Steve & Alan

Please see below and watch/listen to the YouTube link. I'm not convinced we would win this one but please let me know if you would like CP Masters to pursue this and get a musicologist involved which we would have to pay for.

Mary Ann

Mary Ann Slim

Head of Film, TV & Media

Stage Three Music Ltd

13A Hillgate Street

London W8 7SP

Tel: + 44 20 7792 6060

www.stagethreemusic.com



From: Bobby Sukhraj [mailto:bobby.sukhraj@ctm.eu.com]

Sent: 08 April 2009 13:41

To: Mary Ann Slim

Subject: C1000 - Stuck In the Middle

Dear Mary-Ann,

Please find enclosed a youtube link to the TV commercial of a big supermarket chain in Holland called 'C1000'. As you will notice they have very cleverly arranged music sounding very obviously like 'Stuck In the Middle' to accompany the visuals. We think it might be worthwhile to involve a musicologist and eventually take the appropriate steps. What do you think?

SJA-1806

Please also let us know if you want to contact Joe Egan about this or want us to do it for you.

Here is the link: <http://www.youtube.com/watch?v=GVosC9liN1g>

Best,
Bobby



Bobby Sukhraj
CP Masters BV

P.O. Box 1088 - 1200 BB - Hilversum | Marathon 11 - 1219 PG - Hilversum | The Netherlands
T [REDACTED] F +31 (0)35 6474049 M [REDACTED] E bobby@ctm.eu.com

NOTICE: The contents of this e-mail is subject to a disclaimer.
Please refer to <http://ctm.eu.com/emaildisclaimer> for details.

SJA-1807

Schapiro Exhibit 178

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

_____)	
VIACOM INTERNATIONAL INC.,)	
COMEDY PARTNERS,)	Case No. 1:07-cv-02103 (LLS)
COUNTRY MUSIC TELEVISION, INC.,)	(Related Case No. 1:07-cv-03582 (LLS))
PARAMOUNT PICTURES CORPORATION,)	
and BLACK ENTERTAINMENT TELEVISION)	
LLC,)	
)	
)	
<i>Plaintiffs,</i>)	DECLARATION OF MICHAEL
)	HOUSLEY
v.)	
)	
YOUTUBE, INC., YOUTUBE, LLC, and)	
GOOGLE INC.,)	
)	
<i>Defendants.</i>)	
_____)	

Michael Housley, being duly sworn, deposes and says:

1. I have been Manager, Legal Support, of Viacom Inc. ("Viacom") since July, 2007. My duties include the identification of works in suit in the above-captioned action.
2. The process by which the works in suit are identified is a multi-step procedure designed to accurately identify infringing content, match it with Viacom's copyrighted works, and match it with copyright registration information.
3. The matching process begins with a pool of clips that have appeared on YouTube and that have previously been identified as potentially infringing Viacom's copyrights. Those potentially infringing clips must be matched with specific works in which Viacom owns the copyrights.

4. Although a clip has already been identified as likely infringing, it takes additional time and effort to identify the *specific* work from which it was taken. Some of Viacom's television series have at least hundreds of episodes. For example, it may be easy to recognize that a clip was taken from and infringes Viacom's nightly series *The Daily Show*, but because there are over one thousand episodes of *The Daily Show*, it may be more difficult to match the clip with the specific work (episode) from which it was taken. We have been making these matches through a combination of human and automated processes.

5. Once a potentially infringing clip from YouTube has been matched with a Viacom work by these processes, the clip is reviewed by one of a team of first-level reviewers to verify that it is infringing. First-level reviewers watch and listen to each clip and code each clip as part of this process.

6. Clips that have gone through first-level review are then reviewed by second-level reviewers, who perform quality control of the first-level reviewers' designations.

7. The next stage of the process is copyright registration data matching. In this process, Viacom's copyright registration data is linked to infringing clips of Viacom's original content. There are two primary sources of registration data: (1) Viacom's internal copyright records, and (2) comprehensive registration portfolios and reports provided by an outside vendor.

8. Once an infringing clip has been identified, personnel at Viacom enter and match the registration data for the original Viacom content to the infringing clip. The way these registration records are organized and maintained by Viacom does not allow

the process of matching the registrations with infringing clips to be automated the first time a match is made for each registration. After registration data for a specific work is entered into the system for one infringing clip, however, the data then automatically propagates to all clips matching the same copyrighted work. Thus, registration data must only be entered once for each program or asset.

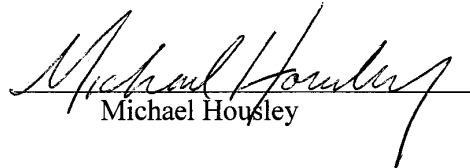
9. From time to time, Viacom generates an export report of the works in suit. This report contains identifying data about each infringing clip and the Viacom asset which it infringes, including but not limited to: (1) the title of the Viacom asset which the clip infringes, (2) registration data linked to the Viacom asset which is infringed, (3) the YouTube URL at which the infringing clip was found, and (4) the YouTube ID for the infringing clip. The data contained in the export report is reviewed for consistency and accuracy prior to being produced to defendants.

10. Based on my experience supervising this work, completing the multi-step matching process will take many months, even for the pool of clips that Viacom has already identified as potentially infringing. Of course, as additional potentially infringing clips are identified, more time will be needed to process them. I cannot make a more precise estimate of the time needed because there are many unforeseeable variables involved.

SJA-1811

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

Executed this 28th day of February, 2008, at New York, New York.


Michael Housley

SJA-1812

Schapiro Exhibit 179

_____)	
VIACOM INTERNATIONAL INC.,)	
COMEDY PARTNERS,)	
COUNTRY MUSIC TELEVISION, INC.,)	
PARAMOUNT PICTURES)	Case No. 1:07-CV-2103-LLS
COPRORATION,)	(Related Case No. 1:07-cv-03582 (LLS))
and BLACK ENTERTAINMENT)	
TELEVISION LLC,)	
)	
Plaintiffs,)	
)	
v.)	
)	
YOUTUBE, INC., YOUTUBE, LLC, and)	
GOOGLE INC.,)	
)	
Defendants.)	
_____)	

**PLAINTIFFS' OBJECTIONS AND RESPONSES TO YOUTUBE'S THIRD SET
OF INTERROGATORIES TO VIACOM INTERNATIONAL, INC. ET AL.**

Plaintiffs Viacom International Inc., Comedy Partners, Country Music Television, Inc., Paramount Pictures Corporation, and Black Entertainment Television, LLC, by their attorneys Jenner & Block LLP and Shearman & Sterling LLP, hereby object to and respond to YouTube's Third Set of Interrogatories to Viacom International, Inc. (Defendants' Third Set of Interrogatories) as follows:

GENERAL OBJECTIONS

Plaintiffs make the following objections to specific Interrogatories by, among other things, incorporating by reference the following general objections ("General Objections"):

1. Plaintiffs object to the Third Set of Interrogatories in their entirety as exceeding the scope permissible under Local Rule 33.3(b), which states that interrogatories other than those seeking names of witnesses with relevant knowledge or information only if ordered by the court or if interrogatories are “a more practical method of obtaining the information sought than a request for production or a deposition.” Defendants’ interrogatory requests are unduly burdensome and duplicative of their document requests.

2. Plaintiffs object to the Third Set of Interrogatories in their entirety as exceeding, with subparts, the limit of twenty-five Interrogatories under the Court’s Scheduling Order entered on August 9, 2007. Plaintiffs have already identified over 60,000 video clips that infringe its copyrights. Interrogatories 14, 15, 16, 17, 18, 19, 20, and 21 purport to request specific information about each of those thousands of infringing clips on a clip-by-clip basis; Interrogatory 25 seeks detailed information about each of Defendants’ 213 Requests for Admission. Defendants’ interrogatories thus impermissibly exceed the twenty-five interrogatory limit.

3. Plaintiffs object to Defendants’ definition of “Viacom,” which includes entities listed in Paragraph 3 of the Definitions. Paragraph 3 makes up a voluminous, globe-spanning listing of Plaintiffs’ partners, affiliates, and subsidiaries. Defendants’ inclusion of these entities is vexatious and improper. Plaintiffs further object to Defendants’ definition of “Viacom” to the extent that it includes Plaintiffs’ outside counsel, because searching for responsive information in the possession of Plaintiffs’ outside counsel would be unduly burdensome.

Plaintiffs further object to Defendants’ inclusion of Viacom’s “agents,” “representatives,” “any other person acting or purporting to act on [Viacom’s] behalf,” or

“any other person otherwise subject to its control” in their definition of Viacom because those terms and/or phrases are overbroad and vague.

4. Plaintiffs object to Defendants’ Third Set of Interrogatories to the extent that they seek to impose on Plaintiffs obligations or requirements beyond those imposed by the Federal Rules of Civil Procedure or the Local Rules of the Southern District of New York.

5. Plaintiffs object to Defendants’ Third Set of Interrogatories to the extent that they seek information or request documents that are known to Defendants, are a matter of public record, or otherwise publicly available.

6. In objecting to Defendants’ Third Set of Interrogatories, Plaintiffs do not in any way waive or intend to waive but, rather, intend to preserve and are preserving:

- a. all objections as to competency, relevancy, materiality, privilege and admissibility of evidence for any purpose of any information or document, or the subject matter thereof, in the trial of this or any other action or subsequent proceedings;
- b. the right to object to the use of any information or document, or the subject matter thereof, in the trial of this or any other action or subsequent proceedings;
- c. the right to elicit appropriate evidence, beyond the responses themselves, regarding the subjects referred to in or in response to any request;
- d. the right to preserve the confidential or proprietary nature of any information or document, or the subject matter thereof, by mutual agreement or otherwise, as a condition of production; *and*
- e. the right at any time to correct, supplement, or clarify any of the objections.

7. Plaintiffs' objections to Defendants' Third Set of Interrogatories shall not constitute an admission of any statement or conclusion implied in any of Defendants' Interrogatories.

RESPONSES AND OBJECTIONS TO SPECIFIC INTERROGATORIES

Subject to and without waiving any of the foregoing General Objections, which apply to each Interrogatory as if set forth fully below, Plaintiffs make the following specific responses and objections:

INTERROGATORY NO. 11:

For each instance in which You contend that Viacom requested access to use a YouTube Copyright Protection Service, but was denied such access, identify the Viacom entity that requested access, the date of the request, the name(s) of the specific YouTube Copyright Protection Service for which access was requested, and the production number (Bates number) of each document reflecting or evidencing the request and denial.

Response and Objections to Interrogatory No. 11:

Plaintiffs incorporate the foregoing General Objections, and object further that this Interrogatory exceeds the scope permissible under Local Rule 33.3(b) because it is not "a more practical method of obtaining the information sought than a request for production or a deposition." Plaintiffs also object that this Interrogatory is overbroad, oppressive, harassing and unduly burdensome to the extent it seeks highly detailed information. Further, Plaintiffs object that this Interrogatory is premature and inconsistent with the Scheduling Order governing this case to the extent that it seeks information that will be identified at a later stage of the litigation and that is properly

subject to disclosure only when expert reports are exchanged or when a pretrial order is entered. In addition, Plaintiffs object that this Interrogatory because it seeks information produced in discovery. Such information is already equally and fully accessible to Defendants — indeed, Defendants should know when they denied Viacom access to YouTube Copyright Protection Services without having to ask Viacom — and it is unduly burdensome to require Plaintiffs to review documents and information to identify particular information for Defendants.

Subject to and without waiver of these general and specific objections, Plaintiffs provide the following examples of instances where Defendants denied Viacom access to YouTube Copyright Protection Services. Although these examples are not necessarily an exhaustive list of every instance in which Viacom requested but was denied access to a YouTube Copyright Protection Service, they illustrate the point.

On February 2, 2007, Viacom General Counsel Michael D. Fricklas sent a letter to David Drummond and Kent Walker requesting that Defendants take a number of measures to prevent rampant copyright infringement on the site and specifically stated that Viacom was “interested in working with [Defendants]” as Defendants began to use Audible Magic. (VIA01475465–VIA01475476.) On February 16, 2007, Mr. Walker refused on behalf of Defendants to allow the use of Audible Magic to protect Viacom’s copyrights (VIA01974134–VIA01974136).

In addition, Dean Garfield testified that YouTube generally refused to provide its copyright protection services to companies without partnership agreements: “[I]t became clear that Google/YouTube was willing to filter for those who had a licensing

relationship with Google/YouTube and not for those who did not.” (D. Garfield Tr. Nov. 2, 2009 at 55:10-13.)

INTERROGATORY NO. 12:

Describe each policy adopted by a Viacom UGC Site addressing termination of the accounts of users who are “repeat infringers” (as that phrase is used in 17 U.S.C. § 512(i)), identifying in the description the Viacom UGC Site that adopted the policy, the dates during which the policy was in effect, and the number of users terminated pursuant to the policy.

Response and Objections to Interrogatory No. 12:

Plaintiffs incorporate the foregoing General Objections, and object further that this Interrogatory exceeds the scope permissible under Local Rule 33.3(b) because it is not “a more practical method of obtaining the information sought than a request for production or a deposition.” Plaintiffs also object that this Interrogatory is overbroad, oppressive, harassing and unduly burdensome to the extent it seeks highly detailed information. In addition, Plaintiffs object that this Interrogatory because it seeks information contained in documents produced in discovery. Such information is already equally and fully accessible to Defendants, and it is unduly burdensome to require Plaintiffs to review the documents to identify particular information for Defendants.

Subject to and without waiver of these general and specific objections, Plaintiffs respond as follows: Plaintiffs have produced numerous Terms of Use documents in discovery. *See* Attachment A, Documents Responsive to Interrogatory 12. Those documents contain information responsive to this Interrogatory.

INTERROGATORY NO. 13:

If You still contend, as alleged, that “YouTube prevents copyright owners from finding on the YouTube site all of the infringing works from which YouTube profits,” identify each fact, each document, and each portion of a witness’ testimony that supports this contention.

Response and Objections to Interrogatory No. 13:

Plaintiffs incorporate the foregoing General Objections, and object further that this Interrogatory is improper, overly broad, unduly burdensome, unreasonably cumulative, abusive, and exceeds the scope of permissible discovery under Local Civil Rule 33.3 and Federal Rules of Civil Procedure 26 and 33. In particular, an interrogatory that seeks identification of each fact supporting a contention is improper, abusive and goes beyond the scope permitted by the Rules. It is oppressive, harassing and unduly burdensome to ask Plaintiffs to parse the millions of documents and hundreds of depositions in this case to specify each fact, each document and each piece of testimony supporting Plaintiffs’ claims, especially where that information is equally available to Defendants. Further, Plaintiffs object that this Interrogatory is premature and inconsistent with the Scheduling Order governing this case to the extent that it seeks information that will be identified at a later stage of the litigation and that is properly subject to disclosure only when expert reports are exchanged or when a pretrial order is entered. In addition, Plaintiffs object that this Interrogatory attempts to elicit trial or litigation strategy or information otherwise protected by the attorney work product doctrine. Subject to and without waiver of these general and specific objections, Plaintiffs respond as follows: numerous documents produced by the parties in this action,

numerous facts contained therein, and numerous pieces of testimony elicited during discovery support the quoted contention, and all of this evidence is already equally and fully accessible to Defendants. Based on the foregoing objections, no further response is required.

INTERROGATORY NO. 14:

If You assert a claim of copyright infringement for any Accused Clip, that you contend does not arise “by reason of the storage at the direction of a user” (as that phrase is used in 17 U.S.C. § 512(c)), identify separately for each such Accused Clip each fact, each document, and each portion of a witness’ testimony that supports this contention.

Response and Objections to Interrogatory No. 14:

Plaintiffs incorporate the foregoing General Objections, and object further that this Interrogatory is improper, overly broad, unduly burdensome, unreasonably cumulative, abusive, and exceeds the scope of permissible discovery under Local Civil Rule 33.3 and Federal Rules of Civil Procedure 26 and 33. In particular, an interrogatory that seeks identification of each fact supporting a contention is improper, abusive and goes beyond the scope permitted by the Rules. It is oppressive, harassing and unduly burdensome to ask Plaintiffs to parse the millions of documents and hundreds of depositions in this case to specify each fact, each document and each piece of testimony supporting Plaintiffs’ claims, especially where that information is equally available to Defendants. Further, Plaintiffs object that this Interrogatory is premature and inconsistent with the Scheduling Order governing this case to the extent that it seeks information that will be identified at a later stage of the litigation and that is properly

subject to disclosure only when expert reports are exchanged or when a pretrial order is entered. In addition, Plaintiffs object that this Interrogatory attempts to elicit trial or litigation strategy or information otherwise protected by the attorney work product doctrine. Finally, Plaintiffs object to this Interrogatory as complex and compound and as exceeding the limit of 25 Interrogatories under the Court's Scheduling Order in that it seeks separate and detailed information about each of the over 60,000 Accused Clips and thereby effectively seeks thousands of separate responses. Subject to and without waiver of these general and specific objections, Plaintiffs respond as follows: numerous documents produced by the parties in this action, numerous facts contained therein, and numerous pieces of testimony elicited during discovery support the quoted contention, and all of this evidence is already equally and fully accessible to Defendants. Based on the foregoing objections, no further response is required.

INTERROGATORY NO. 15:

For each Accused Clip, if You contend that, before YouTube received a DMCA Takedown Notice for the Accused Clip, YouTube had “actual knowledge” (as that phrase is used in 17 U.S.C. § 512(c)(1)) that the Accused Clip infringed Your copyright or that YouTube was “aware of facts or circumstances from which infringing activity [was] apparent” as (as that phrase is used in 17 U.S.C. § 512(c)(1)), identify separately for each such Accused Clip each fact, each document, and each portion of a witness’ testimony that supports this contention.

Response and Objections to Interrogatory No. 15:

Plaintiffs incorporate the foregoing General Objections, and object further that this Interrogatory is improper, overly broad, unduly burdensome, unreasonably cumulative, abusive, and exceeds the scope of permissible discovery under Local Civil Rule 33.3 and Federal Rules of Civil Procedure 26 and 33. In particular, an interrogatory that seeks identification of each fact supporting a contention is improper, abusive and goes beyond the scope permitted by the Rules. It is oppressive, harassing and unduly burdensome to ask Plaintiffs to parse the millions of documents and hundreds of depositions in this case to specify each fact, each document and each piece of testimony supporting Plaintiffs' claims, especially where that information is equally available to Defendants. Further, Plaintiffs object that this Interrogatory is premature and inconsistent with the Scheduling Order governing this case to the extent that it seeks information that will be identified at a later stage of the litigation and that is properly subject to disclosure only when expert reports are exchanged or when a pretrial order is entered. In addition, Plaintiffs object that this Interrogatory attempts to elicit trial or litigation strategy or information otherwise protected by the attorney work product doctrine. Finally, Plaintiffs object to this Interrogatory as complex and compound and as exceeding the limit of 25 Interrogatories under the Court's Scheduling Order in that it seeks separate and detailed information about each of the over 60,000 Accused Clips and thereby effectively seeks thousands of separate responses. Subject to and without waiver of these general and specific objections, Plaintiffs respond as follows: numerous documents produced by the parties in this action, numerous facts contained therein, and numerous pieces of testimony elicited during discovery support the quoted contention,

and all of this evidence is already equally and fully accessible to Defendants. Based on the foregoing objections, no further response is required.

INTERROGATORY NO. 16:

For each Accused Clip, if You contend that YouTube failed to act “expeditiously to remove, or disable access to,” (as that phrase is used in 17 U.S.C. § 512(c)(1)) the Accused Clip after receiving actual knowledge or becoming aware of facts or circumstances from which it was apparent that the Accused Clip infringed a Work In Suit, or after receiving a DMCA Takedown Notice relating to the Accused Clip, identify separately for each such Accused Clip each fact, each document, and each portion of a witness’ testimony that supports this contention.

Response and Objections to Interrogatory No. 16:

Plaintiffs incorporate the foregoing General Objections, and object further that this Interrogatory is improper, overly broad, unduly burdensome, unreasonably cumulative, abusive, and exceeds the scope of permissible discovery under Local Civil Rule 33.3 and Federal Rules of Civil Procedure 26 and 33. In particular, an interrogatory that seeks identification of each fact supporting a contention is improper, abusive and goes beyond the scope permitted by the Rules. It is oppressive, harassing and unduly burdensome to ask Plaintiffs to parse the millions of documents and hundreds of depositions in this case to specify each fact, each document and each piece of testimony supporting Plaintiffs’ claims, especially where that information is equally available to Defendants. Further, Plaintiffs object that this Interrogatory is premature and inconsistent with the Scheduling Order governing this case to the extent that it seeks information that will be identified at a later stage of the litigation and that is properly

subject to disclosure only when expert reports are exchanged or when a pretrial order is entered. In addition, Plaintiffs object that this Interrogatory attempts to elicit trial or litigation strategy or information otherwise protected by the attorney work product doctrine. Finally, Plaintiffs object to this Interrogatory as complex and compound and as exceeding the limit of 25 Interrogatories under the Court's Scheduling Order in that it seeks separate and detailed information about each of the over 60,000 Accused Clips and thereby effectively seeks thousands of separate responses. Subject to and without waiver of these general and specific objections, Plaintiffs respond as follows: numerous documents produced by the parties in this action, numerous facts contained therein, and numerous pieces of testimony elicited during discovery support the quoted contention, and all of this evidence is already equally and fully accessible to Defendants. Based on the foregoing objections, no further response is required.

INTERROGATORY NO. 17:

For each Accused Clip, if You contend that YouTube received a “financial benefit directly attributable to” (as that phrase is used in 17 U.S.C. § 512(c)(1)(B)) the Accused Clip, identify separately for each such Accused Clip the amount of the financial benefit, and each fact, each document, and each portion of a witness’ testimony that supports this contention.

Response and Objections to Interrogatory No. 17:

Plaintiffs incorporate the foregoing General Objections, and object further that this Interrogatory is improper, overly broad, unduly burdensome, unreasonably cumulative, abusive, and exceeds the scope of permissible discovery under Local Civil Rule 33.3 and Federal Rules of Civil Procedure 26 and 33. In particular, an interrogatory

that seeks identification of each fact supporting a contention is improper, abusive and goes beyond the scope permitted by the Rules. It is oppressive, harassing and unduly burdensome to ask Plaintiffs to parse the millions of documents and hundreds of depositions in this case to specify each fact, each document and each piece of testimony supporting Plaintiffs' claims, especially where that information is equally available to Defendants. Further, Plaintiffs object that this Interrogatory is premature and inconsistent with the Scheduling Order governing this case to the extent that it seeks information that will be identified at a later stage of the litigation and that is properly subject to disclosure only when expert reports are exchanged or when a pretrial order is entered. In addition, Plaintiffs object that this Interrogatory attempts to elicit trial or litigation strategy or information otherwise protected by the attorney work product doctrine. Finally, Plaintiffs object to this Interrogatory as complex and compound and as exceeding the limit of 25 Interrogatories under the Court's Scheduling Order in that it seeks separate and detailed information about each of the over 60,000 Accused Clips and thereby effectively seeks thousands of separate responses. Subject to and without waiver of these general and specific objections, Plaintiffs respond as follows: numerous documents produced by the parties in this action, numerous facts contained therein, and numerous pieces of testimony elicited during discovery support the quoted contention, and all of this evidence is already equally and fully accessible to Defendants. Based on the foregoing objections, no further response is required.

INTERROGATORY NO. 18:

For each Accused Clip, if You contend that YouTube had “the right and ability to control” (as that phrase is used in 17 U.S.C. § 512(c)(1)(B)) the allegedly

infringing activity with respect to that Accused Clip, identify separately for each such Accused Clip each fact, each document, and each portion of a witness' testimony that supports this contention.

Response and Objections to Interrogatory No. 18:

Plaintiffs incorporate the foregoing General Objections, and object further that this Interrogatory is improper, overly broad, unduly burdensome, unreasonably cumulative, abusive, and exceeds the scope of permissible discovery under Local Civil Rule 33.3 and Federal Rules of Civil Procedure 26 and 33. In particular, an interrogatory that seeks identification of each fact supporting a contention is improper, abusive and goes beyond the scope permitted by the Rules. It is oppressive, harassing and unduly burdensome to ask Plaintiffs to parse the millions of documents and hundreds of depositions in this case to specify each fact, each document and each piece of testimony supporting Plaintiffs' claims, especially where that information is equally available to Defendants. Further, Plaintiffs object that this Interrogatory is premature and inconsistent with the Scheduling Order governing this case to the extent that it seeks information that will be identified at a later stage of the litigation and that is properly subject to disclosure only when expert reports are exchanged or when a pretrial order is entered. In addition, Plaintiffs object that this Interrogatory attempts to elicit trial or litigation strategy or information otherwise protected by the attorney work product doctrine. Finally, Plaintiffs object to this Interrogatory as complex and compound and as exceeding the limit of 25 Interrogatories under the Court's Scheduling Order in that it seeks separate and detailed information about each of the over 60,000 Accused Clips and thereby effectively seeks thousands of separate responses. Subject to and without waiver

of these general and specific objections, Plaintiffs respond as follows: numerous documents produced by the parties in this action, numerous facts contained therein, and numerous pieces of testimony elicited during discovery support the quoted contention, and all of this evidence is already equally and fully accessible to Defendants. Based on the foregoing objections, no further response is required.

INTERROGATORY NO. 19:

For each Accused Clip, if You contend that the Accused Clip was uploaded to the YouTube website by a user who had no authorization, right, or license to do so, identify separately for each such Accused Clip each fact, each document, and each portion of a witness' testimony that supports this contention.

Response and Objections to Interrogatory No. 19:

Plaintiffs incorporate the foregoing General Objections, and object further that this Interrogatory is improper, overly broad, unduly burdensome, unreasonably cumulative, abusive, and exceeds the scope of permissible discovery under Local Civil Rule 33.3 and Federal Rules of Civil Procedure 26 and 33. In particular, an interrogatory that seeks identification of each fact supporting a contention is improper, abusive and goes beyond the scope permitted by the Rules. It is oppressive, harassing and unduly burdensome to ask Plaintiffs to parse the millions of documents and hundreds of depositions in this case to specify each fact, each document and each piece of testimony supporting Plaintiffs' claims, especially where that information is equally available to Defendants. Further, Plaintiffs object that this Interrogatory is premature and inconsistent with the Scheduling Order governing this case to the extent that it seeks information that will be identified at a later stage of the litigation and that is properly

subject to disclosure only when expert reports are exchanged or when a pretrial order is entered. In addition, Plaintiffs object that this Interrogatory attempts to elicit trial or litigation strategy or information otherwise protected by the attorney work product doctrine. Finally, Plaintiffs object to this Interrogatory as complex and compound and as exceeding the limit of 25 Interrogatories under the Court's Scheduling Order in that it seeks separate and detailed information about each of the over 60,000 Accused Clips and thereby effectively seeks thousands of separate responses. Subject to and without waiver of these general and specific objections, Plaintiffs respond as follows: numerous documents produced by the parties in this action, numerous facts contained therein, and numerous pieces of testimony elicited during discovery support the quoted contention, and all of this evidence is already equally and fully accessible to Defendants. Based on the foregoing objections, no further response is required.

INTERROGATORY NO. 20:

For each Accused Clip, if You still contend, as alleged, that YouTube “enable[d], induce[d], facilitate[d], and materially contribute[d] to each act of infringement by YouTube users” with respect to the Accused Clip, identify separately for each such Accused Clip each fact, each document, and each portion of a witness’ testimony that supports this contention.

Response and Objections to Interrogatory No. 20:

Plaintiffs incorporate the foregoing General Objections, and object further that this Interrogatory is improper, overly broad, unduly burdensome, unreasonably cumulative, abusive, and exceeds the scope of permissible discovery under Local Civil Rule 33.3 and Federal Rules of Civil Procedure 26 and 33. In particular, an interrogatory

that seeks identification of each fact supporting a contention is improper, abusive and goes beyond the scope permitted by the Rules. It is oppressive, harassing and unduly burdensome to ask Plaintiffs to parse the millions of documents and hundreds of depositions in this case to specify each fact, each document and each piece of testimony supporting Plaintiffs' claims, especially where that information is equally available to Defendants. Further, Plaintiffs object that this Interrogatory is premature and inconsistent with the Scheduling Order governing this case to the extent that it seeks information that will be identified at a later stage of the litigation and that is properly subject to disclosure only when expert reports are exchanged or when a pretrial order is entered. In addition, Plaintiffs object that this Interrogatory attempts to elicit trial or litigation strategy or information otherwise protected by the attorney work product doctrine. Finally, Plaintiffs object to this Interrogatory as complex and compound and as exceeding the limit of 25 Interrogatories under the Court's Scheduling Order in that it seeks separate and detailed information about each of the over 60,000 Accused Clips and thereby effectively seeks thousands of separate responses. Subject to and without waiver of these general and specific objections, Plaintiffs respond as follows: numerous documents produced by the parties in this action, numerous facts contained therein, and numerous pieces of testimony elicited during discovery support the quoted contention, and all of this evidence is already equally and fully accessible to Defendants. Based on the foregoing objections, no further response is required.

INTERROGATORY NO. 21:

For each Accused Clip, if You still contend, as alleged, that YouTube's actions were "willful, intentional, and purposeful, in disregard of and indifferent to

[Your] rights” with respect to infringing activity associated with the Accused Clip, identify separately for each such Accused Clip each fact, each document, and each portion of a witness’ testimony that supports this contention.

Response and Objections to Interrogatory No. 21:

Plaintiffs incorporate the foregoing General Objections, and object further that this Interrogatory is improper, overly broad, unduly burdensome, unreasonably cumulative, abusive, and exceeds the scope of permissible discovery under Local Civil Rule 33.3 and Federal Rules of Civil Procedure 26 and 33. In particular, an interrogatory that seeks identification of each fact supporting a contention is improper, abusive and goes beyond the scope permitted by the Rules. It is oppressive, harassing and unduly burdensome to ask Plaintiffs to parse the millions of documents and hundreds of depositions in this case to specify each fact, each document and each piece of testimony supporting Plaintiffs’ claims, especially where that information is equally available to Defendants. Further, Plaintiffs object that this Interrogatory is premature and inconsistent with the Scheduling Order governing this case to the extent that it seeks information that will be identified at a later stage of the litigation and that is properly subject to disclosure only when expert reports are exchanged or when a pretrial order is entered. In addition, Plaintiffs object that this Interrogatory attempts to elicit trial or litigation strategy or information otherwise protected by the attorney work product doctrine. Finally, Plaintiffs object to this Interrogatory as complex and compound and as exceeding the limit of 25 Interrogatories under the Court's Scheduling Order in that it seeks separate and detailed information about each of the over 60,000 Accused Clips and thereby effectively seeks thousands of separate responses. Subject to and without waiver

of these general and specific objections, Plaintiffs respond as follows: numerous documents produced by the parties in this action, numerous facts contained therein, and numerous pieces of testimony elicited during discovery support the quoted contention, and all of this evidence is already equally and fully accessible to Defendants. Based on the foregoing objections, no further response is required.

INTERROGATORY NO. 22:

If you still contend, as alleged, that You have incurred actual damages directly caused by YouTube, identify the specific total amount of actual damages that You have incurred, describe in detail the legal theory upon which You would seek to recover these actual damages and each calculation You used to calculate these actual damages, and identify each fact, each document, and each portion of a witness' testimony that supports this contention.

Response and Objections to Interrogatory No. 22:

Plaintiffs incorporate the foregoing General Objections, and object further that this Interrogatory is improper, overly broad, unduly burdensome, unreasonably cumulative, abusive, and exceeds the scope of permissible discovery under Local Civil Rule 33.3 and Federal Rules of Civil Procedure 26 and 33. Further, Plaintiffs object that the determination, specification, and quantification of actual damages are matters properly subject to expert analysis and discovery in this case. This Interrogatory is thus premature and inconsistent with the Scheduling Order governing this case in that it seeks information that is properly subject to disclosure only when expert reports are exchanged. In addition, Plaintiffs object that this Interrogatory attempts to elicit trial or litigation strategy or information otherwise protected by the attorney work product doctrine.

Subject to and without waiver of the foregoing objections, Plaintiffs respond as follows: Plaintiffs have incurred significant actual damages due to Defendants' unauthorized infringement, including, without limitation, lost licensing revenues payable by Defendants and lost advertising, syndication, and other distribution revenues payable by third parties.

INTERROGATORY NO. 23:

Identify each Work In Suit uploaded in whole or in part to the YouTube website by Viacom or with Viacom's authorization and the date of each such authorized upload.

Response and Objections to Interrogatory No. 23:

Plaintiffs incorporate the foregoing General Objections, and object further that this Interrogatory is improper, overly broad, and exceeds the scope of permissible discovery under Local Civil Rule 33.3 and Federal Rules of Civil Procedure 26 and 33. In particular, Plaintiffs object to Defendants' definition of "Works in Suit" as encompassing "all works ... as to which [Plaintiffs] have asserted claims of copyright infringement, at any time, in this action" and as encompassing portions of works as to which Plaintiffs have not asserted claims of copyright infringement in this action. This definition is facially overbroad and purports to cover content that is irrelevant to this copyright infringement action. Plaintiffs accordingly shall construe "Works in Suit" to encompass solely those clips listed on the Amended Production of Works in Suit produced to Defendants on October 15, 2009. Subject to that definition and subject to and without waiver of these general and specific objections, Plaintiffs respond as follows:

Plaintiffs uploaded none of the Works in Suit, and Plaintiffs authorized the upload of none of the Works in Suit.

INTERROGATORY NO. 24:

Identify each Work In Suit that Viacom has provided as a reference file to any third party for purposes of creating a digital fingerprint of the work to identify copies of the work on the Internet, the third parties to whom each reference file was provided, and the dates on which it was provided to those third parties.

Response and Objections to Interrogatory No. 24:

Plaintiffs incorporate the foregoing General Objections, and object further that this Interrogatory is improper, overly broad, and exceeds the scope of permissible discovery under Local Civil Rule 33.3 and Federal Rules of Civil Procedure 26 and 33. In particular, Plaintiffs object that this Interrogatory is overbroad, oppressive, harassing and unduly burdensome to the extent it seeks highly detailed information. Plaintiffs also object that this Interrogatory is unduly burdensome insofar as it seeks information from time periods for which such records are not reasonably available to Plaintiffs. Plaintiffs further object to this interrogatory insofar as it calls for Plaintiffs to identify works supplied to Auditude and to YouTube as reference files for fingerprinting purposes. Defendants have already sought and obtained such records from Auditude in this litigation, and information concerning works Plaintiffs have supplied to YouTube is equally in Defendants' own possession. Plaintiffs further object to Defendants' definition of "Works in Suit" as encompassing "all works ... as to which [Plaintiffs] have asserted claims of copyright infringement, at any time, in this action" and as encompassing portions of works as to which Plaintiffs have not asserted claims of copyright

infringement in this action. This definition is facially overbroad and purports to cover content that is irrelevant to this copyright infringement action. Plaintiffs accordingly shall construe “Works in Suit” to encompass solely those clips listed on the Amended Production of Works in Suit produced to Defendants on October 15, 2009. Subject to that definition and subject to and without waiver of these general and specific objections, and based upon information available to Plaintiffs, Plaintiffs respond as follows:

Plaintiffs’ current records of works Plaintiffs have provided to Audible Magic, Auditudo, BayTSP, and YouTube for purposes of creating a digital fingerprint of the work to identify copies of the work on the Internet, and the dates on which they were provided to Audible Magic, Auditudo, BayTSP, and YouTube, are reflected within the document attached hereto as Attachment B. The document attached hereto as Attachment C also lists the same information for additional works provided to Audible Magic and Auditudo as DVDs and not reflected in Attachment B. Plaintiffs object that it would be unduly burdensome to require Plaintiffs to search these exhibits for the “Works in Suit,” as such information is equally available to Defendants from the documents. The document attached hereto as Attachment D lists additional Works in Suit that Plaintiff Paramount supplied, as DVDs, to BayTSP on December 29, 2006 and to Audible Magic on May 8, 2007.

In addition to the works listed on the aforementioned exhibits, Plaintiffs have also directly generated fingerprints of their works and supplied those fingerprints to Vobile, YouTube, BayTSP, and Audible Magic for purposes of identifying copies of those works on the Internet. Plaintiffs have also provided Auditudo and Audible Magic with MRSS feeds directing them to content available on Plaintiffs’ websites so that Auditudo and

Audible Magic can generate fingerprints thereof. Plaintiffs are not providing information concerning such in-house fingerprinting, or such MRSS feeds, in response to this Interrogatory, as the Interrogatory requests identification only of instances in which Plaintiffs have provided a “Work In Suit . . . as a reference file” and not identification of instances in which Plaintiffs have used alternative means for providing third-party vendors with fingerprints of Plaintiffs’ works.

INTERROGATORY NO. 25:

If any of Your responses to a request for admission in this action is not an unqualified admission, identify the request for admission and each fact, each document, and each portion of a witness’ testimony that supports this contention.

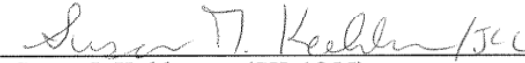
Response and Objections to Interrogatory No. 25:

Plaintiffs incorporate the foregoing General Objections, and object further that this Interrogatory is improper, overly broad, unduly burdensome, unreasonably cumulative, abusive, and exceeds the scope of permissible discovery under Local Civil Rule 33.3 and Federal Rules of Civil Procedure 26 and 33. In particular, an interrogatory that seeks identification of each fact supporting a contention is improper, abusive and goes beyond the scope permitted by the Rules. It is oppressive, harassing and unduly burdensome to ask Plaintiffs to parse the millions of documents and hundreds of depositions in this case to specify each fact, each document and each piece of testimony supporting Plaintiffs’ responses to Defendants’ requests for admission, especially where that information is equally available to Defendants. Further, Plaintiffs object that this Interrogatory is premature and inconsistent with the Scheduling Order governing this case to the extent that it seeks information that will be identified at a later stage of the

litigation and that is properly subject to disclosure only when expert reports are exchanged or when a pretrial order is entered. In addition, Plaintiffs object that this Interrogatory attempts to elicit trial or litigation strategy or information otherwise protected by the attorney work product doctrine. Finally, Plaintiffs object to this Interrogatory as complex and compound and as exceeding the limit of 25 Interrogatories under the Court's Scheduling Order in that it seeks separate and detailed information about each of Plaintiffs' responses to Defendants' 213 Requests for Admission and thereby effectively seeks hundreds of separate responses. Subject to and without waiver of these general and specific objections, Plaintiffs respond as follows: numerous documents produced by the parties in this action, numerous facts contained therein, and numerous pieces of testimony elicited during discovery support Plaintiffs' responses to Defendants' 213 Requests for Admission, and all of this evidence is already equally and fully accessible to Defendants. Based on the foregoing objections, no further response is required.

Respectfully submitted,

January 8, 2010

Handwritten signature of Susan J. Kohlmann in cursive script, followed by a horizontal line.

Susan J. Kohlmann (SK-1855)

JENNER & BLOCK LLP

919 Third Avenue

37th Floor

New York, NY 10022

Telephone: (212) 891-1600

Facsimile: (212) 891-1699

William M. Hohengarten (WH-5233)

Michael B. DeSanctis (MD-5737)

Scott B. Wilkens (pro hac vice)

JENNER & BLOCK LLP

1099 New York Avenue, N.W.

Suite 900

Washington, DC 20001

Telephone: (202) 639-6000

Facsimile: (202) 639-6066

Stuart J. Baskin (SB-9936)

Stephen Fishbein (SF-3410)

John Gueli (JG-8427)

SHEARMAN & STERLING LLP

599 Lexington Avenue

New York, New York 10022

Telephone: (212) 848-4000

Facsimile: (212) 848-7179

SJA-1838

Schapiro Exhibit 130

From: Deana Arizala
Sent: Wednesday, November 22, 2006 8:11 PM
To: Travis Hill
Cc: Mark M. Ishikawa; Courtney Nieman
Subject: RE: [internal-from] MTVN - YouTube - Approved/Declined per asset per week

Importance: High

Attachments: youtubenov06.xls



youtubenov06.xls
(21 KB)

Hey Travis,

Can you run a report for MTVN that has YouTube, Google Video, MySpace, Yahoo Video (separate excel sheets) with the approved and decline in BFM just like the attached example. Thanks!

P.S. Report Period: November 13 - 19, 2006

Best Regards,
Deana Arizala

Deana Arizala
Client Services Manager. BayTSP, Inc
408.341.2365 (direct)
408.341.2300 (voice)
408.341.2399 (fax)

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

From: Travis Hill
Sent: Thursday, November 16, 2006 2:52 PM
To: Mark M. Ishikawa; Courtney Nieman; Deana Arizala
Subject: [internal-from] MTVN - YouTube - Approved/Declined per asset per week

Based on the approved/declined timestamp. Weeks beginning October 30th, November 6th, and November 13th to the present.

SJA-1840

asset	status	count(*)
South Park - Full Episode	Approved	117
South Park - Full Episode	Declined	625
The Daily Show - Clips	Approved	417
The Daily Show - Clips	Declined	5150
The Colbert Report - Clips	Approved	171
The Colbert Report - Clips	Declined	229
Naked Brothers Band - Clips	Approved	8
Naked Brothers Band - Clips	Declined	56
The Daily Show - Full Episode	Approved	7
The Daily Show - Full Episode	Declined	4752
The Colbert Report - Full Episode	Declined	213
South Park - Clips	Approved	1068
South Park - Clips	Declined	1009
Naked Brothers Band - Full Episode	Declined	46
Spongebob Squarepants - Clips	Approved	55
Spongebob Squarepants - Clips	Declined	236
Spongebob Squarepants - Full Episode	Approved	7
Spongebob Squarepants - Full Episode	Declined	263
Fairly Odd Parents - Clips	Approved	4
Fairly Odd Parents - Clips	Declined	22
Fairly Odd Parents - Full Episode	Approved	7
Fairly Odd Parents - Full Episode	Declined	17
Zoey 101 - Clips	Approved	28
Zoey 101 - Clips	Declined	13
Zoey 101 - Full Episode	Approved	82
Zoey 101 - Full Episode	Declined	43
Drake & Josh - Clips	Approved	54
Drake & Josh - Clips	Declined	175
Drake & Josh - Full Episode	Approved	3
Drake & Josh - Full Episode	Declined	140
Backyardigans - Clips	Approved	14
Backyardigans - Clips	Declined	37
Backyardigans - Full Episode	Declined	51
Dora The Explorer - Clips	Approved	2
Dora The Explorer - Clips	Declined	25
Dora The Explorer - Full Episode	Declined	18
South of Nowhere - Clips	Approved	45
South of Nowhere - Clips	Declined	805
South of Nowhere - Full Episode	Approved	36
South of Nowhere - Full Episode	Declined	213
Degrassi - Clips	Approved	17
Degrassi - Clips	Declined	2790
Degrassi - Full Episode	Approved	4
Degrassi - Full Episode	Declined	434
Beyond the Break - Clips	Approved	3
Beyond the Break - Clips	Declined	20
Beyond the Break - Full Episode	Declined	21
Crossroads - Clips	Approved	1
Crossroads - Clips	Declined	115
Crossroads - Full Episode	Declined	126
CMT Music Awards - Clips	Approved	1
CMT Music Awards - Clips	Declined	3
Foxworthy's Big Night Out - Clips	Approved	3
Foxworthy's Big Night Out - Full Episode	Declined	3
Trick My Truck - Clips	Approved	2
Trick My Truck - Clips	Declined	38
Trick My Truck - Full Episode	Declined	39
I Pity The Fool - Clips	Declined	3
I Pity The Fool - Full Episode	Declined	1
Noah's Arc - Clips	Declined	3
Noah's Arc - Full Episode	Declined	5
Laguna Beach - Clips	Approved	10
Laguna Beach - Clips	Declined	101
Laguna Beach - Full Episode	Approved	4
Laguna Beach - Full Episode	Declined	114
Real World - Clips	Declined	344
Real World - Full Episode	Approved	2
Real World - Full Episode	Declined	305
Andy Milonakis - Clips	Approved	1
Andy Milonakis - Clips	Declined	289
Andy Milonakis - Full Episode	Declined	73
VMA Awards - Clips	Approved	50
VMA Awards - Clips	Declined	289

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VMA Awards - Full Episode	Declined	19
Avatar the Last Airbender - Clips	Approved	60
Avatar the Last Airbender - Clips	Declined	4552
Avatar the Last Airbender - Full Episode	Approved	111
Avatar the Last Airbender - Full Episode	Declined	1710
TotalNonstop Action! - Clips	Declined	14
TotalNonstop Action! - Full Episode	Declined	3
Ultimate Fighting Championship - Clips	Approved	2
Ultimate Fighting Championship - Clips	Declined	11
Ultimate Fighting Championship - Full Episode	Declined	8
Most Xtreme Challenge - Clips	Approved	1
Most Xtreme Challenge - Clips	Declined	3
Most Xtreme Challenge - Full Episode	Declined	4

Schapiro Exhibit 131

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,) CASE NO.
) 07-CV-2103
VS.)
)
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,) CASE NO.
) 07-CV-3582
VS.)
)
YOUTUBE, INC., YOUTUBE, LLC, AND)
GOOGLE, INC.,)
)
DEFENDANTS.)
)
-----)

VIDEOTAPED DEPOSITION OF AMY POWELL
TAKEN ON TUESDAY, DECEMBER 15, 2009

JOB NO. 18310

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.)

-----)

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.)

-----)

Videotaped deposition of AMY HOWELL, taken on
behalf of the Defendants, at 350 South Grand Avenue,
Suite 2500, Los Angeles, California, on Tuesday,
December 15, 2009, at 9:25 a.m., before NIKKI ROY,
CSR. No. 3052.

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

12 FOR DEFENDANT GOOGLE:

13 WILSON SONSINI GOODRICH & ROSATI
14 BY: BART E. VOLKMER, ESQ.
15 650 Page Mill Road
16 Palo Alto, California 94304-1050
17 650.565.3508
18 bvolkmer@wsgr.com

19 ALSO PRESENT:

20 PAUL KOENIG, Paramount
21 REBECCA PRENTICE, General Counsel, Paramount
22 SCOTT McNAIR, Videographer
23
24
25

1 09:41:29 MS. KOHLMANN: Objection as to form.
2 09:41:31 You can answer.
3 09:41:31 THE WITNESS: For the film Transformers we
4 09:41:40 uploaded the official approved trailer to YouTube.
5 09:41:44 BY MR. VOLKMER:
6 09:41:48 Q. Did you upload any other materials besides
7 09:41:50 the official trailer to YouTube?
8 09:41:52 A. We always only upload approved materials
9 09:41:56 that have been routed through the marketing
10 09:41:59 executives, talent and filmmakers VIA approved upload
11 09:42:04 account.
12 09:42:08 MR. VOLKMER: Move to restrike the response
13 09:42:10 as nonresponsive.
14 09:42:11 Q. Did you upload any other materials besides
15 09:42:13 the official trailer to YouTube with respect to the
16 09:42:16 Transformers promotional campaign?
17 09:42:19 MS. KOHLMANN: Objection.
18 09:42:20 You can answer.
19 09:42:24 THE WITNESS: For Transformers 2, which is
20 09:42:26 the film I was referencing, we uploaded the official
21 09:42:31 trailer and the official approved clips from the EPK.
22 09:42:37 BY MR. VOLKMER:
23 09:42:37 Q. What about for the original Transformers
24 09:42:40 movie, did Paramount's interactive marketing
25 09:42:43 department engage in any viral marketing of that film

1 09:42:46 using YouTube?

2 09:42:47 A. I don't recall.

3 09:43:00 Q. How long ago did Paramount upload the

4 09:43:03 Transformers 2 trailer to YouTube?

5 09:43:09 A. The Transformers 2 final trailer was earlier

6 09:43:16 this year. I don't recall specifically.

7 09:43:20 Q. So Paramount's interactive marketing

8 09:43:25 department has continued to use YouTube for

9 09:43:28 promotional purposes after this lawsuit was filed; is

10 09:43:31 that correct?

11 09:43:31 MS. KOHLMANN: Objection as to form.

12 09:43:33 You can answer.

13 09:43:34 THE WITNESS: Can you repeat the question,

14 09:43:37 please.

15 09:43:37 BY MR. VOLKMER:

16 09:43:37 Q. Sure. Paramount's interactive marketing

17 09:43:39 department has continued to use YouTube for

18 09:43:41 promotional purposes after this lawsuit was filed; is

19 09:43:44 that correct?

20 09:43:45 A. We use YouTube as we do any other website

21 09:43:48 that we're in business with, which is to upload

22 09:43:51 approved materials for the marketing of our films.

23 09:43:55 Q. Right. And my question was, did Paramount's

24 09:43:59 interactive marketing department continue to use

25 09:43:59 YouTube for promotional purposes after this lawsuit

1 09:44:01 was filed?

2 09:44:02 MS. KOHLMANN: Objection; asked and

3 09:44:02 answered.

4 09:44:12 You can answer.

5 09:44:13 THE WITNESS: As I said, YouTube is one of

6 09:44:15 many websites that we use to market our films with

7 09:44:17 approved materials.

8 09:44:19 BY MR. VOLKMER:

9 09:44:22 Q. That doesn't respond to the question though.

10 09:44:24 The question was, after this lawsuit was filed, did

11 09:44:28 Paramount continue to use YouTube to promote its

12 09:44:31 films?

13 09:44:31 MS. KOHLMANN: Objection; asked and answered

14 09:44:33 and getting argumentative.

15 09:44:35 You can answer.

16 09:44:36 THE WITNESS: We use YouTube to upload

17 09:44:41 approved marketing materials as we do any other

18 09:44:44 website that we're in business with.

19 09:44:46 BY MR. VOLKMER:

20 09:44:46 Q. And that practice of using YouTube to upload

21 09:44:49 approved marketing materials has taken place after

22 09:44:53 the filing of this lawsuit which is in March of 2007?

23 09:44:57 A. That is correct.

24 09:44:58 Q. The materials that Paramount's employees and

25 09:45:19 agents have uploaded to YouTube for promotional

1 09:45:22 purposes, those materials are authorized to be on the
2 09:45:25 YouTube service; is that right?
3 09:45:27 MS. KOHLMANN: Objection as to form.
4 09:45:33 BY MR. VOLKMER:
5 09:45:33 Q. You can answer.
6 09:45:34 A. I can only speak on behalf of my team.
7 09:45:37 Q. Sure. So the materials that were uploaded
8 09:45:41 by your team or by agents of Paramount at the
9 09:45:45 direction of your team, those materials that have
10 09:45:48 been uploaded to YouTube, they are authorized to be
11 09:45:51 on the YouTube service, correct?
12 09:45:52 MS. KOHLMANN: Objection as to form.
13 09:45:55 You can answer.
14 09:45:55 THE WITNESS: To the best of my knowledge,
15 09:45:58 my team has always had the direction of only
16 09:46:02 uploading approved materials.
17 09:46:06 BY MR. VOLKMER:
18 09:46:07 Q. Would you say that everything that your team
19 09:46:09 has uploaded or has approved to be uploaded, that set
20 09:46:14 of materials are authorized?
21 09:46:15 MS. KOHLMANN: Objection; vague.
22 09:46:19 You can answer.
23 09:46:20 THE WITNESS: I'm not sure I know what you
24 09:46:21 mean by "authorized."
25

1 02:45:41 In light of all of the additional
2 02:45:43 focus on infringement on YouTube, I'm
3 02:45:45 checking with Scott to see if we are
4 02:45:46 taking down clips.
5 02:45:49 Do you know what the additional focus on
6 02:45:50 infringement that Mr. Perry references is?
7 02:45:54 MS. KOHLMANN: Objection. Are you asking
8 02:45:57 her as she sits here today?
9 02:46:00 MR. VOLKMER: Yeah, I'm asking her if she
10 02:46:02 has any understanding as to what Mr. Perry was
11 02:46:05 talking about.
12 02:46:05 MS. KOHLMANN: Objection; it's not on this
13 02:46:09 document; lacks foundation.
14 02:46:10 You can answer.
15 02:46:11 THE WITNESS: I am not clear on what he's
16 02:46:14 talking about.
17 02:46:33 MR. VOLKMER: Let's mark Exhibit 20.
18 02:46:36 (Powell Exhibit 20, document bearing
19 02:46:36 Bates number VIA 00431656, marked for
20 02:46:40 identification, as of this date.)
21 02:46:40 MS. KOHLMANN: Thanks.
22 02:46:48 BY MR. VOLKMER:
23 02:47:03 Q. Exhibit 20 is an e-mail exchange produced by
24 02:47:05 Viacom in this litigation. The e-mail thread took
25 02:47:11 place on October 15th and 16th, 2006. And the first

1 02:47:18 message in the thread you write to Tamar Teifeld and
2 02:47:23 Mickey Worsnup and you say:
3 02:47:26 Is this one of our approved
4 02:47:27 clips, question mark.
5 02:47:28 There's a YouTube URL and the subject line
6 02:47:32 is Flags of Our Fathers.
7 02:47:34 Do you know why you reached out to
8 02:47:39 Ms. Teifeld and Mr. Worsnup about the authorization
9 02:47:43 status of this clip?
10 02:47:44 A. I don't know specifically. I presume I was
11 02:47:46 in a meeting and asking them if they were in front of
12 02:47:49 a computer.
13 02:47:51 Q. And Ms. Teifeld responds:
14 02:47:55 Yes, these are clips from the
15 02:47:56 EPK.
16 02:47:57 A. Uh-huh.
17 02:47:57 Q. What is the EPK?
18 02:47:59 A. Electronic press kit.
19 02:48:00 Q. And are clips that are included in the EPK
20 02:48:06 that are uploaded to YouTube authorized to be on
21 02:48:09 YouTube?
22 02:48:09 MS. KOHLMANN: Objection.
23 02:48:11 THE WITNESS: On each specific film we put
24 02:48:14 together what's known as an EPK, which is a
25 02:48:18 collection of approved clips and content for any said

1 02:48:21 film. Those are the clips that are approved for
2 02:48:23 distribution online.
3 02:48:28 BY MR. VOLKMER:
4 02:48:31 Q. So if there's an EPK clip that's appearing
5 02:48:34 on YouTube, it's authorized to be on the YouTube
6 02:48:39 service, correct?
7 02:48:39 MS. KOHLMANN: Objection; misstates the
8 02:48:41 record.
9 02:48:42 THE WITNESS: Not necessarily.
10 02:48:43 BY MR. VOLKMER:
11 02:48:44 Q. Why is that?
12 02:48:45 A. Only the final approved locked color
13 02:48:50 corrected sound mixed final version of the EPK clips
14 02:48:53 are approved for distribution across YouTube and
15 02:48:59 other websites.
16 02:49:00 Q. But all the final versions meeting all the
17 02:49:10 criteria you just listed, those EPK clips are
18 02:49:13 authorized to be on the YouTube service, correct?
19 02:49:15 MS. KOHLMANN: Objection as to form.
20 02:49:16 THE WITNESS: Presumably, yes.
21 02:49:21 BY MR. VOLKMER:
22 02:49:28 Q. This is the same YouTube URL that's
23 02:49:32 referenced in the previous exhibit, Exhibit 19. Do
24 02:49:38 you know if you told Mr. Perry whether or not this
25 02:49:43 clip was authorized to be on YouTube?

1 02:49:45 A. I don't recall.

2 02:50:08 Q. The clip that's referenced in the e-mail on

3 02:50:11 Exhibit 20, that's a clip that was authorized to be

4 02:50:14 on YouTube, correct?

5 02:50:15 MS. KOHLMANN: Objection.

6 02:50:18 THE WITNESS: I would have to review the

7 02:50:19 clip to tell you.

8 02:50:20 BY MR. VOLKMER:

9 02:50:24 Q. Ms. Teifeld says, where you wrote to

10 02:50:27 Ms. Teifeld "Is this one of our approved clips?" And

11 02:50:30 she wrote back "Yes, these clips are from the EPK."

12 02:50:33 Based on this e-mail, isn't the most logical

13 02:50:40 inference that the clip being referenced here is one

14 02:50:43 that was approved by Paramount to appear on YouTube?

15 02:50:45 MS. KOHLMANN: Objection as to form.

16 02:50:47 THE WITNESS: Based on Tamar's e-mail she's

17 02:50:51 saying, yes, these clips are from the EPK, and hence

18 02:50:53 we would assume that, yes, they are approved clips.

19 02:50:57 BY MR. VOLKMER:

20 02:50:57 Q. And you had no reason to question

21 02:51:00 Ms. Teifeld's assessment, correct?

22 02:51:02 A. Correct.

23 02:51:13 Q. You did not ask that this clip be removed

24 02:51:16 from the YouTube service, did you?

25 02:51:18 A. I don't recall.

1 02:51:19 Q. Based on this e-mail in which Ms. Teifeld
2 02:51:24 says that they are approved clips that came from the
3 02:51:29 EPK, do you think that you asked anyone that these --
4 02:51:33 that this clip be removed?
5 02:51:34 MS. KOHLMANN: Objection.
6 02:51:39 THE WITNESS: I do not believe I would have
7 02:51:41 requested it to be removed, with the understanding it
8 02:51:43 was an approved clip from the EPK.
9 02:52:22 MR. VOLKMER: Let's mark Exhibit 21.
10 02:52:23 (Powell Exhibit 21 VIA11786487,
11 02:52:23 document bearing Bates number VIA11786487,
12 02:52:40 marked for identification, as of this date.)
13 02:52:40 BY MR. VOLKMER:
14 02:52:56 Q. This is an e-mail exchange from May 8th and
15 02:52:58 9th, 2007 produced by Viacom in this litigation.
16 02:53:04 In the first message in this thread Kristina
17 02:53:08 Tipton asked whether Paramount should leave up a
18 02:53:13 Transformers clip that appeared on the Ellen
19 02:53:17 Degeneres show; is that right?
20 02:53:18 A. Yes.
21 02:53:18 Q. And it says -- the message from Ms. Tipton
22 02:53:23 says:
23 02:53:24 Publicity wouldn't let us post
24 02:53:26 the clip officially online.
25 02:53:28 Why wouldn't publicity allow Paramount to

1 04:15:42 A. That is correct.

2 04:15:43 Q. And so it didn't matter who the user was,

3 04:15:46 right?

4 04:15:47 MS. KOHLMANN: Objection.

5 04:15:48 You can answer.

6 04:15:48 THE WITNESS: In this instance this is not

7 04:15:50 film content.

8 04:15:52 BY MR. VOLKMER:

9 04:15:55 Q. This is a promotional clip that was produced

10 04:15:59 by Paramount for the movie Transformers, right?

11 04:16:03 A. No that is not correct.

12 04:16:05 Q. What is incorrect about that statement?

13 04:16:06 A. It is not a clip. It's original content

14 04:16:11 that was produced by a third party.

15 04:16:13 Q. Which third party produced this clip?

16 04:16:17 A. A -- I don't remember the name of the

17 04:16:20 company but the gentleman's name was Jules.

18 04:16:23 Q. Acting at Paramount's direction?

19 04:16:27 MS. KOHLMANN: Objection as to form.

20 04:16:29 You can answer.

21 04:16:29 THE WITNESS: Yes.

22 04:16:29 BY MR. VOLKMER:

23 04:16:32 Q. Presumably Paramount owned the video clip

24 04:16:36 that's represented here on Exhibit 28?

25 04:16:38 MS. KOHLMANN: Objection as to form.

1 04:16:41 THE WITNESS: I don't know that I can answer
2 04:16:42 that. I believe Jules created it and owned it.
3 04:16:45 BY MR. VOLKMER:
4 04:17:03 Q. Why do you believe that Jules owned it?
5 04:17:06 A. To the best of my recollection, that was the
6 04:17:09 agreement.
7 04:17:11 Q. There was an agreement that a third party
8 04:17:18 would create marketing materials for Paramount and
9 04:17:24 retain an ownership interest in those materials?
10 04:17:27 MS. KOHLMANN: Objection.
11 04:17:29 You can answer.
12 04:17:29 THE WITNESS: To the best of my knowledge,
13 04:17:30 in this unique circumstance, given the technology
14 04:17:33 involved, yes, that was the case.
15 04:17:34 BY MR. VOLKMER:
16 04:17:57 Q. You were okay with this video remaining on
17 04:18:00 the YouTube service even though it contained in its
18 04:18:03 title the name of a Paramount movie; is that right?
19 04:18:06 MS. KOHLMANN: Objection.
20 04:18:08 You can answer.
21 04:18:08 THE WITNESS: Transformers is the name of
22 04:18:18 our movie, but it's also the name of toys that have
23 04:18:23 been created and an animated feature that's been in
24 04:18:27 the marketplace for a long time and many other
25 04:18:31 things.

1 04:18:31 BY MR. VOLKMER:
2 04:18:57 Q. So Paramount's not claiming any proprietary
3 04:19:00 interest in the phrase "Transformers," right?
4 04:19:05 MS. KOHLMANN: Objection; calls for a legal
5 04:19:06 conclusion.
6 04:19:07 You can answer.
7 04:19:07 THE WITNESS: That's a question I would ask
8 04:19:09 our legal team.
9 04:19:10 BY MR. VOLKMER:
10 04:19:18 Q. You didn't think though that it was
11 04:19:21 inappropriate for this user to post a video to
12 04:19:25 YouTube that had a title that contained the name of
13 04:19:27 one of Paramount's movies?
14 04:19:31 A. Upon review of the content, I did not have a
15 04:19:34 problem with it being on YouTube.
16 04:20:23 MR. VOLKMER: Mark Exhibit 30.
17 04:20:24 (Powell Exhibit 30, document bearing
18 04:20:24 Bates number BAYTSP 003733247, marked for
19 04:20:36 identification, as of this date.)
20 04:20:36 MS. KOHLMANN: Thanks.
21 04:20:45 BY MR. VOLKMER:
22 04:20:53 Q. Exhibit 30 is an e-mail exchange that BayTSP
23 04:20:56 produced in litigation. It's from July 9, 2007.
24 04:21:02 The last message on the page, Warren Kim
25 04:21:05 writes to Al Perry and to Amy Powell that if the

SJA-1858

Schapiro Exhibit 139

From: "Rockwell, Nick" <Nick.Rockwell@mtvn.com>
Date: Tue, 5 Dec 2006 15:19:26 -0500
To: <v_ikezoye@audiblemagic.com>, "Cahan, Adam" <Adam.Cahan@mtvn.com>, "Simon, Joe" <Joe.Simon@viacom.com>
Cc: "Jim Schrempp \(\Jim Schrempp\)" <j_schrempp@audiblemagic.com>, "Jeremy Stern" <j_stern@audiblemagic.com>, <chris@youtube.com>
Subject: RE: Introduction

Hi Vance – would 3PM EST (12 PST) tomorrow work for you?

Nick

From: Vance Ikezoye [mailto:v_ikezoye@audiblemagic.com]
Sent: Tuesday, December 05, 2006 2:42 PM
To: Cahan, Adam; Simon, Joe; Rockwell, Nick
Cc: Jim Schrempp (Jim Schrempp); Jeremy Stern; chris@youtube.com
Subject: RE: Introduction

Adam,

Nice to meet you. I'll also be getting my VP of Engineering, Jim Schrempp, involved as well. I've also copied my VP of Bus Dev, Jeremy Stern.

Let us know what times work for you. We look forward to working with you.

Vance

From: Cahan, Adam [mailto:Adam.Cahan@mtvn.com]
Sent: Tuesday, December 05, 2006 11:09 AM
To: chris@youtube.com; Ikezoye, Vance; Simon, Joe; Rockwell, Nick
Subject: RE: Introduction

Chris - thanks for the intro.

Vance I've added Joe Simon our CTO and Nick Rockwell who heads our tech for digital media to the distribution.

Joe/Nick can I ask you to take the lead in setting up a call with Vance. I would like to join, so let's make it West Coast friendly if we can:)

Thanks - Adam

From: Chris Maxcy [mailto:chris@youtube.com]
Sent: Tue 12/5/2006 11:06 AM
To: v_ikezoye@audiblemagic.com; Cahan, Adam
Subject: Introduction

Hi Vance,

I wanted to introduce you to Adam Cahan at Viacom. We are confidentially talking to Adam and his team about a partnership and wanted to get the two of you connected. Adam has a number of

questions regarding how Viacom can get its content into the AM database. I'll let the two of you take it from here but please let me know if you'd like me to be involved in the conversations.

Best,

Chris

Chris Maxcy

VP, Business Development

YouTube, Inc.

chris@youtube.com <mailto:chris@youtube.com>



www.youtube.com

SJA-1861

Schapiro Exhibit 151

SJA-1862

From: Vance Ikezoye <v_ikezoye@audiblemagic.com>
Sent: Monday, May 8, 2006 11:17 AM
To: Garfield, Dean <Dean_Garfield@mpaa.org>
Subject: RE: W2i Digital Cities Convention

Let me know. btw I don't know when the last time you talked to Yahoo. But they seem to be trying to do the right thing and significantly filter non-authorized copyrighted works.

From: Dean_Garfield@mpaa.org [mailto:Dean_Garfield@mpaa.org]
Sent: Monday, May 08, 2006 10:54 AM
To: v_ikezoye@audiblemagic.com
Subject: Re: W2i Digital Cities Convention

Hey. Thanks for doing this. We will definitely participate once the details are nailed down. I did talk with them and it went very well. I am trying to set up a call with their techhical folks for next week.

Sent from my BlackBerry Wireless Handheld

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

From: Vance Ikezoye <v_ikezoye@audiblemagic.com>
To: Garfield, Dean <Dean_Garfield@mpaa.org>
Sent: Mon May 08 10:49:09 2006
Subject: FW: W2i Digital Cities Convention

I'm trying to get some more info, but here is their brochure. I understand that they expect 200 or so attendees, but they are generally decision makers. I'm trying to get info on the list of attendee cities and exhibitors. Also I have inquired about the potential for a session devoted to our issues. An interesting approach may be to get the firm running the convention to put together training they could sell to the cities.

btw. did you ever talk to youtube? how'd it go?
vance

From: Daniel Aghion [mailto:daghion@w2i.org]
Sent: Friday, May 05, 2006 5:52 PM
To: v_ikezoye@Audiblemagic.com
Subject: RE: W2i Digital Cities Convention

Dear Vance,

Good speaking to you earlier this PM. As promised please find attached our sponsorship brochure. We will explore over the week end how we might actively involve MPAA in the proceedings. On the other hand I would like start exploring further a cooperation with MPAA as I believe copyright protection will be further impacted by the deployment of yet another broadband infrastructure (wireless) which indeed local government are proactively promoting.

Will call you to follow up on Monday afternoon.

Sincerely,

Daniel Aghion
Executive Director
Wireless Internet Institute
(617) 439 5400

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

From: Vance Ikezoye [mailto:v_ikezoye@Audiblemagic.com]

SJA-1863

Sent: Friday, May 05, 2006 5:27 PM
To: daghion@w2i.org
Subject: W2i Digital Cities Convention

I was interested in information on the Digital Cities Convention upcoming in L.A. In conjunction with the Motion Picture Association, we were interested in a booth and perhaps an opportunity for a conference workshop or presentation. Can you give me a call on Monday to discuss? Since I'm in CA after 9 would be great.

Vance Ikezoye

This message is intended for the use of the addressee only and may contain confidential information and trade secrets of Audible Magic. Unauthorized use or disclosure is prohibited.

Vance Ikezoye
Audible Magic Corporation
985 University Avenue #35
Los Gatos, CA 95032 USA
p: 408.399.6405 x106
f: 408.399.6406
www.audiblemagic.com <<http://www.audiblemagic.com/>>

SJA-1864

Schapiro Exhibit 153

Message: RE: Contact Information

✉ **RE: Contact Information**

From Garfield, Dean **Date** Wednesday, April 12, 2006 7:17 PM
To 'chris@youtube.com'
Cc Dahle, Berit
Subject RE: Contact Information

Thanks Chris. I also enjoyed our conversation. Berit will email you back with some times that work.

My contact is
Dean C. Garfield
Executive Vice President & CSO
dean_garfield@mpaa.org
[REDACTED]

From: Chris Maxcy [mailto:chris@youtube.com]
Sent: Wednesday, April 12, 2006 5:49 PM
To: Garfield, Dean
Subject: Contact Information

Dean,

It was nice speaking with you today. I look forward to catching up with you soon. Please let me know if there are some times that work for you later this week or early next.

Best Regards,

Chris

Chris Maxcy
VP, Business Development
YouTube, Inc.
chris@youtube.com
[REDACTED]

www.youtube.com

SJA-1866

Schapiro Exhibit 154

Message: RE: today's call

✉ RE: today's call

From Garfield, Dean **Date** Friday, April 28, 2006 3:17 PM
To 'chris@youtube.com'
Cc
Subject RE: today's call

Chris, I am going to be traveling extensively over the next three weeks, but I do want to follow up on our discussion. Are you and the team available for a technical discussion next Wednesday or Thursday. Look forward to hearing back from you. Thanks.

From: Chris Maxcy [mailto:chris@youtube.com]
Sent: Thursday, April 20, 2006 7:52 PM
To: Garfield, Dean
Subject: RE: today's call

Hi Dean,

It was good speaking with you today. My colleagues on the call were Steve Chen, Co-founder & CTO and Zahavah Levine, General Counsel & VP, Business Affairs. Look forward to continuing the discussions.

Best Regards,

Chris

Chris Maxcy
VP, Business Development
YouTube, Inc.
chris@youtube.com
[REDACTED]

www.youtube.com

From: Dean_Garfield@mpaa.org [mailto:Dean_Garfield@mpaa.org]
Sent: Thursday, April 20, 2006 5:02 PM
To: chris@youtube.com
Subject: today's call

Chris, thanks for arranging today's call. We appreciate your willingness to work together to address the issues we discussed. I look forward to our next discussion. Do you mind sending me the names of the other people on the call? I want to tell our technical folks about the discussion and plan for the next meeting. Thanks.

SJA-1868

Schapiro Exhibit 155

Message: RE: Follow up

RE: Follow up

From Garfield, Dean **Date** Tuesday, August 08, 2006 7:29 PM
To 'chris@youtube.com'
Cc
Subject RE: Follow up

Are you in LA? I would like to talk in person if feasible. If you can't come to my office I can try to meet you somewhere else that is convenient.

From: Chris Maxcy [mailto:chris@youtube.com]
Sent: Tuesday, August 08, 2006 1:08 PM
To: Garfield, Dean
Subject: RE: Follow up

Hi Dean,

2pm works for me. What number should I call?

Best,

Chris

From: Dean_Garfield@mpaa.org [mailto:Dean_Garfield@mpaa.org]
Sent: Tuesday, August 08, 2006 12:32 PM
To: chris@youtube.com
Subject: RE: Follow up

Hi Chris. I do want to catch up, but I can't do 1pm. Does 2pm work? I have been hearing from the studios a lot in recent weeks about you guys and want to provide some honest feedback and hear your thinking.

From: Chris Maxcy [mailto:chris@youtube.com]
Sent: Tuesday, August 08, 2006 10:46 AM
To: Garfield, Dean
Subject: RE: Follow up

Hi Dean,

Hope all is well. Are you available to catch up tomorrow (8/9) at 1pm?

Best,

Chris

From: Dean_Garfield@mpaa.org [mailto:Dean_Garfield@mpaa.org]
Sent: Thursday, July 27, 2006 2:22 PM
To: chris@youtube.com
Subject: Follow up

Chris, sorry we missed you last week. The lunch at Lucas was informative and enjoyable. I would like to pick up our discussion and learn more about where YouTube is headed. Will you let me know when a convenient time to chat. Thanks.

SJA-1870

Schapiro Exhibit 156

Message: RE: Time to talk today?

RE: Time to talk today?

From Chris Maxcy **Date** Monday, September 25, 2006 4:32 PM
To Garfield, Dean
Cc
Subject RE: Time to talk today?

Sure. That works for me. I'm at [REDACTED]

Best,

Chris

From: Dean_Garfield@mpaa.org [mailto:Dean_Garfield@mpaa.org]
Sent: Monday, September 25, 2006 3:58 PM
To: chris@youtube.com
Subject: Re: Time to talk today?

Hey Chris. This has been a crazy day and I am just getting around to grabbing a bite for lunch. Does 6pm work?

Sent from my BlackBerry Wireless Handheld

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

From: Chris Maxcy <chris@youtube.com>
To: Garfield, Dean <Dean_Garfield@mpaa.org>
Sent: Mon Sep 25 15:35:41 2006
Subject: Time to talk today?

Hi Dean,

Hope all is well. Do you have a few minutes to talk today? We are very close to getting our fingerprinting systems licensed and wanted to take you up on your offer to do some testing for your members.

Best,

Chris

SJA-1872

Schapiro Exhibit 158

SJA-1873

To: Dean_Garfield@mpaa.org <Dean_Garfield@mpaa.org>
From: Chris Maxcy <chris@youtube.com>
Cc: 'Kelly Liang' <kel@youtube.com>
Bcc:
Received Date: 2006-10-17 14:14:44 GMT
Subject: FW: Proposal from MPAA on Content Identification and Filtering

Hi Dean,

Things are good here but seem to be busier than ever. We are all excited to be a part of Google (though things have not closed yet - and even if/when they do I have many years of work ahead :-)). Thanks for sending over the attached proposal and for working with us on a pilot test. A couple quick comments:

For the audio fingerprinting, uploaded files are "processed" on our site meaning that they do go live for a short period of time (generally measured in seconds) before the filter kicks in. This is more of a latency issue than anything else and we are working with Vance at Audible to ensure that the system responds quickly.

The other very important element beyond audio fingerprinting is the enhanced text search tool currently being built. This tool will enable content owners to define searches on YouTube using key words or phrases. The search terms can be sent to YouTube via an xml feed or can be input manually. Once YouTube has the search terms, we will automatically run searches on behalf of the content owners. Searches can be saved, narrowed or broadened at the content owners' discretion. Content owners will get an admin tool to see the search results (consisting of a url link and thumbnail images of the videos in question). At this point the content owner will need to review the search results and can mark individual videos as either blocked or licensed for use on YouTube. In either case, once a file is identified as owned or controlled by a content owner it is fed back through the audio fingerprinting system so the entire process gets smarter over time.

Our development team is still working out the implementation details with Vance but we are expecting to get all of the audio fingerprinting and text search tools in place by year end. I'll touch base with Vance to see how we can get the MPAA test up and running as we start to test his system. In the meantime, I also wanted to introduce Kelly Liang who is one of the senior members of our BD team. Kelly will be leading the charge on our studio initiatives going forward. I'm in NYC until later this week but would love to catch up Thurs/Friday if you are available. Look forward to catching up soon.

Best,

Chris

From: Dean_Garfield@mpaa.org [mailto:Dean_Garfield@mpaa.org]
Sent: Thursday, October 12, 2006 7:12 PM
To: chris@youtube.com

Subject: Proposal from MPAA on Content Identification and Filtering

Hi Chris. I trust that things are well. Congrats on the Google deal. How does it feel to be rich? Hopefully, you are still working - - at least for now. In that regard, I have attached a proposal for moving forward on our last discussion. As you may imagine, all the studios are getting calls every day to comment on the Google deal and so there is a lot of focus on this issue. Please let me know when it would be a good time to continue our conversation. Thanks.

Dean

SJA-1875

Schapiro Exhibit 160

SJA-1876

To: "chris@youtube.com" <chris@youtube.com>
From: "Kelly Liang" <kel@youtube.com>
Cc:
Bcc:
Received Date: 2006-12-08 16:41:21 GMT
Subject: FW: Content Identification and Filtering

FYI on the below from Dean. I'll reach out to Alex to see if he/or anyone on his team has had any contact with the MPAA (it didn't appear so on the BD pipeline). I think it makes sense to transition the MPAA discussions to the team that is managing the relationships with the major studios although we have already made good progress and built good relationships. It probably makes sense to have 1 voice that is dealing both with the MPAA and all of the studios for consistency's sake. Let me know what you think.

Thanks,

Kelly

From: Kelly Liang [mailto:kel@youtube.com]
Sent: Thursday, December 07, 2006 9:50 PM
To: 'Dean_Garfield@mpaa.org'
Subject: RE: Content Identification and Filtering

Hi Dean -

Really appreciate the update, good to hear that the studios are interested in discussing the pilot opportunity in further detail. Let me coordinate with some folks over here and we will revert back with some times that will work for in-person sessions.

Thanks,

Kelly

From: Dean_Garfield@mpaa.org [mailto:Dean_Garfield@mpaa.org]
Sent: Thursday, December 07, 2006 7:23 PM
To: kel@youtube.com
Subject: RE: Content Identification and Filtering

Hi. How are ya. Our call went well. The studios had a few questions that we can chat about whenever is convenient. They were also very interested in doing a joint meeting in December if feasible to walk through the concept

SJA-1877

and hear a bit more re the long term plans. We should figure out some dates that may work.

From: Kelly Liang [mailto:kel@youtube.com]
Sent: Monday, December 04, 2006 9:11 AM
To: Garfield, Dean
Subject: RE: Content Identification and Filtering

Thanks Dean - sounds good. Look forward to touching base with you!

From: Dean_Garfield@mpaa.org [mailto:Dean_Garfield@mpaa.org]
Sent: Friday, December 01, 2006 6:30 PM
To: kel@youtube.com
Subject: Re: Content Identification and Filtering

Hi Kelly. We had 3 topics to cover and only got through 1. We are going to pick up Tuesday morning so I will call you after that call.

Sent from my BlackBerry Wireless Handheld

----- Original Message -----
From: Kelly Liang <kel@youtube.com>
To: Garfield, Dean
Sent: Fri Dec 01 17:16:19 2006
Subject: RE: Content Identification and Filtering

Hi Dean -

Thanks again for your time this morning. I'll be back to you next week to schedule a visit with you in LA. How did your discussions with the studios go today?

Have a good weekend. Take care,

Kelly

From: Dean_Garfield@mpaa.org [mailto:Dean_Garfield@mpaa.org]
Sent: Thursday, November 30, 2006 6:16 PM
To: kel@youtube.com

Subject: RE: Content Identification and Filtering

Hi Kelly. We actually have a call tomorrow at 11 am with the studios to discuss this issue so if we can talk before then that would be great. Does 9:30 am pacific work?

From: Kelly Liang [mailto:kel@youtube.com]
Sent: Thursday, November 30, 2006 5:10 PM
To: Garfield, Dean
Subject: RE: Content Identification and Filtering

Hi Dean -

Hope all is well. I wanted to touch base with you and give you an update on the paperwork, the claim your content tool, etc.

Let me know if you might have a few minutes to catch up tomorrow or sometime next week.

Take care,

Kelly

From: Dean_Garfield@mpaa.org [mailto:Dean_Garfield@mpaa.org]
Sent: Wednesday, November 15, 2006 1:17 PM
To: kel@youtube.com
Subject: Content Identification and Filtering

Hi Kelly. I enjoyed talking with you today. Our RFI is attached. Safe travels and talk to you soon.

Schapiro Exhibit 162

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, :
:
v. : Case No.
: 07CV-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, :
v. : Case No.
: 07CV-3582
:
YOUTUBE, INC., YOUTUBE, LLC, :
and GOOGLE, INC., :
:
Defendants. :

- - - - -X
****HIGHLY CONFIDENTIAL****
Videotaped Deposition of DEAN GARFIELD
Washington, D.C.
Tuesday, November 2, 2009
10:24 a.m.

BY: Okeemah S. Henderson, LSR
JOB NO. 18039

SJA-1881

DEAN GARFIELD - HIGHLY CONFIDENTIAL

2

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

FOR THE PLAINTIFFS VIACOM INTERNATIONAL,
INC.:

STUART J. BASKIN, ESQUIRE
SHEARMAN & STERLING, LLP
599 Lexington Avenue
New York, NY 10022
(212) 848-4000

FOR THE PLAINTIFFS VIACOM INTERNATIONAL,
INC.:

MICHAEL B. DESANCTIS, ESQUIRE
LUKE C. PLATZER, ESQUIRE
JENNER & BLOCK, LLP
1099 New York Avenue, NW Suite 900
Washington, DC 20001
(202) 639-6000

FOR THE DEFENDANTS YOUTUBE:

DAVID H. MCGILL, ESQUIRE
MAYER BROWN, LLP
1675 Broadway
New York, NY 10019
(212) 506-2507

FOR THE DEFENDANTS THE FOOTBALL ASSOCIATION:

LAUREN A. MCMILLEN, ESQUIRE
BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP
1285 Avenue of the Americas
New York, NY 10019
(212) 554-1593

FOR THE WITNESS, DEAN GARFIELD:

KELLY M. KLAUS, ESQUIRE
MUNGER TOLLES & OLSEN LLP
355 South Grand Avenue, 35th Flr
Los Angeles, CA 90071
(213) 683-9238

ALSO PRESENT:

Conway Barker, Videographer
Orit Michiel

1 12:12 late -- I would like to say it was late 2005

2 12:12 but I really don't recall. I'm sorry.

3 12:12 Q. Now, putting aside the specific

4 12:12 issue of this litigation I take it that in your

5 12:12 capacity as chief strategic officer for the

6 12:12 MPAA you were in regular communication with

7 12:12 Viacom about copyright enforcement issues; is

8 12:12 that fair to say?

9 12:12 A. Yes. That's fair to say.

10 12:12 Q. And what are some of the topics that

11 12:12 you would discuss within that overall framework

12 12:12 with Viacom?

13 12:12 MR. KLAUS: I would just caution you

14 12:12 that in the course of your communications with

15 12:12 Viacom, to the extent those reflect privileged

16 12:12 communications you should not reveal them and

17 12:12 if you have a question about how far down from

18 12:13 the very general topic of copyright enforcement

19 12:13 do some specific topics go, that's something we

20 12:13 can step outside and try to disentangle.

21 12:13 MR. MCGILL: Just to make sure the

22 12:13 record is clear, your position is that any

23 12:13 privileged information that was related to

24 12:13 Viacom from the MPAA would retain its

25 12:13 privileged nature?

1 12:13 MR. KLAUS: I need to know a little
2 12:13 more specifically about what the discussions
3 12:13 were but certainly the people from the MPAA are
4 12:13 entitled to have privileged conversations with
5 12:13 their member studios and their member studios
6 12:13 counsel and I'm just cautioning him in the
7 12:13 course of answering the question, which was
8 12:13 phrased at a fairly high-level generality that
9 12:13 to the extent it's getting down to specific
10 12:13 subjects, we should discuss that to reveal
11 12:13 there's no inadvertent disclosure of privileged
12 12:13 information.

13 12:13 A. I'll answer it at the high level
14 12:14 that you asked, which is we spent a fair amount
15 12:14 of time talking about strategies for dealing
16 12:14 with copyright infringement generally including
17 12:14 education and the types of education campaign
18 12:14 we should initiate the scope of those types of
19 12:14 education campaign. We talked a lot about
20 12:14 content recognition technologies and technology
21 12:14 generally as a solution for copyright
22 12:14 infringement.

23 12:14 BY MR. MCGILL:

24 12:14 Q. I think you testified earlier that
25 12:14 the six member studios of the MPAA are the

1 12:14 largest motion picture companies in the world;
2 12:14 is that true?
3 12:14 A. The way that I characterized it I
4 12:14 think was that they're also the global leaders;
5 12:14 creating, distributing, marketing motion
6 12:14 picture content. So unlike the recording
7 12:15 industry where if you go to Brazil, the market
8 12:15 leaders are not necessarily the U.S. companies.
9 12:15 With the exception of I think India and perhaps
10 12:15 China, the U.S. companies are also the global
11 12:15 leaders in marketing and developing
12 12:15 audio-visual content, motion picture and
13 12:15 television.
14 12:15 Q. Based on your experience and
15 12:15 knowledge in the industry, would it be fair to
16 12:15 say that Viacom is also one of the largest
17 12:15 creators of professional video content in the
18 12:15 world?
19 12:15 A. Yes.
20 12:15 Q. Given the shared breath of video
21 12:15 content between the MPAA and Viacom, is it fair
22 12:15 to say that the interests of the MPAA and
23 12:15 Viacom were aligned in relation to this issue
24 12:15 of copyright enforcement?
25 12:15 A. I wouldn't necessarily make the

1 12:15 connection between the breath and the alignment
2 12:15 but in general, there was an alignment between
3 12:15 the MPAA and its members because we were simply
4 12:16 an agent for those studios.

5 12:16 Q. And just to clarify -- so when you
6 12:16 think of Viacom as a member studio, although
7 12:16 technically it's a subsidiary, Paramount that's
8 12:16 the member?

9 12:16 A. I thought of Paramount as the member
10 12:16 really. There were -- but we did consider
11 12:16 Viacom and I dealt with Viacom in the same way.
12 12:16 So Paramount was the studio who belonged to the
13 12:16 MPAA. I treated -- I didn't make a distinction
14 12:16 in how I dealt with those who were employed by
15 12:16 Viacom from those who are employed by
16 12:16 Paramount. In fact, in some instances, I
17 12:16 probably wouldn't know who the particular
18 12:16 company was with whom they were employed.

19 12:16 Q. Did the various member studios of
20 12:16 the MPAA share common policies for purposes of
21 12:17 protecting their content on the internet?

22 12:17 MR. KLAUS: Objection. Vague and
23 12:17 ambiguous and also again to the extent that
24 12:17 there's anything that would require you to
25 12:17 reveal privileged, confidential information of

1 12:17 strategy of particular member companies, I
2 12:17 don't think you should reveal that in the
3 12:17 context of this deposition.

4 12:17 A. I didn't understand the question any
5 12:17 way.

6 12:17 BY MR. MCGILL:

7 12:17 Q. That's fair enough. Did you seek in
8 12:17 your capacity as chief strategic officer of the
9 12:17 MPAA, did you seek to create uniformity among
10 12:17 the member studios with respect to copyright
11 12:17 enforcement policies?

12 12:17 MR. KLAUS: Objection. Vague and
13 12:17 ambiguous.

14 12:17 A. No, we did not.

15 12:17 BY MR. MCGILL:

16 12:17 Q. Did the member studios in fact have
17 12:17 separate policies with respect to that issue?

18 12:18 A. Yes. Each of the studios in
19 12:18 addition to working with the MPAA had their own
20 12:18 independent policies that we weren't
21 12:18 necessarily privy to.

22 12:18 Q. The same question with respect to --
23 12:18 let me back up for a second. I take it that
24 12:18 the MPAA from time to time encountered
25 12:18 situations where its content was made available

1 02:12 Q. In response to this update provided
2 02:12 by Mr. Maxcy, you indicate in your E-mail above
3 02:12 that the system you are developing sounds very
4 02:12 strong. Do you see that?

5 02:12 A. I do see it.

6 02:12 Q. Is it your understanding that the
7 02:12 system being described here would later be
8 02:12 known as claimer content?

9 02:12 MR. BASKIN: Objection as to form.
10 02:12 I'm sorry. Where are you?

11 02:12 MR. MCGILL: Well, I have started
12 02:12 with the third paragraph of Chris Maxcy's
13 02:13 E-mail where he's describing -- I don't want to
14 02:13 testify but going through what he described.

15 02:13 MR. BASKIN: What preference did the
16 02:13 system?

17 02:13 MR. MCGILL: Yes. That's in
18 02:13 Mr. Garfield's E-mail above.

19 02:13 THE WITNESS: I think it's the fourth
20 02:13 sentence.

21 02:13 MR. BASKIN: So you're back to the
22 02:13 question with the word system in it.

23 02:13 MR. MCGILL: Yes.

24 02:13 MR. BASKIN: I object to vague and
25 02:13 ambiguous.

1 02:13 A. This system as I was describing it
2 02:13 was both, I don't know what it's called
3 02:13 actually. I'm not familiar with the name.
4 02:13 BY MR. MCGILL:
5 02:13 Q. Let me ask you whether you had
6 02:13 occasion to view videos on YouTube yourself?
7 02:13 A. Yes.
8 02:13 Q. Do you see any cultural or social
9 02:13 benefits that YouTube provides to society?
10 02:13 MR. KLAUS: Objection. Lack of
11 02:13 foundation. Vague and ambiguous.
12 02:13 BY MR. MCGILL:
13 02:14 Q. Let me rephrase. Do you feel as you
14 02:14 sit here today --
15 02:14 MR. BASKIN: I join that one but I
16 02:14 take it you're withdrawing it.
17 02:14 BY MR. MCGILL:
18 02:14 Q. Yes. Do you feel that YouTube
19 02:14 provides any cultural benefits to society?
20 02:14 A. Yes, I do.
21 02:14 Q. Social benefits?
22 02:14 A. Sure. Yes.
23 02:14 Q. For example, it provides --
24 02:14 A. I said, yes.
25 02:14 Q. I'd like to go back to something you

1 02:14 testified to earlier. Specifically you
2 02:14 recalled that someone from YouTube told you
3 02:14 that one reason they were reluctant to come to
4 02:14 an agreement with the MPAA was because
5 02:14 copyright content was, quote, a major lure for
6 02:14 their users. Do you recall that?
7 02:14 A. I do recall that. Yes.
8 02:15 Q. I think you actually testified that
9 02:15 you remember that, quote, very strongly?
10 02:15 A. I did testify to that and it's
11 02:15 accurate.
12 02:15 Q. But you don't recall who made the
13 02:15 statement?
14 02:15 A. I do not.
15 02:15 Q. Do you recall whether it was a man
16 02:15 or woman?
17 02:15 A. I do not.
18 02:15 Q. Was it a face to face meeting or
19 02:15 over the phone?
20 02:15 A. This was over the phone.
21 02:15 Q. Where were you when the call took
22 02:15 place?
23 02:15 A. As I shared earlier with my E-mail,
24 02:15 I spent perhaps two weeks of every month on the
25 02:15 road, so no idea.

1 02:15 Q. Do you recall when this statement

2 02:15 was made?

3 02:15 A. I don't recall the exact dates. I

4 02:15 think I testified earlier based on some of the

5 02:15 E-mail traffic jogging my recollection about

6 02:15 general time proximity but I don't remember the

7 02:15 exact date.

8 02:15 Q. The statement must have surprised

9 02:15 you, didn't it?

10 02:15 A. It did. Yes.

11 02:16 Q. Were you angry at hearing the

12 02:16 statement?

13 02:16 A. No. I'm not angry.

14 02:16 Q. You're Hollywood's copyright

15 02:16 enforcer. Did you throw the phone across the

16 02:16 room or anything?

17 02:16 MR. KLAUS: Objection. I think that

18 02:16 mischaracterizes the testimony. I don't think

19 02:16 he adopted Mr. Sandoval's characterization of

20 02:16 him in his sensationalist headline.

21 02:16 A. I was very clear that I didn't

22 02:16 embrace it. That's not my style. It did stand

23 02:16 out in my mind and it stuck with me because it

24 02:16 seemed rather brazen to say something like

25 02:16 that.

1 02:16 BY MR. MCGILL:
2 02:16 Q. It's a fairly important development,
3 02:16 wouldn't you say?
4 02:16 MR. BASKIN: Objection. Vague and
5 02:16 ambiguous.
6 02:16 A. I don't know if it's important but I
7 02:16 do know that it stood out in my mind because it
8 02:16 was a rather brazen thing to say, that
9 02:17 copyrighted content was the lure and so you
10 02:17 weren't going to do anything about it.
11 02:17 Q. How did you react to the statement?
12 02:17 Do you recall that?
13 02:17 MR. KLAUS: You mean when he was on
14 02:17 the phone call?
15 02:17 A. I don't recall how I reacted. I do
16 02:17 recall that I was disappointed that and
17 02:17 surprised. I was also disappointed that we
18 02:17 spent six months going back and forth on a
19 02:17 pilot and then it didn't happen.
20 02:17 BY MR. MCGILL:
21 02:17 Q. Did you express any of your
22 02:17 disappointments in a letter or E-mail
23 02:17 memorializing this conversation?
24 02:17 MR. BASKIN: To whom?
25 02:17 MR. KLAUS: To whom?

1 02:17 A. To anyone.

2 02:17 MR. KLAUS: Mr. Garfield, you should

3 02:17 exclude from your answer any privileged

4 02:17 communications that you had with the number

5 02:17 studios or with their counsel in relation to

6 02:18 that. If you have information that you recall

7 02:18 right now with communications with

8 02:18 third-parties, you can answer --

9 02:18 MR. MCGILL: If it's okay with you, a

10 02:18 yes or no answer would suffice to that. I'm

11 02:18 not entitled to ask him about the substance

12 02:18 with any lawyers but I would like to know.

13 02:18 MR. KLAUS: I think the substance of

14 02:18 the communication is getting a little close to

15 02:18 the client. Do you want to ask a question to

16 02:18 clarify?

17 02:18 THE WITNESS: My question would be to

18 02:18 you. So why don't we take a break.

19 02:18 MR. KLAUS: I think we should go

20 02:18 outside.

21 02:18 THE VIDEO OPERATOR: Off the record

22 02:18 at 2:18 p.m.

23 02:28 Back on the record at 2:28

24 02:28 MR. KLAUSE: So before the break

25 02:28 there was a question regarding the privilege.

1 02:28 I think the way that the Mr. McGill's phrased
2 02:29 the question, I think that it is acceptable for
3 02:29 you to respond yes or no if you memorialized
4 02:29 the information that you obtained from YouTube
5 02:29 in a communication.
6 02:29 A. Yes, I did.
7 02:29 BY MR. MCGILL:
8 02:29 Q. And that communication was sent to
9 02:29 whom?
10 02:29 MR. KLAUS: Again you can disclose
11 02:29 the recipient of the communication.
12 02:29 A. It was sent to the counsel's lawyers
13 02:29 at the studios.
14 02:29 BY MR. MCGILL:
15 02:29 Q. Did you, yourself ever send a follow
16 02:29 up letter to YouTube as a result of this
17 02:29 conversation?
18 02:29 MR. KLAUS: Objection. Vague and
19 02:29 ambiguous.
20 02:29 A. I did not.
21 02:29 BY MR. MCGILL:
22 02:29 Q. Did you send an E-mail to any of the
23 02:29 contacts that you had over at YouTube saying in
24 02:29 sum and substance this is crazy?
25 02:29 A. No. We had been talking for a long

1 02:29 period of time and Google's conclusions about
2 02:29 what was feasible for YouTube/Google was not
3 02:29 something I thought --

4 02:30 Q. Since you mentioned Google, I just
5 02:30 want to clarify the timeline again. I thought
6 02:30 this conversation may have occurred in or
7 02:30 around April, 2006 is that accurate?

8 02:30 MR. KLAUS: Object.

9 02:30 MR. MCGILL: Which would be
10 02:30 preacquisition?

11 02:30 MR. KLAUS: I think that
12 02:30 mischaracterizes his testimony.

13 02:30 A. Yes. My testimony I think is that I
14 02:30 don't recall the exact time period and I don't
15 02:30 recall whether it was pre or post. So my use
16 02:30 of Google/YouTube is just today's terminology
17 02:30 and what we had switched to in this depo and
18 02:30 not because I knew whether it was pre or post
19 02:30 acquisition.

20 02:30 BY MR. MCGILL:

21 02:30 Q. Because I believe the individuals
22 02:30 you were discussing in relation to that
23 02:30 specific point were Steve Chen, Chris Maxcy,
24 02:30 Zahavah Levine and Kelly Laing and those all
25 02:30 being YouTube employees I thought I would try

1 02:30 and clarify with you whether or not that
2 02:30 conversation helped refresh your recollection
3 02:30 as to when the conversation occurred
4 02:30 preacquisition or post acquisition?
5 02:30 MR. KLAUS: I would just object. My
6 02:31 recollection was that Mr. Garfield had said
7 02:31 Mr. Chen and Ms. Levine and perhaps Mr. Maxcy.
8 02:31 I don't recall whether it's Mr. or Mrs. Liang,
9 02:31 I don't recall Kelly Liang being involved. So
10 02:31 I think it mischaracterizes his testimony but
11 02:31 you should answer his question.
12 02:31 A. Correct. Those were the three
13 02:31 people I recall. I don't recall if Kelly were
14 02:31 on the phone. I also don't recall the exact
15 02:31 timing and whether it were pre or post
16 02:31 acquisition.
17 02:31 BY MR. MCGILL:
18 02:31 Q. Well, notwithstanding this comment
19 02:31 you continued to engage YouTube in a dialogue
20 02:31 about fingerprinting testing; is that right?
21 02:31 A. Yes.
22 02:31 Q. In fact, those conversations
23 02:31 continued up to and including June, 2007; is
24 02:31 that right?
25 02:31 A. Yes. In or about June, 2007 and

SJA-1896

Schapiro Exhibit 164

SJA-1897

From: Lin, David <David_Lin@mpaa.org>
Sent: Wednesday, September 12, 2007 4:54 PM
To: Seidel, Craig <CSeidel@movielabs.com>
Cc: Winter, Craig <Craig_Winter@mpaa.org>
Subject: RE: Google results
Attach: final_minus_file match.xls

That's pretty hot.

Okay I'm not quite finished yet because I haven't merged the match, semicorrect match, false negative, false positive fields but since there aren't that many false positive matches (only one) here are the results.

I also haven't double checked my results but since you wanted something today, here it is.

David Lin

From: Craig Seidel [mailto:CSeidel@movielabs.com]
Sent: Wednesday, September 12, 2007 11:20 AM
To: Lin, David
Subject: Google results
Importance: High

Imagine the temperature of the Sun. Google results are hotter. Can we finish this today?

Thanks,
Craig

SJA-1898

Schapiro Exhibit 165

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 OLIVER WEINGARTEN
TAKEN ON WEDNESDAY, DECEMBER 16, 2009
AT THE OFFICES OF MAYER BROWN INTERNATIONAL, LLP
201 BISHOPSGATE
LONDON EC2M 3AF, UNITED KINGDOM

JOB NO. 18278

A P P E A R A N C E S

FOR THE CLASS PLAINTIFFS, PREMIER LEAGUE:

PROSKAUER ROSE, LLP
By: HAL S. SHAFTEL, Esq.
WILLIAM HART, Esq.
1585 Broadway
New York, NY 10036-8299
212.969.3230
hshaftel@proskauer.com

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

MAYER BROWN, LLP
By: BRIAN M. WILLEN, Esq.
1675 Broadway
New York, NY 10019-5820
212.506.2146
bwillen@mayerbrown.com

MAYER BROWN INTERNATIONAL, LLP
By: MAHISHA RUPAN, Esq.
201 Bishopsgate
London EC2M 3AF
United Kingdom
+44(0)2031303172
mrupan@mayerbrown.com

AOIFE DOWNES, Court Reporter

MIKE PRITCHARD, Videographer

1 A. I think that is why I was asking the question.

2 Q. Did Auditude identify any technology that satisfied
3 the criteria that you were listing here?

4 A. I think they may have had some offering or there would
5 have been some degree of overlap with what we were doing
6 and paying NetResult for, so we decided not to proceed with
7 Auditude.

8 Q. As of June of 2007, were you aware of any technology
9 that existed that would "identify, or at least flag for
10 further review, material that is or may be copyrighted"? 09:53

11 A. Yes.

12 Q. What was that?

13 A. Well, I was aware that YouTube were saying that they
14 had some technology, as were Daily Motion. I think that
15 was, from my recollection, the reason that I would have
16 been asking Mike McGinley the question, and Audible Magic
17 had obviously been around for some time as well.

18 Q. What did you understand about how Audible Magic's
19 technology worked?

20 MR. SHAFTEL: In June of '07? 09:54

21 Q. Sure.

22 A. I am not sure how in-depth I'd looked into Audible
23 Magic, but my understanding was that they were extremely
24 successful in fingerprinting for audio and had moved into
25 audiovisual.

1 Q. Now, when you say "fingerprinting for audio," what are
2 you describing?

3 A. Music.

4 Q. Are you thinking of fingerprinting that looks at the
5 audio track of a particular file?

6 A. That may be an example of the way it works, but I
7 don't have many audio works to protect in my day job.

8 Q. Right. So did Premier League ever explore using
9 audio-based fingerprinting to identify Premier League
10 content?

09:55

11 MR. SHAFTEL: Objection to form.

12 A. Audio-based fingerprinting is for audio, not for
13 audiovisual.

14 Q. So the technology that Audible Magic had wouldn't have
15 been very helpful to Premier League?

16 MR. SHAFTEL: Objection.

17 A. They were certainly -- are we talking now about
18 Audible Magic?

19 Q. Yes.

20 A. We are finished with Auditude?

09:56

21 Q. Yes.

22 A. Audible Magic I believe at that time were very
23 successful with audio and were talking to their customers
24 about audiovisual.

25 Q. But before Audible Magic developed audiovisual

1 filtering, would their technology have been helpful to find
2 Premier League content?

3 MR. SHAFTEL: Objection.

4 A. There may be some instances where it could have been
5 helpful.

6 Q. How so?

7 A. I am trying to think of an example, which is probably
8 very rare. If a particular voice is heard in an
9 audiovisual work that is a continued repost, for example,
10 that might be one way, but I am struggling at this point to 09:57
11 think of many examples.

12 Q. And did Premier League ever use Audible Magic's
13 technology?

14 A. I understand from Audible Magic that they had been
15 trying to have discussions with YouTube and, as I say to
16 all the filtering companies, it's far more beneficial for
17 your technology to be implemented on the websites, because
18 otherwise what is the point of us using your technology if
19 it's not going to get taken down at the other end?

20 Q. So I think my question was: Has Premier League 09:57
21 actually used Audible Magic's technology?

22 A. No.

23 Q. Is this a good time for a break?

24 A. Yes.

25 THE VIDEOGRAPHER: Going off the record. The time is 9:58.

1 (Off the record)

2 THE VIDEOGRAPHER: Back on the record. The time is 10:13.

3 Q. I want to show you a document that we have marked as
4 Exhibit 25.

5 (Exhibit 25 marked for identification)

6 Say for the record this is a document marked PL00178010. Do you
7 recognise this e-mail exchange?

8 MR. SHAFTEL: You still need more time?

9 A. I am still reading through.

10 Q. I apologise. Do you recognise this e-mail exchange? 10:14

11 A. Yes.

12 Q. And is this, at least in part, an e-mail exchange
13 between you and Catherine Mullen from Daily Motion?

14 A. Yes.

15 Q. Who is Catherine Mullen?

16 A. She is an employee of Daily Motion.

17 Q. And I am looking at the e-mail that begins on the
18 bottom of the page that ends in 8009.

19 A. The numbers are cut off.

20 Q. Sorry. It's the e-mail that was sent on October 6th 10:17
21 at 14:12.

22 MR. SHAFTEL: August 6th?

23 A. You said "October".

24 Q. I apologise. August 6th, 2007, at 14:12.

25 A. OK.

1 A. Subsequent to this date. At some point in the last
2 year-and-a-half, I think.

3 Q. Let's look at another exhibit. This will be 29.
4 (Exhibit 29 marked for identification)

5 Q. Do you recall that, in January 2008, YouTube offered
6 to present its video fingerprinting technology to Premier
7 League?

8 A. Can you repeat the question, because I was looking at
9 the document?

10 Q. Of course. The question is, do you recall that, in 10:51
11 January of 2008, YouTube offered to present its video
12 fingerprinting technology to Premier League?

13 A. Yes, I do.

14 Q. And this e-mail from Anthony Zameczkowski dated
15 January 21st, 2008, is that offer?

16 A. Yes.

17 Q. Mr. Zameczkowski wrote, "I think it would be a good
18 opportunity to present you with our new video
19 identification technology and exchange some views."

20 Is that right? 10:52

21 A. Yes.

22 Q. Did the meeting that Mr. Zameczkowski proposed in this
23 e-mail, in fact, occur?

24 A. No.

25 Q. Why was that?

1 A. Anthony contacted the Premier League at too short
2 notice, that nobody was available to meet his inflexible
3 time slots.

4 Q. So it didn't occur in January of 2008. Did it occur
5 at some point after January 2008?

6 A. Yes.

7 Q. Do you recall specifically when the meeting was at
8 which Google presented its video fingerprinting technology
9 to Premier League?

10 A. Not specifically. As I stated, I believe it was in 10:53
11 the last year-and-a-half on the basis of the time that we
12 had discussions, negotiations in the NDA, trialed the
13 content ID, subsequently been using it, it appears it was
14 certainly after January 2008.

15 Q. Did that mean of -- that presentation occurred
16 sometime in 2008, sometime in 2009? I am just trying to
17 get a ballpark.

18 MR. SHAFTEL: Don't guess.

19 A. I really am guessing because so much has happened.

20 Q. And you said that, currently, Premier League is using 10:53
21 the video fingerprinting technology that YouTube offers?

22 A. Yes.

23 Q. When did Premier League start using that technology?

24 A. I am trying to recollect whether it was at the end of
25 last season or it was the beginning of the season. It was

1 certainly around, as far as I can remember - as I say, a
2 lot has happened since - but the middle of last -- no -- we
3 are in 2009 -- it was certainly some point this year.

4 Q. So you think it was sometime after last season ended?

5 A. Well, I am guessing, because it may have been before
6 the season finished. I have a -- I have a recollection
7 that we did trial it -- actually, we did use it before May
8 2009.

9 Q. May of 2009 is when the 2008/2009 season ended?

10 A. Yes, but we were using it certainly before May 2009. 10:55

11 Q. You mentioned Perform Group yesterday?

12 A. Yes.

13 Q. What is Perform Group?

14 A. They do a variety of functions: they produce content,
15 they are content provider and producer, they buy rights,
16 which they sell.

17 Q. They purchase Premier League rights?

18 A. They produce clip rights for the Premier League, but
19 they have bought other rights owners' rights in the past
20 and currently. 10:55

21 Q. Other rights owners' rights with respect to Premier
22 League content?

23 A. No, non-Premier League content.

24 Q. Yes. So what is the relationship between Perform
25 Group and Premier League?

1 A. They produce clips for our licensees that have bought
2 the rights but they also assist myself in creating
3 reference files of live matches to send to YouTube to
4 utilise their fingerprint system.

5 Q. Why is it that Premier League used Perform Group to
6 create reference files to send to YouTube for use in the
7 video fingerprinting system?

8 MR. SHAFTEL: Objection.

9 A. Two reasons, I think: One is that Perform had some
10 sort of pre-existing relationship with YouTube and may have 10:56
11 done the same for others, and, in fact, they may have been
12 suggested by YouTube that we do that route; but secondly,
13 it negated the need for us to interfere with what happens
14 on a match day at the host broadcaster van or IMG. Given
15 that Perform were ingesting a feed, anyway, for the purpose
16 of producing clips for our licensees, it made sense.

17 Q. So that the reference files that Perform Group is
18 providing to YouTube are taken from the live broadcast
19 feed?

20 A. Yes. 10:57

21 Q. And how long is it after the match is played that
22 Perform is providing the reference sample to YouTube?

23 A. They do it in match.

24 Q. How does that work?

25 A. We have had to amend the time frames and format

SJA-1909

Schapiro Exhibit 166

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

THE FOOTBALL ASSOCIATION PREMIER)
LEAGUE LIMITED, BOURNE CO., et al.,)
on behalf of themselves and all)
others similarly situated,)
)
Plaintiffs,)
)
vs.) Case No. 07CV3582
)
YOUTUBE, INC., YOUTUBE, LLC, and)
GOOGLE, INC.,)
)
Defendants.)
_____)

DEPOSITION OF GEORGINA LOTH
NEW YORK, NEW YORK

WEDNESDAY, DECEMBER 2, 2009

REPORTED BY:
ERICA RUGGIERI, CSR, RPR
JOB NO.: 18233

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December 2, 2009

1:08 p.m.

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

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

FOR THE PLAINTIFFS:

PROSKAUER ROSE, LLP

BY: NOAH GITTERMAN, ESQ.

1585 Broadway

New York, N.Y. 10036-8299

(212) 969-3200

ngitterman@proskauer.com

FOR THE DEFENDANTS:

MAYER BROWN, LLP

BY: BRIAN WILLEN, ESQ.

JASON KIRSCHNER, ESQ.

1675 Broadway

New York, New York 10019

bwillen@mayerbrown.com

jkirschner@mayerbrown.com

ALSO PRESENT:

EMILIE MONTANE, FFT

CARLOS KING, Videographer

ABDOU FALL, Interpreter

JOANNA DEZIO, Ph.D, Interpreter

SJA-1913

105

LOTH

Georgina was out on leave during the time when it was -- during the last tournament, when I think this was all set up.

So she could speak to, you know, you know, as she has been, what they signed up for and what she knows, how it works; but in terms of the evaluation, we should probably leave that for Michel tomorrow.

MR. WILLEN: If we have a representation from you that he'll actually be prepared to speak about that, that's fine.

MR. GITTERMAN: Sure.

Q. What volume of content has content ID blocked?

Are you aware of other websites that have tools comparable to CVP, the content verification program?

MR. GITTERMAN: Objection to the form. Vague and ambiguous.

A. We heard about fingerprinting from other websites like INA.

1 LOTH

2 Q. What's INA?

3 A. What is INA?

4 Q. Yes.

5 06:23:07 A. The National Institute of

6 Audio-Visual in France.

7 Q. What type of fingerprinting tool

8 does INA offer?

9 MR. GITTERMAN: Objection to the

10 06:23:07 form.

11 A. I don't know exactly the

12 technology of INA technology.

13 Q. Has FFT ever used Audible Magic?

14 A. Have used what?

15 06:23:07 Q. Audible Magic?

16 A. I don't know about Audible

17 Magic.

18 Q. Has FFT ever used audio

19 fingerprinting?

20 06:23:07 MR. GITTERMAN: Objection to

21 form. Vague and ambiguous.

22 A. No.

23 Q. Is FFT familiar with any sites

24 that use Audible Magic -- I mean, excuse

25 06:23:07 me. Is FFT familiar with any sites that

SJA-1915

107

LOTH

use audio fingerprinting just to screen
content?

A. We know that Daily Motion do it,
06:23:07 but that's all we know.

Q. Daily Motion uses audio fingerprinting to block uploads of videos with certain audio tracks, correct?

MR. GITTERMAN: Objection to
06:23:07 form. Vague and ambiguous. Calls for
speculation.

A. I don't know.

Q. What is your understanding of how Daily Motion uses audio fingerprinting?

MR. GITTERMAN: Objection to
form.

06:23:08 A. For me they listen to the audio on the clips. Then they find some specific, I don't know, specific audio they have of something similar to the video fingerprinting.

Q. Who listens to the audio?

MR. GITTERMAN: Objection to
06:23:08 form. Lacks foundation. Calls for

SJA-1916

Schapiro Exhibit 167

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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

KEITH HAUPRICH
NEW YORK, NEW YORK
THURSDAY, SEPTEMBER 24, 2009

BY: REBECCA SCHAUMLOFFEL
JOB NO. 17720

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

FOR THE LEAD PLAINTIFFS AND
PROSPECTIVE CLASS:

PROSKAUER ROSE LLP

By: WILLIAM HART, ESQ.

1585 Broadway

New York, New York 10036-8299

WHART@PROSKAUER.COM

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

MAYER BROWN LLP

By: ARIC JACOVER, ESQ.

TERRI MAZUR, ESQ.

RICHARD S. PIANKA, ESQ.

1675 Broadway

New York, New York 10019

(212) 506-2146

Ajacover@mayerbrown.com

Tmazur@mayerbrown.com

Rpianka@mayerbrown.com

ALSO PRESENT:

Manuel Abreu, Videographer

---oOo---

1 KEITH HAUPRICH

2 MR. HART: This record is

3 confidential. We will have to

4 deal with that.

5 18:32:28 Q. Were any specific

6 technologies discussed?

7 A. No. Specific technologies

8 were not discussed. Cherry Lane's

9 willingness to participate in an

10 18:32:38 industry measure to get involved with

11 the technology was discussed.

12 Q. What was that industry

13 measure you discussed?

14 A. The use of fingerprinting.

15 18:32:49 Or engaging a software -- engaging in

16 fingerprinting, working with the

17 developer or other provider.

18 Q. Were there any specific

19 developers or providers of

20 18:33:05 fingerprinting technologies that were

21 mentioned?

22 MR. HART: Asked and

23 answered.

24 A. I believe it was Audible

25 18:33:19 Magic that was the name discussed.

1 KEITH HAUPRICH
2 There was no one from Audible Magic in
3 the room.
4 Q. Any others?
5 18:33:28 A. Any other what?
6 Q. Any other technologies?
7 MR. HART: Technology or
8 technology vendors.
9 MR. JACOVER: Technology
10 18:33:33 vendors, thank you.
11 A. No.
12 Q. And you testified earlier
13 that, I just want to clarify, that
14 Cherry Lane has not used Audible
15 18:33:46 Magic's fingerprinting technology; is
16 that correct?
17 A. To date, we have not used
18 their technology, that's correct.
19 MR. JACOVER: Let's take a
20 18:34:01 quick break, and we will wrap up.
21 THE VIDEOGRAPHER: The time
22 is 6:34 p.m. We are going off the
23 record.
24 (Whereupon, a recess was
25 18:51:45 held.)

1 KEITH HAUPRICH

2 THE VIDEOGRAPHER: The time

3 is 6:53 p.m. We are back on the

4 record.

5 18:52:47 MR. JACOVER: We are done

6 with questioning. We just have a

7 quick statement before we wrap up.

8 Plaintiff's counsel, during

9 this deposition, has made a number

10 18:53:01 of privileged assertions relating

11 to Internet monitoring, use of

12 fingerprinting technologies, the

13 issuance of takedowns and Cherry

14 Lane's policies regarding

15 18:53:17 takedowns that -- and regarding

16 its interaction with BayTSP.

17 Those objections, we

18 believe, may be subject to an

19 Agreement or negotiations between

20 18:53:34 the parties, and to the extent

21 that that -- that we come to an

22 Agreement on that issue, we

23 reserve our right to revisit those

24 issues that we are objecting to on

25 18:53:45 privilege grounds with this

SJA-1922

Schapiro Exhibit 168

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 THEODORA MICHAELS
SAN FRANCISCO, CALIFORNIA
SEPTEMBER 24, 2009

JOB NO. 17764

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

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Attorneys for Plaintiff and Witness

250 Hudson Street

8th Floor

New York, New York 10013-1413

BY: ANNIKA K. MARTIN, ESQ.

MAYER BROWN, LLP

Attorneys for Defendant

1675 Broadway

New York, New York 10019-5820

BY: CHRISTINE M. HERNANDEZ, ESQ.

AND

JASON KIRSCHNER, ESQ.

ALSO PRESENT:

NICHOLAS GUZMAN, Videographer

1 11:23:35 A. Watermarking is when there is some sort
2 11:23:39 of electronic tag in the recording that identifies
3 11:23:44 it as a specific work, that can be detected by
4 11:23:47 some sort of program.

5 11:23:49 Q. And does Carlin use watermarking for any
6 11:23:53 of its copyrighted works?

7 11:23:58 A. Well, our -- that question actually
8 11:24:03 doesn't really make sense, because we own songs
9 11:24:07 rather than specific recordings of songs.

10 11:24:11 So, to the extent that the watermark
11 11:24:13 would be in the recording, we wouldn't have
12 11:24:15 anything to do with that.

13 11:24:16 Q. Does Carlin require the use of
14 11:24:18 watermarking technology with any of its licensees?

15 11:24:23 A. Generally, no. There may be instances
16 11:24:27 when we would require that, but I believe that has
17 11:24:31 already been covered in the deposition by Mary
18 11:24:35 McDouwell.

19 11:24:44 Q. What is your knowledge of when Carlin
20 11:24:46 requires this watermarking technology, if at all?

21 11:24:50 A. I really don't know the details on that.

22 11:24:52 MS. MARTIN: Let me know when you want
23 11:30:24 her to clarify the --

24 11:30:24 MS. HERNANDEZ: All right.

25 11:30:24 A. To some extent, you actually clarified

1 11:30:24 it in your first question just now, with regard to
2 11:30:25 BayTSP to the extent that I answered your
3 11:30:25 questions with "I don't know," anyone else at
4 11:30:25 Carlin would also say, "I don't know," because we
5 11:30:25 don't deal directly with them. I just wanted to
6 11:30:25 point that out.

7 11:30:25 Also, with regard to BMI, suits that are
8 11:30:25 brought by BMI on behalf of their members, we do
9 11:30:25 not communicate directly with BMI on those suits,
10 11:30:25 so we have no additional details about them.

11 11:30:25 I also just -- I spoke to someone at
12 11:30:26 Carlin to check on this: The Clark v. Hudson Bay
13 11:30:26 case was regarding the work, "The Shoop Shoop
14 11:30:26 Song, (It's In His Kiss)."

15 11:30:26 MS. MARTIN: Can you sing it for us?

16 11:30:26 A. It is a great song.

17 11:30:26 And, also, in the Farm Club case, we
18 11:30:26 were claimants. That is the extent of my
19 11:30:26 clarifications.

20 11:30:26 Q. Let me follow up, with respect to your
21 11:30:26 first clarification.

22 11:30:27 You represented that no one at Carlin
23 11:30:27 has communications with BayTSP, correct?

24 11:30:27 A. That is correct.

25 11:30:27 Q. But you have also previously stated that

1 11:30:27 Mr. Bienstock responded to a counter-notice
2 11:30:27 received by BayTSP, with respect to one of the
3 11:30:27 takedown notices it had sent on Carlin's behalf;
4 11:30:27 is that correct?
5 11:30:27 A. Yes.
6 11:30:27 Q. How did Mr. Bienstock become aware of
7 11:30:27 the counter-notice?
8 11:30:27 A. I would presume through Lieff Cabraser.
9 11:30:28 Q. Did you discuss that with Mr. Bienstock,
10 11:30:28 as to how he learned that information?
11 11:30:28 A. No.
12 11:30:28 Q. You also stated that Mr. Bienstock
13 11:30:28 responded to the counter-notice?
14 11:30:28 A. Yes.
15 11:30:28 Q. Correct?
16 11:30:28 A. (No response.)
17 11:30:28 Q. Do you know, with respect to
18 11:30:28 transmitting the response, whether he had any
19 11:30:28 communications with BayTSP?
20 11:30:29 A. My understanding is that he was
21 11:30:29 communicating directly with the people who had
22 11:30:29 posted the videos, through BayTSP.
23 11:30:29 Q. Other than YouTube, does Carlin monitor
24 11:30:29 any web sites for infringement of its content?
25 11:30:29 A. No.

SJA-1928

Schapiro Exhibit 169

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

-----X
THE FOOTBALL ASSOCIATION
PREMIER LEAGUE LIMITED, BOURNE
CO., (together with its affiliate
MURBO MUSIC PUBLISHING, INC.),
CHERRY LANE MUSIC PUBLISHING
COMPANY, INC., CAL IV ENTERTAINMENT
LLC, ROBERT TUR d/b/a LOS ANGELES
NEWS SERVICE, NATIONAL MUSIC
PUBLISHERS' ASSOCIATION, THE
RODGERS & HAMMERSTEIN ORGANIZATION,
STAGE THREE MUSIC (US), INC.,
EDWARD B. MARX MUSIC COMPANY,
FREDDY BIENSTOCK MUSIC COMPANY
d/b/a BIENSTOCK PUBLISHING
COMPANY, ALLEY MUSIC CORPORATION,
X-RAY DOG MUSIC, INC., FEDERATION
FRANCAISE DE TENNIS, THE MUSIC
FORCE MEDIA GROUP LLC, THE MUSIC
FORCE LLC, and SIN-DROME RECORDS,
LTD. on behalf of themselves and
all others similarly situated,

Plaintiffs, Case No.
vs. 07-CV-3582

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

Defendants.

-----X
HIGHLY CONFIDENTIAL
VIDEOTAPED DEPOSITION OF HENRY MARX
PALO ALTO, CALIFORNIA
TUESDAY, NOVEMBER 3, 2009
JOB NO. 17941

SJA-1930

HENRY MARX - HIGHLY CONFIDENTIAL

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Henry Marx Palo Alto, CA November 3, 2009

NOVEMBER 3, 2009

9:00 A.M.

HIGHLY CONFIDENTIAL VIDEOTAPED DEPOSITION OF HENRY
MARX, at WILSON, SONSINI, GOODRICH & ROSATI, 601 South
California Street, Palo Alto, California, pursuant to
notice, before me, KATHERINE E. LAUSTER, CLR, CRR, RPR,
CSR License No. 1894.

SJA-1931

HENRY MARX - HIGHLY CONFIDENTIAL

3

Henry Marx Palo Alto, CA November 3, 2009

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

FOR THE CLASS PLAINTIFFS, THE MUSIC FORCE MEDIA
GROUP LLC, THE MUSIC FORCE LLC, SIN-DROME RECORDS,
LTD., and HENRY MARX:

BERNSTEIN, LITOWITZ, BERGER & GROSSMANN, LLP
BY: BENJAMIN GALDSTON, ESQ.
12481 High Bluff Drive, Suite 300
San Diego, California 92130-3582
Telephone: 858.720.3188
Fax: 858.436.0188
beng@blbglaw.com

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

WILSON, SONSINI, GOODRICH & ROSATI
BY: DYLAN J. LIDDIARD, ESQ.
ANTHONY J. WEIBELL, ESQ.
650 Page Mill Road
Palo Alto, California 94304-1050
Telephone: 650.565.3535
Fax: 650.493.6811
dliddiard@wsgr.com
aweibell@wsgr.com

FOR HENRY MARX, THE MUSIC FORCE MEDIA GROUP LLC,
THE MUSIC FORCE LLC, and SIN-DROME RECORDS, LTD.:

LAW OFFICES OF JEFFREY L. GRAUBART, PC
BY: JEFFREY L. GRAUBART, ESQ.
350 West Colorado Boulevard, Suite 200
Pasadena, California 91105
Telephone: 626.304.2800
Fax: 626.304.2807
info@jlgraubart.com

Also Present: KEN REESER, Videographer

1 Henry Marx Palo Alto, CA November 3, 2009

2 17:01:59 Q. And you didn't check with any of The Music

3 17:02:00 Force entities' licensees to see whether or not they

4 17:02:06 had posted any of Bobby Caldwell's content on the

5 17:02:13 Internet; correct?

6 17:02:14 MR. GALDSTON: Objection. Asked and

7 17:02:15 answered, three times now.

8 17:02:16 THE WITNESS: First of all, if they

9 17:02:17 recorded one of his songs, it would be under their

10 17:02:20 name, not Bobby Caldwell's name.

11 17:02:23 I checked Bobby Caldwell. I checked the

12 17:02:27 masters and the works that we own and we control.

13 17:02:30 That's what I checked.

14 17:02:34 BY MR. LIDDIARD:

15 17:02:34 Q. And you have li- -- from time to time, The

16 17:02:37 Music Force entities have licensed out rights to the

17 17:02:40 works-in-suit in this case; correct?

18 17:02:42 A. Yes.

19 17:02:43 Q. And you can't give me a -- you said

20 17:02:47 there's many licensees over the past 30 or -- years

21 17:02:50 or so. Is that an accurate statement?

22 17:02:52 A. Yes.

23 17:02:53 Q. Okay. And what I'm simply trying to get

24 17:02:55 at, have you gone back and checked with any of The

25 17:02:58 Music Force entities licensees to the works-in-suit

SJA-1933

HENRY MARX - HIGHLY CONFIDENTIAL

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1 Henry Marx Palo Alto, CA November 3, 2009

2 17:03:02 in this case to see whether or not they're the ones

3 17:03:05 that are posting Bobby Caldwell's two works-in-suit

4 17:03:10 onto the YouTube site?

5 17:03:12 MR. GALDSTON: Objection. Asked and

6 17:03:12 answered four times now.

7 17:03:16 THE WITNESS: No, but in reviewing

8 17:03:21 Caldwell up there, I did not see anything that would

9 17:03:24 have indicated it was from a third party license.

10 17:03:28 BY MR. LIDDIARD:

11 17:03:29 Q. How -- how do you know that?

12 17:03:31 A. By using my two eyes, and my brain, and my

13 17:03:35 memory. I did not see that.

14 17:03:47 Q. And when you say you "did not see that,"

15 17:03:49 you're referring to looking at the clip on the

16 17:03:51 YouTube site?

17 17:03:53 A. Yes.

18 17:03:53 Q. And did you look at -- to see who the

19 17:03:55 person was who was posting the clip on the YouTube

20 17:03:58 site?

21 17:03:59 MR. GALDSTON: Objection. Asked and

22 17:03:59 answered.

23 17:04:01 THE WITNESS: In some cases, yes, but I

24 17:04:03 did not identify any record company or third party

25 17:04:08 licensee.

SJA-1934

HENRY MARX - HIGHLY CONFIDENTIAL

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1 Henry Marx Palo Alto, CA November 3, 2009

2 17:04:11 BY MR. LIDDIARD:

3 17:04:12 Q. Did you recognize any user name who was

4 17:04:14 posting Bobby Caldwell's content onto the Internet?

5 17:04:18 MR. GALDSTON: Objection. Asked and

6 17:04:18 answered.

7 17:04:21 THE WITNESS: No.

8 17:04:23 BY MR. LIDDIARD:

9 17:04:26 Q. All right. Going back -- so going back to

10 17:04:28 the YouTube's content ID system, what is your

11 17:04:31 understanding of what the YouTube's content ID

12 17:04:35 system is?

13 17:04:36 A. A sham.

14 17:04:37 Q. A sham?

15 17:04:37 A. A sham.

16 17:04:38 Q. Why do you view it as a sham?

17 17:04:40 A. I view it as a sham, because it does not

18 17:04:44 capture the information properly. It does not

19 17:04:50 follow up, and it continues to allow the same people

20 17:04:53 to continue to post, and other people to continue to

21 17:04:58 post the same works.

22 17:05:02 Q. And how do you know that, Mr. Marx?

23 17:05:05 A. I've seen it.

24 17:05:06 Q. You've used YouTube's content ID system

25 17:05:10 yourself?

SJA-1935

HENRY MARX - HIGHLY CONFIDENTIAL

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1 Henry Marx Palo Alto, CA November 3, 2009

2 17:05:11 A. No, sir. I've seen the videos appear

3 17:05:13 again, and again, and again.

4 17:05:15 Q. Any other basis for calling YouTube's

5 17:05:18 content ID system a -- a sham?

6 17:05:21 A. Communication with other people whose

7 17:05:23 works are in contention.

8 17:05:25 Q. Which other people?

9 17:05:31 A. Lawyers.

10 17:05:33 Q. Which lawyers?

11 17:05:35 A. My lawyers.

12 17:05:36 Q. Anyone else?

13 17:05:44 A. That's all I'm going to testify to.

14 17:05:48 Q. Well, is there anyone else other than your

15 17:05:50 lawyers that you've spoken to about --

16 17:05:53 A. I wouldn't know they would call it a sham.

17 17:05:55 I call it a sham.

18 17:05:56 Q. But you've never used YouTube's content ID

19 17:06:02 system yourself; correct?

20 17:06:03 A. No.

21 17:06:03 Q. And how does YouTube's content ID system

22 17:06:07 work?

23 17:06:07 A. I'm not technical.

24 17:06:08 MR. GALDSTON: Object to the form of the

25 17:06:09 question. Lacks foundation.

SJA-1936

HENRY MARX - HIGHLY CONFIDENTIAL

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1 Henry Marx Palo Alto, CA November 3, 2009

2 17:06:10 BY MR. LIDDIARD:

3 17:06:10 Q. So you don't know how it works?

4 17:06:13 A. No.

5 17:06:14 Q. What is YouTube's -- have you heard of

6 17:06:16 YouTube's content verification tool?

7 17:06:19 A. I've heard it.

8 17:06:20 Q. What is it?

9 17:06:21 A. I have no idea.

10 17:06:27 Q. Did you -- did -- okay.

11 17:06:29 A. Apparently it doesn't work.

12 17:06:31 Q. What's the basis for your belief that it

13 17:06:32 doesn't work?

14 17:06:35 A. Well, logic says to me that if it does

15 17:06:38 work, why don't you use it?

16 17:06:41 Q. Do you know if The Music Force entities

17 17:06:44 use the content verification tool?

18 17:06:46 A. I don't know.

19 17:06:48 Q. No? Have you ever checked?

20 17:06:56 A. My attorneys did everything they could to

21 17:06:59 identify to YouTube the problems at hand. My

22 17:07:04 content is still up. So if it works, why aren't you

23 17:07:11 using it?

24 17:07:13 Q. My question was: Do you know if The Music

25 17:07:14 Force entities use the YouTube content verification

1 Henry Marx Palo Alto, CA November 3, 2009

2 17:07:19 tool?

3 17:07:20 A. We did not.

4 17:07:20 Q. Why not?

5 17:07:22 A. We allowed our attorneys to represent our

6 17:07:24 rights and to deal with it accordingly.

7 17:07:27 Q. Okay. Any other reasons for not using

8 17:07:29 YouTube's content verification tool?

9 17:07:32 A. I've already testified there's not enough

10 17:07:35 hours in the day to deal with the YouTube problem,

11 17:07:37 or seconds in the day to deal with the YouTube

12 17:07:41 problem.

13 17:07:44 Q. Any other reasons for not using YouTube's

14 17:07:48 content verification tool?

15 17:07:50 A. That's reason enough.

16 17:07:53 Q. Are there any other reasons why The Music

17 17:07:58 Force entities do not use -- do not use YouTube's

18 17:08:02 content verification tool, other than the reasons

19 17:08:05 you've just provided?

20 17:08:07 A. The best reason -- best reason to not use

21 17:08:10 it is it has no ultimate benefit.

22 17:08:13 Q. I'm asking if there's any other reasons

23 17:08:15 for The Music Force entities' decision not to use

24 17:08:19 YouTube's content verification?

25 17:08:21 A. The fact that it's a sham and it doesn't

SJA-1938

HENRY MARX - HIGHLY CONFIDENTIAL

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1 Henry Marx Palo Alto, CA November 3, 2009

2 17:08:24 work is reason enough.

3 17:08:25 Q. And you believe it's a sham and it doesn't

4 17:08:28 work even though you've never used it before?

5 17:08:30 A. That's right.

6 17:08:31 Q. Okay. Do you believe that YouTube could

7 17:08:40 currently be doing more to identify and remove the

8 17:08:43 unauthorized content that may appear on its website?

9 17:08:47 A. Yes.

10 17:08:48 Q. What exactly could YouTube be doing?

11 17:08:51 A. It could be taking down copyrights that

12 17:08:58 it's not authorized to view.

13 17:09:00 Q. Anything else?

14 17:09:03 A. Yes.

15 17:09:04 Q. What else?

16 17:09:06 A. It could be notifying people on YouTube

17 17:09:10 that if they do that, they'll -- they will not be

18 17:09:13 allowed to post again.

19 17:09:17 Q. Do you know if YouTube has, in fact, a

20 17:09:20 repeat infringer policy?

21 17:09:23 A. I don't know at this point.

22 17:09:25 Q. Anything else that YouTube could be doing?

23 17:09:37 A. I don't know.

24 17:09:40 Q. Has -- have The Music Force entities ever

25 17:09:44 tested or used other technologies to assist in

1 Henry Marx Palo Alto, CA November 3, 2009
2 17:09:48 identifying and removing video content from the
3 17:09:51 Internet?
4 17:09:52 MR. GALDSTON: Object to the form of the
5 17:09:53 question.
6 17:09:59 THE WITNESS: Not to my knowledge.
7 17:10:01 BY MR. LIDDIARD:
8 17:10:05 Q. Have The Music Force entities ever tested
9 17:10:07 any technology that's out on the market to see
10 17:10:11 whether or not it's useful in detecting infringing
11 17:10:15 content that The Music Force entities own the rights
12 17:10:17 to that appear on the Internet?
13 17:10:19 A. Yes.
14 17:10:24 Q. What technologies?
15 17:10:27 A. A website that I testified to, WhoSampled.
16 17:10:33 Q. From about three weeks ago; is that
17 17:10:35 correct?
18 17:10:35 A. Yes.
19 17:10:35 Q. Anything else?
20 17:10:36 A. No.
21 17:10:38 Q. And is that website working pretty well
22 17:10:42 for The Music Force entities?
23 17:10:44 A. It identifies usages, yes, very well.
24 17:10:47 Q. What was the name of that website?
25 17:10:50 A. WhoSampled.com.

1 Henry Marx Palo Alto, CA November 3, 2009

2 17:10:52 Q. Do you know when that website was

3 17:10:55 launched?

4 17:10:56 A. I do not know.

5 17:10:57 Q. Why didn't The Music Force entities start

6 17:10:59 using that website sooner?

7 17:11:02 MR. GALDSTON: Object to the form of the

8 17:11:02 question.

9 17:11:03 THE WITNESS: It didn't learn about it

10 17:11:04 until three weeks ago.

11 17:11:08 BY MR. LIDDIARD:

12 17:11:08 Q. Do you know what technology that

13 17:11:10 particular website uses in order to identify

14 17:11:13 potentially infringing content on the Internet?

15 17:11:16 A. I believe that it uses word of mouth, and

16 17:11:20 people posting the information on the site.

17 17:11:32 Q. Do you know what other tech- -- does the

18 17:11:35 website use any other technology, to your knowledge?

19 17:11:38 A. I'm not technical, but there's technology

20 17:11:41 involved.

21 17:11:42 Q. But you don't know what that technology

22 17:11:43 is?

23 17:11:44 A. No.

24 17:11:45 Q. Have you ever compared that technology to

25 17:11:47 the technology that YouTube uses in its content ID

SJA-1941

Schapiro Exhibit 170

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

THE FOOTBALL ASSOCIATION PREMIER)
LEAGUE LIMITED, BOURNE CO., et al.,)
on behalf of themselves and all)
others similarly situated,)
)
Plaintiffs,)
vs.) Case No.
) 07-CV-3582
)
YOUTUBE, INC., YOUTUBE, LLC, and)
GOOGLE, INC.,)
)
Defendants.)
_____)

VIDEOTAPED DEPOSITION OF
VICTORIA TRAUBE
NEW YORK, NEW YORK
THURSDAY, OCTOBER 8, 2009

BY: REBECCA SCHAUMLOFFEL
JOB NO. 17869

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

FOR THE PLAINTIFFS:

LIEFF, CABRASER, HEIMANN &
BERNSTEIN, LLLP

BY: DAVID S. STELLINGS, ESQ.
ANNIKA MARTIN, ESQ.
250 Hudson Street, 8th floor
New York, New York 10013-1413
Dstellings@lchb.com

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

MAYER BROWN, LLP

By: GREGORY A. FRANTZ, ESQ.
FIDELIS I. AGBAPURUONWU, ESQ.
1675 Broadway
New York, New York 10019
(212) 506-2146
Gfrantz@mayerbrown.com
Fagbapuruonwu@mayerbrown.com

ALSO PRESENT:

Katherine Wagner

Salleen Browne, Videographer

1 VICTORIA TRAUBE
2 flagging these websites?
3 A. I would be guessing.
4 MR. STELLINGS: Don't guess.
5 11:37:18 Q. Do you remember for what
6 purpose he was flagging the websites?
7 MR. STELLINGS: Again, if
8 you know, that's fine. Don't
9 guess.
10 11:37:24 A. I don't know. I would be
11 guessing.
12 Q. Do you know the types of
13 things Mr. Fink was looking for when he
14 was flagging the websites?
15 11:37:38 MR. STELLINGS: Same
16 instruction.
17 A. I don't know. I don't know.
18 Q. Is he still engaged in
19 flagging websites?
20 11:37:44 A. Since I don't know what
21 "flagging websites" means, I don't
22 know.
23 Q. You don't know what flagging
24 websites means?
25 11:37:56 A. I don't know what it means

1 VICTORIA TRAUBE
2 in this context. I could guess.
3 MR. STELLINGS: Again, I
4 don't want you to guess.
5 11:38:02 Q. Has R&H ever used any
6 outside vendors to help track alleged
7 infringement of its content on the
8 Internet?
9 A. R&H, no, we have not.
10 11:38:13 Q. We discussed BayTSP a second
11 ago and you testified that your counsel
12 has retained BayTSP; is that correct?
13 A. That is correct.
14 Q. When I say R&H, I am
15 11:38:27 referring to R&H as well as its agents,
16 including your lawyers. So if you know
17 if your lawyers have retained a
18 particular firm, please include that in
19 your response.
20 11:38:39 A. Well, our lawyers retained
21 BayTSP in connection with this
22 litigation on behalf of the plaintiffs
23 of which R&H is one.
24 Q. Again, including actions
25 11:38:53 that your counsel may have taken, has

1 VICTORIA TRAUBE
2 R&H retained any other outside vendors,
3 including NetResult, Auditude, Audible
4 Magic or any other third-party?
5 11:39:05 A. Not to my knowledge.
6 Q. Do you know why the decision
7 was made to use BayTSP?
8 A. I do not.
9 Q. Do you know when R&H began
10 11:39:38 using BayTSP?
11 A. I don't know when our
12 counsel, as our agent, began to use
13 BayTSP.
14 Q. Do you know whether it was
15 11:39:48 after the litigation began?
16 A. I don't know. Prior to the
17 litigation, they couldn't have been
18 acting as our agent.
19 Q. When you say "they couldn't
20 11:40:02 have been acting as your agent" --
21 A. The law firm. Our counsel.
22 Q. Does R&H have a contract
23 with BayTSP?
24 A. Our counsel may. I don't
25 11:40:19 know.

1 VICTORIA TRAUBE
2 Q. Are you aware of whether R&H
3 is a party to that contract?
4 A. I am not aware.
5 11:40:29 Q. Is there anyone at R&H
6 involved in managing the relationship
7 with BayTSP?
8 A. No. Well, I am sorry, since
9 you are defining R&H as our counsel,
10 11:40:49 our counsel is involved in managing the
11 relationship with BayTSP.
12 Q. Okay. Let me clarify that.
13 Excluding your counsel, is there anyone
14 at R&H that is involved in managing the
15 11:41:01 relationship with BayTSP?
16 A. No.
17 Q. Have you spoken with anyone
18 from BayTSP?
19 A. No.
20 11:41:07 Q. Have you had any
21 communications with anyone from BayTSP?
22 A. No, I have not.
23 Q. Do you know what services
24 BayTSP performs for R&H?
25 11:41:20 A. It is my understanding that

SJA-1948

Schapiro Exhibit 171

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.)
_____)

HIGHLY CONFIDENTIAL
VIDEOTAPED DEPOSITION OF THERESA TORRANCE

LOS ANGELES, CALIFORNIA

WEDNESDAY, JANUARY 21, 2009

JANUARY 21, 2009

8:41 a.m.

HIGHLY CONFIDENTIAL VIDEOTAPED DEPOSITION OF
THERESA TORRANCE, at MAYER BROWN ROWE & MAW,
350 South Grand Avenue, 25th Floor, Los Angeles,
California pursuant to notice, before me,
ANDREA M. IGNACIO HOWARD, CLR, CCRR, RPR, CSR
License No. 9830.

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

FOR NATIONAL MUSIC PUBLISHERS' ASSOCIATION; RODGERS
& HAMMERSTEIN ORGANIZATION; STAGE THREE MUSIC (US),
INC.; EDWARD B. MARKS MUSIC COMPANY; FREDDY
BIENSTOCK MUSIC COMPANY D/B/A BIENSTOCK PUBLISHING
COMPANY, AND ALLEY MUSIC CORPORATION:

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

By: DAVID S. STELLINGS, Esq.

ANNIKA K. MARTIN, Esq.

250 Hudson Street, 8th Floor

New York, New York 10013-1413

(212) 355-9500 akmartin@ichb.com

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

MAYER BROWN, LLP.

By: REGINALD R. GOEKE, Esq.

AMANDA HINE, Esq.

1909 K Street, N.W.

Washington, D.C., 20006-1101

(202) 263-3241 rgoeke@mayerbrown.com;

ahine@mayerbrown.com

SJA-1952

4

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

ALSO PRESENT :

Mitch Lerman, Videographer.

---oOo---

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1 TORRANCE

2 13:19:20 A I'm not sure, but the fingerprinting -- and

3 13:19:23 if I recall, I think there would be a lot of front

4 13:19:28 loading on, you know, our end, as far as

5 13:19:31 fingerprinting the songs, and that's why discussions

6 13:19:33 were having -- weren't or had not been finalized

7 13:19:35 because there would be quite a bit of work entailed, I

8 13:19:39 believe, for Stage Three to get everything

9 13:19:42 fingerprinted or to get the -- get what they need in

10 13:19:45 order to fingerprint.

11 13:19:45 Q And was that a hurdle to doing a deal with

12 13:19:49 TuneSat?

13 13:19:50 A I wouldn't say a hurdle; and, again, it's

14 13:19:52 just my recollection as to why things are -- you know,

15 13:19:55 nothing had been finalized; and, again, I'm just not

16 13:19:59 sure where it stands at this point.

17 13:20:01 Q Right.

18 13:20:02 Did you have any discussions internally about

19 13:20:04 potentially having TuneSat do digital fingerprinting

20 13:20:08 just with respect to Stage Three's most significant

21 13:20:12 works?

22 13:20:14 A No, we never discussed limiting -- limiting

23 13:20:19 it.

24 13:20:19 Q Do you recall any discussions about what

25 13:20:21 TuneSat would have charged to provide a digital

1 TORRANCE

2 13:20:26 fingerprinting service to Stage Three?

3 13:20:28 A I don't recall having a discussion about

4 13:20:31 pricing.

5 13:20:31 Q Do you know whether cost was a factor in

6 13:20:33 Stage Three's decision or lack thereof to go forward

7 13:20:38 with TuneSat?

8 13:20:39 A I don't know that either.

9 13:20:40 Q To your knowledge, to this day, does Stage

10 13:20:49 Three use any sort of digital fingerprinting

11 13:20:50 technology to identify its works that might be

12 13:20:54 available, for example, on the Internet?

13 13:20:56 A Not to my knowledge.

14 13:20:57 Q And do you know why that is?

15 13:21:02 A I don't know.

16 13:21:03 Q Would that have been something that you

17 13:21:05 thought Stage Three should have done?

18 13:21:07 A I know it's something that we were --

19 13:21:10 MR. STELLINGS: Object to the form of the

20 13:21:12 question.

21 13:21:12 Go ahead.

22 13:21:13 THE WITNESS: Okay.

23 13:21:14 MR. STELLINGS: You can answer.

24 13:21:15 THE WITNESS: I know it's something that, you

25 13:21:17 know, Stage Three was interested in -- in looking

1 TORRANCE

2 13:21:19 into.

3 13:21:20 MR. GOEKE: Q. And this is based on

4 13:21:23 discussions with Mr. Conway?

5 13:21:27 A Yeah. I heard Mr. Conway mention it, and

6 13:21:30 Jeff Duncan and I, you know, had mentioned when this

7 13:21:33 came up, and I -- again, there was another entity

8 13:21:36 years before that came up; and, you know, it's never

9 13:21:42 something that you say, "Well, that's a bad idea." So

10 13:21:46 it was --

11 13:21:47 Q And did you, in the course of those

12 13:21:48 discussions or else wise, come to a conclusion as to

13 13:21:52 whether the use of that digital fingerprinting

14 13:21:54 technology would have allowed Stage Three to identify

15 13:21:57 its works on the Internet?

16 13:21:58 A We never got that far.

17 13:22:00 Q Other than digital fingerprinting technology,

18 13:22:09 is there any other copyright protection technology

19 13:22:12 that plaintiff -- that -- sorry -- that Stage Three

20 13:22:15 has considered using?

21 13:22:20 A The one I mentioned earlier that I can't

22 13:22:22 recall the name, and it dates back to Mosaic. It --

23 13:22:27 it was something similar to this. I don't know if it

24 13:22:29 was called digital fingerprinting, but it was

25 13:22:31 something similar, and that's all I remember.

SJA-1956

Schapiro Exhibit 172

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,) CASE NO.
) 07-CV-2103

vs.)
)

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,) CASE NO.
) 07-CV-3582

vs.)
)

YOUTUBE, INC., YOUTUBE, LLC, AND)
GOOGLE, INC.,)
)
DEFENDANTS.)
)

VIDEOTAPED 30(B)(6) DEPOSITION OF
X-RAY DOG MUSIC, INC. through TIMOTHY A. STITHEM
TUESDAY, DECEMBER 8, 2009
LOS ANGELES, CALIFORNIA

Job No. 18195

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1 APPEARANCES OF COUNSEL

2
3 FOR CLASS PLAINTIFFS AND THE DEPONENT:

4 BERNSTEIN LITOWITZ BERGER & GROSSMANN, LLP

5 BY: BENJAMIN GALDSTON, ESQ.

6 12481 High Bluff Drive

7 Suite 300

8 San Diego, California 92130-3582

9 (858) 720-3188

10 (858) 436-0188 (fax)

11 beng@blbglaw.com

12
13 FOR DEFENDANT YOU TUBE:

14 MAYER BROWN, LLP

15 BY: BETH ANN SCHULTZ, ESQ.

16 1675 Broadway

17 New York, New York 10019-5820

18 (212) 506-2355

19 (212) 849-5855 (fax)

20 baschultz@mayerbrown.com

21 - AND -

APPEARANCES (Continued):

MAYER BROWN, LLP

BY: MICHELE K. KEEGAN, ESQ.

1999 K Street, N.W.

Washington, D.C. 20006-1101

(202) 263-3868

(202) 762-4292 (fax)

mkeegan@mayerbrown.com

ALSO PRESENT:

MITCH LERMAN, Videographer

1 16:45 BY MS. SCHULTZ:

2 Q. So you can't answer whether it would be
3 easier for the owner of a work to determine whether
4 it was a work he owned or not?

5 16:45 A. It should be, yes, easier.

6 Q. Did you ever hear of a company called Blue
7 Spike?

8 A. Yes.

9 Q. What is Blue Spike?

10 16:45 A. That was one of the watermarking companies
11 I believe we discussed earlier that I couldn't
12 remember all the names.

13 And we had several conversations with them
14 about either working with us on identifying our
15 16:46 watermarked files or coming up with a system to help
16 encode them in a different way or help set us up
17 with a monitoring system. They were -- sounded like
18 a new company just trying to get their feet wet in
19 the industry.

20 16:46 Q. So you didn't hire Blue Spike?

21 A. No.

22 Q. Do you know if Blue Spike was capable to
23 monitor and track works over the Internet?

24 A. I don't think they were at that time.

25 16:46 Q. How do you know that?

1 16:46 A. My partner had most of the conversations
2 with them, and he relayed to me that he didn't feel
3 that they had the technology in place --

4 Q. Did you --

5 16:46 A. -- in the system.

6 Sorry.

7 I don't think -- he felt they didn't have
8 the system or the technology in place at that time.

9 Q. And do you know what year you were
10 16:47 speaking to Blue Spike?

11 A. I believe that was the summer of 2007.

12 Q. Did X-Ray Dog ever test any company's
13 technology for the use of monitoring and/or tracking
14 its uses on the Internet?

15 16:47 A. On the Internet? Not at that time.

16 Q. At any time?

17 A. Not specifically that I can remember, no.

18 Q. Did you ever hear of the company Audible
19 Magic?

20 16:48 A. Yes.

21 Q. And what is Audible Magic?

22 A. I -- I can't be very specific and probably
23 accurate exactly what they are, but I understood
24 them to be another watermarking or fingerprinting
25 16:48 system software.

1 16:48 Q. And do you know if they were capable of
2 monitoring and/or tracking works over the Internet?

3 MR. GALDSTON: Vague as to time.

4 THE WITNESS: At the time we discussed it
5 16:48 with them, I don't think they had the capabilities.

6 BY MS. SCHULTZ:

7 Q. Do you know if they've ever had the
8 capabilities?

9 A. I would be testifying to something I have
10 16:48 no knowledge of.

11 Q. Is there any company that's available that
12 has the ability to track and/or monitor uses of
13 works on the Internet?

14 A. I haven't worked with any yet and I
15 16:48 haven't found one.

16 Q. But you also said you haven't tested any.

17 A. To test them would be to find them. And
18 the several companies we just discussed didn't claim
19 to have that capability.

20 16:49 Q. I'm going to hand you what's going to be
21 marked as Exhibit 17.

22 (Whereupon Exhibit 17 was marked for
23 identification.)

24 THE WITNESS: Done with this one?

25 16:49 BY MS. SCHULTZ:

1 16:49 Q. Yes.

2 (Discussion off the record.)

3 BY MS. SCHULTZ:

4 Q. It's Bates No. XD00062578.

5 16:50 This appears to be an e-mail attaching an
6 execution copy of --

7 [Reporter requests clarification.]

8 BY MS. SCHULTZ:

9 Q. -- an execution copy of a TuneSat
10 16:50 agreement; is that correct?

11 A. Appears to be.

12 Q. This agreement does not look like it has
13 been signed.

14 Do you know if this agreement was ever
15 16:50 executed?

16 A. I believe it was.

17 Q. Exhibit A to the TuneSat agreement shows a
18 list of monitored media.

19 These seem to be broadcast TV channels; is
20 16:51 that correct?

21 A. Give me a second to look at it.

22 Q. Sure.

23 A. Yep, that looks familiar.

24 Q. And I think you said this before, but
25 16:51 TuneSat has been hired by you to only monitor for

SJA-1965

Schapiro Exhibit 212

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.)
_____)

30(b)(6) VIDEOTAPED DEPOSITION OF STORM DUNCAN
SAN FRANCISCO, CALIFORNIA
WEDNESDAY, JULY 16, 2008

BY: ANDREA M. IGNACIO HOWARD, CSR, RPR, CLR
CSR LICENSE NO. 9830
JOB NO. 15373

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JULY 16, 2008

9:14 a.m.

30(b)(6) VIDEOTAPED DEPOSITION OF STORM DUNCAN,
held at the offices of SHEARMAN & STERLING,
525 Market Street, San Francisco, California,
pursuant to notice, before ANDREA M. IGNACIO
HOWARD, CLR, RPR, CSR License No. 9830.

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

FOR THE PLAINTIFFS VIACOM INTERNATIONAL INC.:

JENNER & BLOCK, LLP

By: BILL HOHENGARTEN, Esq.

SCOTT B. WILKENS, Esq.

1099 New York Avenue, NW, Suite 900

Washington, D.C. 20001

(202) 639-6000 swilkens@jenner.com

FOR THE LEAD PLAINTIFFS AND PROSPECTIVE CLASS:

BERNSTEIN LITOWITZ BERGER & GROSSMANN, LLP

By: JOHN C. BROWNE, Esq.

1285 Avenue Of The Americas

New York, New York 10019

(212) 554-1533 johnb@blbglaw.com

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

WILSON SONSINI GOODRICH & ROSATI, LLP

By: BART E. VOLKMER, Esq.

650 Page Mill Road

Palo Alto, California 94304-1050

(650) 493-9300 bvolkmer@wsgr.com

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

FOR THE DEPONENT:

DUVAL & STACHENFELD, LLP

By: ALLAN N. TAFFET, Esq.

300 East 42nd Street

New York, New York 10017

(212) 692-5523 ataffet@dsllp.com

ALSO PRESENT: Ken Reeser, Videographer.

---oOo---

1 11:02:20 Q And further in the e-mail it says "We need to
2 11:02:24 get this done by Monday"; do you see that?

3 11:02:27 A I do.

4 11:02:27 Q What is your understanding of what that
5 11:02:30 means?

6 11:02:33 A I would -- because there's an attached term
7 11:02:36 sheet as well, the Yellowstone term sheet draft, and
8 11:02:40 the version you printed isn't signed, I don't think,
9 11:02:47 but I would assume that there must have been some sort
10 11:02:49 of agreement on the terms of this term sheet and that
11 11:02:51 they want to get the transaction signed up and
12 11:02:54 announced by the following Monday. I mean, it doesn't
13 11:02:57 say that, but by the following Monday.

14 11:02:59 Q And do you under -- well, as the corporate
15 11:03:03 representative of Credit Suisse, what was Credit
16 11:03:06 Suisse's role going to be in this?

17 11:03:09 A So that isn't -- so it's a general question
18 11:03:13 not referring specifically to this? Okay. Appreciate
19 11:03:16 that.

20 11:03:16 We were going to provide a fairness opinion
21 11:03:18 with respect to this transaction.

22 11:03:20 Q Okay. Can you say briefly what a fairness
23 11:03:22 opinion is?

24 11:03:23 A Sure.

25 11:03:23 A fairness opinion is an opinion of Credit

1 11:03:27 Suisse that the purchase price they are paying is fair
2 11:03:29 to their shareholders from a financial point of view,
3 11:03:32 and actually I don't have the fairness opinion in
4 11:03:34 front of me, so it could be to the Board of Directors
5 11:03:37 or some other constituency, but to some constituency,
6 11:03:43 the transaction is fair from a financial perspective.

7 11:03:45 Q But it would be for an opinion provided to
8 11:03:48 Google or its Board of Directors, and you're doing
9 11:03:50 this for Google; correct?

10 11:03:51 A Yes, that's correct.

11 11:03:52 Q So is it fair to Google or for Google?

12 11:03:54 A Or Google's shareholders, and I'm sure we'll
13 11:03:57 get there at some point. I can answer that more
14 11:03:59 specifically who we addressed it to, but....

15 11:04:02 Q And had Credit Suisse been asked to begin its
16 11:04:16 analyses to provide a fairness opinion before the time
17 11:04:18 of this e-mail?

18 11:04:28 A It's not inherently obvious to me from this
19 11:04:32 e-mail that that's the case, but I would think it
20 11:04:34 would be odd to just get an e-mail with this snip of
21 11:04:38 information only, so I would assume there was a
22 11:04:41 conversation before this e-mail.

23 11:04:42 Q And as the corporate representative of Credit
24 11:04:46 Suisse, can you say when Credit Suisse's engagement
25 11:04:50 began on the project to provide a fairness opinion?

1 11:04:56 A So we had been engaged on -- engaged being a
2 11:05:00 very nonlegal term -- so actively involved on this
3 11:05:04 project for a number of months. I think even prior to
4 11:05:07 August we had conversations with Sequoia and with
5 11:05:10 Google trying to put the two companies together.
6 11:05:13 We had the August set of conversations which
7 11:05:15 we talked about, and then -- and your question might
8 11:05:19 be specifically referring to this. It appears as
9 11:05:22 though they came to some purchase price on this term
10 11:05:25 sheet on October 5th that was attached to the e-mail
11 11:05:28 on October 5th.
12 11:05:29 So I would assume somewhere very close to the
13 11:05:31 vicinity of October 5th they called us up and said,
14 11:05:34 "Hey, can you provide a fairness opinion?"
15 11:05:36 Q Okay. And you mentioned Sequoia in your
16 11:05:40 answer. What is that?
17 11:05:42 A Sure. Is there a date on this, too? It
18 11:05:46 might help clarify it.
19 11:05:48 The -- and just for the benefit, the date on
20 11:05:52 the term sheet has a draft of October 3rd. So if it's
21 11:05:55 a draft of October 3rd, you could probably interpolate
22 11:05:59 something between the 3rd and the 5th as being when
23 11:06:02 they would have called us to do the fairness opinion.
24 11:06:06 Sequoia is a venture capital firm, and I'm
25 11:06:09 going a little bit off of memory here, that's -- if my

1 11:53:08 question.

2 11:53:08 THE WITNESS: The title of the e-mail is

3 11:53:12 "Snowmass video analysis" that was sent from Salman to

4 11:53:16 Salman, and within it there's a detail of videos, I

5 11:53:26 guess, which is -- includes 424, I guess 123 which

6 11:53:31 aren't valid URLs. I'm not sure what that means in

7 11:53:34 terms of the total quantity.

8 11:53:37 And then it says a subdivision of that 424 --

9 11:53:48 sorry. That 424 less the 123 describing them by two

10 11:53:53 -- three categories, a premium category, a removed

11 11:53:58 category, and a no category, which is no copyright but

12 11:54:02 includes commercials, trailers, public service promos

13 11:54:06 and true UGC.

14 11:54:09 Q That's the no category, what you were just

15 11:54:10 describing?

16 11:54:11 A That's right.

17 11:54:12 Q And the premium category, do you understand

18 11:54:15 what that is?

19 11:54:18 A Yeah. It says it's content that is

20 11:54:20 copyrighted either in whole or in substantial part,

21 11:54:23 and it also included, removed where links were -- that

22 11:54:28 were taken down.

23 11:54:31 Q Do you understand what removed where -- were

24 11:54:34 links that were taken down means?

25 11:54:36 A Probably not from a technical perspective,

1 11:54:38 but I would assume, you know, from a business
2 11:54:42 perspective that means that they -- that content was
3 11:54:45 actually taken off of the website.
4 11:54:47 Q And its being -- that removed content is
5 11:54:52 being grouped together with the premium content for
6 11:54:56 the purposes of this analysis; correct?
7 11:54:58 MR. VOLKMER: Objection to the form of the
8 11:54:59 question.
9 11:54:59 THE WITNESS: Can you repeat the question?
10 11:55:03 Sorry.
11 11:55:11 (Whereupon, record read by the Reporter as
12 11:55:11 follows:
13 11:54:49 "Question: And its being -- that removed
14 11:54:51 content is being grouped together with the
15 11:54:54 premium content for the purposes of this
16 11:54:56 analysis; correct?")
17 11:55:12 THE WITNESS: Correct.
18 11:55:12 MR. HOHENGARTEN: Q. It gives a total number
19 11:55:16 of videos that are premium or -- and/or removed as 189
20 11:55:24 of the videos sampled; correct?
21 11:55:29 A Correct.
22 11:55:29 Q And that's 63 percent of the videos sampled?
23 11:55:32 MR. VOLKMER: Objection to the form of the
24 11:55:33 question.
25 11:55:33 MR. HOHENGARTEN: Q. According to this?

1 11:55:36 MR. VOLKMER: And renew that objection.

2 11:55:39 THE WITNESS: No. The way I read it, it's

3 11:55:40 63 percent of the net total, not the gross total. So

4 11:55:43 the percentage of the total would be 189 over 424

5 11:55:47 which would be a smaller percentage than the 63.

6 11:55:50 MR. HOHENGARTEN: Okay. Let me step back.

7 11:56:02 Q As the corporate representative of Credit

8 11:56:04 Suisse, what is your understanding of the purpose of

9 11:56:07 providing this information to Credit Suisse?

10 11:56:09 MR. VOLKMER: Objection to the form of the

11 11:56:11 question.

12 11:56:11 THE WITNESS: This is more information

13 11:56:18 that -- that is being provided to us coincident with,

14 11:56:22 I think, with what we just discussed in Exhibit 11 to

15 11:56:29 help us facilitate doing some modeling around the

16 11:56:33 valuation or the financial performance first, and then

17 11:56:36 the valuation second of YouTube.

18 11:56:39 MR. HOHENGARTEN: Q. And it's a -- one way

19 11:56:41 of breaking down video content on YouTube into

20 11:56:45 categories; correct?

21 11:56:47 A Yes.

22 11:56:48 Q And it's relevant to the valuation insofar as

23 11:56:53 the ability to monetize these different categories may

24 11:56:58 be different; correct?

25 11:57:00 A That is one way they could be differentiated,

1 11:57:04 yes.

2 11:57:04 Q Do you know whether in your final valuation
3 11:57:08 models, which we'll get to, but at this point whether,
4 11:57:13 in fact, you differentiated between these categories
5 11:57:18 according to the ability to monetize them?

6 11:57:21 A It would probably be easier to answer that
7 11:57:22 question when I have that stuff in front of me.

8 11:57:25 Q Okay.

9 11:57:25 A You want me to guess?

10 11:57:27 Q No, I don't want you to guess.

11 11:57:28 A Okay.

12 11:57:29 Q But -- but having worked on this project, I
13 11:57:31 thought you might be able to give me a -- an answer
14 11:57:33 based on what you know right now.

15 11:57:34 A Okay. Yeah.

16 11:57:35 MR. VOLKMER: I'm going to object to the form
17 11:57:37 of this question --

18 11:57:37 THE WITNESS: Okay.

19 11:57:38 MR. VOLKMER: -- to the extent there's a
20 11:57:40 question pending.

21 11:57:41 MR. HOHENGARTEN: Well, it was my original
22 11:57:43 question, actually. I can read it.

23 11:57:51 Q Do you know whether in your final valuation
24 11:57:53 models, which we'll get to, but at this point whether,
25 11:57:58 in fact, you differentiated between these categories

1 11:58:01 according to the ability to monetize them?

2 11:58:06 MR. VOLKMER: I'm going to renew the

3 11:58:08 objection.

4 11:58:12 THE WITNESS: Thank you.

5 11:58:13 Let's wait until we get to those, and then

6 11:58:15 I'll give you a better answer.

7 11:58:16 MR. HOHENGARTEN: Q. Let's walk through the

8 11:58:17 breakdown here though --

9 11:58:19 A Sure.

10 11:58:19 Q -- still.

11 11:58:19 We started to talk about it but I want to try

12 11:58:22 to go through it a little more methodically to make

13 11:58:25 sure that I understand the information that's being

14 11:58:27 supplied here.

15 11:58:28 A Okay.

16 11:58:29 Q There is -- the first line gives a gross

17 11:58:30 total and it says "424"; correct?

18 11:58:36 A That's correct.

19 11:58:36 Q In parenthesis, and you mentioned this in a

20 11:58:40 prior answer, it says "Includes 123 that aren't valid

21 11:58:45 URLs"; correct?

22 11:58:47 A That's correct also.

23 11:58:47 Q Do you understand what the 424 refers to?

24 11:58:55 A My recollection of the 424 is that it's a --

25 11:58:59 it says at the top of the e-mail, "Some manual

1 11:59:02 analysis we did," was that it was a study that the
2 11:59:07 Google folks had performed studying, you know, a
3 11:59:10 number of randomly generated or chosen videos, and
4 11:59:16 that 424 is the number that they had randomly chosen
5 11:59:19 and -- and were able to categorize with these
6 11:59:25 subcategorizations.

7 11:59:27 Q Okay. And the "includes 123 that aren't
8 11:59:30 valid URLs," do you understand what the meaning of
9 11:59:36 that is?

10 11:59:38 A I would assume -- I don't know YouTube's
11 11:59:42 technology underpinnings well enough, but I would
12 11:59:46 assume that meant at one point there was a video that
13 11:59:49 had been put up and it kind of looks as though you can
14 11:59:52 click on it, but when you click on it, that video is
15 11:59:55 no longer there, so it's no longer valid. That would
16 11:59:58 be my understanding.

17 11:59:59 Q And that number is subtracted from -- the 123
18 12:00:03 that aren't valid URLs are -- are subtracted from the
19 12:00:07 gross total to provide a net total of videos of 301;
20 12:00:13 is that correct?

21 12:00:13 A That's correct.

22 12:00:14 Q And then that net total of 301 videos that's
23 12:00:18 regard -- that treated as 100 percent for purposes of
24 12:00:20 the analysis; right?

25 12:00:21 A That's correct, yes.

1 12:00:22 Q And then that's divided into two categories.
2 12:00:26 The first category is called "No," and the second
3 12:00:29 category is called "Pram/Rem," which I believe means
4 12:00:37 premium/removed; correct?
5 12:00:40 A Yes.
6 12:00:40 MR. VOLKMER: Object to the form of the
7 12:00:41 question.
8 12:00:43 MR. HOHENGARTEN: Q. The first category is
9 12:00:44 "No"; correct?
10 12:00:46 A Yes.
11 12:00:46 Q And the second category is labeled here
12 12:00:48 "Prem/rem"; correct?
13 12:00:53 A There's actually just two labelings. So the
14 12:00:55 definition down below expands upon that to say that it
15 12:00:58 means premium/removed.
16 12:01:03 Q Okay. And that category of premium/removed
17 12:01:08 under this analysis is 63 percent of the net total of
18 12:01:12 videos sampled; correct?
19 12:01:15 MR. VOLKMER: Objection to the form of the
20 12:01:17 question.
21 12:01:37 (Whereupon, record read by the Reporter as
22 12:01:37 follows:
23 12:01:04 "Question: Okay. And that category of
24 12:01:05 premium/removed under this analysis is
25 12:01:11 63 percent of the net total of videos

1 12:01:14 sampled; correct?")

2 12:01:37 THE WITNESS: So the -- the premium/removed

3 12:01:40 category is 189 of the 424, and 189 of the 301. So

4 12:01:46 the percentage 63 percent is 63 percent of the net

5 12:01:49 total, so hopefully that answers your question, I

6 12:01:52 think.

7 12:01:52 MR. HOHENGARTEN: Q. It's 63 percent of the

8 12:01:54 net total which excludes the URLs that aren't valid?

9 12:01:58 A That's correct, which is, I think, the

10 12:02:00 definition of net total for purposes of this, which I

11 12:02:03 think you established as well, so sure.

12 12:02:08 Q And the "No" category is 37 percent of that

13 12:02:11 net total; correct?

14 12:02:14 A That's correct, yes.

15 12:02:15 Q So setting aside the URLs that aren't valid,

16 12:02:21 the remaining sample of videos, the net total, breaks

17 12:02:25 down into 63 percent that are premium removed and

18 12:02:28 37 percent that are no; correct?

19 12:02:30 A That's correct.

20 12:02:31 Q And the premium/removed category includes

21 12:02:37 content that is copyrighted in whole or substantial

22 12:02:42 part, plus removed, which are links that were taken

23 12:02:44 down; right?

24 12:02:48 A Yeah, that's how it's categorized here

25 12:02:51 from -- from the Google folks.

1 12:05:17 MR. HOHENGARTEN: Okay.

2 12:05:23 Q Did Credit Suisse itself review any YouTube

3 12:05:27 videos or sample of videos in connection with

4 12:05:30 providing a fairness opinion?

5 12:05:32 A No.

6 12:05:34 Q Do you know, as the corporate representative

7 12:05:38 of Credit Suisse, did you receive any other

8 12:05:42 information about a breakdown of video categories from

9 12:05:45 Google other than this e-mail, Exhibit 13, that we've

10 12:05:50 just been talking about?

11 12:05:52 MR. VOLKMER: Object to the form of the

12 12:05:54 question.

13 12:06:48 THE WITNESS: We might have received other

14 12:06:49 categorization. I guess when we go through more

15 12:06:53 documents, that might help refresh my memory. Sitting

16 12:06:55 here right now, I can't remember which documents might

17 12:06:58 have given us additional information.

18 12:06:59 Certainly there's some additional kind of

19 12:07:01 characterization of the videos in Exhibit 8 that you

20 12:07:04 showed me previously, but it wasn't re-categorizing it

21 12:07:12 any differently than had been shown here.

22 12:08:02 MR. HOHENGARTEN: Mark exhibit -- what was

23 12:08:04 that one?

24 12:08:05 THE WITNESS: 13 was the last one.

25 12:08:06 MR. HOHENGARTEN: Exhibit 14, which is CSSU

1 12:08:11 4069 through 4074.

2 12:08:22 (Document marked Duncan Exhibit 14

3 12:08:34 for identification.)

4 12:08:34 MR. HOHENGARTEN: Sorry.

5 12:10:29 THE WITNESS: Okay.

6 12:10:30 MR. HOHENGARTEN: Q. Exhibit 14 is an e-mail

7 12:10:39 chain with an attachment; correct?

8 12:10:48 A There were two attachments, it looks like,

9 12:10:50 but yes, at least on the attached line up top it says

10 12:10:54 there's two.

11 12:10:55 Q Yes, you're right.

12 12:10:57 The attachments at the top says "agua

13 12:11:00 model.xls" and "agua model.xls," the same names;

14 12:11:05 correct?

15 12:11:05 A They do say the same name.

16 12:11:09 Q Either with attachment or attachments.

17 12:11:18 A Sure. Absolutely. That's a little confusing

18 12:11:21 as well but yes, it looks like there are either one or

19 12:11:24 two attachments. There are definitely two

20 12:11:26 attachments. I'm not sure if they're different and

21 12:11:28 named the same or named the same and the same.

22 12:11:30 Q And the -- the e-mail is being sent by James

23 12:11:34 Kim of Credit Suisse to Salman Ullah of Google and

24 12:11:39 Storm Duncan and James Kim of -- of Credit Suisse;

25 12:11:43 right?

1 12:11:45 A And David Drummond.

2 12:11:46 Q Thank you, and David Drummond.

3 12:11:48 A And a whole bunch of people cced as well.

4 12:11:51 Q And the e-mail says "Attached please find the

5 12:11:54 latest version of the model"; correct?

6 12:11:57 A It does.

7 12:11:58 Q And do you know what's meant by "the

8 12:12:02 model" there?

9 12:12:05 A It appears to be the -- the beginning of a

10 12:12:12 model or more than the beginning. A substantial -- a

11 12:12:16 substantially further enhanced draft of a model

12 12:12:21 incorporating some monetization around YouTube.

13 12:12:30 Q And what kind of a model is this? Is it a

14 12:12:34 cash flow model?

15 12:12:47 A This has a -- what is the Bates numbers? Is

16 12:12:52 that the name again?

17 12:12:53 Q Yes, that's what those numbers at the bottom

18 12:12:56 are.

19 12:12:56 A Bates Nos. 4071 and 4072 seem to be a

20 12:13:01 projection model. 4073 has a valuation. Hard to tell

21 12:13:06 if that's a discounted cash flow model or not, but it

22 12:13:08 appears that it could be, and then 4074 is a further

23 12:13:17 projection model with again some valuation at the

24 12:13:23 bottom that -- hard to tell if it's a DCF or not.

25 12:13:27 Q When you say "DCF," you mean discounted cash

1 12:13:29 flow?

2 12:13:40 A Yes.

3 12:13:40 Q And looking at Bates page 4071 --

4 12:13:52 A Okay.

5 12:13:53 Q -- this is the first of the first two

6 12:13:55 pages -- of the two pages which you said were a

7 12:14:07 projection model; right?

8 12:14:10 A Yes.

9 12:14:10 Q And what's being projected here?

10 12:14:27 A The project of the financial performance of

11 12:14:35 YouTube, and I'm not sure if it's as part of Google or

12 12:14:41 not. It doesn't specifically say.

13 12:14:47 Q Okay. And so to do that projection, is it

14 12:14:52 looking at projecting revenue that YouTube would be

15 12:14:56 able to bring in in the future?

16 12:14:59 A Yes.

17 12:15:00 Q And then is it also looking at the cost of

18 12:15:03 that revenue or expenses to get net revenue measured

19 12:15:08 in a variety of ways?

20 12:15:12 A It does come to net revenues well, and then

21 12:15:15 also further costing that down to the EBIDTA level and

22 12:15:19 the EBIT level, and the net operating profit after tax

23 12:15:24 level free cash flow, which is NOPAT and then FCF at

24 12:15:28 the very bottom.

25 12:15:32 Q And for a layperson, are those different ways

1 12:15:35 of measuring revenue minus types of expenses or other
2 12:15:41 costs that you would subtract from revenue?

3 12:15:44 MR. VOLKMER: Object to the form of the
4 12:15:45 question.

5 12:15:46 THE WITNESS: The -- there's a number of
6 12:15:50 different things below the net revenue line, and I
7 12:15:57 think there might be cost extracted to get to net
8 12:15:59 revenue, and then a supplemental set of costs to get
9 12:16:04 to other items, such as EBIDTA, EBIT, and even
10 12:16:10 including cap X expenses, so not only cost, but
11 12:16:15 investments as well.

12 12:16:15 Q So there are different ways of measuring
13 12:16:18 operating profit or profit; is that right?

14 12:16:23 A You're saying there are different ways?

15 12:16:25 Q These different -- the lines here at the
16 12:16:29 bottom after you've taken out revenues and then you
17 12:16:35 have the EBIDTA and notepad you referred to.

18 12:16:37 A Either operating profit or cash flows. So an
19 12:16:39 example, NOPAT, which is down there at the bottom, net
20 12:16:42 operating profit after taxes, and FCF, which is free
21 12:16:45 cash flow, would also exclude investments such as
22 12:16:49 capital expenditures.

23 12:16:51 So either operating profit tier point or just
24 12:16:58 cash flows in general even after investments.

25 12:16:58 Q And to make that projection, one of the

1 12:17:08 inputs is revenue that can be derived from different
2 12:17:15 types of video content on YouTube; is that right?
3 12:17:18 MR. VOLKMER: Object to the form of the
4 12:17:20 question.
5 12:17:29 (Whereupon, record read by the Reporter as
6 12:17:29 follows:
7 12:17:00 "Question: And to make that projection, one
8 12:17:08 of the inputs is revenue that can be derived
9 12:17:12 from different types of video content on
10 12:17:17 YouTube; is that right?")
11 12:17:29 THE WITNESS: Sorry. Which projection?
12 12:17:32 MR. HOHENGARTEN: Q. The projection analysis
13 12:17:35 on 40 -- Bates pages 4071 and 4072 of Exhibit 14.
14 12:17:44 You -- you said it looks at revenue and then
15 12:17:47 subtracts various things from it, I believe you
16 12:17:49 testified in response to my prior questioning. It
17 12:17:52 looks at projections of revenue.
18 12:17:57 A I guess you want to restate your question,
19 12:17:59 because we got a little bit -- we got far away from it
20 12:18:00 now. I'm sorry.
21 12:18:04 Q As one step in this projection analysis --
22 12:18:10 A Okay.
23 12:18:10 Q -- you are projecting the revenue that
24 12:18:11 YouTube can derive from various types of video
25 12:18:15 content; is that correct?

1 12:18:16 A If you say -- if by "you," you mean Credit
2 12:18:18 Suisse, then the answer is no. If by "you," you mean
3 12:18:22 a person in theory that's doing this model, then yes,
4 12:18:25 this model is to project revenue as a part of it.
5 12:18:31 Q Okay. And why isn't that something Credit
6 12:18:32 Suisse is doing?
7 12:18:34 A We're responsible for the financial analysis.
8 12:18:36 The revenue projections are coming from other sources.
9 12:18:41 Q From Google and YouTube?
10 12:18:43 A That --
11 12:18:47 MR. VOLKMER: Object to the form of the
12 12:18:48 question.
13 12:18:48 MR. HOHENGARTEN: Q. Where are the -- where
14 12:18:49 are the projections coming from?
15 12:18:51 A Probably an infinite answer to your question,
16 12:18:54 unfortunately, I would assume there is a lot of market
17 12:18:57 data that goes into this, you know, so yeah, I
18 12:19:08 think -- I think there's some market data that goes
19 12:19:10 into this, and then from Google and then from YouTube
20 12:19:13 is probably the -- probably the three primary sources
21 12:19:24 that would account for, I guess, most of that.
22 12:19:31 Q Did Credit Suisse design this model,
23 12:19:33 projection model, on CSSU 4071 to 72?
24 12:19:39 A I'm sorry. By design it, what do you mean by
25 12:19:42 that? Are you asking me like did we actually type it

1 12:19:45 in, or did we actually design like construct or the
2 12:19:48 essence of it?

3 12:19:50 Q I think I'm asking the latter.

4 12:19:52 A Okay. We're just financial people at the end
5 12:19:57 of the day. So we take the input and the way the
6 12:19:59 business works and put it into an Excel spreadsheet.
7 12:20:01 So this is an Excel spreadsheet and it's possible that
8 12:20:06 we actually built this Excel model, but the construct
9 12:20:09 for how the business works, how you reflect how the
10 12:20:11 business works, and all of the inputs for it would not
11 12:20:14 be something that Credit Suisse would have been
12 12:20:17 responsible for creating.

13 12:20:18 Q Looking at page 004071 still, there is a top
14 12:20:54 section of that. It's described as "Video/Page View
15 12:20:58 Data."

16 12:20:59 A Okay.

17 12:20:59 Q And the bottom of that section is captioned
18 12:21:04 "Video Content Split." Do you see what I'm -- where
19 12:21:07 I'm looking?

20 12:21:07 A I do.

21 12:21:08 Q That divides it into percent premium and
22 12:21:12 percent nonpremium; correct?

23 12:21:17 A It does, yes.

24 12:21:18 Q And the percent premium content is projected
25 12:21:23 to be 60 percent in each of the years shown on this

1 12:21:27 model; is that correct?

2 12:21:28 A That's correct.

3 12:21:28 Q And the percent nonpremium content is

4 12:21:30 projected to be 40 percent in each of the years shown

5 12:21:33 on this model; correct?

6 12:21:35 A Correct.

7 12:21:35 Q And those two categories account for all

8 12:21:37 content projected for these years on the -- on this

9 12:21:41 model; correct?

10 12:21:42 MR. VOLKMER: Object to the form of the

11 12:21:43 question.

12 12:21:44 MR. HOHENGARTEN: Q. They add up. They add

13 12:21:45 up to 100 percent?

14 12:21:50 A So which question is it? The first one or

15 12:21:52 the second one?

16 12:21:53 Q I think they mean the same thing.

17 12:21:57 MR. VOLKMER: Bill, can you just --

18 12:21:57 MR. HOHENGARTEN: Yeah.

19 12:21:58 MR. VOLKMER: Rephrase that.

20 12:21:59 MR. HOHENGARTEN: Q. I guess I'm having

21 12:22:03 trouble understanding what the lack of understanding

22 12:22:05 is.

23 12:22:06 A Well, I can explain the lack of

24 12:22:07 understanding, if that's a -- if that's a question as

25 12:22:09 well.

1 12:22:10 Q Yes, it would help me probably --

2 12:22:11 A Okay.

3 12:22:12 Q -- to ask a clearer question.

4 12:22:14 A Okay. I don't have a calculator to calculate

5 12:22:16 that. All that is is mathematically 60 and

6 12:22:19 mathematically 40 that does add up to 100 percent, but

7 12:22:24 I think your specific question was, does that account

8 12:22:26 for 100 percent of the video?

9 12:22:27 I don't know that without having a

10 12:22:28 calculator, because I think that then gets trailed

11 12:22:32 through the model in other places, and I have to see

12 12:22:33 what it actually applies to.

13 12:22:45 Does that help clarify my problem?

14 12:22:47 Q Are you aware of other types of video content

15 12:22:51 other than premium and nonpremium that are factored

16 12:22:53 into this model?

17 12:22:54 A Let me -- if you just -- this is a

18 12:22:57 mathematical question, so I could probably answer that

19 12:22:59 for you if you give me just a few minutes here.

20 12:23:14 May I grab my calculator, if that's all

21 12:23:17 right?

22 12:23:17 Q Absolutely.

23 12:23:18 A Thanks. It doesn't appear to add up to your

24 12:25:03 answer being correct, at least I can't get it that

25 12:25:07 way. Oh, that's annual. I'm sorry. My bad. I

1 12:25:14 apologize.

2 12:25:15 So net daily. That's 313 times 365 minus --

3 12:25:27 yeah, I think it actually does. So the premium and

4 12:25:32 nonpremium video content split accounts for

5 12:25:36 100 percent of what's titled up above, roughly, net

6 12:25:40 daily video streams.

7 12:25:41 Q Okay. And you were having a little trouble

8 12:25:44 figuring that out, because at one place it's

9 12:25:47 characterized -- they're giving an annual number and

10 12:25:50 in another place a daily number; right?

11 12:25:52 A Yeah, exactly.

12 12:25:52 Q I had that same problem earlier.

13 12:25:54 A And you were just going to let me hang out.

14 12:25:57 Q I thought you'd figure it out faster than I

15 12:26:00 could explain.

16 12:26:00 And you said before that the data, the

17 12:26:08 projections, were given to Credit Suisse or derived by

18 12:26:13 Credit Suisse from a variety of sources for this;

19 12:26:16 correct?

20 12:26:17 A That's correct.

21 12:26:17 Q And where did the 60/40 premium/nonpremium

22 12:26:25 video content split data or projection come from?

23 12:26:29 A My recollection is that it was a rough

24 12:26:31 summary of Exhibit 13's study.

25 12:26:38 Q And to recall, Exhibit 13 is -- is the

1 12:27:00 Snowmass video analysis that we discussed earlier from

2 12:27:04 Salman Ullah; correct?

3 12:27:06 A That's correct.

4 12:27:06 Q And there it showed, well, just for the way

5 12:27:12 the link comes here, premium or removed was

6 12:27:15 63 percent, and "No" was 37 percent; correct?

7 12:27:18 A That's correct.

8 12:27:19 Q And so when you say this is a rough

9 12:27:25 approximation of that, that 63 percent for premium has

10 12:27:29 been rounded to 60, and the 37 percent for nonpremium

11 12:27:32 has been rounded to 40; correct?

12 12:27:34 MR. VOLKMER: Objection to the form of the

13 12:27:35 question.

14 12:27:35 THE WITNESS: I don't know that they were

15 12:27:39 rounded to get to 60/40. I think this was a source of

16 12:27:44 how they came up with 60/40. There might have been

17 12:27:47 other factors as well.

18 12:27:50 MR. HOHENGARTEN: Okay.

19 12:27:51 Q Are there any other factors you can think of

20 12:27:53 right now?

21 12:27:56 A I think that they had spoken with the YouTube

22 12:27:59 folks, and we had all spoken with them around premium

23 12:28:02 and nonpremium contents. So I'm sure there was a lot

24 12:28:05 of conversations and triangulations of trying to come

25 12:28:08 up with, you know, the right approximation to use for

1 12:28:10 this.

2 12:28:12 Q And at least as of this draft of the model,

3 12:28:16 this was what you came up with, that YouTube and

4 12:28:21 Google came up with as the right approximation?

5 12:28:24 MR. VOLKMER: Objection to the form of the

6 12:28:25 question.

7 12:28:28 THE WITNESS: The -- I don't know that

8 12:28:30 YouTube came up with this, so -- because I think you

9 12:28:33 had a lot of people in your question, but yes, this is

10 12:28:36 what we decided to use or were told to use, I guess,

11 12:28:38 is the right way of putting it.

12 12:28:40 MR. HOHENGARTEN: Okay.

13 12:28:40 Q Who told you to use it?

14 12:28:41 A I would be pretty sure that that was a Google

15 12:28:45 assumption right here.

16 12:28:47 Q Okay. Mark Exhibit 15.

17 12:29:07 A We're done with this one?

18 12:29:08 Q Yes, but you may want to keep it handy.

19 12:29:10 A Okay. Handy like the sandwiches are over

20 12:29:16 there?

21 12:29:16 Q And we'll pause pretty quickly.

22 12:29:24 A I notice that they're just behind the video

23 12:29:27 camera.

24 12:29:27 MR. VOLKMER: Talking to you. It's

25 12:29:29 psychological technique.

1 12:29:29 (Document marked Duncan Exhibit 15
2 12:29:30 for identification.)
3 12:29:30 MR. HOHENGARTEN: Exhibit --
4 12:29:31 THE WITNESS: Yeah, psyche ops.
5 12:29:33 MR. HOHENGARTEN: Q. Exhibit 15 is CSSU 4075
6 12:29:36 through 4077.
7 12:30:34 A Okay.
8 12:30:34 Q Okay. Actually, I would like you to go back
9 12:30:38 to look at Exhibit 14 that we were just looking at,
10 12:30:40 just the front page of it.
11 12:30:42 A Okay.
12 12:30:42 Q That's the cover e-mail to the model we were
13 12:30:48 looking at, and there it says "We will also have a
14 12:30:52 call tomorrow (Saturday) at 9am pacific to discuss the
15 12:30:57 model and to have a status update"; correct?
16 12:30:59 A Yes.
17 12:31:00 Q And if you then turn to Exhibit 15, which you
18 12:31:04 were just given, that's an e-mail on Saturday,
19 12:31:09 October 7th at 1:49 p.m. from James Kim to James Kim,
20 12:31:15 Salman Ullah, Storm Duncan, and David Drummond, copies
21 12:31:19 to some other people; correct?
22 12:31:23 A Yes.
23 12:31:23 Q And it also has an attachment "agua
24 12:31:31 model.xls"; right?
25 12:31:32 A Yes.

1 13:17:29 for identification.)

2 13:17:29 THE WITNESS: Okay.

3 13:17:29 MR. HOHENGARTEN: Q. And Exhibit 17. First

4 13:17:39 page of Exhibit 17 is a cover e-mail with an

5 13:17:42 attachment; is that correct?

6 13:17:44 A Yes.

7 13:17:44 Q And it's being sent by Amrit Rao to Storm

8 13:17:53 Duncan, yourself, cc Chris Scarborough and James Kim;

9 13:17:57 right?

10 13:18:00 A Yes, that's correct.

11 13:18:01 Q On October 9th, 2006; correct?

12 13:18:07 A Yes.

13 13:18:07 Q And it -- subject is "Green Board Materials";

14 13:18:15 right?

15 13:18:16 A Correct.

16 13:18:16 Q And then there's an attachment which is

17 13:18:23 indicated that its file name is "Materials for Green

18 13:18:26 Board.pdf; correct?

19 13:18:30 A That's correct as well.

20 13:18:31 Q And the remainder of Exhibit 16 after the

21 13:18:35 e-mail, after the first page, is that attachment;

22 13:18:38 correct?

23 13:18:40 A Exhibit 17 --

24 13:18:42 Q I'm sorry.

25 13:18:42 A -- and yes.

1 13:18:48 Q Thank you for correctly identifying the
2 13:18:50 exhibit number as 17.
3 13:18:51 A Absolutely.
4 13:18:58 Q And is this presentation -- this is a
5 13:19:01 presentation to the Google board about the YouTube
6 13:19:07 acquisition; is that right?
7 13:19:09 MR. VOLKMER: Objection to the form of the
8 13:19:10 question.
9 13:19:11 THE WITNESS: This is a presentation to the
10 13:19:15 Google board, and I think it is our fairness
11 13:19:20 presentation.
12 13:19:22 MR. HOHENGARTEN: Q. Your fairness
13 13:19:24 presentation?
14 13:19:25 A Yes.
15 13:19:25 Q And what is a fairness presentation?
16 13:19:30 A It's a -- as you recall from the earlier
17 13:19:34 topics that we discussed, we were asked to provide a
18 13:19:37 fairness opinion, and this is the book that allows
19 13:19:41 them to understand how we came to our fairness
20 13:19:43 opinion.
21 13:19:49 Q In -- was this book or presentation actually
22 13:19:53 presented to the Google board?
23 13:19:55 A It was.
24 13:19:55 Q Were you present for that presentation?
25 13:20:10 A I was.

1 13:20:10 Q Was this book or presentation presented to
2 13:20:13 other Google personnel at any other time?
3 13:20:18 MR. VOLKMER: Objection to the form of the
4 13:20:19 question.
5 13:20:24 (Whereupon, record read by the Reporter as
6 13:20:24 follows:
7 13:20:11 "Question: Was this book or presentation
8 13:20:12 presented to other Google personnel at any
9 13:20:16 other time?")
10 13:20:28 THE WITNESS: I don't recall. It wouldn't
11 13:20:36 surprise me if we also shared it with the operating
12 13:20:39 team of Salman Ullah, Sean Dempsey, but I don't recall
13 13:20:48 specifically if we did or didn't.
14 13:20:55 MR. HOHENGARTEN: Q. We'll also come back to
15 13:20:56 this --
16 13:20:57 A Okay.
17 13:20:57 Q -- but let's just get a couple more exhibits.
18 13:21:02 We'll mark Exhibit 18, which is CSSU 2882
19 13:21:10 through 2885.
20 13:21:24 (Document marked Duncan Exhibit 18
21 13:21:25 for identification.)
22 13:21:25 THE WITNESS: Thank you. Okay.
23 13:21:47 MR. HOHENGARTEN: Q. Exhibit 18 is a cover
24 13:21:49 e-mail from James Kim to Salman Ullah and Matthew --
25 13:21:57 matthew@google.com and Sean Dempsey; correct?

1 14:10:25 "Question: And the projection model, a key
2 14:10:28 assumption for it is that 60 percent of the
3 14:10:31 total video streams on the Yellow or YouTube
4 14:10:33 website are premium; correct?")
5 14:10:54 MR. TAFFET: Objection.
6 14:10:59 MR. HOHENGARTEN: Q. Yeah, do you understand
7 14:11:01 the question?
8 14:11:03 A I'll -- I'll answer with enough so that if --
9 14:11:06 I'm not answering your question, then you can rephrase
10 14:11:09 it, if that's all right?
11 14:11:10 Q Absolutely.
12 14:11:11 A The projection model in Exhibit 16 has as an
13 14:11:15 assumption that 60 percent of it -- of the video
14 14:11:19 content split is premium and 40 percent is nonpremium.
15 14:11:23 Q Okay.
16 14:11:23 A Okay.
17 14:11:23 Q And that's also reflected on the statement of
18 14:11:27 "Key Yellow Revenue Assumptions" in the board
19 14:11:29 presentation; correct?
20 14:11:30 A That is correct.
21 14:11:35 Q And the projection model -- and it may -- you
22 14:11:44 have Exhibit 16 in front of you, too, I see.
23 14:11:46 So the projection model in Exhibit 16 also
24 14:11:50 assumes that in 2007 10 percent of those premium
25 14:11:58 videos have gotten -- Google -- YouTube --

1 14:12:07 MR. VOLKMER: I'm going to object.

2 14:12:09 MR. HOHENGARTEN: Yeah.

3 14:12:09 MR. VOLKMER: I don't -- I don't want to mess

4 14:12:11 up your flow.

5 14:12:12 MR. HOHENGARTEN: Q. The -- the projection

6 14:12:13 model in Exhibit 16 also assumes that in 2007, for the

7 14:12:17 premium video content, 10 percent of the videos, the

8 14:12:22 premium videos, have been permissioned by content

9 14:12:27 partners for monetization; is that right?

10 14:12:30 MR. VOLKMER: Object to the form of the

11 14:12:32 question.

12 14:12:36 THE WITNESS: So the Exhibit 16 in 2007 for

13 14:12:39 premium video content has 10 percent permissioned

14 14:12:44 content from partners.

15 14:12:46

16 14:13:06

17 14:13:10

18 14:13:14

19 14:13:18

20 14:13:18

21 14:13:31

22 14:13:35

23 14:13:39

24 14:13:42 A The -- I guess there's two ways to answer

25 14:13:47 your question, one of which I can't and one of which I

1 14:13:51 [REDACTED]
2 14:13:55 [REDACTED]
3 14:13:58 The concept is that it takes time to
4 14:14:01 negotiate with the partners for permission to use the
5 14:14:03 content before they can use it and actually derive
6 14:14:06 revenues from it.
7 14:14:08 So that's the increased number, is that over
8 14:14:14 time that they will be able to increase that
9 14:14:15 monetization.
10 14:14:20 Q The Exhibit 16 projection model shows under
11 14:15:03 "Premium Video Content" a CPM; do you see that?
12 14:15:08 A I do.
13 14:15:09 Q And that rises -- it starts at [REDACTED] in 2007
14 14:15:16 and rises to [REDACTED] in 2011; correct?
15 14:15:20 A Correct.
16 14:15:21 Q And you said before that CPM, it meant, cost
17 14:15:24 per thousand, and it's an advertising revenue value?
18 14:15:31 MR. VOLKMER: Object to the form of the
19 14:15:33 question.
20 14:15:33 THE WITNESS: I believe before I hedged my
21 14:15:38 confidence in knowing the exact terminology, and in
22 14:15:41 the second part I didn't know.
23 14:15:43 MR. HOHENGARTEN: Q. You don't know whether
24 14:15:44 it's advertising revenue?
25 14:15:46 A Oh, I thought you said advertising

1 14:15:48 terminology.

2 14:15:50 Q Does it -- does it -- does it represent a

3 14:15:53 form of advertising revenue?

4 14:15:55 MR. VOLKMER: Object to the form of the

5 14:15:58 question.

6 14:15:58 THE WITNESS: The CPM?

7 14:16:00 MR. HOHENGARTEN: Q. Yes.

8 14:16:04 A I'm probably not the expert on that topic,

9 14:16:06 because I'm not in the advertising space, but my

10 14:16:08 understanding is that it is the cost per thousand ads

11 14:16:11 you sell.

12 14:16:12 So I would think that it's correlated -- it

13 14:16:15 correlates to the advertising revenue, but I'm not an

14 14:16:17 advertising expert, so I don't want to give you

15 14:16:19 comfort -- comfort in that.

16 14:16:24 Q If you would look down under "Nonpremium

17 14:16:27 Content" in this same Exhibit 16.

18 14:16:30 A Okay.

19 14:16:31 Q And there's also a line or row for "CPM"

20 14:16:33 there; correct?

21 14:16:34 A Yes.

22 14:16:35 Q And the CPM values for nonpremium content in

23 14:16:40 this model, this projection model, start at [REDACTED] in 2007

24 14:16:45 and rise to [REDACTED] in 2011; right?

25 14:16:49 A Correct.

1 14:29:18 A Okay.

2 14:29:23 Q And is Exhibit 19 a draft of the board

3 14:29:28 presentation, the final version of which is in

4 14:29:34 Exhibit 18?

5 14:29:35 MR. VOLKMER: Object to the form.

6 14:29:43 MR. HOHENGARTEN: Sorry.

7 14:29:43 Q The final version of which is in Exhibit 17.

8 14:29:47 A Did you want to rephrase that whole question?

9 14:29:49 Q Yeah.

10 14:29:49 Is -- is Exhibit 19 a draft of the board -- a

11 14:29:57 board presentation concerning the fairness opinion?

12 14:30:01 MR. VOLKMER: Object to the form.

13 14:30:11 THE WITNESS: It's a draft of materials that

14 14:30:13 led up to eventually and incorporated into a board

15 14:30:19 presentation, it looks like to me.

16 14:30:22 MR. HOHENGARTEN: Okay.

17 14:30:22 Q I'd just like you to look at page 3335 --

18 14:30:26 A Okay.

19 14:30:26 Q -- of Exhibit 19, and this is a page

20 14:30:35 concerning "Key Revenue Assumptions in Yellow Model";

21 14:30:39 correct?

22 14:30:39 A Correct.

23 14:30:39 Q And in this draft under "Premium Video,"

24 14:30:45 there is a definition of premium content; correct?

25 14:30:49 A There is, yes.

1 14:30:49 Q And it reads "Premium content is copyrighted
2 14:30:57 content such as movie/TV trailers, music videos,
3 14:31:01 etc"; correct?

4 14:31:03 A Correct.

5 14:31:04 Q And the assumption in this draft about the
6 14:31:07 percentage of total video streams that are premium
7 14:31:10 videos is that there will be 60 percent -- let me
8 14:31:14 rephrase that, actually.

9 14:31:15 In this draft, 60 percent of total video
10 14:31:18 streams in Yellow website are premium is assumed;
11 14:31:22 correct?

12 14:31:22 A Correct.

13 14:31:23 Q Now, if we look back at the board
14 14:31:31 presentation, which I was asking you about before we
15 14:31:34 gave you this, which is Exhibit 17 --

16 14:31:43 A Okay.

17 14:31:43 Q -- and look again back at Bates page 3570,
18 14:31:50 here it's also the case that 60 percent of total video
19 14:31:53 streams on the Yellow website are premium. It's also
20 14:31:57 assumed here; correct?

21 14:31:58 A That's correct.

22 14:31:58 Q And so that number, the 60 percent of video
23 14:32:05 streams on Yellow website are premium, that assumption
24 14:32:08 does not change between the draft in Exhibit 19 and
25 14:32:10 the final version in Exhibit 17; correct?

1 14:32:13 A Correct.

2 14:32:15 Q The definition of "premium content" in
3 14:32:17 Exhibit 19 does not appear in the final version in
4 14:32:21 Exhibit 17; correct?

5 14:32:24 A Correct.

6 14:32:24 Q Do you have any reason to believe that the
7 14:32:26 definition changed between exhibit -- the draft in
8 14:32:31 Exhibit 19 and the final version in Exhibit 17?

9 14:32:34 MR. VOLKMER: Object to the form of the
10 14:32:35 question.

11 14:32:36 THE WITNESS: I guess a couple of things.
12 14:32:39 One is I'm not sure why it wasn't carried over so that
13 14:32:43 in and of itself might mean the definition changed. I
14 14:32:47 don't know the answer to that, and the second
15 14:32:48 supporting, I guess, statements or what I just said is
16 14:32:51 that this as an example on -- on Exhibit 19 says
17 14:32:57 "Copyrighted content such as movie/TV trailers, music
18 14:33:01 videos, etc.," my recollection is that in the early
19 14:33:03 document nonpremium content included trailers, if I
20 14:33:07 remember right, although we might want to go back
21 14:33:09 there and cross-reference, because I'm getting
22 14:33:11 definitioned out a little bit or definition confused a
23 14:33:15 little bit.

24 14:33:15 So that might be another reason it might have
25 14:33:18 changed between the two. I think, you know, it's --

1 14:33:20 on Exhibit 17, the premium video was stuff that
2 14:33:27 required providers to allow Yellow to monetize their
3 14:33:34 content. So I think that's how I would view the
4 14:33:36 definition on page nine in the absence of having
5 14:33:40 something specifically defining.

6 14:33:50 MR. HOHENGARTEN: Q. And now still sticking
7 14:33:51 with Exhibit 17, the final board model, you can set
8 14:33:54 Exhibit 19 aside.

9 14:33:56 A Okay.

10 14:33:57 Q Sticking with Exhibit 17, the final board
11 14:34:00 model on page 3570, just to confirm, the assumption of
12 14:34:08 the projection model there is that in 2007, 10 percent
13 14:34:12 of the premium content providers have given that
14 14:34:15 permission that's required for Yellow to monetize the
15 14:34:19 content; correct?

16 14:34:21 MR. VOLKMER: Object to the form.
17 14:34:41 (Whereupon, record read by the Reporter as
18 14:34:41 follows:

19 14:33:57 "Question: Sticking with Exhibit 17, the
20 14:33:59 final board model on page 3570, just to
21 14:34:07 confirm, the assumption of the projection
22 14:34:09 model there is that in 2007, 10 percent of
23 14:34:12 the premium content providers have given
24 14:34:15 that permission that's required for Yellow
25 14:34:17 to monetize the content; correct?")

1 14:34:41 THE WITNESS: Okay. You ready?

2 14:34:48 MR. HOHENGARTEN: Yeah.

3 14:34:48 THE WITNESS: Sorry. Didn't know if you had

4 14:34:50 to rephrase that.

5 14:34:50 I think the assumption is here; assumes

6 14:34:52 10 percent of premium content providers allow Yellow

7 14:34:55 to monetize their content in 2007.

8 14:35:20 MR. HOHENGARTEN: Q. Let's continue down the

9 14:35:22 page on -- in Exhibit 17, Bates page 3570. There's

10 14:35:28 a -- a row called "Run of Site Ads"; correct?

11 14:35:36 A Yes.

12 14:35:36 Q Can you explain how "Run of Site Ads" factor

13 14:35:47 into the projection model that's on Exhibit 16?

14 14:35:50 MR. VOLKMER: Object to the form.

15 14:35:51 THE WITNESS: Okay. So when you say how they

16 14:36:34 factor in, you mean in terms of like what percentage

17 14:36:37 of page views or run of site, or how -- how do you

18 14:36:44 want me to walk you how it fact -- how it factors in?

19 14:36:48 MR. HOHENGARTEN: Q. Well, I'm wondering

20 14:36:49 what a "Run of Site Ad" is to begin with actually.

21 14:36:51 Maybe that will be helpful to verify.

22 14:36:54 A And that might be a better question for

23 14:36:55 Google than for me, because again this is -- all this

24 14:36:58 stuff is which is why -- it's helpful for me to have

25 14:37:01 the definition of discounted cash flow which is kind

1 14:37:03 of our responsibility versus the key revenue

2 14:37:06 assumptions which came from them.

3 14:37:08 So run of site is something that is a

4 14:37:11 definition that might be better to get from them.

5 14:37:14 Q Okay. Let me -- looking at just the model,

6 14:37:17 the projection model in Exhibit 16 now, rather than

7 14:37:20 the board materials.

8 14:37:24 A Sorry.

9 14:37:25 MR. TAFFET: It's this.

10 14:37:25 THE WITNESS: Sorry. Okay.

11 14:37:26 MR. HOHENGARTEN: Q. And I'm sorry we have

12 14:37:27 to keep going back and forth.

13 14:37:29 A No, no. That's fine. No worries.

14 14:37:31 Q These are tied together, but some information

15 14:37:33 is in one and some is in the other.

16 14:37:35 A Yeah.

17 14:37:35 Q Are -- based on information given in this

18 14:37:41 projection model, are run of site ads shown on every

19 14:37:49 watch page on YouTube?

20 14:37:52 MR. VOLKMER: Object to the form of the

21 14:37:54 question.

22 14:37:54 THE WITNESS: On every watch.

23 14:38:17 MR. HOHENGARTEN: Q. I realize you may need

24 14:38:19 your calculator because of this difference between one

25 14:38:22 figure shown in annual numbers and one in daily

1 15:51:16 THE WITNESS: You good with that question?

2 15:51:20 MR. HOHENGARTEN: Q. If you understood it.

3 15:51:22 I'll rephrase it if you didn't.

4 15:51:24 A Yeah, if you could rephrase it. I think --

5 15:51:25 Q Okay. Looking at page 1865 --

6 15:51:27 A Yeah.

7 15:51:27 Q -- we've been discussing a number of lines.

8 15:51:30 The last one reads "Don't target because we can't

9 15:51:33 profit from these pages"; correct?

10 15:51:35 A Uh-huh.

11 15:51:35 Q Do you recall the significance of that

12 15:51:38 statement?

13 15:51:39 A I think by "significance" you mean the

14 15:51:41 importance of it?

15 15:51:42 Q What does it mean?

16 15:51:43 A Okay. The meaning of it. Sorry. Got it.

17 15:51:45 Thank you.

18 15:51:45 It -- my gut tells me that there's something

19 15:52:04 that I missed between the "No copyright issues DMCA

20 15:52:08 line," and "Don't target because we can't profit from

21 15:52:10 these messages --" I'm sorry "-- from these pages,"

22 15:52:13 because it seems as though what they're saying here is

23 15:52:15 that some of this stuff was monetized or there weren't

24 15:52:21 copyright issues, and then other stuff wasn't targeted

25 15:52:23 for revenue monetization, because they can't profit

1 15:52:25 from those pages.

2 15:52:27 Q And to the best of your recollection,

3 15:52:30 somebody from YouTube would have explained that to

4 15:52:32 you?

5 15:52:32 A Yes.

6 15:52:32 Q But you don't recall who specifically?

7 15:52:34 A No.

8 15:52:37 MR. HOHENGARTEN: I think we need to change

9 15:52:38 video tapes.

10 15:52:42 THE VIDEOGRAPHER: This is the end of video

11 15:52:44 tape number three in the continuing deposition of

12 15:52:47 Storm Duncan on July 16th, 2008. The time is

13 15:52:55 3:52 p.m.

14 15:52:56 We are off the record.

15 15:52:57 (Recess taken.)

16 16:04:54 THE VIDEOGRAPHER: This is the beginning of

17 16:04:57 video tape number four in the continuing deposition of

18 16:05:01 Storm Duncan on July 16th, 2008. The time is

19 16:05:06 4:05 p.m. We're off the record -- we're back on the

20 16:05:10 record.

21 16:05:11 MR. HOHENGARTEN: Okay.

22 16:05:12 Q Continuing with Exhibit 21, if you would turn

23 16:05:18 to Bates page 1957, and do you see roughly in the

24 16:05:32 middle of the page there's a line that begins with

25 16:05:35 "60 percent"?

1 16:05:35 A Uh-huh.

2 16:05:35 Q Can you read that line and the next line

3 16:05:38 please?

4 16:05:38 A Sure. "60 percent is 'Premium.'

5 16:05:42 Professionally produced. Legitimate and

6 16:05:49 illegitimate."

7 16:05:50 Q And do you recall what the significance or

8 16:05:52 meaning of those notes are?

9 16:05:57 MR. VOLKMER: Object to the form of the

10 16:05:58 question.

11 16:06:01 MR. HOHENGARTEN: Q. Did you understand my

12 16:06:02 question?

13 16:06:02 A The meaning of those notes are? So are you

14 16:06:05 asking what do I mean by "legitimate and

15 16:06:09 illegitimate," or --

16 16:06:09 Q That would be part of my question certainly.

17 16:06:11 A You want to break it down into parts then?

18 16:06:14 Q What do you mean by "legitimate,

19 16:06:17 illegitimate"?

20 16:06:18 A Okay. I think.

21 16:06:19 MR. VOLKMER: I'm going to object to the form

22 16:06:20 of that question.

23 16:06:22 You can proceed.

24 16:06:23 THE WITNESS: Can you read it back?

25 16:06:24 MR. HOHENGARTEN: Q. Actually. I'll just --

1 16:06:26 A Okay.

2 16:06:28 Q What is meant in these notes by "legitimate"

3 16:06:31 and "illegitimate"?

4 16:06:34 A Okay. Okay. My recollection is that there's

5 16:06:39 professionally produced content which is by, you know,

6 16:06:42 a studio or someone professional that would own that

7 16:06:46 content, and legitimate and illegitimate is whether it

8 16:06:51 was put up in agreement with YouTube and that producer

9 16:06:53 or put up by someone else without the agreement of

10 16:06:57 that producer.

11 16:06:58 Q Okay. And does -- does -- do those notes

12 16:07:02 reflect something that somebody told you as opposed to

13 16:07:04 your own thoughts?

14 16:07:09 A Definitely something that someone told me as

15 16:07:12 opposed to my own thoughts to your question.

16 16:07:16 Q And do you recall who?

17 16:07:32 A I don't.

18 16:07:34 Q Do you recall whether it was somebody from

19 16:07:36 YouTube?

20 16:08:07 A I don't.

21 16:08:07 Q Do you recall whether it was somebody from

22 16:08:10 Google?

23 16:08:10 A I don't.

24 16:08:10 Q And do you recall roughly when this

25 16:08:14 information was imparted to you?

1 16:08:20 MR. VOLKMER: Object to the form of the
2 16:08:21 question.
3 16:08:22 THE WITNESS: Somewhere between Thursday and
4 16:08:24 Monday of that weekend.
5 16:08:26 MR. HOHENGARTEN: Q. Some time during the --
6 16:08:28 during the due diligence process for your fairness
7 16:08:30 evaluation?
8 16:08:31 A That's correct.
9 16:08:31 Q Mr. Browne is now going to ask a few
10 16:08:37 questions.
11 16:08:38 A Okay.
12 16:08:38 Q He represents the class.
13 16:08:40 MR. BROWNE: Okay. Can we go off the record
14 16:08:43 for a few minutes? Thanks.
15 16:08:45 THE VIDEOGRAPHER: The time is 4:08 p.m.
16 16:08:47 We are off the record.
17 16:08:48 (Recess taken.)
18 16:10:41 (Document marked Duncan Exhibit 22
19 16:11:01 for identification.)
20 16:11:01 THE VIDEOGRAPHER: The time is 4:11 p.m.
21 16:11:04 We're back on the record.
22 16:11:06 EXAMINATION BY MR. BROWNE
23 16:11:06 MR. BROWNE: Q. Good afternoon, Mr. Duncan.
24 16:11:08 My name is John Browne. I represent the English
25 16:11:11 Premier League and the Class in this case, and I just

1 16:11:14 have a few questions for you to follow-up on
2 16:11:19 Mr. Hohengarten's questions of earlier today.
3 16:11:22 I placed in front of you a document that
4 16:11:25 we've marked as Exhibit 22. It's Bates stamped CSSU
5 16:11:28 003105.
6 16:11:30 Do you have that document in front of you?
7 16:11:33 A I do.
8 16:11:33 Q Okay. Do you -- do you recognize that
9 16:11:34 document?
10 16:11:36 A No. You mean in terms of like do I remember
11 16:11:40 having it come to me back then?
12 16:11:41 Q Well, can -- can you describe it for me? Do
13 16:11:44 you -- do you know what it is?
14 16:11:45 A Oh, it's just an e-mail. Sorry, yeah. I
15 16:11:49 misunderstood your question, but it's an e-mail from
16 16:11:53 Zach Maurus to my colleague Chris Scarborough and
17 16:11:57 myself on October 6th.
18 16:11:57 Q Okay. And do you have any reason to believe
19 16:11:59 that you did not receive this e-mail on or about
20 16:12:01 October 6th?
21 16:12:03 A No reason to believe that, no.
22 16:12:04 Q Okay. But I take it you don't have any
23 16:12:06 independent recollection of -- of getting it?
24 16:12:09 A Not -- not at that time.
25 16:12:12 Q Okay. And if you look down in the second

1 16:17:36 issues that you -- that you described to me, were
2 16:17:39 aware in the time frame that you received this e-mail
3 16:17:41 of -- of copyright issues that were facing YouTube?
4 16:17:44 A Yeah, yes.
5 16:17:45 Q And what were those?
6 16:17:47 MR. VOLKMER: Object.
7 16:17:48 THE WITNESS: Sorry.
8 16:17:48 MR. VOLKMER: Object to the form of the
9 16:17:49 question.
10 16:17:50 THE WITNESS: I think we had just talked
11 16:17:52 about the primary copyright issue which is whether
12 16:17:56 something is put up on the site by a publisher. We
13 16:17:59 have an agreement with that publisher or that it was
14 16:18:02 put up by someone else that didn't have the permission
15 16:18:04 from that publisher to put it up.
16 16:18:07 MR. BROWNE: Q. Is that something that you
17 16:18:09 guys looked into, that Credit Suisse looked into in
18 16:18:12 connection with due diligence?
19 16:18:13 A I think -- I think that's what we spent a lot
20 16:18:16 of time earlier today on when we were going through
21 16:18:19 the model which is the percentage. You know, Google's
22 16:18:23 goal was to -- to -- you know, let's go back to
23 16:18:28 Exhibit 16 if that's -- that's what I remember.
24 16:18:32 You know, Google's goal on this premium video
25 16:18:35 content was to have the permission content which was

1 16:18:37 that [REDACTED] we spent so much time on
2 16:18:41 earlier to get the permission to have that content on
3 16:18:44 that legitimate side, the permission side, and that's
4 16:18:48 what I think the whole purpose of that entire
5 16:18:50 conversation was earlier today was how do you -- how
6 16:18:53 do they anticipate monetizing that.
7 16:18:55 MR. BROWNE: Right.
8 16:18:56 Q Other than that -- correct me if I'm wrong --
9 16:18:57 other than YouTube or, I'm sorry, Google giving you
10 16:18:59 some information about what was premium content and
11 16:19:02 how much was not premium content on the site, and then
12 16:19:06 Credit Suisse using that information to create the
13 16:19:09 model, what, if anything else, did Credit Suisse do to
14 16:19:16 diligence copyright issues?
15 16:19:17 MR. VOLKMER: Object to the form of the
16 16:19:18 question.
17 16:19:21 THE WITNESS: So we had a lot of
18 16:19:22 conversations. You know, we -- we aren't copyright
19 16:19:26 attorneys, so we didn't do copyright diligence, if
20 16:19:29 that's the specific answer to your question.
21 16:19:30 You know, we obviously spent a lot of time
22 16:19:32 that day with YouTube and with Google talking about
23 16:19:35 the monetization plan which is, I think, the source of
24 16:19:37 how this model came about.
25 16:19:39 MR. BROWNE: Okay.

1 16:19:40 Q Did you spend a lot of time that day or any
2 16:19:42 other day talking with anyone at Google or YouTube
3 16:19:46 about specific copyright issues aside from the
4 16:19:50 monetization point?
5 16:19:56 A So is there a copyright issue where they're
6 16:20:00 not monetizing it you're saying?
7 16:20:02 Q Let me -- let me just start asking a
8 16:20:04 different way.
9 16:20:04 A Okay.
10 16:20:05 Q You -- you dealt with the monetization of the
11 16:20:07 copyright -- copyrighted material, is that correct, in
12 16:20:12 your valuation model?
13 16:20:13 MR. VOLKMER: Object to the --
14 16:20:14 MR. TAFFET: Objection to the form.
15 16:20:15 MR. VOLKMER: Object to the form of the
16 16:20:16 question.
17 16:20:18 MR. BROWNE: Q. Did you?
18 16:20:20 A No.
19 16:20:21 Q Okay. When you guys -- when -- when Credit
20 16:20:27 Suisse was conducting its due diligence, I'm just
21 16:20:32 going to try it in a very broad way --
22 16:20:34 A Sure.
23 16:20:35 Q -- what did you do? Tell me everything you
24 16:20:37 did with respect to copyright issues that were facing
25 16:20:40 YouTube.

SJA-2017

Schapiro Exhibit 216

SJA-2018



PROJEC DETAIL

VIA01474688

Project Beagle Model 0 22
Summary

Scenarios	
Baseline	0
Cost per View	1
Pre-roll Companion	2
Professional Content	3
Other	4
Use Scenario	0

Scenario 0 1 2 3
Cost per View New Unit Pro Content

2006 2007 2008 2009 2010

Revenue	Video Pre-Roll - Total				
	Premium - Total				
	Cost per View - Total				
	Paid Search / Ad Network - Total				
	Revenue - Total				
Expenses	Cost of Goods				
	Bandwidth				
	Storage				
	Ad Serving				
	Web Analytics				
	Cost of Goods - Total				
	Gross Margin				
	General Expenses				
	Operations				
	Service & Support				
	Engineering				
	Sales				
	Marketing				
	CSA				
	Content Licensing				
	General Expenses - Total				
	Net Profit / (Loss)				
	Average Annual Head Count				

NON-BINDING - FOR DISCUSSION ONLY

NewSite P&L - Summary

(\$000s)

VIA Base Case

Year 1 Year 2 Year 3 Year 4 Year 5 CAGR

Average Monthly Unique Users

Revenue

- Video Programming
- Ad-Supported
- Electronic Sell Thru
- VOD - Rental
- Subscription

Total Programming Revenue

Plus: Run of Site Revenue

Total Revenue

Video Programming Costs

- Ad-Supported
- Electronic Sell Thru
- VOD - Rental
- Subscription
- Exclusivity Fee

Total Programming Costs

Gross Profit

- Ad-Supported
- Electronic Sell Thru
- VOD - Rental
- Subscription
- Exclusivity Fee

Total Video Programming

Plus: Run of Site Revenue

Total Gross Profit

% of Video Programming Revenue
% of Total Revenue

Less: Operating Expenses

- Affiliate distribution fee
- Infrastructure/Network
- Research & Development
- Marketing
- G&A

Total Expenses

% of Total Revenue

Operating Profit

% Margin

Partner Share @ 50%

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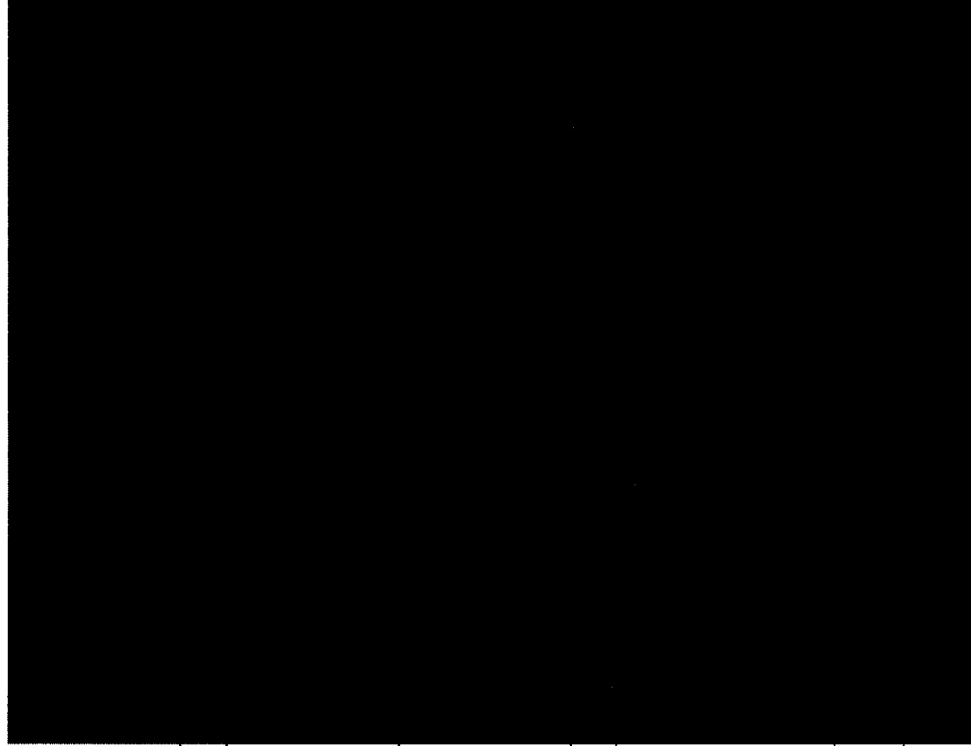
VIA01474690

NON-BINDING - FOR DISCUSSION ONLY

NewSite P&L - Summary (\$000s)

VIA Base Case

Year 1 Year 2 Year 3 Year 4 Year 5 CAGR



Average Monthly Unique Users

- Revenue
- Video Programming
- Ad-Supported
- Electronic Sell Thru
- VOD - Rental
- Subscription

Total Programming Revenue

Plus: Run of Site Revenue

Total Revenue

Video Programming Costs

- Ad-Supported
- Electronic Sell Thru
- VOD - Rental
- Subscription
- Exclusivity Fee

Total Programming Costs

Gross Profit

- Ad-Supported
- Electronic Sell Thru
- VOD - Rental
- Subscription
- Exclusivity Fee

Total Video Programming

Plus: Run of Site Revenue

Total Gross Profit

% of Video Programming Revenue
% of Total Revenue

Less: Operating Expenses

- Affiliate distribution fee
- Infrastructure/Network
- Research & Development
- Marketing
- G&A

Total Expenses

% of Total Revenue

Operating Profit

% Margin

Partner Share @ 50%

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NewSite - Content Holder P&L

(\$000s)

VIA Base Case

	Year 1	Year 2	Year 3	Year 4	Year 5
Content Holder Revenue					
Ad Revenue					
- Revenue share from NewCo					
- Net revenue sold by Content Holder					
Subtotal					
Other Revenue					
- Electronic Sell Thru					
- VOD - Rental					
- Subscription					
- Exclusivity Fee					
Total Content Holder Rev					
% Revenue breakdown					
- Fox					
- Viacom					
- Other					
\$ Revenue breakdown					
- Fox					
- Viacom					
- Other					
Affiliate distribution cost					
- Fox					
- Viacom					
Bandwidth costs					
- Fox					
- Viacom					
Gross Profit					
- Fox					
- Viacom					
Plus: Share of NewCo Operating Profit					
- Fox					
- Viacom					
Total Incremental Value					
- Fox					
- Viacom					

TV & film revenue share
TV inventory sold by content holders

License fee for exclusive TV content

misused
→ Traffic vortex that can be used for something else.
→

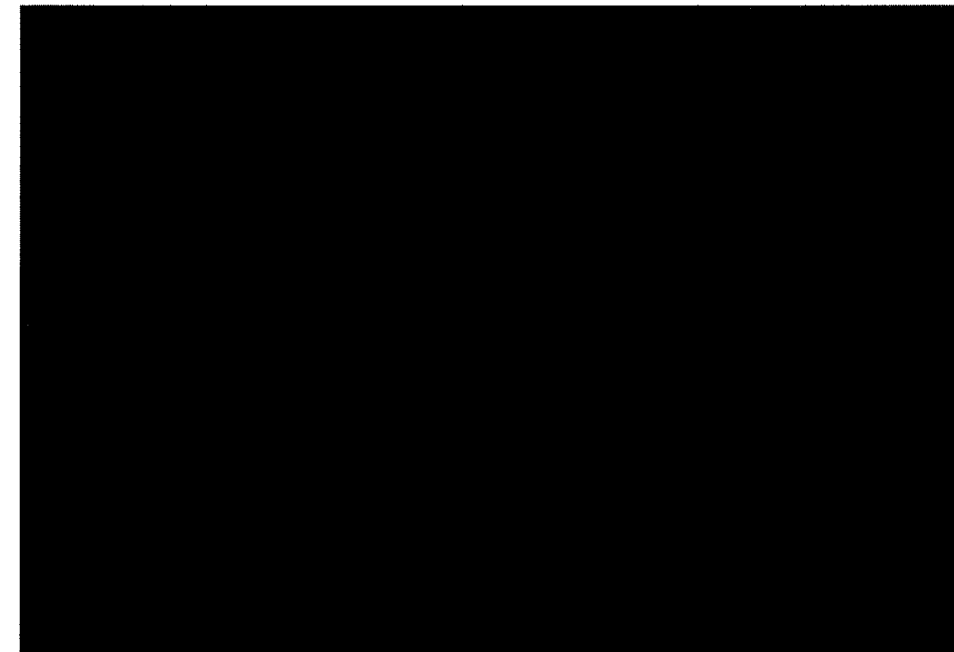
→ Must believe that they can be used
for other purposes.



Project Beagle Model 0.18 Model

Assumptions	
Traffic	
Visitors	
Page Views	
File Views	
File Views	
Traffic Composition	
US/UK/CDN	
Balance of International	
Page Composition / Usage	
Home Page	
List Page - Non-Search	
List Page - Search Results	
Other Pages - Utility (log in, Help, Upload, etc)	
Page Views	
Home Page	
List Page - Non-Search	
List Page - Search Results	
Other Pages - Utility (log in, Help, Upload, etc)	
Cost of Goods	
Bandwidth	
File Length Average	
File Encode Rate	
File Download Completion Rate	
Transportation Technology	
Peak Hour Usage	
Cost of Bandwidth	
Peak to Mean Ratio	
Cost of Bandwidth	
Cost of Bandwidth	
Delivery Technology	
Cost of Bandwidth	
Cost of Bandwidth	
Cost of Bandwidth (Average of Methodologies)	
Storage	
Users when Upload	
Uploads per User	
Uploads per Month	
Encoded File Size	
Source File / Encoded File Size Ratio	
Source File Size	
Encoded File Size	
Storage per Upload	
Average New Storage per Month	
Cumulative Storage at Year-End	
Cost of Storage (Resilient Network Storage)	
Ad Serving	
Cost per Ad Server Call	
Ad Server Call Rate	
Ad Server Call Rate	
Pages Served	
Files Served	
Ad Server Calls	
Cost of Ad Serving	
Web Analytics	
Cost per Web Analytics Call	
Pages Served	
Files Served	
Web Analytics Calls	
Cost of Analytics	

Descriptions	2006	2007	2008	2009	2010	CAGR
Cost of Goods - Total	1,451,692	2,019,252	2,629,946	3,240,796	3,461,762	27.2%



Revenue Performance by Ad Type						
Video Inventory						
Pre-Roll						
Serving Ratio						
Inline - Premium, Branded Display Ads						
RCS (ex Home Page)						
Home Page						
Cost per View (CPV) Ads						
Revenue per Page						
Inline - Paid Search / Ad Network						
RCS (ex Home Page)						
US/JK/CDN						
Ad Network / Paid Search Availability - US/JK/CDN						
Ad Network / Paid Search Availability - Non-US/JK/CDN						
Sold by Ad Type						
US/JK/CDN						
Video Inventory - Pre Roll						
Video Inventory						
Inline - Premium, Branded Display Ads - Home Page						
Inline - Premium, Branded Display Ads - RCS (ex Home Page)						
Cost per View (CPV) Ads						
Inline - Premium, Branded Display Ads - Home Page						
Inline - Paid Search / Ad Network - RCS (ex Home Page)						
Balance of International						
Video Inventory - Pre Roll						
Video Inventory						
Inline - Premium, Branded Display Ads - Home Page						
Inline - Premium, Branded Display Ads - RCS (ex Home Page)						
Cost per View (CPV) Ads						
Inline - Paid Search / Ad Network - Home Page						
Inline - Paid Search / Ad Network - RCS (ex Home Page)						
Sold Inventory						
Video Inventory - Pre Roll						
US/JK/CDN						
Film Views						
US/JK/CDN - Sold Inventory						
Balance of International						
Other Pages - Utility (Open, Help, Upload, etc)						
Balance of International - Sold Inventory						
Sold Inventory - Total Video Inventory - Pre Roll						
US/JK/CDN						
Home Page						
Cost per View (CPV) Ads						
List Page - Non Search						
List Page - Search Results						
Content Pages						
Other Pages - Utility (Open, Help, Upload, etc)						
US/JK/CDN - Sold Inventory						
Balance of International						
Home Page						
List Page - Non Search						
List Page - Search Results						
Content Pages						
Other Pages - Utility (Open, Help, Upload, etc)						
Balance of International - Sold Inventory						
Sold Inventory - Total Inline - Premium, Branded Display Ads						
US/JK/CDN						
Home Page						
List Page - Non Search						
List Page - Search Results						
Content Pages						
Other Pages - Utility (Open, Help, Upload, etc)						
US/JK/CDN - Sold Inventory						

Description	Units											
	2006	2007	2008	2009	2010	CAGR						
Balance of International List Page - Non-Search List Page - Search Results Content Pages Other Pages - Utility (Open, Help, Upload, etc) Balance of International - Sold Inventory												
Sold Inventory - Total Cost Per View												
Inline - Paid Search / Ad Network US/JUK/CON												
Home Page List Page - Non-Search List Page - Search Results Content Pages Other Pages - Utility (Open, Help, Upload, etc) US/JUK/CON - Sold Inventory												
Balance of International List Page - Non-Search List Page - Search Results Content Pages Other Pages - Utility (Open, Help, Upload, etc) Balance of International - Sold Inventory												
Sold Inventory - Total Inline - Paid Search / Ad Network												
Inventory - Total												
Revenue Video Inventory - Pre Roll US/JUK/CON												
Plays Advertising Revenue (Monthly)												
Balance of International Advertising Revenue (Monthly)												
Revenue - Total Video Inventory - Pre Roll US/JUK/CON												
Inline - Premium, Branded Display Ads US/JUK/CON												
Home Page List Page - Non-Search List Page - Search Results Content Pages Other Pages - Utility (Open, Help, Upload, etc) Advertising Revenue (Monthly)												
Balance of International Home Page List Page - Non-Search List Page - Search Results Content Pages Other Pages - Utility (Open, Help, Upload, etc) Advertising Revenue (Monthly)												
Revenue - Total Inline - Premium, Branded Display Ads US/JUK/CON												
Cost Per View US/JUK/CON												
Home Page List Page - Non-Search List Page - Search Results Content Pages Other Pages - Utility (Open, Help, Upload, etc) Advertising Revenue (Monthly)												
Balance of International Home Page List Page - Non-Search List Page - Search Results												

Description	Content Pages
	Other Pages - Utility (Open, Help, Upload, etc)
Advertising Revenue (Month)	
Revenue - Total Cost per View	
Issue - Paid Search / Ad Network	US/UK/CAN
	Home Page
List Page - Non-Search	List Page - Search Results
	Content Pages
Other Pages - Utility (Open, Help, Upload, etc)	Advertising Revenue (Month)
	Advertising Revenue (Month)
Balance of International	
Home Page	Home Page
	List Page - Non-Search
List Page - Search Results	List Page - Search Results
	Content Pages
Other Pages - Utility (Open, Help, Upload, etc)	Advertising Revenue (Month)
	Advertising Revenue (Month)
Revenue - Total (Time - Paid Search) / Ad Network	
Revenue - Total	

Project Beagle Model 0 18
Summary

	2006	2007	2008	2009	2010
Visitors (million/month)					
Global					
US/UK/CN					
Page Views (million)					
Global					
US/UK/CN					
Film Views (million)					
Global					
US/UK/CN					
Revenue					
Video Pre-Roll - Total					
Premium - Total					
Cost per View - Total					
Paid Search / Ad Network - Total					
Revenue - Total					
Expenses					
Cost of Goods					
Bandwidth					
Storage					
Ad Serving					
Web Analytics					
Cost of Goods - Total					
Gross Margin					
General Expenses					
Operations					
Service & Support					
Engineering					
Sales					
Marketing					
G&A					
Content Licensing					
General Expenses - Total					
Net Profit / (Loss)					
Average Annual Head Count					

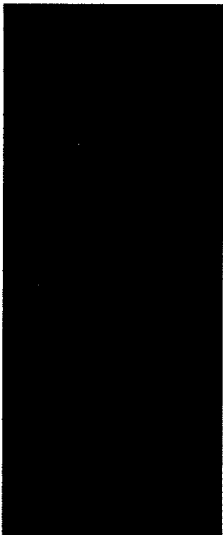
Project Beagle Model 0 18
Financial

Key Model Drivers
Total Revenue
Average # Users

COGS
Bandwidth
Storage
Ad Serving
Web Analytics

Total COGS
% of Revenue

2006P 2007P 2008P 2009P 2010P



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Project Beagle Model 0 18
Financial

Operations	2006P	2007P	2008P	2009P	2010P
Colocation Space & Related Charges					
Average Monthly Cost					
Serving Capacity Cost Growth					
Annual Cost					
Site Operations Team					
Headcount @ YE					
Burdened Cost/EE @ YE					
% Increase in Burdened Cost/EE					
Total Cost					
Content Servicing & Customer Support					
# Reps					
Burdened Cost/Rep					
% Increase in Burdened Cost/EE					
Total Cost					
Depreciation Expense					
Operations					
% of Revenue					
Engineering					
Actual Employees Required (Manual Adjustment)					
Burdened Cost/Employee					
% Increase in Burdened Cost/EE					
Total Research & Development Cost					
Engineering					
% of Revenue					

Project Beagle Model 0 18
Financial

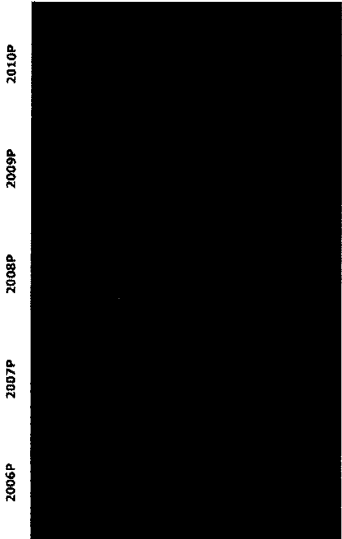
	2006P	2007P	2008P	2009P	2010P
Sales & Marketing					
Sales & Sales Support					
Employee Related Cost					
Sales Repts					
Brand Advertising Revenue					
Revenue Burden per Rep					
Branded Repts Headcount					
Branded Repts Loaded Cost per Employee					
Total - Branded Repts					
Cost per View Advertising Revenue					
Revenue Burden per Rep					
Inside Repts Headcount					
Inside Repts Loaded Cost per Employee					
Total - Inside Sales Repts					
Sales Support & Ad Ops					
Ad ops/client services/yield management to reps ratio					
Ad ops/client services headcount					
Branded Sales Support Headcount					
Inside Repts Support Headcount					
Burdened Cost per Support Headcount					
Total - Support					
Management and Overhead					
Management and Overhead Headcount					
Burdened Cost per Support Headcount					
Total - Management & Overhead					
Total Sales					
Marketing & BD					
Employee Related Cost					
# Employees					
Burdened Cost/Employee					
% Increase Cost/EE					
Total Employee Related Cost					
Outside Marketing % of Revenue					
Outside Marketing Expense					
Total Marketing					
Sales & Marketing					
% of Revenue					

Project Beagle Model 0 18
Financial

	2006P	2007P	2008P	2009P	2010P
G&A					
Employee Related Costs					
# Employees					
Burdened Cost/Employee					
% Increase in Burdened Cost/EE					
Total Employee Related Cost					
Recruiting Cost:					
\$ Per New Hire -- non-support					
# New Hires					
\$ Per New Hire -- support					
# New Hires					
Total Recruiting Cost					
Overhead / Facilities					
Headcount					
Space per Person (sq. ft)					
Price per Square Foot					
Bad Debt Expense					
% Revenue from National & Inside Sales					
Total Bad Debt Expense					
G&A					
% of Revenue					
Content Licensing					
Content Licensing Fee Rate					
Content Licensing Expense					
Content Licensing					
CAPEX					
Total Incremental Capex					
Total Employees					
Operations					
Service & Support					
Engineering					
Sales					
Marketing					
G&A					
Total Employees					
Revenue per Employee					

Project Beagle Model 0 18
Financial

Total Spending
COGS
Operations
Service & Support
Engineering
Sales
Marketing
G&A
Content Licensing
Spending as % of Revenue
COGS
Operations
Service & Support
Engineering
Sales
Marketing
G&A



Project Beagle

Discussion with Judy McGrath and Michael Wolf

July 10, 2006

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Today's Objective

- Quickly bring you up to speed on the last few days of work looking at YouTube
- Find a time to go through some numbers later today
- Jointly explore what this means to all of us
- Agree on next steps, including the nature of dialog with the rest of the Viacom decision makers

YouTube Overview

YouTube at a Glance

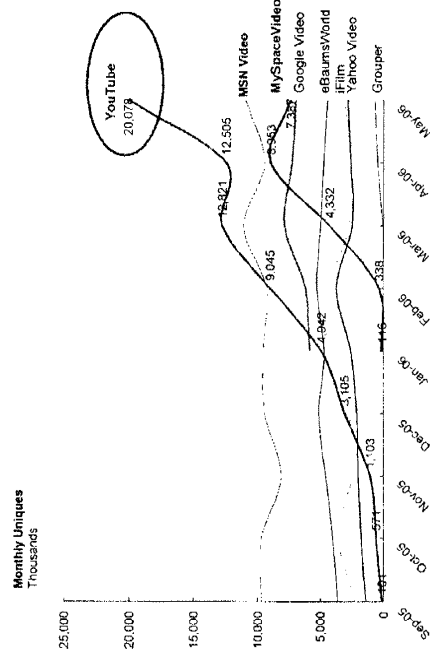
- Founded February 2005
- Site motto: "Broadcast Yourself" -- Features and usage
 - Users can instantly upload, watch, tag and share videos.
 - Getting to comprehensive - search millions of videos uploaded by community members
 - Personalize the experience by subscribing to member videos, saving favorites, and creating playlists. Developing a persona on YouTube
 - Embed YouTube videos on websites using video implants or APIs
 - Users can make their posted videos public or private
 - Ability to watch and share videos from mobile phones or PDAs
- Headquarters: San Mateo, CA
- Management:
 - Chad Hurley – CEO & co-founder – prior Paypal
 - Steve Chen – CTO & co-founder – Prior Paypal
 - Sales and bus dev. mostly x-Yahool (Chris Maxcy)
- Investors:
 - YouTube announced its first round of funding in November 2005 for \$3.5 million from venture-capital firm Sequoia Capital.
 - In April 2006, YouTube received an additional \$8 million in a second round of funding from Sequoia – investment led by Roelof Botha, former CFO of PayPal

YouTube is a “Video Utility” -- Serving an Extremely “Longtail” of Content

- YouTube is a utility people use to contribute, share and consume video
 - Users currently upload ~70K videos per day and invest in tagging, cataloging and sharing their videos
- Consumption of “branded” content on YT is low
 - There are no movie trailers in the top 30, nor are there any clips from popular TV shows
 - Only four of the top 30 most watched videos of all time on YouTube are music videos, one of which is in German
- In fact, in the “branded area,” Ifilm does significantly more streams than YouTube, even though Ifilm is much smaller from a user base perspective
 - o *Pirates of the Caribbean* 2 trailers consumption on YT = 250k; consumption on IFILM = 1m
 - o Even the much-discussed SNL “Lazy Sunday” sketch and its myriad spoofs have been seen more times on IFILM than on YouTube
- Net-net, YouTube is much closer to video search than VOD

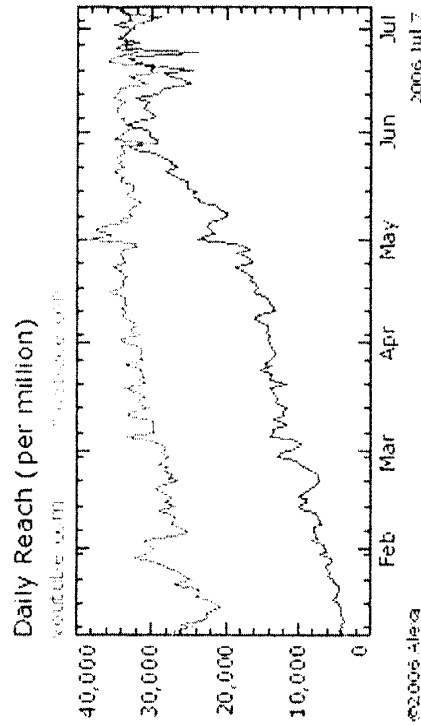
YouTube is Showing Break Out Growth

NIELSEN NETRATINGS MONTHLY UNIQUES



NetRatings – May 2006

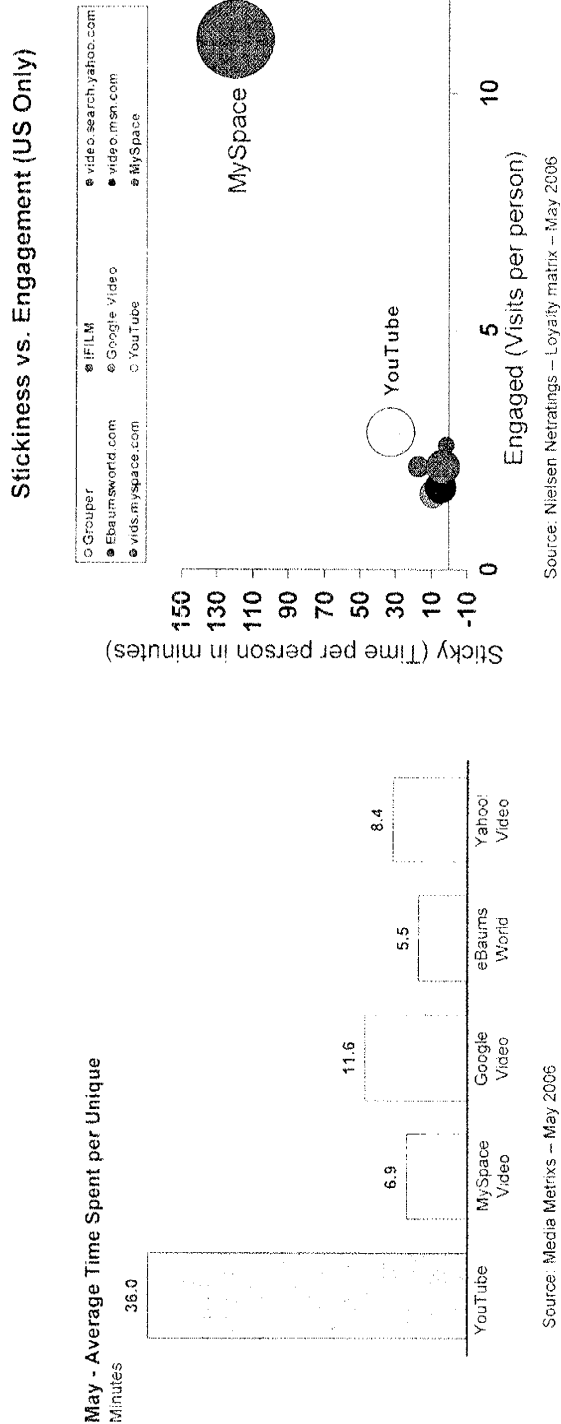
(US Only)



Alexa Rankings – July 2006

- In video, YouTube is a clear leader with **20M uniques** (NetRatings) growing 100% month-on-month
- YouTube has a massive global reach:
 - A top 10 site in 8 countries, a top 20 site in 18 countries, and a top 50 site in 49 countries
 - Alexa ranks the site 19th in the world; Implies 4% global audience reach
 - Approximately 80% of traffic is non-US

The Site is Extremely “Sticky” -- Particularly vs. Competitive Sites



- Relative to the competition it is experiencing 3-5X time spent with an average of 36 minutes per unique per month (MediaMetrix)

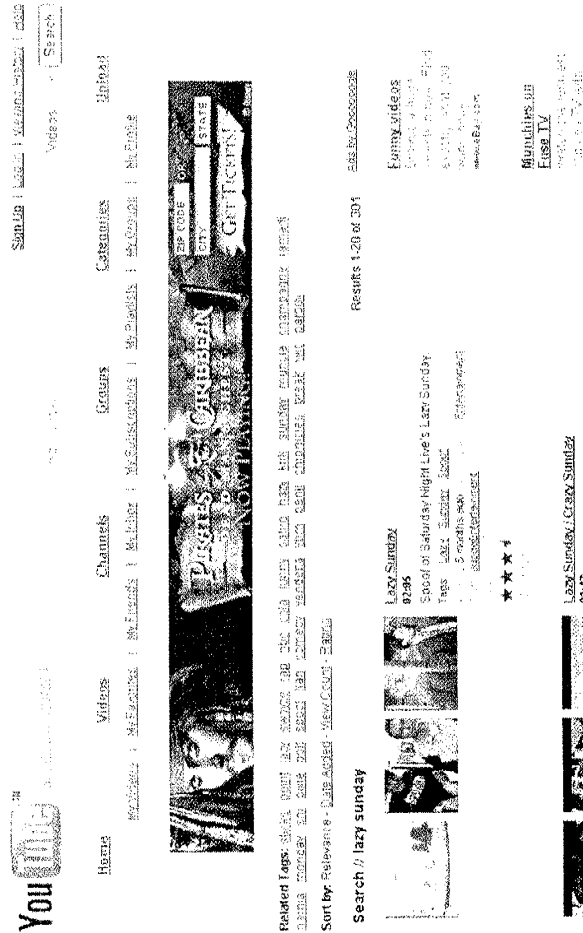
YouTube's Audience is a Strong Fit with MTVN

- **MTVN's primary demos are strongly represented on YouTube:**
 - o P12 – 34 = 39% of YouTube's audience and 67% of the site's page views
 - o P18-49 = 59% of YouTube audience and 53% of page views
- **MTVN / YouTube unduplicated audience would be 35MM uniques – an active reach of 23%**
 - o >40% of the unique audience on each MTV.com, CMT.com, Gametrailers, iFilm, and The-N.com are also on YouTube
 - o By comparison, only 9% of YouTube's uniques overlap with MTV.com – representing a significant opportunity to grow our audiences
- **The potential competitive threat of a combined MySpace / YouTube would reach 51MM unduplicated uniques**

Source: Nielsen Netratings – Audience overlap

However, YouTube's Advertising Business is in its Infancy

- We do not believe YouTube has any significant ad business
- The company has (correctly) been focused on the user experience and has not implemented any invasive advertising
 - Focuses on Banners
 - No “pre-roll” video inventory
- However, it has recently done business with Disney, NBC, and Weinstein Co.
- Also using ad networks Google AdSense to monetize traffic



Fit With MTVN/Viacom

As Video Consumption Moves to the Web, YouTube has Emerged As a First Choice Asset for the Company

- YouTube is the dominant platform for consumers as they migrate to using video to express themselves
 - It is quickly becoming a “video social network”
 - There is currently no other asset that approaches this position
- YouTube would be a transformative acquisition for MTV Networks / Viacom in the internet space; we would:
 - Immediately become the leading global deliverer of video online, with dominance in almost every country
 - Own the world’s largest repository of digital video that is relevant to our audiences

Four Key Success Factors for YouTube as Part of MTVN/Viacom...

- 1. Maintain consumer leadership position**
- 2. Crack the ad model**
- 3. Evolve the content model to fully incorporate
“branded content”**
- 4. Maintain “technology company” status**

...Each is Discussed in turn

1) Consumer Leadership: While YouTube is Number One, the Space is Competitive, Meaning its Position Cannot Be Taken for Granted

- A range of companies – including the portals, the social networks and pure-play start-ups are aggressively pursuing this space, creating alternatives for consumers
- Therefore, YouTube must focus not only on continuing to attract new consumers, but maintaining existing ones -- The key here will likely be to increase “switching costs”
 - Today, YouTube has a “limited audience lock-in”
 - Unlike MySpace, there is less investment in personal profiles and personalities
 - YouTube will have to focus on adding features which make it harder to move
 - With limited switching costs audiences are likely to migrate to other sources should the site’s appeal be diminished – ad integration will be a particularly sensitive issue

2) Advertising: Success Will Require Tapping the Branded and Ad Network Spaces as Well as Creating A New “Ad Sense-Like” Product

- YouTube’s traffic is fragile with respect to attempts to monetize it through traditional “inserted” video advertising.
- Audience tolerance for pre and post-roll video advertising will be low compared to websites that are used predominantly for the consumption of professional programming that is not available elsewhere (e.g. IFILM, Overdrive)
- The model we have built assumes three revenue generation models, two of which already exist and are well understood, one of which is new and therefore untested.
- The proposed monetization mechanisms are:
 - Branded Premium Advertising & Sponsorships
 - Cost per View / “Video Ad Sense” Model
 - Run Of Site / Advertising Network

The Markets We Know – Branded and Ad Networks

- “Branded” revenue will be generated from key real estate, and will likely be in the form of auctioned premium advertising and sponsorships
 - Paid Placement – home page based sponsored video (i.e. one block where film studios bid for placement of their trailers)
 - Premium Content – over time the use of ad supported premium clips/content in a separate section (i.e., Movie of the week, first looks, releases, film trailers, etc).
 - That said, there is some concerns surrounding generation of significant revenue from entertainment advertisers (e.g. studios) include:
 - Likely lack of ability to *drive* traffic to home page and other destinations within the site,
 - Most popular and therefore valuable content – such as huge movie releases (trailers, etc.) – will likely be available freely anyway.
- In addition, we assume the use of advertising networks for yield management – initially domestically and over time internationally

The “Video Ad Sense-Like” Opportunity

- Users have so much freedom of choice for the consumption of media that marketers can no longer assume they can “buy time” within it.
- Advertisers are becoming obliged to offer compelling content and services. Google’s advertising model made this clear, whereby advertisers not only bid for the privilege of real estate but advertising that does not make good use of available real estate is penalized.
- We propose a revenue model for YouTube that treats advertising and content as near-equals, as in Google’s “natural vs. sponsored” search results. Cost per view paid video advertising would appear throughout the YouTube site, alongside the programming.
- Advertisers would bid for keyword-space, and could ultimately upload their own creative.
- Audiences would be receptive to the advertisers’ content because it would never be forced upon them but offered more as a *service* or as additional content to them, and advertising content that doesn’t perform (is not watched) would be automatically discounted and would ultimately disappear.

3) Evolve the content model to fully incorporate “branded content

- Today, YouTube incorporates some branded content
- However, the experience is not maximized and the business model is not fully defined
- On a going forward basis, YouTube needs to evolve to deal with both of these issues

4) Maintain “Technology Company” status

KEY SUCCESS FACTORS

- Ability to hire and retain technical talent: requires significant technical talent to develop targeted advertising and search related competencies. E.g., developing cost per play models that match categories of video to advertisers. As a corporately owned company it will be more challenging to incentivize new hires
- Ongoing investment in infrastructure: YouTube is at an early stage of infrastructure development and will require ongoing investments in storage/caching, and servers to maintain speed and effectiveness
- Investment in innovation: As a platform, YouTube requires ongoing investment in innovation to maintain the relevance of its searches and sharing technology

Viacom / YouTube – Sources of Value Added

- **Provide users with fame on television** i.e., The crowd decides, we put it on air - best of appears weekly on Comedy Central and MTVN, provides additional incentive for users to upload, vote and promote themselves on YouTube
- **Brands/ editorial fit** enables us to both source talent, innovative content for consumption across platforms. We are one of the few providers willing to put edgier content on TV. ie. User generated music video, user generated ads on television
- **Video content** – breadth and depth can power YouTube to the next level of relevance. By providing all of our clip based video in raw form – i.e. non branded editorial experience- simple search and obtain. We can push YouTube to become a more comprehensive destination and source for broader syndication
- **Promotion** – fit with our target audience and demo. We can reinforce and drive traffic/ promotion between YouTube and other MTVN sites
- **User Registration information** – Breadth of user information will increase our ability to target advertising to the user base across the MTVN network

Financial Model

- We currently are in the midst of finalizing out operating projections
 - Advertising revenue
 - Video storage and delivery costs
 - General company management costs
- In addition, the Viacom M&A team is on board and waiting to overlay the requisite financial items
- We anticipate having something for you to review later day

Summary and Next Steps

- Integrate your input
- Refine operating model
- Build valuation model
- Socialize the opportunity with other key members of the Viacom management team
- Depending on the outcome of these steps, potentially engage with the controlling VC this week

SJA-2055

Schapiro Exhibit 285

SJA-2056

Comedy Central Viral Placements YTD 2007

Property	Clip Title	User Name
GOOD GOD TOTAL		
Good God	The meeting	thatsfunny/ thatisalsofunny
Good God	The meeting	thatsfunny/ thatisalsofunny
Good God	The meeting	thatsfunny/ thatisalsofunny
Good God	The meeting	thatsfunny/ thatisalsofunny
Good God	The meeting	thatsfunny/ thatisalsofunny
Good God	The meeting	thatsfunny/ thatisalsofunny
Good God	The meeting	thatsfunny/ thatisalsofunny
Good God	The meeting	thatsfunny/ thatisalsofunny
Good God	The meeting	thatsfunny/ thatisalsofunny
BAXTER & MCGUIRE TOTAL		
Baxter & McGuire	Yer Outta There	thatsfunny/ thatisalsofunny
Baxter & McGuire	Yer Outta There	thatsfunny/ thatisalsofunny
Baxter & McGuire	Yer Outta There	thatsfunny/ thatisalsofunny
Baxter & McGuire	Yer Outta There	thatsfunny/ thatisalsofunny
Baxter & McGuire	Yer Outta There	thatsfunny/ thatisalsofunny
Baxter & McGuire	Yer Outta There	thatsfunny/ thatisalsofunny
Baxter & McGuire	Yer Outta There	thatsfunny/ thatisalsofunny
Baxter & McGuire	Yer Outta There	thatsfunny/ thatisalsofunny
Baxter & McGuire	Yer Outta There	thatsfunny/ thatisalsofunny
FREAK SHOW TOTAL		
Freak Show	TCS clip	thatsfunny/ thatisalsofunny
Freak Show	TCS clip	thatsfunny/ thatisalsofunny
Freak Show	TCS clip	thatsfunny/ thatisalsofunny
Freak Show	TCS clip	jim
Freak Show	TCS clip	thatsfunny/ thatisalsofunny
Freak Show	TCS clip	thatsfunny/ thatisalsofunny
Freak Show	TCS clip	thatsfunny/ thatisalsofunny
Freak Show	TCS clip	thatsfunny/ thatisalsofunny
NAKED TRUCKER TOTAL		
Naked Trucker	Music video American Dream	thatsfunny/ thatisalsofunny
Naked Trucker	Music video American Dream	thatsfunny/ thatisalsofunny
Naked Trucker	Music video American Dream	thatsfunny/ thatisalsofunny
Naked Trucker	Music video American Dream	thatsfunny/ thatisalsofunny
Naked Trucker	Music video American Dream	thatsfunny/ thatisalsofunny
Naked Trucker	Music video American Dream	thatsfunny/ thatisalsofunny
Naked Trucker	Music video American Dream	thatsfunny/ thatisalsofunny
SARAH SILVERMAN TOTAL		
Sarah Silverman	Weather Report	thatsfunny/ thatisalsofunny
Sarah Silverman	Jail	thatsfunny/ thatisalsofunny
Sarah Silverman	Homeless Guy	thatsfunny/ thatisalsofunny
Sarah Silverman	Food & Blankets	thatsfunny/ thatisalsofunny
Sarah Silverman	Talkshow	thatsfunny/ thatisalsofunny
Sarah Silverman	Batteries	thatsfunny/ thatisalsofunny

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Comedy Central Viral Placements YTD 2007

URL	Date Live	Expiration	Site
http://www.veoh.com/videos/e151049NhcqJ5kK	10/5/2006		VEOH
http://uploads.atomfilms.com/clip.aspx?key=D093101E8DBBE8A5	10/5/2006		Atom Films
http://clipshack.com/Clip.aspx?key=C4D68C39FA680687	10/5/2006		Clip Shack
http://www.vidlife.com/video_play_914037_Good_God_Poo_Caper_.htm	10/5/2006		Vidilife
http://www.dailymotion.com/thatsfunny/video/xrd80_good-god-poo-caper	10/5/2006		Daily Motion
http://thatsfunny.livedigital.com/content/1142699/	10/5/2006		Live Digital
http://www.bolt.com/Thatsfunny/video/Good_God_Dead_Pool/2670347	10/5/2006		Bolt
http://viralvideo.clevver.com/search/good+god/0/c88bf6fb-a263-4479-b678-988600c92391.htm	10/5/2006		Clevver
no longer up	10/5/2006		YouTube
no longer up	9/15/2006		VEOH
http://uploads.atomfilms.com/clip.aspx?key=938AC2B0F37895DF	9/15/2006		Atom Films
http://clipshack.com/Clip.aspx?key=180E30C4406F5EE4	9/15/2006		Clip Shack
http://www.vidlife.com/video_play_868417_The_Adventures_of_Baxter_and_McGuire_Yer_Out_.htm	9/15/2006		Vidilife
http://www.dailymotion.com/thatsfunny/video/xinjr_baxter-and-mcguire-yer-out	9/15/2006		Daily Motion
http://thatsfunny.livedigital.com/content/1057673/	9/15/2006		Live Digital
http://www.bolt.com/Thatsfunny/video/The_Adventures_of_Baxter_/2452704	9/15/2006		Bolt
http://viralvideo.clevver.com/search/baxter+mcguire/0/47074f4b-f091-4ddf-9608-986500c8b01b.htm	9/15/2006		Clevver
no longer up	9/15/2006		You Tube
http://www.veoh.com/videos/e122952jawnmm6Aj	9/15/2006		VEOH
http://uploads.atomfilms.com/clip.aspx?key=430966854C18190A	9/15/2006		Atom Films
no longer up	9/15/2006		Clip Shack
http://www.vidlife.com/video_play_837321_Freak_Show_.htm	9/15/2006		Vidilife
http://www.dailymotion.com/thatsfunny/video/xf18z_freak-show	9/15/2006		Daily Motion
http://www.bolt.com/Thatsfunny/video/Freak_Show/2253453	9/15/2006		Bolt
http://viralvideo.clevver.com/search/freak+show/0/32cbb9e2-cd74-4416-8e84-984300d0ab7e.htm	9/15/2006		Clevver
no longer up	9/15/2006		YouTube
http://uploads.atomfilms.com/clip.aspx?key=BE6D678C8155169D	11/6/2006		Atom Films
http://clipshack.com/Clip.aspx?key=9AD8322859A623CF	11/6/2006		Clip Shack
http://www.vidlife.com/video_play_934097_The_Naked_Trucker_and_T_Bones_Show_.htm	11/6/2006		Vidilife
http://www.bolt.com/Thatsfunny/video/The_Naked_Trucker_and_TB0/2625474	11/6/2006		Bolt
http://www.dailymotion.com/thatsfunny/video/xuwyr_the-naked-trucker-and-tbones-show	11/6/2006		Daily Motion
http://www.veoh.com/videos/v195629TJrG6Kxt	11/6/2006		VEOH
no longer up	11/6/2006		YouTube
http://uploads.atomfilms.com/clip.aspx?key=2F161B5F78DFEF55	1/30/2007		Atom Films
http://uploads.atomfilms.com/clip.aspx?key=AE8A0849D7977477	1/30/2007		Atom Films
http://uploads.atomfilms.com/clip.aspx?key=A599F8855E0C9E3E	2/7/2007		Atom Films
http://uploads.atomfilms.com/clip.aspx?key=48673CD6F39AF327	2/7/2007		Atom Films
http://uploads.atomfilms.com/clip.aspx?key=96F88DC835CAAAC9	2/14/2007		Atom Films
http://uploads.atomfilms.com/clip.aspx?key=49D9B47B691A9533	2/20/2007		Atom Films

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Comedy Central Viral Placements YTD 2007

Views To Date

116,694
17,944
35,492
1,675
3,737
19,286
40
6,187
26,401
5,932

115,097
699
22,007
6,533
4,746
56,830
22
463
2,569
21,228

374,459
1,084
173,108
504
180
1,142
10,352
10,529
177,560

72,378
52,282
411
870
1,750
7,511
8,833
721

170,221
41,710
1,407
1,252
805
1,184
1,450

SJA-2059

Comedy Central Viral Placements YTD 2007

Sarah Silverman	Weather Report	thatsfunny/ thatisalsofunny
Sarah Silverman	Jail	thatsfunny/ thatisalsofunny
Sarah Silverman	Homeless Guy	thatsfunny/ thatisalsofunny
Sarah Silverman	Food & Blankets	thatsfunny/ thatisalsofunny
Sarah Silverman	Talkshow	thatsfunny/ thatisalsofunny
Sarah Silverman	Batteries	thatsfunny/ thatisalsofunny
Sarah Silverman	Weather Report	thatsfunny/ thatisalsofunny
Sarah Silverman	Jail	thatsfunny/ thatisalsofunny
Sarah Silverman	Homeless Guy	thatsfunny/ thatisalsofunny
Sarah Silverman	Food & Blankets	thatsfunny/ thatisalsofunny
Sarah Silverman	Talkshow	thatsfunny/ thatisalsofunny
Sarah Silverman	Batteries	thatsfunny/ thatisalsofunny
Sarah Silverman	Weather Report	thatsfunny/ thatisalsofunny
Sarah Silverman	Jail	thatsfunny/ thatisalsofunny
Sarah Silverman	Homeless Guy	thatsfunny/ thatisalsofunny
Sarah Silverman	Food & Blankets	thatsfunny/ thatisalsofunny
Sarah Silverman	Talkshow	thatsfunny/ thatisalsofunny
Sarah Silverman	Batteries	thatsfunny/ thatisalsofunny
Sarah Silverman	Weather Report	thatsfunny/ thatisalsofunny
Sarah Silverman	Homeless Guy	thatsfunny/ thatisalsofunny
Sarah Silverman	Talkshow	thatsfunny/ thatisalsofunny
Sarah Silverman	Food & Blankets	thatsfunny/ thatisalsofunny
Sarah Silverman	Talkshow	thatsfunny/ thatisalsofunny
Sarah Silverman	Batteries	thatsfunny/ thatisalsofunny
Sarah Silverman	Batteries	jim
Sarah Silverman	Batteries	thatsfunny/ thatisalsofunny
Sarah Silverman	Batteries	thatsfunny/ thatisalsofunny

HALFWAY HOME TOTAL

Halfway Home	Pogo Stick	thatsfunny/ thatisalsofunny
Halfway Home	Pogo Stick	thatsfunny/ thatisalsofunny
Halfway Home	Pogo Stick	thatsfunny/ thatisalsofunny
Halfway Home	Pogo Stick	thatsfunny/ thatisalsofunny
Halfway Home	Pogo Stick	thatsfunny/ thatisalsofunny
Halfway Home	Pogo Stick	thatsfunny/ thatisalsofunny
Halfway Home	Pogo Stick	thatsfunny/ thatisalsofunny
Halfway Home	Pogo Stick	thatsfunny/ thatisalsofunny
Halfway Home	Pogo Stick	thatsfunny/ thatisalsofunny
Halfway Home	Pogo Stick	thatsfunny/ thatisalsofunny
Halfway Home	Pogo Stick	thatsfunny/ thatisalsofunny

Shatner Roast

Shatner Roast	Takei clip	thatsfunny/ thatisalsofunny
Shatner Roast	Takei clip	thatsfunny/ thatisalsofunny
Shatner Roast	Shatner/Nimoy clip	thatsfunny/ thatisalsofunny
Shatner Roast	Betty White clip	thatsfunny/ thatisalsofunny
Shatner Roast	Greg Giraldo clip	thatsfunny/ thatisalsofunny
Shatner Roast	Patton Oswalt clip	thatsfunny/ thatisalsofunny
Shatner Roast	Betty White clip	thatsfunny/ thatisalsofunny

SJA-2060

Comedy Central Viral Placements YTD 2007

http://clipshack.com/Clip.aspx?key=6CDBC089C1FB8463	1/31/2007	Clip Shack
http://clipshack.com/Clip.aspx?key=DFB7FA6B8D63F1B0	1/31/2007	Clip Shack
http://clipshack.com/Clip.aspx?key=D5192381C1995E53	2/7/2007	Clip Shack
http://clipshack.com/Clip.aspx?key=B2F903E245A79D56	2/7/2007	Clip Shack
http://www.clipshack.com/Clip.aspx?key=23EA1D8E3CA1D842	2/7/2007	Clip Shack
http://www.clipshack.com/Clip.aspx?key=51D983FC9F2AA7BC	2/15/2007	Clip Shack
http://www.bolt.com/Thatsfunny/video/The_Sarah_Silverman_Progr/2973969	1/31/2007	Bolt
http://www.bolt.com/Thatsfunny/video/The_Sarah_Silverman_Progr/2973296	1/31/2007	Bolt
http://www.bolt.com/Thatsfunny/video/The_Sarah_Silverman_Progr/2997926	2/7/2007	Bolt
http://www.bolt.com/Thatsfunny/video/The_Sarah_Silverman_Progr/2998058	2/7/2007	Bolt
http://www.bolt.com/Thatsfunny/video/The_Sarah_Silverman_Progr/3024472	2/14/2007	Bolt
http://www.bolt.com/Thatsfunny/video/The_Sarah_Silverman_Progr/3044013	2/20/2007	Bolt
http://www.dailymotion.com/thatsfunny/video/x13ss6_the-sarah-silverman-program-weather	1/30/2007	Daily Motion
http://www.dailymotion.com/thatsfunny/video/x13sxh_the-sarah-silverman-program-jail	1/30/2007	Daily motion
http://www.dailymotion.com/video/x15m9z_the-sarah-silverman-program-homeles	2/7/2007	Daily Motion
http://www.dailymotion.com/video/x15mma_the-sarah-silverman-program-food	2/7/2007	Daily Motion
http://www.dailymotion.com/video/x17no8_sarah-silverman-talkshow	2/14/2007	Daily Motion
http://www.dailymotion.com/video/x19ea2_the-sarah-silverman-program-batteri	2/20/2007	Daily Motion
http://www.veoh.com/videos/v227347DZ3Ncphs	1/31/2007	VEOH
http://www.flukiest.com/media/482264/	2/7/2007	Flukiest
http://www.flukiest.com/media?fi_id=486411	2/14/2007	Flukiest
http://www.flurl.com/item/The_Sarah_Silverman_Program_Food_and_Blankets_u_226567	2/7/2007	Flurl
http://www.flurl.com/item/The_Sarah_Silverman_Program_Talkshow_u_228629	2/14/2007	Flurl
http://comedy.smartvideochannel.com/media/playvideo.aspx?f=flash7&cid=E03EAB4B1751444C813466B4166C77F6	2/20/2007	Smart Video Channel
http://www.vidilife.com/index.cfm?f=media.play&vclnrMediaProgramIDCrp-B51343AA-E3AC-4630-8178-9	2/20/2007	Vidilife
http://viralvideo.clevver.com/video/12db0377-44fd-4426-9db8-98db00e6b27e.htm	2/20/2007	Clevver
http://www.vidiac.com/video/12db0377-44fd-4426-9db8-98db00e6b27e.htm	2/20/2007	Vidiac
<hr/>		
http://uploads.atomfilms.com/clip.aspx?key=7DD2CD188A5EBF62	3/13/2007	Atom Films
http://www.bolt.com/Thatsfunny/video/Halfway_Home_Pogo_Stick/3095291	3/13/2007	Bolt
http://viralvideo.clevver.com/video/55c5a238-7366-4c4f-b73d-98f00c56442.htm	3/13/2007	Clevver
http://clipshack.com/Clip.aspx?key=C135CD5592432B47	3/13/2007	Clip Shack
http://www.dailymotion.com/thatsfunny/video/2342789	3/13/2007	Daily Motion
http://www.flukiest.com/media/523788/	3/13/2007	Flukiest
http://www.ifilm.com/profile/thatsalsofunny/video/2832005	3/13/2007	iFilm
http://www.liveleak.com/view?i=f28_1173803329	3/13/2007	Live Leak
http://comedy.smartvideochannel.com/media/playvideo.aspx?f=flash7&cid=1B1CCE9B58964E4A8CFDED4317C1FAA7&v=my	3/13/2007	Smart Video
http://www.veoh.com/videos/v299663PsXQFjdX	3/13/2007	VEOH
http://www.vidilife.com/video_play_981597_Halfway_Home_Pogo_Stick_clip.htm	3/13/2007	Vidilife
<hr/>		
		TOTAL
no longer up	8/12/2006	YouTube
http://grouper.com/video/MediaDetails.aspx?id=1489881&ml=o%3d7%26fk%3dshatner%2broad%26fx%3d&	8/12/2006	Grouper
http://grouper.com/video/MediaDetails.aspx?id=1489901&ml=o%3d7%26fk%3dshatner%2broad%26fx%3d&	8/12/2006	Grouper
http://grouper.com/video/MediaDetails.aspx?id=1489898&ml=o%3d7%26fk%3dshatner%2broad%26fx%3d&	8/12/2006	Grouper
http://grouper.com/video/MediaDetails.aspx?id=1489888&ml=o%3d7%26fk%3dshatner%2broad%26fx%3d&	8/12/2006	Grouper
http://www.bolt.com/Thatsfunny/video/Shatner_Roast_Patton_Oswa/1959222	8/12/2006	Bolt
no longer up	3/8/2007	ClipShack

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Comedy Central Viral Placements YTD 2007

3,522
957
1,481
1,128
903
1,877
4,772
4,557
4,321
1,157
1,545
2,176
8,496
9,230
4,318
1,311
1,062
1,660
948
7,085
3,350
4,060
3,360
6,215
5,990
3,767
3,767
29,428
20,819
1,390
2,962
1,389
120
402
139
899
485
371
432
267,398
166,300
44,344
7,472
3,765
2,440
16,528
1,289

SJA-2062

Comedy Central Viral Placements YTD 2007

Shatner Roast	Betty White clip	thatsfunny/ thatisalsosfunny
Shatner Roast	Betty White clip	thatsfunny/ thatisalsosfunny
Shatner Roast	Betty White clip	thatsfunny/ thatisalsosfunny
Shatner Roast	Betty White clip	thatsfunny/ thatisalsosfunny
Shatner Roast	Betty White clip	thatsfunny/ thatisalsosfunny
Shatner Roast	Betty White clip	thatsfunny/ thatisalsosfunny
Shatner Roast	Betty White clip	thatsfunny/ thatisalsosfunny
Shatner Roast	Betty White clip	thatsfunny/ thatisalsosfunny
Shatner Roast	Artie Lang clip	thatsfunny/ thatisalsosfunny
Shatner Roast	Artie Lang clip	thatsfunny/ thatisalsosfunny
Shatner Roast	Artie Lang clip	thatsfunny/ thatisalsosfunny
Shatner Roast	Artie Lang clip	thatsfunny/ thatisalsosfunny
Shatner Roast	Artie Lang clip	thatsfunny/ thatisalsosfunny
Shatner Roast	Artie Lang clip	thatsfunny/ thatisalsosfunny
Shatner Roast	Artie Lang clip	thatsfunny/ thatisalsosfunny
Shatner Roast	Son of Shat and Spock	thatsfunny/ thatisalsosfunny
Shatner Roast	Son of Shat and Spock	thatsfunny/ thatisalsosfunny
Shatner Roast	Son of Shat and Spock	thatsfunny/ thatisalsosfunny
Shatner Roast	Artie Lang clip	thatsfunny/ thatisalsosfunny
Shatner Roast	Betty White clip	thatsfunny/ thatisalsosfunny
Shatner Roast	Son of Shat and Spock	thatsfunny/ thatisalsosfunny
Shatner Roast	Artie Lang clip	thatsfunny/ thatisalsosfunny
Shatner Roast	Betty White clip	thatsfunny/ thatisalsosfunny
Shatner Roast	Son of Shat and Spock	thatsfunny/ thatisalsosfunny

MIND OF MENCIA TOTAL

[illegible]

SJA-2063

Comedy Central Viral Placements YTD 2007

no longer up	3/8/2007	Addicting Clips
no longer up	3/8/2007	Vidiac
no longer up	3/8/2007	Daily Motion
no longer up	3/20/2007	Bolt
no longer up	3/20/2007	Flurl
no longer up	3/20/2007	StreamDump
no longer up	3/20/2007	Flukiest
no longer up	3/20/2007	Veoh
no longer up	3/8/2007	Clevver
no longer up	3/8/2007	Addicting Clips
no longer up	3/8/2007	Clevver
no longer up	3/8/2007	ClipShack
no longer up	3/20/2007	Bolt
no longer up	3/8/2007	Vidiac
no longer up	3/8/2007	Daily Motion
no longer up	3/20/2007	StreamDump
no longer up	3/20/2007	Veoh
no longer up	3/20/2007	Flukiest
no longer up	3/20/2007	Bolt
no longer up	3/20/2007	StreamDump
no longer up	3/20/2007	Flukiest
http://clipshack.com/Clip.aspx?key=9A5645B9226BE982	3/28/2007	ClipShack
http://clipshack.com/Clip.aspx?key=44E7075A9446B1A7	3/28/2007	ClipShack
http://clipshack.com/Clip.aspx?key=99993E38322C2F4F	3/28/2007	ClipShack
http://uploads.atomfilms.com/clip.aspx?key=3059432ADD9E80ED	3/28/2007	Atom Films
http://uploads.atomfilms.com/clip.aspx?key=C826640F18A33B2D	3/28/2007	Atom Films
http://uploads.atomfilms.com/clip.aspx?key=558B09C12032BD03	3/28/2007	Atom Films

http://uploads.atomfilms.com/clip.aspx?key=CDA7969BC92E4513	2/28/2007	Atom Films
http://www.bolt.com/Thatsfunny/video/Mind_of_Mencia_Castro/3071153	2/28/2007	Bolt
http://viralvideo.clevver.com/video/328b07be-f506-484a-9ab1-98e300ffae70.htm	2/28/2007	Clevver
http://www.clipshack.com/Clip.aspx?key=220990DB62C67E73	2/28/2007	Clip Shack
http://www.dailymotion.com/video/x1bx7g_mind-of-mencia-castro	2/28/2007	Daily Motion
http://www.flukiest.com/media?f_id=496150	2/28/2007	Flukiest
http://www.flurl.com/item/_Mind_of_Mencia_Castro_u_232988	2/28/2007	Flurl
http://www.sharkle.com/video/120087/	2/28/2007	Sharkle
http://www.streamdump.com/79f9aaf	2/28/2007	Stream Dump
http://www.veoh.com/videos/v275317m3h8aEW4	2/28/2007	VEOH
http://www.vidiac.com/video/328b07be-f506-484a-9ab1-98e300ffae70.htm	2/28/2007	Vidiac
http://www.vidilife.com/index.cfm?f=media.play&vchrMediaProgramIDCryp=956D62BF-8174-4B14-A4D4-A	2/28/2007	Vidilife
http://uploads.atomfilms.com/clip.aspx?key=835415912D9FC79B	2/28/2007	Atom Films
http://www.bolt.com/Thatsfunny/video/Mind_of_Mencia_Asian_Eve/3071224	2/28/2007	Bolt
http://viralvideo.clevver.com/video/edef2945-55b7-4d25-ad20-98e301027cfd.htm	2/28/2007	Clevver
http://www.clipshack.com/Clip.aspx?key=0D96D235536650BB	2/28/2007	Clip Shack
http://www.dailymotion.com/video/x1c91g_mind-of-mencia-asian-event	2/28/2007	Daily Motion
http://www.flukiest.com/media?f_id=496151	2/28/2007	Flukiest
http://www.sharkle.com/video/120089/	2/28/2007	Sharkle
http://www.streamdump.com/?dc2f8a	2/28/2007	Stream Dump

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Comedy Central Viral Placements YTD 2007

1,739
1,046
456
494
63
458
412
52
1,052
1,316
1,181
915
296
1,198
539
49
45
97
62
387
295
1,051
392
1,855
2,059
5,968
1,783
66,343
1,278
1,200
1,166
1,242
387
518
591
307
355
1,800
1,166
1,641
22,846
1,541
1,313
942
551
609
301
440

SJA-2065

Comedy Central Viral Placements YTD 2007

Mind of Mencia	Asian Event	thatsfunny/ thatisalsofunny
Mind of Mencia	Asian Event	thatsfunny/ thatisalsofunny
Mind of Mencia	Asian Event	thatsfunny/ thatisalsofunny
Mind of Mencia	Collar	thatsfunny/ thatisalsofunny
Mind of Mencia	Collar	thatsfunny/ thatisalsofunny
Mind of Mencia	Collar	thatsfunny/ thatisalsofunny
Mind of Mencia	Collar	thatsfunny/ thatisalsofunny
Mind of Mencia	Collar	thatsfunny/ thatisalsofunny
Mind of Mencia	Collar	thatsfunny/ thatisalsofunny
Mind of Mencia	Collar	thatsfunny/ thatisalsofunny
Mind of Mencia	Collar	thatsfunny/ thatisalsofunny
Mind of Mencia	Collar	thatsfunny/ thatisalsofunny
Mind of Mencia	Collar	thatsfunny/ thatisalsofunny
Mind of Mencia	Collar	thatsfunny/ thatisalsofunny
Mind of Mencia	First Look: Season 3	thatsfunny/ thatisalsofunny
Mind of Mencia	First Look: Season 3	thatsfunny/ thatisalsofunny
Mind of Mencia	First Look: Season 3	thatsfunny/ thatisalsofunny

[illegible]

LIL BUSH TOTAL	100 per day
Lil Bush	Premiere
Lil Bush	Premiere
Lil Bush	Premiere
Lil Bush	Premiere
Lil Bush	Premiere
Lil Bush	Premiere
Lil Bush	Premiere
Lil Bush	Premiere
Lil Bush	Premiere
Lil Bush	Premiere
Lil Bush	Premiere
Lil Bush	Irag n Roll
Lil Bush	Irag n Roll
Lil Bush	Irag n Roll
Lil Bush	Irag n Roll
Lil Bush	Irag n Roll

CHAPPELLE TOTAL	100 per day	
Chappelle DVD	Commercial	thatsfunny/thatisalsofunny

SJA-2066

Comedy Central Viral Placements YTD 2007

http://www.veoh.com/videos/v275319EkYwMay2	2/28/2007	VEOH
http://www.vidiac.com/video/edef2945-55b7-4d25-ad20-98e301027cfd.htm	2/28/2007	Vidiac
http://www.vidiLife.com/index.cfm?f=media.play&vchrMediaProgramIDCrp=3C3DAC47-7A32-4AB2-9E78-8	2/28/2007	VidiLife
http://uploads.atomfilms.com/clip.aspx?key=844D0CF364AC14C4	2/28/2007	Atom Films
http://viralvideo.clevver.com/video/62c2587d-5aad-4e40-847f-98e30105293f.htm	2/28/2007	Clevver
http://www.clipshack.com/Clip.aspx?key=350B81C516E185D5	2/28/2007	Clip Shack
http://www.dailymotion.com/video/x1c943_mind-of-mencia-collar	2/28/2007	Daily Motion
http://www.flukiest.com/media?f_id=496152&f_page=1	2/28/2007	Flukiest
http://www.fluri.com/item/_Mind_of_Mencia_Collar_u_232991	2/28/2007	Fluri
http://www.sharkle.com/video/120090/	2/28/2007	Sharkle
http://www.streamdump.com/79454b1	2/28/2007	Stream Dump
http://www.veoh.com/videos/v275343Hs2Tqbvk	2/28/2007	VEOH
http://www.vidiac.com/video/62c2587d-5aad-4e40-847f-98e30105293f.htm	2/28/2007	Vidiac
http://www.vidiLife.com/index.cfm?f=media.play&vchrMediaProgramIDCrp=DBAAC3A2-E92A-434D-83EE-A	2/28/2007	VidiLife
http://uploads.atomfilms.com/clip.aspx?key=F9F03A576290B47A	3/28/2007	Atom Films
http://www.clipshack.com/Clip.aspx?key=37A4B2D5881BFB8D	3/28/2007	Clip Shack
http://www.dailymotion.com/video/x1kj07_first-look-mind-of-mencia-season-3	3/28/2007	Daily Motion
<hr/>		
http://uploads.atomfilms.com/clip.aspx?key=1A2FD7930B28C58D		Atom Films
http://www.bolt.com/Thatsfunny/video/Reno_911_Jaws_of_Life/3230511		Bolt
http://viralvideo.clevver.com/video/c776f3c2-2498-4b91-9849-99200124d60e.htm		Clevver
http://www.clipshack.com/Clip.aspx?key=F379CB5E6EEE92B3		ClipShack
http://www.dailymotion.com/video/x1uyge_reno-911-jaws-of-life		DailyMotion
http://www.flukiest.com/media?f_id=617310		Flukiest
http://www.sharkle.com/video/126391/		Sharkle
http://comedy.smartvideochannel.com/media/PlayVideo.aspx?cid=3757C93C8A114B05BDF0DEF1C5BF1D45		Smart Video Channel
http://www.veoh.com/videos/v441543XZdazs8M		Veoh
<hr/>		
http://www.bolt.com/Thatsfunny/video/Comedy_Centrals_Lil_Bush/3294510		Bolt
http://viralvideo.clevver.com/video/d32e17af-c3be-49f2-bca1-993f00ca7e8a.htm		Clevver
http://www.clipshack.com/Clip.aspx?key=25EAF190183914D3		ClipShack
http://video.coolstreaming.us/view_video.php?viewkey=238a2f37603d90b58898		Cool Streaming Video
http://emuse.ebaumsworld.com/video/watch/22679		Ebaums World
http://www.flukiest.com/media?f_id=643257		Flukiest
http://www.sharkle.com/video/128867/		Sharkle
http://www.veoh.com/videos/v561464b8pBy5Fw		Veoh
http://www.vidiLife.com/video_play_1029418_Comedy_Central's_Lil'_Bush.htm?tc=570833		VidiLife
http://www.vshare.com/video.php?vid=1228		vshare
http://www.vsocial.com/video/?d=89741		vsocial
http://uploads.atomfilms.com/clip.aspx?key=2ECCF2842F8F165F		Atom Films
http://www.clipshack.com/Clip.aspx?key=2382F11360B91DB7		ClipShack
http://www.dorks.com/videos/lil_bush_iraqi_n_roll.html		Dorks
http://emuse.ebaumsworld.com/video/watch/23676/		Ebaums World
http://media.putfile.com/Lil-Bush---Iraqi-n-Roll-		Putfile
<hr/>		
http://uploads.atomfilms.com/Clip.aspx?key=4EEA751B01784E65		Atom Films

SJA-2067

Comedy Central Viral Placements YTD 2007

	981
	1,313
	722
	1,017
	1,079
	1,100
	527
	414
	919
	295
	691
	923
	1,079
	790
	6,477
	5,732
	2,090
	1,512,496
	38,600
	8,400
	9,165
	10,021
	210
	7,581
	1,704
	6,913
	6,968
	390,130
	45,377
	56,304
	50,029
	38,420
	476
	42,905
	7,663
	567
	36,215
	34,766
	48,465
	1,773
	21,785
	1,030
	1,707
	2,648
	321,337
	2,790

SJA-2068

Comedy Central Viral Placements YTD 2007

[illegible][illegible][illegible]

SJA-2069

Comedy Central Viral Placements YTD 2007

<http://viralvideo.clevver.com/video/ac49b13c-5233-4049-8319-993f010096a6.htm>
<http://www.clipshack.com/Clip.aspx?key=B1752F6AD6367734>
http://www.dailymotion.com/thatsfunny/video/x26hby_best-of-chappelles-show-uncensored
<http://emuse.ebaumsworld.com/video/watch/23319>
http://www.theentertainmentworld.tv/videos/media/76/Best_of_Chappelle's_Show_Uncensored/
<http://www.flukiest.com/media/643299/>
<http://en.sevenload.com/videos/keOBMn3/Best-of-Chappelles-Show-Uncensored-DVD>
<http://comedy.smartvideochannel.com/media/PlayVideo.aspx?cid=2DE587FC33494365BC66A4C1D3257242>
<http://www.sharkie.com/video/129204/>
<http://www.veoh.com/videos/v561961w2k9M8mE>
<http://www.youare.tv/watch.php?id=3643>

Clevver
Clipshack
DailyMotion
Ebaum's World
Entertainment World
Flukiest
Sevenload
Smart video Channel
Sharkie
Veoh
You Are TV

SJA-2070

Comedy Central Viral Placements YTD 2007

74,664
76,292
992
525
474
17,523
72,490
70,814
3,076
553
1,144

SJA-2071

Schapiro Exhibit 425

Message: RE: Proposal from MPAA on Content Identification and Filtering

 **RE: Proposal from MPAA on Content Identification and Filtering**

From Kelly Liang **Date** Monday, October 23, 2006 6:45 PM

To Garfield, Dean

Cc

Subject RE: Proposal from MPAA on Content Identification and Filtering

Hi Dean –

It was good to speak with you, Chad and Craig on Thursday. We look forward to launching a content filtering pilot with the MPAA sometime towards the end of the year. Please don't hesitate to let me know if there is any further info that I can provide to you on our development efforts with Audible Magic. I plan to be in LA within the next couple of weeks and will definitely schedule a time to stop by for a visit if you are available.

Regards,
Kelly

From: Kelly Liang [mailto:kel@youtube.com]

Sent: Tuesday, October 17, 2006 10:53 AM

To: 'Dean_Garfield@mpaa.org'; 'chris@youtube.com'

Subject: RE: Proposal from MPAA on Content Identification and Filtering

Hi Dean –

I'll coordinate with Chris on our end but why don't we tentatively plan for a call late Thursday afternoon, say 4pm? Look forward to speaking with you.

Regards,
Kelly

From: Dean_Garfield@mpaa.org [mailto:Dean_Garfield@mpaa.org]

Sent: Tuesday, October 17, 2006 10:24 AM

To: chris@youtube.com

Cc: kel@youtube.com

Subject: RE: Proposal from MPAA on Content Identification and Filtering

Hi Chris and Kelly. Thanks for the email. Good to hear things are going well. I am actually heading to NY at the end of the week. Thursday late in the day or early Friday works best for me for a call. The system you are developing sounds very strong. Based on your comments, I think over time we can help in speeding the automation of the manual process of reviewing the thumbnails. We actually have a similar process in place for our notices to ISP and have a few people in India that are being used to review the images and then cataloging the hash. We are also looking at ways of associating the hash with useful metadata information that may also help in the long term.

Kelly, I look forward to meeting you when we next chat.

From: Chris Maxcy [mailto:chris@youtube.com]

Sent: Tuesday, October 17, 2006 7:15 AM

To: Garfield, Dean

Cc: 'Kelly Liang'

Subject: FW: Proposal from MPAA on Content Identification and Filtering

Hi Dean,

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MPAA004540

Things are good here but seem to be busier than ever. We are all excited to be a part of Google (though things have not closed yet – and even if/when they do I have many years of work ahead ☺). Thanks for sending over the attached proposal and for working with us on a pilot test. A couple quick comments:

For the audio fingerprinting...uploaded files are "processed" on our site meaning that they do go live for a short period of time (generally measured in seconds) before the filter kicks in. This is more of a latency issue than anything else and we are working with Vance at Audible to ensure that the system responds quickly.

The other very important element beyond audio fingerprinting is the enhanced text search tool currently being built. This tool will enable content owners to define searches on YouTube using key words or phrases. The search terms can be sent to YouTube via an xml feed or can be input manually. Once YouTube has the search terms, we will automatically run searches on behalf of the content owners. Searches can be saved, narrowed or broadened at the content owners' discretion. Content owners will get an admin tool to see the search results (consisting of a url link and thumbnail images of the videos in question). At this point the content owner will need to review the search results and can mark individual videos as either blocked or licensed for use on YouTube. In either case, once a file is identified as owned or controlled by a content owner it is fed back through the audio fingerprinting system so the entire process gets smarter over time.

Our development team is still working out the implementation details with Vance but we are expecting to get all of the audio fingerprinting and text search tools in place by year end. I'll touch base with Vance to see how we can get the MPAA test up and running as we start to test his system. In the meantime, I also wanted to introduce Kelly Liang who is one of the senior members of our BD team. Kelly will be leading the charge on our studio initiatives going forward. I'm in NYC until later this week but would love to catch up Thurs/Friday if you are available. Look forward to catching up soon.

Best,

Chris

From: Dean_Garfield@mpaa.org [mailto:Dean_Garfield@mpaa.org]

Sent: Thursday, October 12, 2006 7:12 PM

To: chris@youtube.com

Subject: Proposal from MPAA on Content Identification and Filtering

Hi Chris. I trust that things are well. Congrats on the Google deal. How does it feel to be rich? Hopefully, you are still working - - at least for now. In that regard, I have attached a proposal for moving forward on our last discussion. As you may imagine, all the studios are getting calls every day to comment on the Google deal and so there is a lot of focus on this issue. Please let me know when it would be a good time to continue our conversation. Thanks.

Dean

SJA-2074

Schapiro Exhibit 6

John Eddow

From: Allie Wester
Sent: Monday, August 18, 2008 2:27 PM
To: [REDACTED]
Cc: Christy Wise
Subject: "FanscapeVideos" Account Disabled

Hello,

I work for Fanscape, a new media marketing agency, and our "FanscapeVideos" YouTube Channel/Account was permanently disabled today. We work with MTV (Viacom) on several of their shows and upload a lot of their content. We've had this problem before with some of our videos getting flagged by Viacom and not realizing we are an MTV agency. However, this time, MTV legal claims that they have no record of requesting our videos or channel be removed.

Everything on our channel has been legally provided for us by clients – can you let me know if there is an issue or complaint I am not aware of, and what steps we can take to get the account reactivated?

Thank you,
Allie

Allie Wester
Coordinator, Online Publicity & Promotions
Fanscape, Inc.
<http://www.fanscape.com>
360 N. La Cienega Blvd., 3rd FL
Los Angeles, CA 90048
T: 323.785.7786 | F: 323.785.7101
AllieW@fanscape.com
AIM: [REDACTED]

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FS000085

10/27/2008

Schapiro Exhibit 19

From: Michelena.hallie@mtvn.com
Sent: Thursday, November 16, 2006 2:57 AM
To: Courtney Nieman
Cc: Evelyn Espinosa; Deana Arizala; Mark M. Ishikawa; Sarah Cruz
Subject: Re: Time Breakdown of Clips from yesterday.

I would like a call between 2:30 and 5:30 NY time tomorrow. It is essential that I have a thorough understanding of what is going on. Please let me know what time works for you.

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

From: Hallie, Michelena
To: 'courtney@baytsp.com' <courtney@baytsp.com>
CC: 'evelyn@baytsp.com' <evelyn@baytsp.com>; 'deanaa@baytsp.com' <deanaa@baytsp.com>; 'marki@baytsp.com' <marki@baytsp.com>; 'sarahc@baytsp.com' <sarahc@baytsp.com>
Sent: Wed Nov 15 21:32:25 2006
Subject: Re: Time Breakdown of Clips from yesterday.

Sorry. I should have hit Reply All. (I initially sent this only to Courtney)

First, what about Daily Show and Colbert that were longer than 2 1/2 minutes and shorter than 3 minutes? And does this mean there were only 36 clips passed over on youtube? I can't believe there were only 44 of our clips total on youtube since we didn't remove any clips last week. (My recollection is we took only 8 down under our criteria.). Is that right?

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

From: Courtney Nieman <courtney@baytsp.com>
To: Hallie, Michelena
CC: Evelyn Espinosa <evelyn@baytsp.com>; Deana Arizala <deanaa@baytsp.com>; Mark M. Ishikawa <marki@baytsp.com>; Courtney Nieman <courtney@baytsp.com>; Sarah Cruz <sarahc@baytsp.com>
Sent: Wed Nov 15 21:20:53 2006
Subject: Time Breakdown of Clips from yesterday.

Michelena,

Here is the break down of the "Passed On" clips from yesterday's report

Time Break Down of Video Clips

Length *	YouTube	MySpace	Google	Total	%
0-60	277	14	41	332	47%
61-90	150	12	33	195	28%
91-120	61	6	17	84	12%
121-150	52	4	6	62	9%
151-180	10	1	18	29	4%
	550		37	115	702

*Clip length is reported in seconds.

Call me if you have any questions.

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

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

6/11/2008

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BAYTSP 001125759

Schapiro Exhibit 20

From: Michelena.hallie@mtvn.com
Sent: Wednesday, November 15, 2006 2:36 PM
To: Sarah Cruz
Cc: Evelyn Espinosa; Mark M. Ishikawa; Deana Arizala; Courtney Nieman; Cahan, Adam; Deana Arizala; Allen Chu; Chris Schmalz
Subject: RE: Video Takedown 11/14/06

Could I get some more information on the clips that were passed on? I'm particularly surprised about the small number of videos taken down under and am curious as to the average size of the videos that apparently did not meet our criteria. I'd also like to discuss the take down procedure on Google Video. In conversations with Mark, I thought the agreement was that you would send notices to Google Video requesting that they remove the link to infringing material. Is that not the procedure? Is that something you have done for other clients?

From: Sarah Cruz [mailto:sarahc@baytsp.com]
Sent: Tuesday, November 14, 2006 8:12 PM
To: Hallie, Michelena
Cc: Evelyn Espinosa; Mark M. Ishikawa; Deana Arizala; Courtney Nieman; Cahan, Adam; Deana Arizala; Allen Chu; Chris Schmalz; Sarah Cruz
Subject: Video Takedown 11/14/06

European Music Awards Tracking Update

For November 14, 2006 we have found and sent notices for 8 YouTube infringements. Please look below for a detailed report of :

Notice Sent

14-Nov	Total
8	8

Infringement Data

Asset	File Name	Protocol	URL	Username
EMA AWARDS 2006	Borat & Timberlake - MTV EMA 2006	YouTube	http://youtube.com/watch?v=VTBToSmGRoQ	Viestarts
EMA AWARDS 2006	Rihanna - SOS performance - EMA 2006	YouTube	http://www.youtube.com/watch?v=jV2CXkesjdY	Riri69
EMA AWARDS 2006	Muse-sttarlight(live 2006)	YouTube	http://www.youtube.com/watch?v=rmbfXrPtIMs	nisuuno
EMA AWARDS 2006	LoveStoned	YouTube	http://www.youtube.com/watch?v=olkmn-_cgUA	l1v269
EMA AWARDS 2006	Snoop and Pharell - Drop It Like It's Hot (Live)	YouTube	http://youtube.com/watch?v=T_dxVTb6ZSI	jctthree
EMA AWARDS 2006	Nelly Furtado- Maneater in live	YouTube	http://www.youtube.com/watch?v=uWpl0O8EMNc	georgema
EMA AWARDS 2006	depeche mode EMA	YouTube	http://www.youtube.com/watch?v=p3amlHvI0gg	ClaudiaA
EMA AWARDS 2006	Outlandish	YouTube	http://www.youtube.com/watch?v=xDsEkODg9Gs	awayclos

MTV Networks Video Takedown Update

6/11/2008

SJA-2080

Protocol	Episodes	Clips	Passed On
YouTube	22	36	555
MySpace	0	8	37
Yahoo Video	0	2	130
Google Video	17	3	115

Note: Yahoo Video is a reference site only, we have only foundlinks to other sites that is sharing the infringing material. For notice sending: we limited ourselves to only the three video sites we have authority to send notices to; YouTube, Google, and Myspace. We then applied the same rules for each link as if we were enforcing on the original site and as a result sent zero notices: YouTube: 0 , Google Video: 0, MySpace: 0.

P2P	Count
Gnutella	211
eDonkey	537
BitTorrent	7626

(Not sent, just for view.)

YouTube Results

Content Provider	Asset	Episodes	Clips	Passed On
Country Music Television	CMT Music Awards	0	0	0
	Country Fired Home Videos	0	0	1
	Crossroads	0	0	0
	Foxwothy's Big Night Out	0	0	0
	Trick My Truck	0	0	0

Comedy Central	South Park	0	1	315
	The Colbert Report	0	13	150
	The Daily Show	0	0	0

SpikeTV	Carpocalypes	0	0	0
	King of Vegas	0	0	0
	Most Xtreme Challenge	0	0	5
	Pros Vs Joes	0	0	0
	Total Nonstop Action	0	0	0
	Ultimate Fighting Championship	0	0	0

Viacom	Andy Milonakis	0	0	2
	Avatar the Last Airbender	0	1	2
	Backyardigans	0	0	0
	Beyond the Break	0	0	0
	Blue's Room	0	0	0
	Can't Get A Date	0	0	0
	Degrassi	0		
	Diego	0	0	1
	Dora The Explorer	0	0	1
	Drake & Josh	0	0	0
	Fairly Odd Parents	7	0	0
	GLAAD Media Awards	0	0	2
	Greatest TV Quotes and Catch Phrases	0	0	0
	Hi-Jinks	0	0	0
	I Pity the Fool	0	0	0
	Jack's Big Music Show	0	0	0
	Laguna Beach	0		

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BAYTSP 001093518

SJA-2081

	Naked Brothers Band	0	0	7
	Noah's Arc	0	0	16
	Real World	0	0	2
	Sit Down Comedy with David Steinberg	0	0	0
	South of Nowhere	0	21	28
	Spongebob Squarepants	0	0	0
	Hogan Knows Best	0	0	0
	TV Land Myths and Legends	0	0	0
	TV Land Present the 100	0	0	0
	VMA Awards	0	0	0
	Wonder Pets	0	0	0
	Zoey 101	15	0	23

TOTAL	22	36	555
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MySpace Results

Content Provider	Asset	Episodes	Clips	Passed On
Country Music Television	CMT Music Awards	0	0	0
	Country Fired Home Videos	0	0	0
	Crossroads	0	0	0
	Foxwothy's Big Night Out	0	0	0
	Trick My Truck	0	0	0

Comedy Central	South Park	0	7	27
	The Colbert Report	0	0	0
	The Daily Show	0	0	0

SpikeTV	Carpocalypes	0	0	0
	King of Vegas	0	0	0
	Most Xtreme Challenge	0	0	0
	Pros Vs Joes	0	0	0
	Total Nonstop Action	0	0	0
	Ultimate Fighting Championship	0	1	1

Viacom	Andy Milonakis	0	0	0
	Avatar the Last Airbender	0	0	0
	Backyardigans	0	0	1
	Beyond the Break	0	0	0
	Blue's Room	0	0	0
	Can't Get A Date	0	0	0
	Degrassi	0	0	1
	Diego	0	0	0
	Dora The Explorer	0	0	1
	Drake & Josh	0	0	0
	Fairly Odd Parents	0	0	0
	GLAAD Media Awards	0	0	0
	Greatest TV Quotes and Catch Phrases	0	0	0
	Hi-Jinks	0	0	0
	I Pity the Fool	0	0	1
	Jack's Big Music Show	0	0	0
	Laguna Beach	0	0	1
	Naked Brothers Band	0	0	0
	Noah's Arc	0	0	0
	Real World	0	0	0
	Sit Down Comedy with David			

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SJA-2082

	Steinberg	0	0	0
	South of Nowhere	0	0	2
	Spongebob Squarepants	0	0	2
	Hogan Knows Best	0	0	0
	TV Land Myths and Legends	0	0	0
	TV Land Present the 100	0	0	0
	VMA Awards	0	0	0
	Wonder Pets	0	0	0
	Zoey 101	0	0	0
	TOTAL	0	8	37

Google Video Results

Content Provider	Asset	Episodes	Clips	Passed On
Country Music Television	CMT Music Awards	0	0	0
	Country Fired Home Videos	0	0	0
	Crossroads	0	0	0
	Foxwothy's Big Night Out	0	0	0
	Trick My Truck	0	0	0

Comedy Central	South Park	0	1	34
	The Colbert Report	0	1	41
	The Daily Show	0	1	19

SpikeTV	Carpocalypes	0	0	0
	King of Vegas	0	0	0
	Most Xtreme Challenge	0	0	0
	Pros Vs Joes	0	0	0
	Total Nonstop Action	0	0	8
	Ultimate Fighting Championship	0	0	0

Viacom	Andy Milonakis	0	0	0
	Avatar the Last Airbender	16	0	0
	Backyardigans	0	0	2
	Beyond the Break	0	0	0
	Blue's Room	0	0	0
	Can't Get A Date	0	0	0
	Degrassi	0	0	0
	Diego	0	0	0
	Dora The Explorer	0	0	10
	Drake & Josh	0	0	0
	Fairly Odd Parents	1	0	0
	GLAAD Media Awards	0	0	0
	Greatest TV Quotes and Catch Phrases	0	0	0
	Hi-Jinks	0	0	0
	I Pity the Fool	0	0	0
	Jack's Big Music Show	0	0	0
	Laguna Beach	0	0	0
	Naked Brothers Band	0	0	0
	Noah's Arc	0	0	0
	Real World	0	0	0
	Sit Down Comedy with David Steinberg	0	0	0
	South of Nowhere	0	0	0
	Spongebob Squarepants	0	0	1
	Hogan Knows Best	0	0	0

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SJA-2083

	TV Land Myths and Legends	0	0	0
	TV Land Present the 100	0	0	0
	VMA Awards	0	0	0
	Wonder Pets	0	0	0
	Zoey 101	0	0	0
	TOTAL	17	3	115

Yahoo Video Results

Content Provider	Asset	Episodes	Clips	Passed On
Country Music Television	CMT Music Awards	0	0	0
	Country Fired Home Videos	0	0	0
	Crossroads	0	0	4
	Foxwothy's Big Night Out	0	0	0
	Trick My Truck	0	0	0

Comedy Central	South Park	0	0	79
	The Colbert Report	0	0	33
	The Daily Show	0	0	1

SpikeTV	Carpocalypes	0	0	0
	King of Vegas	0	0	0
	Most Xtreme Challenge	0	0	0
	Pros Vs Joes	0	0	0
	Total Nonstop Action	0	0	0
	Ultimate Fighting Championship	0	0	0

Viacom	Andy Milonakis	0	0	0
	Avatar the Last Airbender	0	0	0
	Backyardigans	0	0	0
	Beyond the Break	0	0	0
	Blue's Room	0	0	0
	Can't Get A Date	0	0	0
	Degrassi	0	0	7
	Diego	0	0	0
	Dora The Explorer	0	0	0
	Drake & Josh	0	0	1
	Fairly Odd Parents	0	0	0
	GLAAD Media Awards	0	0	0
	Greatest TV Quotes and Catch Phrases	0	0	0
	Hi-Jinks	0	0	0
	I Pity the Fool	0	0	0
	Jack's Big Music Show	0	0	0
	Laguna Beach	0	0	0
	Naked Brothers Band	0	0	0
	Noah's Arc	0	0	0
	Real World	0	0	0
	Sit Down Comedy with David Steinberg	0	0	0
	South of Nowhere	0	0	0
	Spongebob Squarepants	0	0	2
	Hogan Knows Best	0	0	1
	TV Land Myths and Legends	0	0	0
	TV Land Present the 100	0	0	0

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SJA-2084

	VMA Awards	0	2	2
	Wonder Pets	0	0	0
	Zoey 101	0	0	0
	TOTAL	0	2	130

P2P (Not sent)

Content Provider	Asset	Gnutella	eDonkey	BitTorrent
Country Music Television	CMT Music Awards	0	3	0
	Country Fired Home Videos	0	0	0
	Crossroads	0	5	0
	Foxwothy's Big Night Out	0	0	0
	Trick My Truck	0	2	0

Comedy Central	South Park	72	0	6472
	The Colbert Report	0	0	287
	The Daily Show	6	0	230

SpikeTV	Carpocalypes	11	0	0
	King of Vegas	0	0	0
	Most Xtreme Challenge	0	3	0
	Pros Vs Joes	0	0	0
	Total Nonstop Action	0	0	0
	Ultimate Fighting Championship	3	282	0

Viacom	Andy Milonakis	0	18	0
	Avatar the Last Airbender	4	0	74
	Backyardigans	2	0	0
	Beyond the Break	0	6	0
	Blue's Room	0	0	0
	Can't Get A Date	0	0	0
	Degrassi	4	0	0
	Diego	0	0	0
	Dora The Explorer	10	0	468
	Drake & Josh	0	2	0
	Fairly Odd Parents	23	0	0
	GLAAD Media Awards	0	0	0
	Greatest TV Quotes and Catch Phrases	0	0	0
	Hi-Jinks	0	0	0
	I Pity the Fool	0	0	0
	Jack's Big Music Show	0	0	0
	Laguna Beach	43	0	0
	Naked Brothers Band	0	0	0
	Noah's Arc	0	0	0
	Real World	0	0	0
	Sit Down Comedy with David Steinberg	0	0	0
	South of Nowhere	1	0	51
	Spongebob Squarepants	6	1	41
	Hogan Knows Best	0	81	3

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	Breaking Bonaduce	0	0	0
	VMA Awards	8	134	0
	Wonder Pets	0	0	0
	Zoey 101	18	0	0
	Total	211	537	7626

Sarah Cruz
Client Services
BayTSP, Inc.

6/11/2008

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