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15:50:39 2 Q And let me ask you, when -- you're a computer  
15:51:18 3 engineer; are you not?

15:51:19 4 A I have a computer engineering degree.

15:51:22 5 Q So when a clip is uploaded onto YouTube by an  
15:51:34 6 outsider, by an uploader, am I correct that YouTube  
15:51:38 7 makes a copy of -- of it and stores that copy on  
15:51:43 8 YouTube's server?

15:51:44 9 MR. MANCINI: Objection; vague and ambiguous.

15:51:46 10 THE WITNESS: I'm not familiar with exactly  
15:51:51 11 what YouTube does with uploads.

15:51:53 12 MR. MANCINI: And I just want to continue my  
15:51:55 13 objection as now being way beyond the Court's  
15:51:57 14 instruction that this be limited to the witness's  
15:52:00 15 knowledge, who has already testified to lacking  
15:52:03 16 operational knowledge of YouTube, by the way.

15:52:06 17 MR. BASKIN: Q. Do you know whether YouTube,  
15:52:11 18 in order to encourage browsing, creates a searchable  
15:52:17 19 index on the site?

15:52:20 20 MR. MANCINI: Same exact objections.

15:52:22 21 THE WITNESS: I have no specific knowledge of  
15:52:26 22 that.

15:52:26 23 MR. BASKIN: Q. Well, you do know, for  
15:52:28 24 example, do you not, that YouTube sorts and indexes  
15:52:40 25 videos to encourage browsing? Isn't that right?

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15:52:44 2 MR. MANCINI: So, Stu, this is really a point  
15:52:47 3 we should really cut this off, because we're going way  
15:52:50 4 beyond Judge Stanton's instructions here.

15:52:50 5 MR. BASKIN: You know, the deposition  
15:52:52 6 would -- could been done well short of four hours.  
15:52:52 7 Probably would have been done short of two hours, but  
15:52:58 8 for all the objections. I'm asking him things within  
15:52:59 9 his knowledge. If he doesn't know, he doesn't know.

15:52:59 10 MR. MANCINI: He said -- He said -- how many  
15:52:59 11 times you want to ask him. He says he doesn't have  
15:53:01 12 this operational knowledge.

15:53:03 13 MR. BASKIN: Q. You do know, sir, that  
15:53:05 14 YouTube's website has distribution contracts with  
15:53:09 15 various parties; do you not?

15:53:12 16 MR. MANCINI: Objection; vague and ambiguous,  
15:53:13 17 and same continuing objections.

15:53:17 18 THE WITNESS: I'm not sure what "distribution  
15:53:20 19 contracts" mean.

15:53:21 20 MR. BASKIN: Q. You're serious? You don't  
15:53:22 21 know what a distribution contract means?

15:53:23 22 MR. MANCINI: Same objections.

15:53:24 23 THE WITNESS: Well, it could mean many  
15:53:27 24 things.

15:53:27 25 MR. BASKIN: Q. Did you tell the securities

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15:53:29 2 marketplace, for example, during an analyst call, of  
15:53:31 3 certain distribution contracts that YouTube has to  
15:53:34 4 distribute its content over other platforms?

15:53:36 5 MR. MANCINI: Same objections. Clearly this  
15:53:40 6 question is intended to do nothing other than to  
15:53:43 7 harass the witness.

15:53:44 8 THE WITNESS: I don't recall.

15:53:44 9 MR. BASKIN: Q. Does YouTube have  
15:53:46 10 distribution contracts to distribute its videos with  
15:53:52 11 Apple over iPhone and iTV?

15:53:55 12 MR. MANCINI: Same continuing objections.

15:53:57 13 THE WITNESS: YouTube is a distribution  
15:53:59 14 vehicle.

15:54:02 15 MR. BASKIN: Q. And what my question is, do  
15:54:03 16 they have distribution contracts with Apple to  
15:54:06 17 distribute YouTube's product over iPhone and iTV?

15:54:11 18 MR. MANCINI: Same continuing objections.

15:54:19 19 THE WITNESS: I believe that there are deals  
15:54:21 20 with those companies around YouTube. I don't know the  
15:54:25 21 exact deals.

15:54:25 22 MR. BASKIN: Q. What about Motorola?

15:54:27 23 MR. MANCINI: Same continuing objections.

15:54:29 24 THE WITNESS: I don't recall.

15:54:30 25 MR. BASKIN: Q. What about Sony, Panasonic,

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15:54:34 2 and Tivo?

15:54:35 3 MR. MANCINI: Same continuing objections.

15:54:37 4 THE WITNESS: Sorry. What's the question?

15:54:38 5 MR. BASKIN: Q. Does YouTube have contracts

15:54:40 6 with all of these companies to distribute YouTube's

15:54:45 7 product over those -- over their platforms?

15:54:47 8 A So you mean Google?

15:54:49 9 MR. MANCINI: Same continuing objections.

15:54:51 10 MR. BASKIN: Well, I can phrase it that way.

15:54:52 11 Q Does Google have contracts with all of those

15:54:55 12 companies to distribute YouTube's content over

15:54:59 13 their -- over their platforms?

15:55:01 14 MR. MANCINI: Same continuing objections.

15:55:03 15 THE WITNESS: I'm not the expert on the

15:55:05 16 topic. I mean, we have people who would know

15:55:08 17 accurately.

15:55:08 18 MR. BASKIN: Q. What about phone companies,

15:55:10 19 like Cingular, Verizon, Vodaphone, and Telefon Italia?

15:55:15 20 MR. MANCINI: Same continuing objections.

15:55:17 21 THE WITNESS: Same answer.

15:55:19 22 MR. BASKIN: Q. Has the senior management of

15:55:23 23 Google discussed distribution contracts with all of

15:55:28 24 these major companies in the past?

15:55:30 25 MR. MANCINI: Objection; vague and ambiguous,

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15:55:31 2 and lacks foundation.

15:55:33 3 THE WITNESS: You're asking if we've

15:55:35 4 discussed all of a long series of maybe 10 or 12

15:55:39 5 companies you just named? Would you like to restate

15:55:42 6 them?

15:55:43 7 MR. BASKIN: Q. You want me to do them one

15:55:46 8 by one?

15:55:46 9 Do the senior management of Google, in your

15:55:49 10 presence, discuss YouTube's distribution contracts

15:55:51 11 with Apple?

15:55:53 12 MR. MANCINI: Objection; lacks foundation;

15:55:54 13 vague and ambiguous.

15:55:55 14 THE WITNESS: I don't recall.

15:55:56 15 MR. BASKIN: Q. How about with Sony?

15:55:59 16 MR. MANCINI: Same objection.

15:56:03 17 THE WITNESS: Again, I'm not sure what a

15:56:05 18 "distribution contract" is either so.

15:56:07 19 MR. BASKIN: Q. But --

15:56:08 20 A I have no in-depth knowledge of these things,

15:56:10 21 so I don't --

15:56:12 22 Q I understand.

15:56:14 23 The question is whether these were -- whether

15:56:16 24 these distribution contracts which by -- by which I

15:56:20 25 mean contracts to distribute YouTube's videos over

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15:56:22 2 these other platforms, whether that was discussed with  
15:56:27 3 senior management at Google?

15:56:30 4 MR. MANCINI: Objection; vague and ambiguous;  
15:56:31 5 lacks foundation, and continuing objection to the  
15:56:34 6 disavowance of this Court's order.

15:56:37 7 THE WITNESS: I'm sorry. YouTube could be  
15:56:40 8 accessed to all those things, whether or not we make a  
15:56:41 9 deal, so it's kind of a strange question also.

15:56:43 10 MR. BASKIN: Q. Well --

15:56:44 11 THE WITNESS: I mean.

15:56:46 12 MR. BASKIN: Q. -- do you recall whether the  
15:56:47 13 senior management of the company, including you and  
15:56:49 14 Mr. Brin and Mr. Schmidt, have had discussions  
15:56:54 15 regarding contracts between YouTube or Google and such  
15:57:01 16 companies as Apple, Sony, Panasonic, Cingular,  
15:57:05 17 Verizon, Vodaphone, pick any one of them, do you  
15:57:11 18 remember discussing distribution contracts with any of  
15:57:14 19 those companies?

15:57:15 20 MR. MANCINI: Same objections.

15:57:16 21 THE WITNESS: I don't recall any specific  
15:57:17 22 discussions, no.

15:57:18 23 MR. BASKIN: Q. Do you recall discussions  
15:57:31 24 among senior management that YouTube is involved in  
15:57:41 25 promoting videos?

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15:57:42 2 MR. MANCINI: Objection; vague and ambiguous;  
15:57:44 3 lacks foundation.  
15:57:46 4 THE WITNESS: I don't understand the  
15:57:47 5 question.  
15:57:49 6 MR. BASKIN: Q. Well, does YouTube --  
15:57:57 7 MR. MANCINI: So, Stu, once again, we're  
15:57:59 8 going to operational issues --  
15:58:01 9 MR. BASKIN: Okay.  
15:58:02 10 MR. MANCINI: -- that go way beyond the  
15:58:04 11 Court's order.  
15:58:05 12 MR. BASKIN: Let's -- let's mark exhibit --  
15:58:06 13 let me show you actually some e-mails that not only  
15:58:12 14 you received but you wrote, Mr. Page.  
15:58:15 15 MR. MANCINI: Please, let's do that.  
15:58:18 16 MR. BASKIN: What number is this?  
15:58:19 17 THE REPORTER: 19.  
15:58:20 18 (Document marked Page Exhibit 19  
15:58:21 19 for identification.)  
15:58:48 20 MR. BASKIN: Q. Again, sir, to save time,  
16:00:32 21 I'm going to ask about this document, but you're  
16:00:34 22 welcome to look at it as much as you want.  
16:00:37 23 A Okay.  
16:00:37 24 Q But first, with respect to Exhibit 19, can  
16:00:39 25 you identify that, sir, as an e-mail chain of which

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16:00:46 2 was sent to you by David Eun?

16:00:55 3 A It appears that way, yes.

16:00:58 4 Q Do you remember this at all?

16:01:06 5 A It's triggered my recollection a little bit.

16:01:07 6 Q Does it trigger your recollection enough to

16:01:10 7 tell us whether you now remember that YouTube is in

16:01:16 8 the business of entering into promotional contracts

16:01:20 9 with big companies to promote their videos?

16:01:24 10 MR. MANCINI: Objection; mischaracterizes the  
16:01:26 11 document.

16:01:26 12 THE WITNESS: Sorry. Do you want me to read  
16:01:30 13 the whole document?

16:01:31 14 MR. BASKIN: No.

16:01:34 15 Q If you -- you have to answer my question.

16:01:35 16 You can read the whole document. But is YouTube, to

16:01:38 17 your recollection, in the business of promoting

16:01:42 18 videos?

16:01:42 19 MR. MANCINI: Objection; mischaracterizes the  
16:01:44 20 document.

16:01:45 21 MR. BASKIN: Q. Is that one of the functions  
16:01:46 22 that YouTube engages in?

16:01:48 23 MR. MANCINI: Objection; mischaracterizes the  
16:01:49 24 document; vague and ambiguous; lacks foundation.

16:01:52 25 THE WITNESS: I don't understand the question

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16:01:53 2 or the relevance to the document.

16:01:55 3 MR. BASKIN: Okay. Thank you.

16:02:17 4 Q Does the YouTube -- does YouTube drive  
16:02:23 5 additional monetizeable traffic to Google's search  
16:02:28 6 engine?

16:02:29 7 MR. MANCINI: Objection; vague and ambiguous.

16:02:30 8 THE WITNESS: Yeah, I'm not sure what that  
16:02:34 9 means. Google owns YouTube.

16:02:38 10 MR. BASKIN: Q. And when someone -- if  
16:02:41 11 someone is going to search over YouTube, does that  
16:02:45 12 drive additional traffic that you can monetize to the  
16:02:50 13 Google search engine?

16:02:52 14 MR. MANCINI: Objection; vague and ambiguous.

16:02:57 15 THE WITNESS: I'm not sure.

16:03:01 16 MR. BASKIN: Q. If you just go to a  
16:03:14 17 second -- maybe this will refresh your memory -- go  
16:03:17 18 back to, I don't know what exhibit this is, board  
16:03:20 19 book, sorry, this is Exhibit 1. If you go to  
16:03:24 20 page eight of Exhibit 1.

16:03:42 21 A Is there a particular part of this?

16:03:43 22 Q Yeah. There's one sentence I want to direct  
16:03:46 23 your attention to. Two-thirds down the page, it says  
16:03:49 24 "Yellow can drive additional monetizeable traffic  
16:03:54 25 through green's search engine (not currently included

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16:03:58 2 in financial model)."  
16:04:01 3 Do you see that?  
16:04:03 4 MR. MANCINI: Objection; document speaks for  
16:04:04 5 itself.  
16:04:05 6 THE WITNESS: I'm reading the document, yes.  
16:04:07 7 MR. BASKIN: Q. Do you recall what Credit  
16:04:12 8 Suisse told the Google board in that sentence?  
16:04:14 9 MR. MANCINI: So objection; lacks foundation,  
16:04:15 10 and continuing objection to reliance on this document  
16:04:15 11 to which the witness testified previously he did not  
16:04:20 12 recall.  
16:04:20 13 THE WITNESS: Yeah, I don't recall. I state,  
16:04:27 14 too, there's a lot of such presentations to the board  
16:04:30 15 which I assume I don't read all of.  
16:04:33 16 MR. BASKIN: Q. Has the senior management of  
16:04:34 17 Google discussed, meaning you and Mr. Brin and  
16:04:38 18 Mr. Schmidt, the economic value to YouTube to --  
16:04:45 19 strike that. Strike that.  
16:04:46 20 Have you and Mr. Brin and Mr. Schmidt  
16:04:48 21 discussed the economic value to Google of having  
16:05:04 22 searches for content over YouTube pass through  
16:05:08 23 Google's search engine?  
16:05:09 24 MR. MANCINI: Objection; vague and ambiguous.  
16:05:10 25 THE WITNESS: I still don't understand the

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16:05:12 2 question.

16:05:12 3 MR. BASKIN: Maybe it had been a lousy

16:05:16 4 question.

16:05:18 5 Q Has anyone quantified, to your knowledge, for  
16:05:23 6 senior management, the benefit set forth by Credit  
16:05:26 7 Suisse on Exhibit 1, set forth on that line about  
16:05:31 8 additional monetizeable traffic?

16:05:33 9 Have you seen a quantification of the value  
16:05:35 10 to Google of that phenomenon?

16:05:41 11 MR. MANCINI: Objection; lacks foundation;  
16:05:43 12 vague and ambiguous.

16:05:43 13 THE WITNESS: I don't recall.

16:05:44 14 MR. BASKIN: Q. Now, the Google search  
16:06:00 15 engine provides search services on the YouTube site;  
16:06:07 16 isn't that right?

16:06:08 17 MR. MANCINI: Objection; vague and ambiguous.

16:06:11 18 THE WITNESS: Yeah, I'm not sure what the  
16:06:12 19 definition of the "Google search engine" is given that  
16:06:16 20 Google also owns YouTube.

16:06:17 21 MR. BASKIN: Q. Well, let me put it this  
16:06:21 22 way: Has the -- has the Google search engine been  
16:06:24 23 customized for YouTube?

16:06:25 24 MR. MANCINI: Objection; vague and ambiguous.

16:06:27 25 THE WITNESS: So again I don't know what you

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16:06:29 2 mean by "the Google search engine."

16:06:32 3 MR. BASKIN: Q. Well, has -- when someone  
16:06:35 4 goes to Google.com and types in something in the box  
16:06:39 5 to search the Internet, has that search engine been  
16:06:46 6 customized for YouTube?

16:06:47 7 MR. MANCINI: Objection; vague and ambiguous.

16:06:48 8 THE WITNESS: I'm still not sure what that  
16:06:53 9 means.

16:06:53 10 MR. BASKIN: Q. Does -- does YouTube get  
16:07:07 11 search -- get searching preference on Google -- on  
16:07:11 12 Google?

16:07:12 13 MR. MANCINI: Objection; vague and ambiguous.

16:07:14 14 THE WITNESS: I'm not aware of the details.

16:07:19 15 MR. BASKIN: Okay.

16:07:20 16 Q What about does Google's search engine direct  
16:07:26 17 video queries first to YouTube?

16:07:28 18 MR. MANCINI: Okay. So continuing objections  
16:07:30 19 to the lack of precision, which is why I'm claiming  
16:07:32 20 them to be vague and ambiguous, but we're clearly  
16:07:35 21 going way beyond this Court's order with respect to  
16:07:37 22 this line of questioning. This is not an area of this  
16:07:45 23 witness's unique knowledge, clearly.

16:07:47 24 THE WITNESS: We have people who are  
16:07:49 25 operational on these issues who would know exact

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16:07:52 2 answers.

16:07:53 3 MR. BASKIN: Q. Now, you helped design

16:07:59 4 Google's search engine; didn't you? Isn't that why

16:08:02 5 you're the founder?

16:08:04 6 A In -- before 1998, I wrote some of the code

16:08:06 7 that was the Google search engine, which probably has

16:08:10 8 all been deleted by now, hopefully, over 11 years ago

16:08:14 9 now.

16:08:18 10 Q Well, even 11 years ago, if Viacom had given

16:08:27 11 Google a white list of authorized clips to be shown on

16:08:32 12 the YouTube site, could that have been built into the

16:08:36 13 search function?

16:08:37 14 MR. MANCINI: Objection; calls for

16:08:39 15 speculation; hypothetical; clearly beyond this Court's

16:08:42 16 order; vague and ambiguous.

16:08:43 17 THE WITNESS: I'm also not a lawyer.

16:08:45 18 MR. BASKIN: Q. Sorry?

16:08:46 19 A I'm also not an attorney.

16:08:50 20 Q I was aware of that. I'm asking you a

16:08:52 21 question for a computer engineer like yourself.

16:08:54 22 MR. MANCINI: And objection to the extent it

16:08:56 23 seeks a legal conclusion by the term "authorized

16:09:00 24 clips."

16:09:01 25 MR. BASKIN: So let me say it again.

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16:09:02 2 Q If Viacom were to give Google a white list of  
16:09:05 3 authorized clips, clips that Viacom is authorized to  
16:09:08 4 be put on the YouTube website, could that be built  
16:09:14 5 into the search engine?

16:09:15 6 MR. MANCINI: Objection; calls for  
16:09:16 7 speculation; vague and ambiguous; calls for a legal  
16:09:19 8 conclusion; well beyond this Court's order.

16:09:23 9 THE WITNESS: On that, I just don't  
16:09:25 10 understand the question.

16:09:27 11 MR. BASKIN: Q. Does the Google search  
16:10:04 12 engine block certain searches because it violated the  
16:10:10 13 laws of particular countries?

16:10:12 14 MR. MANCINI: Objection; lacks foundation;  
16:10:13 15 vague and ambiguous; calls for a legal conclusion, and  
16:10:15 16 well beyond this Court's order.

16:10:20 17 THE WITNESS: You're asking a very general  
16:10:22 18 question. There's very many laws around the world  
16:10:26 19 which Google is required to follow, which there's  
16:10:30 20 tremendous amount of detail and I'm not an expert on.

16:10:33 21 MR. BASKIN: Q. Well, could Google's search  
16:10:37 22 engine block searches of pirated sites like Bit  
16:10:42 23 Torrent, a site like that?

16:10:44 24 MR. MANCINI: Same exact objections.

16:10:47 25 THE WITNESS: It's a hypothetical question.

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16:10:58 2 I don't know the answer to that.

16:10:59 3 MR. BASKIN: Q. I take it that there's been  
16:11:12 4 no discussion among the other founder and you and  
16:11:15 5 Mr. Schmidt as to whether the Google search engine  
16:11:23 6 should be adjusted or modified to block pirated  
16:11:27 7 search -- sites of pirate -- searches of pirated  
16:11:30 8 sites?

16:11:30 9 MR. MANCINI: Objection; lacks foundation;  
16:11:32 10 vague and ambiguous; calls for speculation and  
16:11:34 11 violates this Court's order.

16:11:36 12 THE WITNESS: I don't recall any such  
16:11:37 13 discussion.

16:11:38 14 MR. BASKIN: Let's take a break for a second.  
16:11:46 15 How much time is left?

16:11:48 16 THE VIDEOGRAPHER: We've got --

16:11:49 17 MR. BASKIN: Well, let's go off the record.

16:11:51 18 THE VIDEOGRAPHER: We're now going off the  
16:11:52 19 record. The time is 4:07 p.m.

16:11:56 20 (Recess taken.)

16:20:31 21 THE VIDEOGRAPHER: We're now going back on  
16:20:32 22 the record. The time is 4:16 p.m.

16:20:35 23 MR. BASKIN: We are now a little short of  
16:20:37 24 three hours. I'm through with my questioning of  
16:20:40 25 Mr. Page.

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16:20:41 2 I'm going to pass the baton to counsel for

16:20:44 3 The Class, and with everyone's permission, my

16:20:47 4 colleague is going to be leaving us to catch an

16:20:49 5 airplane. So I assume you got -- he means no

16:20:53 6 disrespect. It's just he's attending a conference, I

16:20:56 7 believe, and I promised him we would try to get him

16:20:58 8 out of here by 4:00.

16:20:59 9 MR. MANCINI: Safe travels.

16:21:01 10 MR. DEIXLER: Should I switch with you?

16:21:03 11 MR. BASKIN: Yeah, I think you should.

16:21:05 12 MR. DEIXLER: Okay.

16:21:16 13 MR. MANCINI: What is the time we have on the

16:21:18 14 record?

16:21:18 15 THE VIDEOGRAPHER: Right now we've got

16:21:24 16 176 minutes right now. 176 minutes.

16:21:27 17 MR. DEIXLER: I'm sorry. How much?

16:21:30 18 THE VIDEOGRAPHER: 176 right now. 177.

16:21:35 19 MR. MANCINI: We have one hour left.

16:21:40 20 MR. DEIXLER: One hour and three minutes.

16:21:44 21 MR. MANCINI: Hopefully much less.

16:21:46 22 MR. DEIXLER: We share the same goal.

16:21:51 23 MR. MANCINI: What's your time?

16:21:54 24 THE WITNESS: I wasn't figuring in the

16:21:57 25 30-minute delay to begin with or hour delay.

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16:22:01 2 MR. MANCINI: An hour.

16:22:20 3 MR. DEIXLER: If you can hear over the

16:22:21 4 packing up, I'll happily get started.

16:22:24 5 Is that okay with you Mr. Page?

16:22:25 6 THE WITNESS: Uh-huh.

16:22:27 7 MR. STRAUSS: I'm all done.

16:22:28 8 MR. BASKIN: Okay.

16:22:33 9 MR. DEIXLER: Are we on the record?

16:22:35 10 THE VIDEOGRAPHER: We're on the record.

16:22:36 11 EXAMINATION BY MR. DEIXLER

16:22:36 12 MR. DEIXLER: Okay.

16:22:37 13 Q Good afternoon, Mr. Page.

16:22:38 14 A Good afternoon.

16:22:39 15 Q My name is Bert Deixler. I'm a partner at

16:22:45 16 Proskauer Rose, and I'm a lawyer representing The

16:22:48 17 Class. Do you understand that?

16:22:50 18 A Yes.

16:22:50 19 Q And you understand your testimony continues

16:22:52 20 to be under oath and subject to the penalty of

16:22:52 21 perjury?

16:22:53 22 A Of course.

16:22:53 23 Q Did you favor the acquisition of YouTube by

16:22:58 24 Google?

16:23:02 25 A I don't remember my exact thinking around the

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16:23:04 2 time. I don't think I was tremendously upset by it.

16:23:13 3 Q Can you recall whether you favored the  
16:23:16 4 acquisition of YouTube by Google, sir?

16:23:19 5 MR. MANCINI: Objection; asked and answered.

16:23:24 6 THE WITNESS: I mean the -- you know, there's  
16:23:27 7 many such issues around doing deals. I -- like I  
16:23:31 8 said, I don't think I was upset by it.

16:23:33 9 MR. DEIXLER: Yeah, my question was a  
16:23:35 10 different one and a precise one.

16:23:37 11 Q Were you in favor of the acquisition of  
16:23:39 12 YouTube by Google, sir?

16:23:42 13 MR. MANCINI: Objection; asked and answered  
16:23:43 14 twice now.

16:23:44 15 THE WITNESS: You're implying, I guess, we  
16:23:47 16 have some sort of strict voting process. I'm not sure  
16:23:50 17 that's normally how we would do it.

16:23:52 18 MR. DEIXLER: Q. Do you recall whether there  
16:23:53 19 was a vote which you participated in on whether Google  
16:23:56 20 should acquire YouTube?

16:23:57 21 A I don't recall a vote. I think -- I mean, I  
16:24:09 22 think most people were for it, but it was done  
16:24:11 23 informally and that's probably why we did the deal.

16:24:14 24 Q I see.

16:24:14 25 Most people were for. Were you one of those

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16:24:16 2 people who was for it?

16:24:17 3 MR. MANCINI: Objection; asked and answered.

16:24:18 4 THE WITNESS: I said I don't remember being

16:24:20 5 upset about it, so my guess is I was more positive

16:24:23 6 than negative.

16:24:24 7 MR. DEIXLER: Q. It's only a guess. You

16:24:25 8 have no memory at all as to whether you were for it or

16:24:28 9 against it. Is that your testimony under oath; sir?

16:24:32 10 MR. MANCINI: Objection; asked and answered

16:24:33 11 four times, and now just seeking to harass this

16:24:36 12 witness. The witness's memory is what it is,

16:24:38 13 Counselor.

16:24:38 14 THE WITNESS: Yeah, and there's also a

16:24:40 15 question of, you know, different times. I mean, these

16:24:42 16 things don't happen in one day. They go on and on and

16:24:45 17 on.

16:24:45 18 MR. DEIXLER: Q. Do you recall, sir, that

16:24:47 19 your being in favor or opposed to the acquisition of

16:24:50 20 YouTube by Google changed from one point to another

16:24:54 21 prior to the closing of the transaction?

16:24:56 22 MR. MANCINI: Objection; asked and answered.

16:24:58 23 THE WITNESS: I don't recall.

16:24:59 24 MR. DEIXLER: Q. Can you recall on any

16:25:00 25 occasion discussing with Mr. Brin whether you favored

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16:25:03 2 or opposed the acquisition of YouTube by Google?

16:25:07 3 MR. MANCINI: Objection; asked and answered  
16:25:09 4 in an only slightly different variant.

16:25:13 5 THE WITNESS: I don't recall such a  
16:25:14 6 situation, but I'd be surprised if I didn't.

16:25:17 7 MR. DEIXLER: Okay.

16:25:17 8 Q If you wanted to refresh your memory about  
16:25:20 9 the content of any conversation you had with Mr. Brin,  
16:25:23 10 on whether the YouTube acquisition should go forward,  
16:25:30 11 to what would you refer?

16:25:35 12 A I'm not sure what I would use.

16:25:37 13 Q Well, do you have a practice of making notes?

16:25:40 14 A No.

16:25:41 15 Q Do you have a videotape or an audiotape of  
16:25:44 16 conversations that you had with Mr. Brin on that  
16:25:46 17 subject matter?

16:25:49 18 A Not that I can recall, and I assume if there  
16:25:52 19 was, it would be -- if it were relevant, it would be  
16:25:57 20 produced to counsel.

16:25:58 21 Q We have the best of your memory with regards  
16:26:00 22 to the topics you discussed with Mr. Brin regarding  
16:26:03 23 whether you were for or against the acquisition of  
16:26:05 24 YouTube; is that true?

16:26:07 25 MR. MANCINI: Objection.

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16:26:07 2 Is that a question?

16:26:11 3 THE WITNESS: You're asking if I answered

16:26:13 4 your previous question?

16:26:14 5 MR. DEIXLER: No.

16:26:15 6 Q I'm asking if there's anything else that

16:26:17 7 could enhance your memory from what you just testified

16:26:19 8 to that you know of.

16:26:20 9 MR. MANCINI: Objection; asked and answered.

16:26:22 10 THE WITNESS: I can't think of anything

16:26:24 11 offhand.

16:26:25 12 MR. DEIXLER: Q. How about Mr. Schmidt?

16:26:27 13 Prior to the closure of the acquisition of YouTube,

16:26:31 14 did you and Mr. Schmidt discuss whether you were in

16:26:33 15 favor of it?

16:26:35 16 A Like I said, I don't recall any specific

16:26:38 17 discussions around it. Again, I'd be surprised if I

16:26:42 18 didn't.

16:26:43 19 Q Can you recall in general any conversation

16:26:45 20 you and Mr. Schmidt had about the wisdom of Google

16:26:48 21 acquiring YouTube --

16:26:50 22 MR. MANCINI: Objection.

16:26:51 23 MR. DEIXLER: Q. -- prior to its

16:26:52 24 acquisition?

16:26:53 25 MR. MANCINI: Objection; vague and ambiguous.

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16:26:54 2 THE WITNESS: I don't recall.

16:26:55 3 MR. DEIXLER: Q. You have no memory, general

16:26:58 4 or specific, of any conversation you had with Mr. Brin

16:27:01 5 or with Mr. Schmidt on the topic of the acquisition

16:27:05 6 of -- of YouTube by Google prior to the acquisition

16:27:08 7 closing; is that your testimony, sir?

16:27:10 8 MR. MANCINI: Objection; asked and answered.

16:27:13 9 THE WITNESS: I already answered that

16:27:16 10 question.

16:27:16 11 MR. DEIXLER: Q. Is that your testimony,

16:27:17 12 sir?

16:27:17 13 A Of course. I just said that.

16:27:18 14 MR. MANCINI: Objection; asked and answered.

16:27:19 15 THE WITNESS: I just said that.

16:27:21 16 MR. DEIXLER: Okay.

16:27:22 17 Q You have no way of refreshing your memory,

16:27:24 18 that you know of, with regard to the conversations, if

16:27:27 19 any, that you had with Mr. Brin or Mr. Schmidt on the

16:27:30 20 wisdom of Google's acquiring YouTube prior to the

16:27:34 21 closure; is that also true?

16:27:36 22 MR. MANCINI: Objection; asked and answered

16:27:37 23 and vague and ambiguous.

16:27:38 24 THE WITNESS: I already answered.

16:27:39 25 MR. DEIXLER: I'm sorry.

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16:27:40 2 Q Will you answer my question, sir?

16:27:41 3 A I said I already answered it.

16:27:43 4 MR. MANCINI: Objection.

16:27:44 5 MR. DEIXLER: I'm sorry.

16:27:45 6 Q You didn't answer the question. Would you  
16:27:46 7 please do so now?

16:27:47 8 MR. MANCINI: Sir, you are just harassing  
16:27:49 9 this witness now, and you are wasting all of our time.

16:27:51 10 MR. DEIXLER: All right.

16:27:52 11 Q Answer the question please.

16:27:53 12 MR. MANCINI: And you're directly violating  
16:27:54 13 Judge Stanton's order in this case.

16:27:57 14 MR. DEIXLER: That's not true.

16:27:58 15 Q Answer the question, please, sir, if you  
16:27:58 16 would.

16:28:00 17 A Would you repeat the question?

16:28:01 18 Q Yes.

16:28:02 19 Am I correct that you have nothing to which  
16:28:04 20 you could refer which would refresh your memory with  
16:28:07 21 regard to any conversations you had with Mr. Brin or  
16:28:11 22 Mr. Schmidt on the topic of the wisdom of YouTube  
16:28:13 23 being acquired by Google prior to the closure of that  
16:28:16 24 transaction?

16:28:17 25 MR. MANCINI: Objection; vague and ambiguous

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16:28:19 2 to be specific as to the term "wisdom," and asked and

16:28:22 3 answered numerous times.

16:28:23 4 MR. BASKIN: Hold on one second, guys.

16:28:25 5 Keep the questions going. My bag is in my

16:28:27 6 colleague's car.

16:28:29 7 MR. MANCINI: Go ahead.

16:28:30 8 MR. BASKIN: I've got to get it, so.

16:28:33 9 MR. MANCINI: Is the question, Counselor,

16:28:35 10 designed to do anything other than harass this

16:28:37 11 witness, because he's answered it numerous times?

16:28:39 12 MR. DEIXLER: Q. Please answer the question.

16:28:40 13 MR. MANCINI: You're aware, Counselor --

16:28:41 14 MR. DEIXLER: Q. Please answer the question.

16:28:43 15 MR. MANCINI: You're aware, Counselor,

16:28:46 16 harassment is sanctionable in the Southern District of

16:28:48 17 New York.

16:28:48 18 MR. DEIXLER: Q. Please answer the question.

16:28:50 19 A Like I said --

16:28:50 20 MR. MANCINI: Asked and answered --

16:28:51 21 THE WITNESS: -- anything.

16:28:51 22 MR. MANCINI: -- numerous times?

16:28:52 23 THE WITNESS: Same answer.

16:28:54 24 MR. DEIXLER: Q. You can't think of anything

16:28:56 25 that you could refer to that would refresh your memory

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16:29:00 2 with regard to the conversation; is that true?

16:29:02 3 MR. MANCINI: So that's now been asked and

16:29:04 4 answered about seven times, Counselor.

16:29:06 5 MR. DEIXLER: Q. Is that true?

16:29:07 6 A I can't think of anything offhand. I already

16:29:09 7 said multiple times.

16:29:12 8 Q Why were you, in general, in favor of the

16:29:15 9 acquisition of YouTube by Google?

16:29:19 10 MR. MANCINI: Objection; asked and answered;

16:29:20 11 mischaracterizes testimony.

16:29:21 12 THE WITNESS: I said I don't remember being

16:29:31 13 against it.

16:29:35 14 MR. BASKIN: I'm not trying to be rude, guys.

16:29:40 15 I just got to get my bag.

16:29:40 16 THE WITNESS: You say what were my reasons?

16:29:45 17 MR. DEIXLER: Yes, sir.

16:29:48 18 THE WITNESS: Let me see. I have to think

16:29:50 19 about that.

16:29:53 20 I mean, we do lots of different acquisitions.

16:29:57 21 I think there's always a balance of very many things.

16:30:00 22 I don't know that I remember my specific reasons, but

16:30:03 23 I can -- obviously it's a big site. It has very good

16:30:12 24 functionality for -- or even did, at that time.

16:30:15 25 It has very good functionality for

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16:30:17 2 discovering related videos for allowing anybody to  
16:30:24 3 upload something, for those people to distribute those  
16:30:27 4 and so on, which the community features on that were  
16:30:34 5 very, very well-developed.

16:30:37 6 MR. DEIXLER: Q. Any other reason why you  
16:30:38 7 favored the acquisition of YouTube by Google?

16:30:42 8 A That I do now?

16:30:43 9 MR. MANCINI: Objection; mischaracterizes his  
16:30:45 10 testimony.

16:30:45 11 MR. DEIXLER: Q. Prior to the closing of the  
16:30:47 12 acquisition.

16:30:48 13 MR. MANCINI: Same objection.

16:30:48 14 THE WITNESS: Like I said, I don't remember  
16:30:49 15 my exact thinking around it. I gave you some of  
16:30:52 16 the -- some of the general things. I think we were  
16:30:55 17 very positive.

16:30:57 18 MR. DEIXLER: Q. Is there anything else,  
16:30:58 19 other than the fact that it was a big site and the  
16:31:01 20 functionality, which caused you to be in favor of the  
16:31:04 21 acquisition of YouTube by Google prior to the closing  
16:31:07 22 of the transaction?

16:31:09 23 MR. MANCINI: Objection.

16:31:09 24 That intentionally misstates testimony, and  
16:31:13 25 objection to the extent that, once again, we're going

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16:31:15 2 far afield of this Court's order.  
16:31:19 3 MR. DEIXLER: Q. Please answer the question.  
16:31:22 4 MR. MANCINI: Same objections.  
16:31:23 5 THE WITNESS: Like I said, I don't recall,  
16:31:24 6 like, any specifics or anything.  
16:31:27 7 MR. DEIXLER: Q. If you wanted to refresh  
16:31:29 8 your memory with regard to the reasons you favored the  
16:31:32 9 acquisition of YouTube by Google prior to the closure  
16:31:36 10 of that transaction, to what, if anything, would you  
16:31:40 11 refer?  
16:31:40 12 MR. MANCINI: Counselor, do you intend on  
16:31:42 13 misrepresenting his testimony that he favored  
16:31:45 14 something when he specifically told you his precise --  
16:31:49 15 MR. DEIXLER: Please, no speaking objections.  
16:31:51 16 MR. MANCINI: You're intentionally --  
16:31:52 17 MR. DEIXLER: No speaking objections.  
16:31:53 18 MR. MANCINI: But you're --  
16:31:55 19 MR. DEIXLER: If you have an objection, make  
16:31:57 20 your objection, a legal objection. Stop talking.  
16:32:00 21 Please don't try to intimidate me.  
16:32:01 22 MR. MANCINI: Objection; misrepresenting the  
16:32:03 23 witness's testimony.  
16:32:03 24 MR. DEIXLER: Okay.  
16:32:05 25 MR. MANCINI: Asked and answered and clearly

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16:32:06 2 violating this Court's order.

16:32:06 3 MR. BASKIN: Q. Would you answer the  
16:32:06 4 question now, sir?

16:32:13 5 A Sorry. You've got to repeat it now.

16:32:17 6 Q If you wanted to refresh your memory with  
16:32:19 7 regard to the reasons you favor the acquisition of  
16:32:20 8 YouTube by Google prior to the closure of that  
16:32:21 9 transaction, to what, if anything, would you refer?

16:32:23 10 MR. MANCINI: Same objections.

16:32:25 11 THE WITNESS: Again, I would disagree with  
16:32:26 12 the premise.

16:32:27 13 MR. DEIXLER: Q. Which premise?

16:32:30 14 A The premise of your question.

16:32:32 15 Q Which one?

16:32:34 16 A At least one.

16:32:34 17 Q Which is the one you disagree with, sir?

16:32:38 18 A Well, you are stating that I was for it,  
16:32:41 19 which I don't remember saying.

16:32:42 20 Q Were you against it?

16:32:44 21 A I don't --

16:32:45 22 MR. MANCINI: Objection; asked and answered.

16:32:46 23 THE WITNESS: I didn't say that either.

16:32:48 24 MR. DEIXLER: Q. You were neither for it nor  
16:32:51 25 against it?

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16:32:51 2 MR. MANCINI: Objection; asked and answered

16:32:53 3 numerous times now.

16:32:54 4 Counselor, maybe we should just read back

16:32:59 5 what he said.

16:32:59 6 MR. DEIXLER: Q. Were you for it or against

16:33:00 7 it?

16:33:01 8 MR. MANCINI: Objection; Counselor. He's

16:33:03 9 answered this question numerous times. Maybe we

16:33:06 10 should just read it back.

16:33:06 11 MR. DEIXLER: Q. Were you for it or against

16:33:08 12 it?

16:33:08 13 MR. MANCINI: Same objections.

16:33:09 14 THE WITNESS: I believe what I stated was

16:33:10 15 that I wasn't -- I don't remember being against it.

16:33:13 16 MR. DEIXLER: Q. And if you weren't against

16:33:14 17 it, does that mean you were for it?

16:33:16 18 A No.

16:33:16 19 Q Did you abstain?

16:33:19 20 A Like I said, I --

16:33:20 21 MR. MANCINI: Objection; lacks foundation.

16:33:22 22 THE WITNESS: Like I already explained, there

16:33:24 23 wasn't -- I don't think it's really, like, a formal

16:33:26 24 process, and it also persists over time.

16:33:28 25 MR. DEIXLER: Q. Prior to the closure of the

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16:33:30 2 acquisition of YouTube by Google, had you learned from  
16:33:34 3 anybody that there were allegations that YouTube had  
16:33:38 4 engaged in copyright infringements?

16:33:40 5 MR. MANCINI: Objection to the extent it  
16:33:42 6 seeks communications with counsel to which I instruct  
16:33:45 7 the witness not to answer.

16:33:46 8 THE WITNESS: I'll take advice of counsel.

16:33:48 9 MR. DEIXLER: Q. So except from your answer,  
16:33:53 10 any -- any information you received from counsel,  
16:33:56 11 other than from a lawyer conveying confidential  
16:34:00 12 information for the purpose of rendering or receiving  
16:34:03 13 legal advice, did you have any familiarity with the  
16:34:08 14 fact of any allegations of copyright infringement made  
16:34:12 15 with regard to YouTube prior to the closure of the  
16:34:15 16 Google acquisition of YouTube?

16:34:16 17 MR. MANCINI: Objection; vague and ambiguous;  
16:34:18 18 calls for a legal conclusion.

16:34:19 19 THE WITNESS: I don't recall.

16:34:23 20 MR. DEIXLER: Q. You don't recall, meaning,  
16:34:29 21 you might have and you've forgotten?

16:34:32 22 MR. MANCINI: Objection; that's nothing other  
16:34:33 23 than harassing this witness.

16:34:36 24 THE WITNESS: I don't recall.

16:34:37 25 MR. DEIXLER: Q. What does that mean?

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16:34:38 2 MR. MANCINI: That speaks for itself,

16:34:40 3 Counselor. He doesn't recall.

16:34:43 4 MR. DEIXLER: Q. What does it mean, sir? To

16:34:45 5 not recall, is it something you think you once knew

16:34:48 6 and you had forgotten, or is it something you believe?

16:34:53 7 You never knew.

16:34:54 8 MR. MANCINI: You don't have to answer that.

16:34:55 9 MR. DEIXLER: Q. Please answer that

16:34:58 10 question.

16:34:58 11 MR. MANCINI: The witness does not have to

16:34:58 12 answer that, Counselor, and you know it.

16:34:58 13 MR. DEIXLER: He has to answer.

16:34:59 14 MR. MANCINI: He doesn't recall an answer to

16:35:00 15 a question.

16:35:00 16 Do we need a definition -- a dictionary in

16:35:03 17 this room for what the term "recall" means?

16:35:03 18 MR. DEIXLER: Q. Would you answer my

16:35:04 19 question?

16:35:05 20 MR. MANCINI: He doesn't have to answer the

16:35:06 21 question.

16:35:07 22 MR. DEIXLER: You're instructing him not to

16:35:09 23 answer the question?

16:35:09 24 MR. MANCINI: I'm not instructing him not to

16:35:09 25 answer a --

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16:35:09 2 MR. DEIXLER: Then answer the question.

16:35:10 3 MR. MANCINI: -- harassing question.

16:35:10 4 MR. DEIXLER: Then answer the question.

16:35:13 5 MR. MANCINI: What -- what is the definition

16:35:13 6 of the word "recall" says?

16:35:16 7 MR. DEIXLER: Yes.

16:35:17 8 Q When you say "recall," "you do not recall,"

16:35:17 9 does it mean that you once knew something, and you've

16:35:20 10 forgotten it, or that you don't believe you --

16:35:21 11 MR. MANCINI: How in the world could you ever

16:35:22 12 parse it that way, Counselor?

16:35:24 13 MR. DEIXLER: Q. Could you answer my

16:35:25 14 question?

16:35:26 15 A I think I have responsibility for a great

16:35:29 16 number of people and a huge amount of stuff, and I

16:35:32 17 have -- there's a huge amount of detail that I can't

16:35:35 18 remember.

16:35:38 19 Q With regard to the -- your awareness of

16:35:41 20 allegations of copyright infringement before the

16:35:44 21 acquisition of YouTube by Google, do you believe that

16:35:49 22 you once had received information about that and

16:35:51 23 you've forgotten it?

16:35:54 24 MR. MANCINI: Objection; lacks foundation;

16:35:55 25 intentionally mischaracterizes testimony, and calls

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16:35:58 2 for a legal conclusion.  
16:35:59 3 THE WITNESS: Like I said, I don't recall.  
16:36:02 4 MR. DEIXLER: Q. If you wanted to refresh  
16:36:05 5 your memory about whether you had received information  
16:36:08 6 about allegations of copyright infringement by YouTube  
16:36:12 7 prior to Google's acquisition, to what, if anything,  
16:36:15 8 would you refer?  
16:36:17 9 MR. MANCINI: Same objections.  
16:36:19 10 THE WITNESS: Again, I can't think of  
16:36:20 11 anything offhand.  
16:36:21 12 MR. DEIXLER: Q. Can you recall having had  
16:36:23 13 any conversation with Mr. Schmidt, either before or  
16:36:26 14 after the acquisition of YouTube, in which the topic  
16:36:30 15 of copyright infringement was discussed by you?  
16:36:33 16 MR. MANCINI: Same objection, and to the  
16:36:34 17 extent it seeks communications either communicated by  
16:36:38 18 counsel or relayed from counsel, instruct the witness  
16:36:40 19 not to answer.  
16:36:41 20 THE WITNESS: I don't recall.  
16:36:42 21 MR. DEIXLER: Q. You don't recall any  
16:36:43 22 conversation that you had with Mr. Schmidt on any  
16:36:46 23 occasion on the topic of copyright infringements; is  
16:36:49 24 that correct?  
16:36:49 25 MR. MANCINI: Counselor, do you hope to get a

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16:36:51 2 different answer by asking the same exact question  
16:36:53 3 twice?  
16:36:53 4 MR. DEIXLER: If you would stop talking and  
16:36:55 5 only make legal objections, this would go much faster.  
16:36:57 6 MR. MANCINI: You are violating the Court's  
16:36:59 7 order where he specifically asked you, specifically  
16:37:03 8 instructed counsel, how to conduct this deposition.  
16:37:05 9 You're repeating questions which is clearly in  
16:37:09 10 violation --  
16:37:09 11 MR. DEIXLER: Please, stop wasting my time.  
16:37:09 12 Make legal objections and not speaking objections.  
16:37:10 13 Q Would you answer my question?  
16:37:10 14 MR. MANCINI: Objection; asked and answered.  
16:37:12 15 MR. BASKIN: Q. Would you answer my  
16:37:13 16 question?  
16:37:15 17 A I don't recall.  
16:37:16 18 Q Can you recall having had any conversation  
16:37:17 19 with Mr. Schmidt, either before or after the  
16:37:20 20 acquisition of YouTube, in which the topic of  
16:37:23 21 copyright infringement was discussed by either you or  
16:37:25 22 by him?  
16:37:26 23 MR. MANCINI: Objection; asked and answered;  
16:37:27 24 same reservation with respect to the communication of  
16:37:30 25 privileged information.

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16:37:31 2 THE WITNESS: Again, I don't recall.

16:37:31 3 MR. DEIXLER: Okay.

16:37:32 4 Q How about Mr. Brin? Do you recall on any

16:37:34 5 occasion ever discussing with Mr. Brin allegations of

16:37:38 6 copyright infringement as to YouTube either before or

16:37:42 7 after Google's acquisition of YouTube?

16:37:43 8 MR. MANCINI: Objection to the extent it

16:37:45 9 seeks communications either with or from counsel to

16:37:49 10 which the witness is instructed not to answer.

16:37:52 11 THE WITNESS: I don't recall.

16:37:53 12 MR. DEIXLER: Q. If you wanted to refresh

16:37:55 13 your memory about whether you and Mr. Brin or you and

16:37:58 14 Mr. Schmidt had ever discussed that topic, to what, if

16:38:02 15 anything, would you refer?

16:38:04 16 MR. MANCINI: Objection; lacks foundation.

16:38:07 17 THE WITNESS: Same answer.

16:38:08 18 MR. DEIXLER: Q. You can't think of anything

16:38:09 19 to which you could refer; correct?

16:38:11 20 A No.

16:38:11 21 Q You know of no document; true?

16:38:14 22 MR. MANCINI: Objection, Counselor. He just

16:38:15 23 answered that question.

16:38:17 24 THE WITNESS: Again, I can't think of

16:38:19 25 anything offhand, no.

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16:38:21 2 MR. DEIXLER: Q. Did you ever give  
16:38:25 3 consideration to whether there were technologic  
16:38:35 4 methods which would make copyright violations by  
16:38:40 5 YouTube less likely to occur?

16:38:42 6 MR. MANCINI: Objection; lacks foundation;  
16:38:44 7 calls for speculation, and seeks a legal conclusion.

16:38:47 8 THE WITNESS: I guess I'm not -- I feel like  
16:38:53 9 I don't understand the premise again.

16:38:55 10 MR. DEIXLER: I see.

16:38:55 11 Q You received a copy, in February of 2007, of  
16:39:01 12 a letter from Mr. Fricklas, who was the -- is the  
16:39:05 13 general counsel of Viacom, in which he made  
16:39:09 14 suggestions and allegations about copyright  
16:39:13 15 infringement and said there would be a large takedown  
16:39:17 16 of Viacom-owned material.

16:39:19 17 Do you recall learning about that some time  
16:39:22 18 in 2007?

16:39:23 19 MR. MANCINI: Objection; lacks foundation;  
16:39:25 20 vague and ambiguous; asked and answered.

16:39:27 21 THE WITNESS: Hold on one second.

16:39:29 22 You're referring to the document that was  
16:39:32 23 already discussed.

16:39:33 24 MR. DEIXLER: I believe it's Exhibit 15, if  
16:39:38 25 my memory serves.

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16:39:39 2 Q Do you recall that document?

16:39:40 3 MR. MANCINI: Same objections; asked and  
16:39:41 4 answered.

16:39:41 5 THE WITNESS: I already said I don't recall  
16:39:43 6 that document.

16:39:43 7 MR. DEIXLER: Q. Do you recall any  
16:39:44 8 discussion about the fact of that document having been  
16:39:46 9 received?

16:39:46 10 MR. MANCINI: Same objections; asked and  
16:39:48 11 answered.

16:39:48 12 THE WITNESS: Again, I don't recall, and I  
16:39:49 13 also don't think it was delivered to me. I think it  
16:39:51 14 was delivered to the company.

16:39:52 15 MR. DEIXLER: Q. It was delivered to  
16:39:53 16 Mr. Drummond?

16:39:54 17 A Yes.

16:39:54 18 Q And is Mr. Drummond a lawyer?

16:39:59 19 A Yes.

16:39:59 20 Q Okay. And is it your best memory that when  
16:40:03 21 Mr. Fricklas's letter to Viacom was delivered to the  
16:40:07 22 company, you did not become aware of it?

16:40:10 23 MR. MANCINI: Objection; asked and answered  
16:40:11 24 numerous times.

16:40:12 25 THE WITNESS: I said I don't recollect it.

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16:40:14 2 MR. DEIXLER: Q. Do you recall the issue

16:40:16 3 being presented, whether you recall the letter itself

16:40:19 4 or not --

16:40:20 5 MR. MANCINI: Counselor --

16:40:21 6 MR. DEIXLER: Q. -- that is that Viacom was

16:40:22 7 going to take down programming?

16:40:25 8 MR. MANCINI: Counselor, objection; asked and

16:40:27 9 answered by Mr. Baskin no more than about 30 minutes

16:40:30 10 ago.

16:40:31 11 THE WITNESS: Yeah. Like I said, I don't

16:40:32 12 recall.

16:40:33 13 MR. DEIXLER: Q. Was there ever a time that

16:40:38 14 you in your position as president of product and

16:40:45 15 cofounder directed anybody to determine whether there

16:40:48 16 were violations of the copyrights of any copyright

16:40:51 17 holder --

16:40:52 18 MR. MANCINI: Objection.

16:40:53 19 MR. DEIXLER: Q. -- by the operation of

16:40:54 20 YouTube?

16:40:55 21 MR. MANCINI: Objection; lacks foundation;

16:40:56 22 calls for a legal conclusion.

16:40:59 23 THE WITNESS: Again, I'm not an expert on the

16:41:01 24 operation of YouTube, but I don't recall any such

16:41:02 25 thing.

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16:41:03 2 MR. DEIXLER: Q. You don't recall giving an

16:41:04 3 instruction to anybody to find out whether there was a

16:41:09 4 basis for allegations of copyright infringement by

16:41:11 5 YouTube; correct?

16:41:12 6 MR. MANCINI: Same objections; asked and just

16:41:15 7 answered.

16:41:15 8 THE WITNESS: There were a lot of assumptions

16:41:17 9 in that question, and I don't recall.

16:41:18 10 MR. DEIXLER: Q. You don't recall whether

16:41:19 11 you gave such an instruction?

16:41:21 12 MR. MANCINI: Objection; asked and answered.

16:41:23 13 THE WITNESS: I don't recall.

16:41:24 14 MR. DEIXLER: Q. Was there ever a time when

16:41:29 15 you said to somebody, "There seemed to be a lot of

16:41:33 16 allegations that YouTube may be infringing copyright."

16:41:38 17 I'd like you to find out about it and report to me,"

16:41:41 18 or words to that effect?

16:41:42 19 MR. MANCINI: Objection; lacks foundation;

16:41:44 20 calls for speculation.

16:41:45 21 THE WITNESS: I don't recall doing that, no.

16:41:50 22 MR. DEIXLER: Q. Can you recall from the

16:41:53 23 time when you first -- well, let me go back.

16:41:55 24 When is the first time you can recall logging

16:41:57 25 in and seeing YouTube?

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16:42:05 2 A I don't know. I assume some time around the  
16:42:07 3 acquisition, but I don't recall that.

16:42:08 4 Q Shortly before the acquisition or months  
16:42:10 5 before the acquisition?

16:42:12 6 A That was quite a while ago. I don't -- you  
16:42:14 7 know, I visit a lot of websites. I don't remember.

16:42:17 8 Q I'm focused on YouTube.

16:42:18 9 Can you recall approximately the first time  
16:42:20 10 when you went to the YouTube website?

16:42:23 11 A I mean, no, I can't recall that.

16:42:26 12 Q Can you recall what caused you to go to the  
16:42:29 13 YouTube website for the first time?

16:42:30 14 A No.

16:42:30 15 Q Can you recall discussing with anybody what  
16:42:33 16 you saw on the YouTube website when you first went  
16:42:36 17 there?

16:42:36 18 A No.

16:42:36 19 Q Can you recall on any occasion discussing  
16:42:38 20 with Mr. Brin or Mr. Schmidt what you saw on the  
16:42:41 21 YouTube website?

16:42:46 22 A I can't recall any specific instance, no.

16:42:47 23 Q Can you recall on any occasion of viewing  
16:42:49 24 something on the YouTube website which cautioned you  
16:42:53 25 to be concerned about whether it was properly on the

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16:42:58 2 website?

16:42:59 3 MR. MANCINI: Objection; vague and ambiguous.

16:43:00 4 THE WITNESS: I can't recall that, no.

16:43:02 5 MR. DEIXLER: Q. When's the last time you

16:43:04 6 looked at the YouTube website?

16:43:10 7 A Probably pretty recently, but I can't

16:43:15 8 remember exactly.

16:43:16 9 Q Would it be fair to say that from the time

16:43:19 10 you first looked at the YouTube website until the last

16:43:21 11 time you looked at the YouTube website, on no occasion

16:43:24 12 did you observe anything which caused you to think

16:43:27 13 about whether there were copyright infringements

16:43:29 14 viewable on those -- on that website?

16:43:31 15 MR. MANCINI: Objection; vague and ambiguous;

16:43:34 16 calls for a legal conclusion.

16:43:35 17 THE WITNESS: I don't recall that, no.

16:43:37 18 MR. DEIXLER: Q. Can you recall being

16:43:39 19 involved in a discussion about the value of The

16:43:43 20 Football Association Premier League's broadcast?

16:43:48 21 A No.

16:43:48 22 Q Can you recall participating in any written

16:43:51 23 communications on the topic of The Football

16:43:56 24 Association Premier League?

16:43:58 25 A Like I said, I don't recall.

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16:44:00 2 Q Do you know what the Premier League is?

16:44:02 3 A I assume it's something related to sports.

16:44:04 4 Q That's all you know about it? Can you think

16:44:06 5 of any particular sport it's associated with or --

16:44:10 6 A Well, you said football. I'm not really a  
16:44:11 7 big follower of sports.

16:44:11 8 Q So as you sit here today, you have really no

16:44:14 9 idea what particular sport The Football Association

16:44:18 10 Premier League is affiliated with?

16:44:18 11 A I'm guessing.

16:44:22 12 MR. MANCINI: Objection; asked and answered.

16:44:23 13 THE WITNESS: I'm guessing football. It

16:44:24 14 doesn't seem like --

16:44:25 15 MR. DEIXLER: Q. You're guessing. You don't

16:44:27 16 know; correct?

16:44:28 17 A Football is in the name.

16:44:30 18 Q Okay. You're guessing that it's football,

16:44:32 19 but you don't know for sure; is that your testimony?

16:44:34 20 MR. MANCINI: Objection; asked and answered.

16:44:35 21 THE WITNESS: Yeah, I'm not sure.

16:44:36 22 MR. DEIXLER: Q. Let me -- who is Omid

16:44:48 23 Kordestani?

16:44:51 24 MR. MANCINI: Continuing objections to the

16:44:55 25 violations of this Court's order.

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16:44:56 2 THE WITNESS: Yeah, that's actually on our

16:45:00 3 website, but he's, you know, a business development

16:45:03 4 VP.

16:45:04 5 MR. DEIXLER: Q. And he works for Google;

16:45:08 6 does he?

16:45:09 7 A Yes, he does.

16:45:10 8 MR. MANCINI: Same objection.

16:45:11 9 MR. DEIXLER: Q. And --

16:45:15 10 A You certainly don't need me to answer that;

16:45:17 11 no?

16:45:17 12 Q I'm sorry?

16:45:18 13 A You don't need me to answer that; no?

16:45:21 14 Q I'm going to show you a -- he and you were in

16:45:24 15 communications, is that correct, with regard to work

16:45:27 16 that he was doing for Google?

16:45:30 17 A I remember talking to Omid from time to time.

16:45:39 18 Q You recall having communications with him

16:45:41 19 about The English Premier Football (Soccer)

16:45:50 20 opportunity?

16:45:50 21 MR. MANCINI: Objection; lacks foundation.

16:45:51 22 THE WITNESS: I don't recall.

16:45:53 23 MR. DEIXLER: I'd like to find this at a

16:46:11 24 break.

16:46:12 25 Q Can you recall having a discussion in writing

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16:46:13 2 with Mr. Kordestani on the topic of whether content of  
16:46:18 3 The English Premier League Football should be paid for  
16:46:22 4 or not?

16:46:23 5 MR. MANCINI: Objection; lacks foundation.

16:46:25 6 THE WITNESS: I don't recall.

16:46:28 7 MR. DEIXLER: Q. Can you recall having any  
16:46:32 8 conversations with Mr. Brin or Mr. Schmidt on the  
16:46:36 9 topic of The English Premier Football League?

16:46:41 10 A I don't recall.

16:46:42 11 Q Can you recall having had any conversations  
16:46:44 12 with anybody about the desirability of English Premier  
16:46:51 13 League Football content being licensed for YouTube  
16:46:56 14 viewing?

16:46:56 15 MR. MANCINI: Objection; vague and ambiguous;  
16:46:57 16 lacks foundation.

16:46:58 17 THE WITNESS: I don't recall and, you know,  
16:47:00 18 there's lot of these kinds of things. I mean, there's  
16:47:05 19 probably -- I would imagine Google is probably  
16:47:08 20 negotiating with every content owner there is.

16:47:11 21 MR. DEIXLER: Yeah. I'm focused on any  
16:47:13 22 memory you have of any kind of discussion on that  
16:47:17 23 topic, that is, licensing, with The English Premier  
16:47:20 24 League.

16:47:21 25 Do you have any memory of that at all?

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16:47:23 2 A No.

16:47:23 3 Q You don't deny that you had such

16:47:25 4 communications; do you?

16:47:26 5 MR. MANCINI: Objection.

16:47:28 6 THE WITNESS: I mean, like I said, I don't

16:47:30 7 recall.

16:47:30 8 MR. DEIXLER: Q. Can you recall learning, in

16:47:35 9 advance of a content licensing arrangement with the

16:47:41 10 Walt Disney Company, that that agreement was going to

16:47:44 11 be entered into?

16:47:46 12 MR. MANCINI: Objection; asked and answered

16:47:47 13 numerous times.

16:47:50 14 THE WITNESS: Yeah, I don't recall specifics

16:47:52 15 there.

16:47:52 16 MR. DEIXLER: Q. Can you recall discussing

16:47:54 17 the topic with Mr. Brin prior to the entry into the

16:47:59 18 agreement with the Walt Disney Company?

16:48:01 19 MR. MANCINI: Objection, Counselor. We have

16:48:03 20 spent enumerable time with Mr. Baskin on this precise

16:48:08 21 subject.

16:48:08 22 MR. DEIXLER: Please, Counsel.

16:48:09 23 MR. MANCINI: Objection; asked and answered.

16:48:12 24 MR. DEIXLER: Q. Answer the question now.

16:48:13 25 A I don't recall.

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16:48:13 2 Q How about Mr. Schmidt? Do you recall  
16:48:15 3 discussing with Mr. Schmidt entering into the Walt  
16:48:17 4 Disney Company arrangement?

16:48:18 5 MR. MANCINI: So, Counselor, we -- we are  
16:48:20 6 clearly now -- you are clearly now in violation of  
16:48:23 7 this Court's order.

16:48:24 8 MR. DEIXLER: Okay.

16:48:24 9 MR. MANCINI: Clearly, and at some point  
16:48:25 10 we're going to --

16:48:27 11 MR. DEIXLER: Even if you keep saying it, it  
16:48:28 12 doesn't make it true, and it's improper objection --

16:48:29 13 MR. MANCINI: It is actually true, and I can  
16:48:31 14 read back the transcript to the judge if you want. It  
16:48:33 15 is clearly in violation of the Court's order.

16:48:33 16 MR. DEIXLER: It is an improper -- it is an  
16:48:35 17 improper objection on top of that, so it is not --

16:48:37 18 MR. MANCINI: It is no such thing.

16:48:38 19 MR. DEIXLER: I don't want to engage with you  
16:48:39 20 further.

16:48:39 21 Q Did you have conversations with Mr. Schmidt  
16:48:41 22 in advance of the entry into the arrangement with the  
16:48:43 23 Walt Disney Company? Yes or no?

16:48:45 24 MR. MANCINI: Objection; lacks foundation;  
16:48:47 25 asked and answered numerous times; continuing

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16:48:49 2 objection to the violation of this Court's order.

16:48:51 3 THE WITNESS: I don't recall.

16:48:52 4 MR. DEIXLER: Q. If you wanted to refresh

16:48:54 5 your memory on the topics that you had with Mr. Brin

16:48:57 6 or Mr. Schmidt with regard to the terms of an

16:48:59 7 arrangement with the Walt Disney Company, to what, if

16:49:03 8 anything, would you refer?

16:49:04 9 MR. MANCINI: Same objections.

16:49:05 10 THE WITNESS: Again, I can't think of

16:49:06 11 anything offhand.

16:49:10 12 MR. DEIXLER: Q. In your not remembering

16:49:12 13 that you were opposed to the acquisition of YouTube by

16:49:17 14 Google, can you recall participating in any discussion

16:49:20 15 with anybody on the topic of the financial value to

16:49:25 16 Google of the acquisition of YouTube?

16:49:28 17 MR. MANCINI: Objection; intentionally

16:49:30 18 mischaracterizes his prior testimony; vague and

16:49:32 19 ambiguous.

16:49:32 20 MR. DEIXLER: Q. Can you answer the

16:49:33 21 question, please?

16:49:44 22 A I don't recall much of any real financial

16:49:47 23 analysis. In general, for startups, it's a pretty

16:49:54 24 difficult thing.

16:49:55 25 Q Can you recall participating in any

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16:49:57 2 conversation with Mr. Schmidt or Mr. Brin on the

16:50:00 3 economic value to Google of acquiring YouTube?

16:50:06 4 MR. MANCINI: Objection; asked and answered;

16:50:09 5 vague and ambiguous.

16:50:09 6 THE WITNESS: Again, I don't recall the

16:50:10 7 specifics around those discussions.

16:50:12 8 MR. DEIXLER: Q. Can you recall in general

16:50:13 9 that you had such conversations?

16:50:15 10 MR. MANCINI: Same objections.

16:50:17 11 THE WITNESS: I can't recall conversations.

16:50:19 12 I'd be surprised if there weren't some.

16:50:21 13 MR. DEIXLER: Q. If you wanted to refresh

16:50:23 14 your memory on the topic of any conversation that you

16:50:25 15 had with Mr. Schmidt or Mr. Brin on the topic of the

16:50:28 16 economic value to Google of acquiring YouTube, to

16:50:32 17 what, if anything, would you refer?

16:50:33 18 MR. MANCINI: Objection; vague and ambiguous.

16:50:35 19 THE WITNESS: Like I said, I can't think of

16:50:37 20 anything offhand.

16:50:38 21 MR. DEIXLER: Q. Can you recall having had

16:50:53 22 any conversations with Mr. Schmidt or Mr. Brin on the

16:50:59 23 topic of the competitive advantage to Google in

16:51:02 24 acquiring YouTube?

16:51:04 25 MR. MANCINI: Objection; vague and ambiguous;

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16:51:06 2 lacks foundation.

16:51:08 3 THE WITNESS: I mean, I already said I can't

16:51:12 4 remember specifics. I can't remember anything about

16:51:14 5 the competitive issues.

16:51:15 6 MR. DEIXLER: Q. Can you recall having

16:51:16 7 conversations with Mr. Brin or Mr. Schmidt on the

16:51:22 8 disadvantages Google Video had compared to YouTube

16:51:26 9 prior to the acquisition?

16:51:29 10 MR. MANCINI: Objection; lacks foundation.

16:51:31 11 Objection; vague and ambiguous. Objection; asked and

16:51:33 12 answered.

16:51:34 13 THE WITNESS: I can't remember any specifics

16:51:36 14 about discussions with them and about Google Video,

16:51:41 15 no.

16:51:41 16 MR. DEIXLER: Q. Can you recall anything in

16:51:42 17 general that you discussed with them on that topic?

16:51:45 18 MR. MANCINI: Same objections.

16:51:47 19 THE WITNESS: Sorry. Same thing. I can't

16:51:49 20 remember.

16:51:49 21 MR. DEIXLER: Q. So you can't recall

16:51:50 22 generally or specifically a conversation with Mr. Brin

16:51:53 23 or Mr. Schmidt on the relative competitive advantages

16:51:56 24 of YouTube versus Google Video; is that fair?

16:52:00 25 MR. MANCINI: Counsel, do you like restating

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16:52:02 2 his testimony, because that's exactly what you just

16:52:05 3 did?

16:52:06 4 MR. DEIXLER: Please, stop.

16:52:06 5 Q Would you answer the question?

16:52:07 6 MR. MANCINI: Objection; asked and just

16:52:09 7 answered. You're just rephrasing his answer as a

16:52:12 8 question.

16:52:12 9 MR. DEIXLER: Q. Would you answer the

16:52:13 10 question, please?

16:52:14 11 MR. MANCINI: Again, asked and answered.

16:52:15 12 THE WITNESS: Like I said, I don't recall.

16:52:17 13 MR. DEIXLER: Q. If you wanted to refresh

16:52:19 14 your memory on that topic, to what, if anything, would

16:52:22 15 you refer?

16:52:23 16 A Well, like I said --

16:52:24 17 MR. MANCINI: Objection; lacks foundation.

16:52:25 18 THE WITNESS: -- nothing comes to mind.

16:52:28 19 MR. DEIXLER: Q. During the period in

16:52:29 20 advance within the first, I'll say, 60 days before the

16:52:32 21 acquisition of YouTube by Google, how frequently did

16:52:35 22 you and Mr. Schmidt speak?

16:52:37 23 MR. MANCINI: Objection; asked and answered.

16:52:40 24 THE WITNESS: Like I've already stated, we

16:52:44 25 talk fairly frequently. But, you know, three -- this

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16:52:47 2 is about three years ago, I guess. I don't remember  
16:52:49 3 how often we talked.  
16:52:50 4 MR. DEIXLER: Q. What's your best estimate?  
16:52:54 5 MR. MANCINI: Objection; asked and answered.  
16:52:55 6 Counselor, I think it's time that I remind  
16:52:59 7 you what Judge Stanton said about this conference.  
16:52:59 8 Perhaps you're not aware of the history that  
16:53:03 9 lead to this deposition.  
16:53:03 10 MR. DEIXLER: Please stop wasting my time.  
16:53:05 11 Don't interfere any further or --  
16:53:06 12 MR. MANCINI: Counselor, you're clearly now  
16:53:09 13 violating --  
16:53:09 14 MR. DEIXLER: All right.  
16:53:10 15 I'll adjourn the deposition.  
16:53:13 16 MR. MANCINI: Call the judge.  
16:53:14 17 MR. DEIXLER: We are going to call the judge.  
16:53:16 18 I've had it with this.  
16:53:16 19 MR. MANCINI: Let's call the judge now.  
16:53:18 20 MR. DEIXLER: I'm happy to do that.  
16:53:18 21 MR. MANCINI: Shall we do that now?  
16:53:18 22 MR. DEIXLER: Sure. Let's do that.  
16:53:18 23 MR. MANCINI: Okay. Let's do it.  
16:53:18 24 MR. DEIXLER: I want to make sure that the  
16:53:19 25 judge has the full benefit of -- of the behavior

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16:53:20 2 engaged in by you because it's nothing short of

16:53:20 3 shocking and it's certainly unnecessary.

16:53:20 4 MR. MANCINI: Okay.

16:53:23 5 MR. DEIXLER: So I'd like the benefit of the

16:53:25 6 transcript of the time from when I began the

16:53:28 7 examination of the witness, through and including now,

16:53:30 8 which is about 4:55 California time.

16:53:34 9 MR. MANCINI: Okay. And do we want to call

16:53:36 10 the judge right now, because I'm happy to do that? I

16:53:39 11 am happy to call him.

16:53:40 12 MR. DEIXLER: I'm thinking it's probably 8:00

16:53:42 13 in New York City. If you think he's there, I'm happy

16:53:45 14 to do it.

16:53:46 15 MR. MANCINI: I doubt he's there.

16:53:46 16 MR. DEIXLER: If you prefer to arrange a call

16:53:46 17 tomorrow --

16:53:47 18 MR. MANCINI: Counselor --

16:53:47 19 MR. DEIXLER: -- I'm happy to do that. I'm

16:53:48 20 not going to let you bully me anymore. I've had it

16:53:51 21 with you.

16:53:52 22 MR. MANCINI: Counselor, you are violating

16:53:54 23 the court order. You are obviously not aware of the

16:53:55 24 court order that led to this deposition.

16:53:55 25 MR. DEIXLER: Okay. I'm going to adjourn my

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16:53:57 2 portion of the deposition right now and take it up

16:53:58 3 with Judge Stanton.

16:53:58 4 MR. MANCINI: Counselor, this witness -- this

16:54:02 5 witness is one of the most senior executives of the

16:54:07 6 company. The judge -- may I read back to you what he

16:54:08 7 said about this deposition?

16:54:08 8 MR. DEIXLER: I'm fully familiar with the

16:54:09 9 Court's order. I've adhered strictly to it. Your

16:54:11 10 behavior has been unprofessional, uncalled for --

16:54:14 11 MR. MANCINI: Not true, Counselor.

16:54:14 12 MR. DEIXLER: -- disruptive.

16:54:16 13 MR. MANCINI: If anything, it's to the

16:54:18 14 contrary.

16:54:18 15 MR. DEIXLER: Okay. The deposition from my

16:54:20 16 standpoint is now adjourned, and I will deal --

16:54:22 17 MR. MANCINI: Counselor, you have 25 minutes

16:54:26 18 left.

16:54:26 19 MR. DEIXLER: I will deal -- I will deal with

16:54:28 20 the judge, because I do not intend to allow you to

16:54:29 21 disrupt it any further.

16:54:29 22 MR. MANCINI: You have 25 minutes left.

16:54:30 23 MR. DEIXLER: My best professional estimate

16:54:32 24 is, is that we will be back here with Mr. Page again

16:54:36 25 without your disruptions.

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16:54:36 2 MR. MANCINI: Counselor --  
16:54:36 3 MR. DEIXLER: We're going to adjourn the  
16:54:38 4 deposition, and let's go off the record now.  
16:54:42 5 THE VIDEOGRAPHER: This concludes today's  
16:54:44 6 video deposition of Larry Page in the matter of Viacom  
16:54:47 7 International versus YouTube, Inc., and The Football  
16:54:51 8 Association.  
16:54:51 9 We are now off the record.  
16:54:52 10 The time is 4:50 p.m.  
16:54:56 11 (WHEREUPON, the deposition adjourned at  
12 4:50 p.m.)  
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J U R A T

I, LARRY PAGE, do hereby certify under penalty of perjury that I have read the foregoing transcript of my deposition taken on October 1, 2009; that I have made such corrections as appear noted herein in ink, initialed by me; that my testimony as contained herein, as corrected, is true and correct.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2009,  
at \_\_\_\_\_, California.

\_\_\_\_\_

SIGNATURE OF WITNESS

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E R R A T A

I wish to make the following changes,  
for the following reasons:

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WITNESS' SIGNATURE

DATE

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2 CERTIFICATE OF REPORTER

3

4 I, ANDREA M. IGNACIO HOWARD, hereby certify  
5 that the witness in the foregoing deposition was by me  
6 duly sworn to tell the truth, the whole truth, and  
7 nothing but the truth in the within-entitled cause;

8

9 That said deposition was taken in shorthand  
10 by me, a Certified Shorthand Reporter of the State of  
11 California, and was thereafter transcribed into  
12 typewriting, and that the foregoing transcript  
13 constitutes a full, true and correct report of said  
14 deposition and of the proceedings which took place;

15

16 That I am a disinterested person to the said  
17 action.

18

19 IN WITNESS WHEREOF, I have hereunto set my  
20 hand this day of 2009.

21

22

23 \_\_\_\_\_  
24 ANDREA M. IGNACIO HOWARD, RPR, CCRR, CLR, CSR No. 9830

24

25

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2 I N D E X

3 DEPOSITION OF LARRY PAGE

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8 E X H I B I T S

9 EXHIBIT PAGE

10 Exhibit 1 10/9/06 E-mail w/ Attachments, 27

11 Subject: Green Board Material,

12 Bates Nos. CSSU003560 - 586;

13 27 pgs.

14 Exhibit 2 12/8/05 E-mail, Subject: 35

15 [Harappa-bd] Search Terms, Bates

16 Nos. GOO001-00990640 - 41; 2 pgs.

17 Exhibit 3 5/12/06 E-mail, Subject: Re: Video 44

18 GPS - Content, Bates Nos.

19 GOO001-00496651 - 54; 4 pgs.

20 Exhibit 4 9/7/06 E-mail, Subject: CBS - 58

21 Google Video Deal: Update, Bates

22 Nos. GOO001-01526188 - 89; 2 pgs.

23 Exhibit 5 11/2/06 E-mail, Subject: Re: 60

24 Viacom/MTV proposal, Bates Nos.

25 GOO001-00797166; 1 pg.

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2		E X H I B I T S (Confidential.)	
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4	EXHIBIT		PAGE
5	Exhibit 6	11/14/06 E-mail String, Subject:	62
6		Re: Content deal terms, Bates	
7		Nos. G00001-01507063 - 65; 3 pgs.	
8	Exhibit 7	11/29/06 E-mail String, Subject:	67
9		Fwd: Google's Best and Final	
10		Proposal, Bates Nos.	
11		G00001-01526800 - 802; 3 pgs.	
12	Exhibit 8	10/31/06 E-mail String, Subject:	68
13		Re: Viacom Content, Bates Nos.	
14		G00001-01559968 - 71; 4 pgs.	
15	Exhibit 9	11/16/06 E-mail String, Subject:	73
16		Fw: Chat with Eric on Media	
17		Deals...next steps, Bates Nos.	
18		G00001-00792654 - 65; 2 pgs.	
19	Exhibit 10	11/16/06 E-mail String, Subject:	76
20		Re: Deal review call, Bates Nos.	
21		G00001-01526638 - 39; 2 pgs.	
22	Exhibit 11	Turner/YouTube (YT) Term Sheet	80
23		10/11/06, Bates Nos.	
24		G00001-02826036 - 46; 11 pgs.	
25			

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1	PAGE, L. - HIGHLY CONFIDENTIAL		
2	E X H I B I T S (Confidential.)		
3	EXHIBIT		PAGE
4	Exhibit 12	TWDC/Google - Deal Framework,	84
5		Bates Nos. GOO001-02502815 - 819;	
6		5 pgs.	
7	Exhibit 13	MTV Networks Video Term Sheet	88
8		Google Draft 12/14/06, Bates Nos.	
9		GOO001-02892078 - 083; 6 pgs.	
10	Exhibit 14	2/15/07 E-mail String, Subject:	94
11		Iger, Bates Nos. GOO001-01511226	
12		- 27; 2 pgs.	
13	Exhibit 15	2/2/07 Letter To Drummond and	99
14		Walker From Fricklas, Bates Nos.	
15		VIA01475465 - 76; 12 pgs.	
16	Exhibit 16	2/12/07 E-mail Subject: Corporate	100
17		eFax from 12126644733, Bates Nos.	
18		GOO001-02826791 - 98; 8 pgs.	
19	Exhibit 17	6/8/06 E-mail Subject: Fw: Google	102
20		Video Handover deck_v2, Bates Nos.	
21		GOO001-00791569 - 611; 43 pgs.	
22	Exhibit 18	2/2/07 E-mail String, Subject:	110
23		Fwd: What I sent to Viacom...,	
24		Bates Nos. GOO001-00973152 - 54;	
25		3 pgs.	

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2 E X H I B I T S (Continued.)

3

4 EXHIBIT PAGE

5 Exhibit 19 10/2/07 E-mail String, Subject: 119

6 Re: Idea on promotion on YouTube,

7 Bates Nos. G00001-00989006 - 08;

8 3 pgs.

9 ---oOo---

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

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

Plaintiffs,

vs.

No. 07-CV-2203

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

Defendants.

-----X

THE FOOTBALL ASSOCIATION PREMIER  
LEAGUE LIMITED, BOURNE CO., et al.,  
on behalf of themselves and  
all others similarly situated,

Plaintiffs,

vs.

No. 07-CV-3582

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

Defendants.

-----X

HIGHLY CONFIDENTIAL  
VIDEOTAPED DEPOSITION OF DAVID DRUMMOND  
SAN FRANCISCO, CALIFORNIA  
THURSDAY, FEBRUARY 12, 2009

Job No.: 16392

1 DAVID DRUMMOND

10:17:39 2 Q. So it's your recollection that this was a  
10:17:41 3 pricing issue, as far as he was concerned? It was  
10:17:44 4 too expensive?

10:17:45 5 A. (No audible response.)

10:17:46 6 Q. An acquisition of YouTube would be too  
10:17:48 7 expensive?

10:17:49 8 A. I -- I recall him having concerns about a  
10:17:52 9 price.

10:17:52 10 Q. And no other concerns?

10:17:54 11 A. I don't remember what other concerns he  
10:17:56 12 might have had.

10:17:57 13 Q. Now -- now, is it fair to say that your  
10:18:52 14 initial offer to YouTube was in the range of  
10:18:56 15 \$615 million?

10:19:00 16 A. Yes, I think that's correct.

10:19:02 17 Q. And the final offer added a billion  
10:19:07 18 dollars to that, basically?

10:19:09 19 A. Yes.

10:19:10 20 Q. Now, I take it that the acquisition was  
10:19:16 21 embodied in a merger agreement?

10:19:18 22 A. Yes, that's correct.

10:19:20 23 MR. BASKIN: And let me show you, just so  
10:19:22 24 we're working off the same page what we'll mark as  
10:19:39 25 Drummond 2.

1 DAVID DRUMMOND

10:19:40 2 (Drummond Exhibit Number 2 was marked for  
10:19:40 3 identification.)

10:19:40 4 MR. BASKIN: I think that's about as many  
10:19:40 5 as we've got.

10:20:10 6 BY MR. BASKIN:

10:20:10 7 Q. Is that a copy of the merger agreement,  
10:20:13 8 Mr. Drummond?

10:20:13 9 A. It appears to be.

10:20:15 10 Q. And did you work on the acq- --  
10:20:16 11 negotiation of the merger agreement?

10:20:18 12 A. Yes, I did.

10:20:19 13 Q. How about the scrivening of the merger  
10:20:22 14 agreement? Did you work on the scrivening of the  
10:20:25 15 merger agreement?

10:20:26 16 MR. SCHAPIRO: You might define  
10:20:27 17 "scrivening" for the ladies and gentlemen of the  
10:20:29 18 jury.

10:20:30 19 BY MR. BASKIN:

10:20:30 20 Q. Do you know what "scrivening" means,  
10:20:33 21 Mr. Drummond?

10:20:34 22 A. Yes.

10:20:34 23 Q. Did you work on the scrivening of the  
10:20:37 24 merger agreement?

10:20:38 25 A. I didn't actually write the language, if



1 DAVID DRUMMOND

10:20:40 2 that's what you mean, but I was -- certainly  
10:20:42 3 reviewed drafts, and reviewed provisions, and was  
10:20:45 4 asked to comment on them.

10:20:46 5 Q. Now, before you entered into this  
10:20:49 6 agreement, and before you submitted the transaction  
10:20:53 7 to your board for its approval, would I be correct  
10:20:57 8 that Google performed a due diligence investigation  
10:21:00 9 of YouTube's operations and financing conditions?

10:21:03 10 A. Yes, that's true.

10:21:04 11 Q. And that's customary, isn't it, to perform  
10:21:07 12 a due diligence?

10:21:08 13 A. Yes.

10:21:09 14 Q. And maybe you could tell the ladies and  
10:21:10 15 gentlemen of the jury what a due diligence is.

10:21:15 16 A. Well, a due diligence investigation is  
10:21:18 17 generally what a company will do when they're  
10:21:22 18 attempting -- when you're going to invest the  
10:21:25 19 company funds, or, for instance, in acquiring a  
10:21:29 20 company, to review the -- the asset that you're  
10:21:32 21 buying, the company that you're buying, and try to  
10:21:35 22 understand its -- its business, and whether or not  
10:21:42 23 it's worth some particular amount of money that is  
10:21:45 24 proposed to be paid for it.

10:21:48 25 Q. And it is generally your practice -- your

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1 DAVID DRUMMOND

10:21:50 2 experience that the target company makes available  
10:21:54 3 to the would-be acquirer the information the  
10:21:59 4 would-be acquirer wants to see?

10:22:01 5 A. Yes, that's my understanding.

10:22:03 6 Q. And is it fair to say that's what happened  
10:22:05 7 here as well?

10:22:07 8 A. Yes, that's correct.

10:22:07 9 Q. And prior to the acquisition, did you --  
10:22:09 10 strike that.

10:22:10 11 Were a large array of documents set up in  
10:22:15 12 what might be characterized as a war room?

10:22:20 13 A. (No audible response.)

10:22:21 14 Q. Or would you -- would you use a different  
10:22:23 15 phrase?

10:22:25 16 A. I don't -- I don't recall the -- the  
10:22:27 17 actual venue, or how things were set up. I know  
10:22:30 18 that they -- we spent a fair bit of time at Wilson  
10:22:34 19 Son- -- Sonsini, both negotiating the transaction  
10:22:38 20 and -- and review -- you know, performing due  
10:22:42 21 diligence.

10:22:43 22 Q. And did you have access to the senior  
10:22:46 23 executives of YouTube to ask them questions?

10:22:49 24 A. Yes, we did.

10:22:50 25 Q. And did you do that from time to time in

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1 DAVID DRUMMOND

10:22:52 2 the course of the due diligence?

10:22:53 3 A. Yes, we did.

10:22:54 4 Q. And in connection with that, do you recall  
10:22:57 5 any question you asked them that they refused to  
10:22:59 6 answer?

10:23:01 7 A. No, I don't.

10:23:02 8 Q. Do you recall -- strike that.

10:23:04 9 Who else, other than -- I take it you  
10:23:06 10 weren't doing all the due diligence yourself?

10:23:09 11 A. That's correct.

10:23:09 12 Q. Who else worked on due diligence in -- in  
10:23:12 13 addition to you, sir?

10:23:15 14 A. At Google, Matt Sucherman. He was an  
10:23:20 15 in-house Google lawyer who then was in charge of our  
10:23:24 16 corporate law group.

10:23:29 17 We also had some other Google lawyers  
10:23:35 18 involved in the process. Alex MacGillivray, Glenn  
10:23:44 19 Brown, our outside counsel was Simpson Thatcher.  
10:23:52 20 There were at least two lawyers from there.

10:23:58 21 Q. How about nonlawyers who participated in  
10:24:01 22 due diligence? I assume Credit Suisse First Boston  
10:24:08 23 did; is that true?

10:24:10 24 A. They -- they didn't play as much of a role  
10:24:12 25 in what I would call the due diligence, but in terms

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1 DAVID DRUMMOND

10:24:17 2 of other Google people, I know that Salar Kamangar  
10:24:30 3 was one of our product managers. I believe he was a  
10:24:33 4 VP at that time.

10:24:34 5 Q. How about Sean Dempsey?

10:24:37 6 A. Of course. I'm forgetting Sean Dempsey,  
10:24:39 7 who was -- worked on the corporate development team,  
10:24:42 8 and Salman Ullah, who was his -- his boss, who ran  
10:24:46 9 -- at the time, ran corporate development for  
10:24:50 10 Google, who reported to me.

10:24:51 11 Q. Now, is there also an individual named  
10:25:00 12 James Kim? That sounds familiar to you?

10:25:03 13 A. Yes.

10:25:04 14 Q. A banker at Credit Suisse?

10:25:07 15 A. (Witness nods head.)

10:25:08 16 Q. Is that correct?

10:25:09 17 A. I won't dispute that. I think that's  
10:25:11 18 true.

10:25:12 19 Q. Well, it may not be now, but he was then;  
10:25:14 20 correct?

10:25:15 21 A. That sounds correct, but I -- I don't  
10:25:17 22 remember him well.

10:25:18 23 Q. And did he also participate in the due  
10:25:21 24 diligence?

10:25:21 25 A. He may have, but I -- I don't remember his

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DAVID DRUMMOND

12:25:46 payments it should make arising out of copyright  
12:25:49 litigation?

12:25:50 A. I -- I don't remember what our initial  
12:25:52 position is. I remember that we agreed on a --  
12:25:55 on -- on a -- what's called a -- you know, a -- a  
12:26:00 cap or an amount, and expresses a percentage of the  
12:26:04 purchase price.

12:26:05 Q. Now, in particular, if you'll turn to  
12:26:09 page -- to the exhibit -- to the merger agreement.  
12:26:15 I don't remember what exhibit number is. If you  
12:26:19 would -- we'll count down for a second --

12:26:22 MS. MERINGOLO: Exhibit 2.

12:26:23 BY MR. BASKIN:

12:26:23 Q. Exhibit 2. So I understand how this  
12:26:25 works, sir, if you first turn to page 61 and 62 of  
12:26:34 the merger agreement --

12:26:38 MR. SCHAPIRO: Sorry. Are you giving  
12:26:39 Bates numbers or the page numbers?

12:26:41 BY MR. BASKIN:

12:26:41 Q. Page numbers of the document. It would be  
12:26:44 Bates numbers -123 and -124.

12:27:00 Section 9.2 sets up indemnification by the  
12:27:06 company stockholders, the company being YouTube;  
12:27:11 right, sir?

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12:27:12 A. Yes.

12:27:12 Q. Then among the items, I -- that were to be  
12:27:15 identify -- indemnified, if you go to the top of  
12:27:19 page 62, was any indemnified copyright action,  
12:27:24 including any damages arising prior to or after the  
12:27:29 effective time; right, Mr. Drummond?

12:27:33 A. Yes, I see that.

12:27:34 Q. Now, on page 17 of the agreement, as I  
12:27:36 understand it, an escrow account was set up; right,  
12:27:47 sir?

12:27:48 A. Yes.

12:27:48 Q. And if I understand how this functioned,  
12:27:50 under the escrow account 12.5 percent of the  
12:27:58 aggregate share consideration, that is, 12.5 percent  
12:28:06 of \$1.65 billion, was to be set up in an escrow  
12:28:13 account; correct?

12:28:15 A. That's correct.

12:28:16 Q. So that's roughly -- what? 200 --  
12:28:19 \$200 million was to be escrowed?

12:28:30 A. Sorry. It's 12.5 percent of -- it's --  
12:28:32 the -- the shares.

12:28:32 Q. Okay.

12:28:33 A. This is a share deal.

12:28:37 Q. Now, then, if I'm right, if you turn to

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12:28:45 page 64, and the -- and it continues on page 65,  
12:29:06 Section 9.6(b) limited the actual indemnification  
12:29:17 for copyright violations to 5 percent of the total  
12:29:23 number of escrow shares initially deposited in the  
12:29:28 escrow account; right, Mr. Drummond?

12:29:30 A. Yes, I see that.

12:29:32 Q. So then roughly do the math. You would  
12:29:40 take \$1.65 billion and multiply that by  
12:29:46 12.5 percent, which I think is \$206 million, and  
12:29:53 then you would take 5 percent of that, and so the  
12:29:55 initial escrowed amount for copyright violations was  
12:30:02 approximately \$10 million, as set forth in this  
12:30:05 agreement; correct?

12:30:07 A. That would be the -- probably the better  
12:30:10 reading of the language in the original agreement,  
12:30:13 yes.

12:30:14 Q. Well, it's the only reading, but you --  
12:30:16 there's a scrivener's error; right?

12:30:21 A. That's correct.

12:30:22 Q. And this is where the scrivener erred;  
12:30:26 correct?

12:30:26 A. This is where the error took place, yes.

12:30:29 Q. Now, the net effect was --

12:30:32 Mark this as Exhibit --

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12:30:44 2 THE REPORTER: 11.

12:30:45 3 MR. BASKIN: 11.

12:30:51 4 (Drummond Exhibit Number 11 was marked for  
12:30:51 5 identification.)

12:31:31 6 BY MR. BASKIN:

12:31:32 7 Q. Let me ask you to look at Exhibit 11,  
12:31:34 8 Mr. Drummond.

12:31:52 9 Does Exhibit 11 appear to you to be a --  
12:31:56 10 e-mail communicating to the Sequoia folks the fully  
12:32:02 11 executed amendment to the merger agreement?

12:32:06 12 A. Yes, that's what it appears to be.

12:32:08 13 Q. And have you seen this prior to today,  
12:32:10 14 sir?

12:32:13 15 A. (No audible response.)

12:32:14 16 Q. By that, I -- by "this," I mean have you  
12:32:17 17 seen the amendment prior to today?

12:32:19 18 A. Yes.

12:32:19 19 Q. I'm not talking about the actual  
12:32:21 20 transmittal to Sequoia guys.

12:32:23 21 A. Yes, I believe I've seen the -- the  
12:32:24 22 amendment.

12:32:25 23 Q. Now, if I understand what happened by this  
12:32:27 24 amendment, Section 9.6(b) -- well, strike that.

12:32:33 25 It starts by having a couple whereas

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1 DAVID DRUMMOND

12:32:36 2 clauses, the second one which provides that this  
12:32:41 3 corrects a mutual mistake resulting from a  
12:32:44 4 scrivener's error; correct?

12:32:46 5 A. That's correct.

12:32:48 6 Q. And the mistake was in Section 9.6(b), as  
12:32:55 7 we discussed before; right, Mr. Drummond?

12:32:57 8 A. That's right.

12:32:58 9 Q. And basically, what this does, if I  
12:33:01 10 understand it correctly, it changes the size of the  
12:33:07 11 escrow available to Google for copyright  
12:33:11 12 infringement actions from 5 percent of the total  
12:33:17 13 number of escrowed shares, to 5 percent of the  
12:33:23 14 aggregate share price -- aggregate share  
12:33:27 15 consideration; is that right?

12:33:28 16 A. That's right.

12:33:29 17 Q. So now, instead of having 5 percent of  
12:33:32 18 approximately, I believe, \$200 million available as  
12:33:41 19 an indemnification for copyright infringement, this  
12:33:45 20 amendment makes available 5 percent of  
12:33:48 21 \$1.65 billion; correct?

12:33:51 22 A. That's correct.

12:33:53 23 Q. So basically, it increased the escrow from  
12:34:02 24 about \$10.3 million available for copyright  
12:34:07 25 infringement actions to \$82.5 million? Something in

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12:34:12 2 that range, sir?

12:34:15 3 A. Well, it corrected the error in the  
12:34:17 4 original agreement.

12:34:18 5 Q. And the effect of correcting the error was  
12:34:20 6 basically the indemnification flowing to Google  
12:34:23 7 increased by 800 percent?

12:34:25 8 A. Well, I guess I would argue it never  
12:34:28 9 increased. The -- the agreement was the agreement,  
12:34:31 10 and it was just a -- incorrectly memorialized.

12:34:36 11 Q. Now, what do you recall occasioned the  
12:34:38 12 discovery of the scrivener's error?

12:34:46 13 A. You know, I don't -- I don't recall who  
12:34:49 14 actually noticed it. It was brought to my  
12:34:52 15 attention, I believe, by Matt Sucherman who had  
12:34:58 16 worked on -- on the deal.

12:35:01 17 Q. Well, the amendment was executed, it looks  
12:35:04 18 like, approximately April 18th, 2007; is that  
12:35:07 19 correct?

12:35:07 20 A. That's what it says.

12:35:08 21 Q. And Viacom filed this lawsuit in March of  
12:35:13 22 2006; is that right, Mr. Drummond?

12:35:18 23 A. That sounds generally correct. I don't  
12:35:20 24 know. I'd have to refer to something to -- to get  
12:35:22 25 that exact --



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DAVID DRUMMOND

16:00:31 relationships with.

16:00:32 Q. And if an NBC or Viacom was unwilling to  
16:00:36 license their content to you --

16:00:38 A. Well, we knew that it was their view that,  
16:00:40 you know, as expressed in this letter, that we  
16:00:43 needed to -- to deploy this technology to meet legal  
16:00:47 obligations. Obviously, we disagreed with that.

16:00:50 Q. And I take it, in fact, you did not deploy  
16:00:52 the technology for either Viacom or NBC; is that  
16:00:57 correct?

16:00:57 A. I don't recall that we did.

16:01:02 Q. Now, by the way, in reaching that  
16:01:04 conclusion that you had no obligation to do so, was  
16:01:11 that on advice of counsel, or how did you come about  
16:01:15 that -- that conclusion?

16:01:15 A. It's privileged, I believe. It was on  
16:01:17 advice of counsel.

16:01:36 MR. BASKIN: And I'll first direct this to  
16:01:53 your attorney, but do you want to tell us which  
16:01:55 counsel gave that advice that you're relying on?

16:01:59 MR. SCHAPIRO: No.

16:02:05 MR. BASKIN: Okay. Now -- after Google  
16:03:33 acquired YouTube -- just one second. Oh, here it  
16:04:50 is.

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. )  
 )

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

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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

15:43:55 1 my memory.

15:43:57 2 Q Let's turn to Exhibit 21.

15:43:59 3 A Okay.

15:44:05 4 Q Exhibit 21 consists of handwritten notes also  
15:44:08 5 interspersed with some other pages. Just focusing on  
15:44:12 6 that handwritten notes at the moment, are those your  
15:44:16 7 notes?

15:44:17 8 A Looks like my handwriting, for lack of a  
15:44:23 9 better way of putting it.

15:44:25 10 Q And this set of documents that we've labeled  
15:44:35 11 Exhibit 21 was produced to us all as one set, I  
15:44:39 12 believe. Would this be maintained as a single file by  
15:44:49 13 you? Do you recall?

15:44:52 14 A No, I don't recall. My guess is it was  
15:44:54 15 probably just a stack of stuff and somehow I think you  
15:44:56 16 guys interpret it as one document. I think it's a  
15:45:00 17 lot --

15:45:00 18 Q Okay.

15:45:00 19 A -- of documents that were probably sitting  
15:45:02 20 together.

15:45:10 21 Q Looking at the first page of Exhibit 21 --

15:45:16 22 A Okay.

15:45:17 23 Q -- actually, do you know what these are notes  
15:45:22 24 of on the first page -- notes from?

15:45:38 25 A It looks like notes on diligence, like asking

15:45:42 1 questions of them of what they're doing and how it's  
15:45:44 2 going.

15:45:45 3 Q Would they be notes of the due diligence  
15:45:49 4 meetings with YouTube personnel at Wilson Sonsini's  
15:45:52 5 offices?

15:45:52 6 A That's highly possible, yeah. I don't know  
15:45:54 7 the answer, but it seems like that's definitely a  
15:45:57 8 possibility here.

15:45:58 9 Q When you take notes in a due diligence  
15:46:01 10 setting, do you make every effort to accurately record  
15:46:06 11 what's going on?

15:46:08 12 MR. VOLKMER: Objection to the form.

15:46:10 13 THE WITNESS: If this was done in the  
15:46:13 14 context -- context of me doing due diligence, I try to  
15:46:17 15 write as much as I can down.

15:46:20 16 MR. HOHENGARTEN: Q. And as accurately as  
15:46:22 17 possible?

15:46:22 18 A Yeah. I wouldn't make up stuff. Yeah,  
15:46:26 19 absolutely. Some of it might not be what I heard. It  
15:46:29 20 might be my interpretation or might be other people's  
15:46:32 21 interpretation that I don't agree with. So that  
15:46:32 22 doesn't mean there's not much truth in here either  
15:46:39 23 communicated to me or --

15:46:39 24 Q Okay.

15:46:39 25 A -- that's how it was, but....

15:46:42 1 Q Several lines -- just a few lines down from  
15:46:44 2 the top there's a -- reads "Brent/Gideon"; correct?

15:46:49 3 A Uh-huh.

15:46:50 4 Q Does that indicate that you met with Brent  
15:46:53 5 Hurley and Gideon Yu during due diligence?

15:46:57 6 A It could. Typically that's not what I would  
15:47:00 7 put in my notes, but maybe because this was a while  
15:47:03 8 ago, I had a different style back then. So it could  
15:47:06 9 either mean that those were the two folks that were  
15:47:08 10 giving me the information or could mean follow-up with  
15:47:13 11 Brad and Gideon or something.

15:47:13 12 So I don't want to give you 100 percent  
15:47:15 13 comfort on that, but it seems logical that it could  
15:47:18 14 have been the two folks that were there.

15:47:20 15 Q And you say it's not what -- that's not what  
15:47:21 16 you would normally write who you met with in your  
15:47:25 17 notes. Where would you normally write?

15:47:26 18 A I probably normally have like -- you know,  
15:47:27 19 although this is up at the top, but I probably have  
15:47:30 20 like a category of like Credit Suisse people, you  
15:47:32 21 know, lawyers, client people, et cetera, in different  
15:47:35 22 columns, and I don't have it, but this was a while  
15:47:38 23 ago. Maybe my style has changed since then. Maybe I  
15:47:44 24 should go back to my old style.

15:47:52 25 Q If you could flip back a couple of pages --



15:47:55 1 A Okay.

15:47:56 2 Q -- to page 1865 --

15:47:59 3 A All righty.

15:48:01 4 Q -- in Exhibit 21. At the top of that page,  
15:48:10 5 could you read the first two lines at the top of that  
15:48:12 6 page, since it's your handwriting.

15:48:14 7 A Sure.

15:48:15 8 That doesn't mean it will be correct when I  
15:48:18 9 read it either. "No copyright issues; DMCA (no  
15:48:24 10 issues). Don't target because we can't profit from  
15:48:29 11 these pages."

15:48:35 12 Q And do you know what "DMCA" is referring to  
15:48:38 13 there?

15:48:40 14 MR. TAFFET: Just for point of clarity, if  
15:48:43 15 it's -- there seems to be a 1, 2, and 3, if you go to  
15:48:48 16 the prior page. This is a continuation of number two.  
15:48:50 17 I don't know if that --

15:48:51 18 MR. HOHENGARTEN: Okay.

15:48:51 19 MR. TAFFET: -- changes the witness's answer,  
15:48:53 20 but it's....

15:48:54 21 MR. HOHENGARTEN: Thank you, Mr. Taffet.

15:48:55 22 Q Why don't we, so we have the full context,  
15:48:57 23 that's helpful, have you look at page 1864. The last  
15:49:02 24 two lines have a number two circled.

15:49:09 25 Could you read those two lines?

15:49:12 1 A You mean the "Search Deal" and the  
15:49:15 2 "Partnerships"?

15:49:16 3 Q I believe --

15:49:17 4 A The first two lines of two you're saying?  
15:49:19 5 Yeah.

15:49:19 6 Q Look at the bottom two lines of the page.

15:49:21 7 A Okay. Yeah. Got it. My bad. I  
15:49:23 8 misunderstood you.

15:49:23 9 So it says "Partnerships (Studio\Labels) most  
15:49:31 10 aggressively monetized."

15:49:33 11 Q Is it your understanding that the next two  
15:49:36 12 lines on that page are a part of the same set of notes  
15:49:40 13 about point two?

15:49:40 14 A Yeah, it looks to be a carryover. That's  
15:49:42 15 right. I think that's fair.

15:49:47 16 Q And in that context, what does "No copyright  
15:49:54 17 issues DMCA refer to"?

15:49:56 18 MR. VOLKMER: Objection to the form of the  
15:49:57 19 question.

15:49:58 20 THE WITNESS: I would assume it's under the  
15:50:04 21 subcategory of "Partnerships (Studio/Labels)."

15:50:18 22 MR. HOHENGARTEN: Q. Do you recall whether  
15:50:19 23 this was something that is notes of something you were  
15:50:21 24 told?

15:50:23 25 A Yeah, I think that's what all of this is, is

15:50:25 1 the note. Oh, you're referring specifically to my  
15:50:28 2 comment where I might put down my own opinion?

15:50:30 3 Q Yes. You asked -- exactly --

15:50:31 4 A Oh, sorry.

15:50:32 5 Q -- where you said a number, so....

15:50:34 6 A I would not have expressed my own opinion on  
15:50:37 7 that statement, so it was definitely told to me by  
15:50:39 8 someone else.

15:50:40 9 Q And do you recall who that person was?

15:50:45 10 A I don't.

15:50:45 11 Q And --

15:50:50 12 A Someone from YouTube.

15:50:51 13 Q And do you recall the significance of the  
15:50:55 14 last line that we've been discussing, don't -- which  
15:50:58 15 is on page 1865 -- that says "Don't target because we  
15:51:03 16 can't profit from these pages"?

15:51:04 17 MR. VOLKMER: Object to the form of the  
15:51:06 18 question.

15:51:15 19 (Whereupon, record read by the Reporter as  
15:51:15 20 follows:

15:50:52 21 "Question: And do you recall the  
15:50:54 22 significance of the last line that we've  
15:50:56 23 been discussing, don't -- which is on page  
15:51:00 24 1865 -- that says 'Don't target because we  
15:51:03 25 can't profit from these pages'?"

15:51:16 1 THE WITNESS: You good with that question?

15:51:20 2 MR. HOHENGARTEN: Q. If you understood it.

15:51:22 3 I'll rephrase it if you didn't.

15:51:24 4 A Yeah, if you could rephrase it. I think --

15:51:25 5 Q Okay. Looking at page 1865 --

15:51:27 6 A Yeah.

15:51:27 7 Q -- we've been discussing a number of lines.

15:51:30 8 The last one reads "Don't target because we can't

15:51:33 9 profit from these pages"; correct?

15:51:35 10 A Uh-huh.

15:51:35 11 Q Do you recall the significance of that

15:51:38 12 statement?

15:51:39 13 A I think by "significance" you mean the

15:51:41 14 importance of it?

15:51:42 15 Q What does it mean?

15:51:43 16 A Okay. The meaning of it. Sorry. Got it.

15:51:45 17 Thank you.

15:51:45 18 It -- my gut tells me that there's something

15:52:04 19 that I missed between the "No copyright issues DMCA

15:52:08 20 line," and "Don't target because we can't profit from

15:52:10 21 these messages --" I'm sorry "-- from these pages,"

15:52:13 22 because it seems as though what they're saying here is

15:52:15 23 that some of this stuff was monetized or there weren't

15:52:21 24 copyright issues, and then other stuff wasn't targeted

15:52:23 25 for revenue monetization, because they can't profit

15:52:25 1 from those pages.

15:52:27 2 Q And to the best of your recollection,  
15:52:30 3 somebody from YouTube would have explained that to  
15:52:32 4 you?

15:52:32 5 A Yes.

15:52:32 6 Q But you don't recall who specifically?

15:52:34 7 A No.

15:52:37 8 MR. HOHENGARTEN: I think we need to change  
15:52:38 9 video tapes.

15:52:42 10 THE VIDEOGRAPHER: This is the end of video  
15:52:44 11 tape number three in the continuing deposition of  
15:52:47 12 Storm Duncan on July 16th, 2008. The time is  
15:52:55 13 3:52 p.m.

15:52:56 14 We are off the record.

15:52:57 15 (Recess taken.)

16:04:54 16 THE VIDEOGRAPHER: This is the beginning of  
16:04:57 17 video tape number four in the continuing deposition of  
16:05:01 18 Storm Duncan on July 16th, 2008. The time is  
16:05:06 19 4:05 p.m. We're off the record -- we're back on the  
16:05:10 20 record.

16:05:11 21 MR. HOHENGARTEN: Okay.

16:05:12 22 Q Continuing with Exhibit 21, if you would turn  
16:05:18 23 to Bates page 1957, and do you see roughly in the  
16:05:32 24 middle of the page there's a line that begins with  
16:05:35 25 "60 percent"?

16:05:35 1 A Uh-huh.

16:05:35 2 Q Can you read that line and the next line  
16:05:38 3 please?

16:05:38 4 A Sure. "60 percent is 'Premium.'  
16:05:42 5 Professionally produced. Legitimate and  
16:05:49 6 illegitimate."

16:05:50 7 Q And do you recall what the significance or  
16:05:52 8 meaning of those notes are?

16:05:57 9 MR. VOLKMER: Object to the form of the  
16:05:58 10 question.

16:06:01 11 MR. HOHENGARTEN: Q. Did you understand my  
16:06:02 12 question?

16:06:02 13 A The meaning of those notes are? So are you  
16:06:05 14 asking what do I mean by "legitimate and  
16:06:09 15 illegitimate," or --

16:06:09 16 Q That would be part of my question certainly.

16:06:11 17 A You want to break it down into parts then?

16:06:14 18 Q What do you mean by "legitimate,  
16:06:17 19 illegitimate"?

16:06:18 20 A Okay. I think.

16:06:19 21 MR. VOLKMER: I'm going to object to the form  
16:06:20 22 of that question.

16:06:22 23 You can proceed.

16:06:23 24 THE WITNESS: Can you read it back?

16:06:24 25 MR. HOHENGARTEN: Q. Actually. I'll just --

16:06:26 1 A Okay.

16:06:28 2 Q What is meant in these notes by "legitimate"  
16:06:31 3 and "illegitimate"?

16:06:34 4 A Okay. Okay. My recollection is that there's  
16:06:39 5 professionally produced content which is by, you know,  
16:06:42 6 a studio or someone professional that would own that  
16:06:46 7 content, and legitimate and illegitimate is whether it  
16:06:51 8 was put up in agreement with YouTube and that producer  
16:06:53 9 or put up by someone else without the agreement of  
16:06:57 10 that producer.

16:06:58 11 Q Okay. And does -- does -- do those notes  
16:07:02 12 reflect something that somebody told you as opposed to  
16:07:04 13 your own thoughts?

16:07:09 14 A Definitely something that someone told me as  
16:07:12 15 opposed to my own thoughts to your question.

16:07:16 16 Q And do you recall who?

16:07:32 17 A I don't.

16:07:34 18 Q Do you recall whether it was somebody from  
16:07:36 19 YouTube?

16:08:07 20 A I don't.

16:08:07 21 Q Do you recall whether it was somebody from  
16:08:10 22 Google?

16:08:10 23 A I don't.

16:08:10 24 Q And do you recall roughly when this  
16:08:14 25 information was imparted to you?

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

VIDEOTAPED DEPOSITION OF MARYROSE DUNTON  
SAN FRANCISCO, CALIFORNIA  
FRIDAY, AUGUST 22, 2008

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



1 DUNTON

12:08:31 2 saying "oh, so by the way, after our discussion on  
12:08:34 3 friday, I did a little exercise on friday and went  
12:08:36 4 through all the most viewed/most discussed/top  
12:08:40 5 favorites/top rated to try and figure out what  
12:08:43 6 percentage is or has copyrighted material."

12:08:50 7 Do you see that?

12:08:51 8 A I do.

12:08:52 9 Q It then reads "it was over 70%."

12:09:00 10 Do you see that?

12:09:01 11 A I do.

12:09:01 12 Q Does -- and you then say -- first of all,  
12:09:10 13 when we're talking about -- when you are talking about  
12:09:12 14 "most viewed/most discussed/top favorite/top rated,"  
12:09:15 15 you're talking about videos on YouTube; correct?

12:09:19 16 A I believe what I'm talking about here, there  
12:09:23 17 is a "Videos" tab on YouTube, and on that we show or  
12:09:29 18 have shown the most viewed, most discussed, how many  
12:09:34 19 number of comments, top favorite, and top rated videos  
12:09:38 20 for that day.

12:09:41 21 Q And that's what you went through, the most  
12:09:44 22 viewed, most discussed, top favorites, top rated  
12:09:52 23 videos, and you found that over 70 percent were or  
12:09:54 24 contained copyrighted material; correct?

12:09:59 25 A So I don't remember this chat specifically,

1 DUNTON

12:10:02 2 but I do remember conversations at the time about  
12:10:08 3 premium content on YouTube that is professionally  
12:10:12 4 produced content.

12:10:13 5 So I do have a recollection following some  
12:10:19 6 discussions at looking at the most viewed, most  
12:10:22 7 discussed, top rated, top favorites, we call those the  
12:10:27 8 browse pages, for that day and tried to determine,  
12:10:30 9 based on the video still, if it was premium content or  
12:10:33 10 not.

12:10:33 11 Q And premium content is copyrighted content;  
12:10:36 12 correct?

12:10:37 13 MR. KRAMER: Objection; the question is  
12:10:38 14 vague.

12:10:38 15 THE WITNESS: I have no idea if premium  
12:10:41 16 content is copyrighted content.

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

12:10:45 18 THE WITNESS: But we certainly used that term  
12:10:48 19 interchangeably for a long, long time, "copyrighted,"  
12:10:53 20 "premium."

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

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

12:11:03 23 A So I took a look at the most viewed, top  
12:11:06 24 rated, et cetera, videos for that day, because there  
12:11:09 25 was some discussion about premium content on YouTube,

1 DUNTON

12:11:13 2 and I wanted to see, I wanted to look for that day and  
12:11:18 3 see how much -- what -- what content was being viewed  
12:11:22 4 that day.

12:11:23 5 Q Did you have premium content in February  
12:11:32 6 2006?

12:11:35 7 A There was certainly content I would define as  
12:11:38 8 "premium" on the website in February 2006, yes.

12:11:41 9 Q In the sense that it was copyrighted,  
12:11:43 10 correct, but you didn't have a separate -- an  
12:11:47 11 established content category in February 2006; did  
12:11:50 12 you?

12:11:50 13 MR. KRAMER: Objection to the extent that  
12:11:51 14 that question includes a legal conclusion. The term  
12:11:57 15 "copyrighted" is vague.

12:11:59 16 MR. DESANCTIS: Q. Ms. Dunton, is it vague  
12:12:01 17 to you when I use the term "copyright"?

12:12:08 18 A Yes.

12:12:08 19 Q Why?

12:12:16 20 A I don't know that I have now or have ever had  
12:12:20 21 a very good understanding of copyrights.

12:12:23 22 Q Okay. But in the instant message we've just  
12:12:36 23 read, you concluded that over 70 percent of the most  
12:12:44 24 viewed, most discussed, top favorite, and top rated  
12:12:48 25 videos were copyrighted material; correct?

1 DUNTON

12:12:51 2 A No.

12:12:52 3 Q Is that not what the document says,  
12:12:54 4 Ms. Dunton?

12:12:56 5 A I can tell you at one time I looked at the  
12:13:00 6 most viewed, top rated content for that day and  
12:13:06 7 determined that it was premium content. I -- I have  
12:13:09 8 to add, whatever is on the most viewed varies wildly,  
12:13:15 9 wildly depending on whatever is going on, the popular  
12:13:18 10 culture in the news at the time.

12:13:20 11 So to look at that at any point in time and  
12:13:23 12 try to make a determination on what is generally being  
12:13:26 13 viewed on YouTube would be incorrect.

12:13:29 14 I'm sure if you looked at it yesterday, it  
12:13:32 15 would be all Barrack Obama, and I can look at it  
12:13:35 16 yesterday and say "Everything on YouTube is  
12:13:37 17 Barrack Obama." So when I did this that day, I looked  
12:13:41 18 at the most viewed, most discussed, top rated for that  
12:13:44 19 day, and I believe I came, by looking at the stills,  
12:13:47 20 the determination that around 70 percent of it was  
12:13:50 21 premium content.

12:13:51 22 Q But you didn't say premium content in this  
12:13:53 23 IM. You said "copyrighted material"; correct?

12:13:56 24 MR. KRAMER: The document speaks for itself.  
12:13:58 25 You can answer.

1 DUNTON

12:13:58 2 THE WITNESS: We used the term, correct or  
12:14:01 3 not, interchangeably. "Copyright" and "premium."

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

12:14:07 5 A Even --

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

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

12:14:09 8 Q And in 2006, there was no established  
12:14:12 9 category of content on YouTube called "premium  
12:14:14 10 content"; was there?

12:14:15 11 MR. KRAMER: Objection; the question is  
12:14:16 12 vague.

12:14:16 13 THE WITNESS: What do you mean by  
12:14:17 14 "established category of content"?

12:14:19 15 MR. DESANCTIS: Q. Was there content on the  
12:14:21 16 website that was treated differently because it was  
12:14:27 17 premium?

12:14:29 18 A We didn't treat any content differently in  
12:14:31 19 2006.

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

12:14:42 21 After you said it was over 70 percent  
12:14:44 22 copyrighted material, you say "hah shit never mind."

12:14:52 23 Were you hoping that -- you were hoping that  
12:14:56 24 the number that you found would be lower than  
12:14:58 25 70 percent; weren't you?

1 DUNTON

12:15:00 2 A I have no idea what I was hoping at the time  
12:15:03 3 that I wrote this.

12:15:04 4 Q Okay. And Steve Chen responds, "hahaha."  
12:15:14 5 That's the convention in instant message for laughing;  
12:15:19 6 right?

12:15:20 7 A Yes.

12:15:20 8 Q So he thinks it's funny that over 70 percent  
12:15:24 9 of the most viewed, most discussed, top favorite, top  
12:15:28 10 rated videos on YouTube that day were copyrighted?

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

12:15:34 12 THE WITNESS: So a couple of things. I said,  
12:15:40 13 from looking at the video stills, I thought over  
12:15:43 14 70 percent or 70 percent or whatever it is were  
12:15:45 15 premium. I have no idea what Steve Chen thought at  
12:15:48 16 the time.

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

12:15:49 18 Q But all he responded -- first of all, you  
12:15:52 19 didn't say premium. You said "copyrighted"; correct?

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

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

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

12:16:07 23 A Steve says, "hahaha" in this chat; that is  
12:16:12 24 correct.

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

1 DUNTON

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

12:16:15 3 A I mean content that looks to be  
12:16:18 4 professionally produced. It's glossy. It's not what  
12:16:22 5 we would define at the time as user-generated content.

12:16:26 6 Q Okay. Steve then says "maryrose, you're  
12:16:35 7 fired." But that was in gest; correct?

12:16:46 8 A I imagine it -- I imagine it was in gest,  
12:16:48 9 correct.

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

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

12:16:52 12 Q Okay. Then you respond "oh, what I meant to  
12:16:55 13 say after I found that 70%, I went and flagged it all  
12:16:58 14 for review."

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

12:17:03 16 A At the time, it meant it goes into a queue  
12:17:07 17 that somebody at YouTube reviews.

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

12:17:15 19 A They can review it for many different  
12:17:17 20 purposes. Things are flagged because users find them  
12:17:21 21 inappropriate. Anything that users feel break our  
12:17:24 22 Terms of Use.

12:17:25 23 Q Okay. But you did not flag it all for  
12:17:31 24 review; did you?

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

1 DUNTON

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

12:17:43 3 Q Okay. This is a joke; right? You're being  
12:17:50 4 sarcastic --

12:17:51 5 A Which part?

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

12:17:54 7 A Which part?

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

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

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

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

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

12:18:12 13 THE WITNESS: I don't know if Steve is being  
12:18:14 14 sarcastic or not.

12:18:15 15 MR. DESANCTIS: Q. Do you think he actually  
12:18:17 16 thought that you flagged all 70 percent for review?

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

12:18:25 18 Q Okay. Was there a flag for copyright  
12:18:38 19 infringement in 2006, in February of 2006?

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

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

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

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

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

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



1 DUNTON

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

3

13:15:52 4 THE VIDEOGRAPHER: The time is 1:15 p.m.

13:15:56 5 We are back on the record.

13:15:57 6 MR. DESANCTIS: Q. Ms. Dunton, you mentioned

13:16:08 7 something earlier today called featured videos. Can

13:16:13 8 you please explain what featured videos are?

13:16:17 9 A Featured videos are videos on the YouTube.com

13:16:22 10 Homepage that are selected from our -- from our base

13:16:34 11 of videos.

13:16:35 12 Q Selected for what purpose?

13:16:39 13 A To highlight, to show entertaining,

13:16:47 14 relevance, content for our community.

13:16:51 15 Q Okay. When did the featured videos feature

13:16:54 16 first appear on the site?

13:16:57 17 A I don't know when it first appeared. It --

13:16:59 18 it was already there when I started at YouTube.

13:17:01 19 Q Okay. Were you involved at any time in

13:17:10 20 deciding which particular videos would be used as

13:17:13 21 featured videos?

13:17:15 22 A Yes.

13:17:15 23 Q How? What -- can you -- sorry. Let me

13:17:21 24 withdraw that.

13:17:21 25 Can you describe your involvement with that?

1 DUNTON

13:17:26 2 A For some period of time in YouTube's history,  
13:17:30 3 I would -- I would find videos to feature on the  
13:17:36 4 YouTube.com Homepage.

13:17:37 5 Q And you actually spent a lot of time doing  
13:17:40 6 that; didn't you?

13:17:41 7 A What do you mean by "a lot"?

13:17:44 8 Q Were you up -- up late a lot of nights  
13:17:49 9 looking for featured videos?

13:17:51 10 A I was -- I was up late almost every night in  
13:17:54 11 YouTube's history working in some way, shape, or form,  
13:17:57 12 so....

13:17:58 13 Q Let's -- I need this one; okay.

13:18:03 14 MS. MAGUIRE: Yeah.

13:18:11 15 MR. DESANCTIS: Okay.

13:18:30 16 (Document marked Dunton Exhibit 6  
13:18:30 17 for identification.)

13:18:30 18 MR. DESANCTIS: Q. Let me show you what's  
13:18:31 19 been marked as Exhibit 6. Hand that out.

13:18:47 20 This is an e-mail exchange between you and  
13:18:49 21 someone named Jamie Byrne. It's dated September 7th,  
13:18:55 22 2006, Bates No. G00001-510555.

13:19:03 23 Can you please review this document,  
13:19:05 24 Ms. Dunton?

13:19:06 25 A Yes.

1 DUNTON

13:19:25 2 Q I just wanted to direct your attention --

13:19:28 3 A I'm sorry. I just want to finish reading it  
13:19:30 4 real quick.

13:19:31 5 Q Okay.

13:19:44 6 A Okay.

13:19:46 7 Q I just wanted to direct your attention to  
13:19:49 8 your e-mail to Jamie Byrne that starts in the middle  
13:19:55 9 of the page, and it begins "Hi, I'm up at 3AM doing my  
13:19:59 10 normal hunting for featured videos."

13:20:01 11 So was it a normal activity for you to hunt  
13:20:06 12 for featured videos, as you say, late into the night?

13:20:09 13 MR. KRAMER: Objection; vague as to time.

13:20:13 14 THE WITNESS: I -- I would try and feature a  
13:20:16 15 new video, maybe a couple of new videos, every day.

13:20:20 16 MR. DESANCTIS: Okay. Okay.

13:20:25 17 Q Now, how would it be determined -- how would  
13:20:28 18 you determine which videos would appear on the site as  
13:20:31 19 featured videos?

13:20:35 20 A I would kind of take note of what was popular  
13:20:40 21 and, you know, what's going on in pop culture, the  
13:20:44 22 news. I would often do searches. That sounds funny,  
13:20:47 23 but I'd often do searches on the website for sort  
13:20:52 24 of -- for adjectives. I'd look for things like  
13:20:55 25 "awesome," "funny" or "silly," and look for videos

1 DUNTON

13:20:59 2 that were, I thought, were going to be entertaining,

13:21:01 3 and sort of highlighted. You know, the best of

13:21:04 4 YouTube, and I thought the community would like, that

13:21:06 5 they would enjoy watching.

13:21:09 6 Q And when you were looking through videos,

13:21:25 7 were you looking through the entirety of the videos on

13:21:29 8 the YouTube site, or were you -- would you only search

13:21:32 9 perhaps what was posted that day?

13:21:37 10 A Oh, my gosh. I couldn't -- I -- I couldn't

13:21:40 11 tell you. I would -- I would do searches, yes.

13:21:42 12 Q Okay.

13:21:43 13 A In a search box. Just like a regular user, I

13:21:46 14 would type in "awesome," "funny" and just look at

13:21:48 15 whatever the results were.

13:21:49 16 Q And when you found one you wanted to use as a

13:21:51 17 featured video, what would you -- what would you do in

13:21:56 18 order to make it actually appear as a featured video

13:21:59 19 on the site?

13:22:00 20 A We had a tool. Actually, I'll step back.

13:22:02 21 Initially, we didn't have a tool, and I would

13:22:05 22 send them to Steve, and Steve would have to hard code

13:22:07 23 them into the Homepage.

13:22:08 24 Q Is -- sorry.

13:22:11 25 Steve is Steve Chen?