

A-701

217

1 MARYANN SLIM

2 technically, it is not using our song,

3 but it has produced a song to sound

4 like our song. So this is a sound

5 15:52:19 alike case.

6 Q. In the E-mail from you to

7 Steve Lewis and Alan Kading, at the top

8 you say, "This is with high

9 importance." You are requesting that

10 15:52:33 they look at the YouTube clip or the

11 YouTube link. And you say, "I am not

12 convinced we would win this one, but

13 please let me know if you would like CP

14 Masters to pursue this and get a

15 15:52:46 musicologist involved which we would

16 have to pay for."

17 Do you see that?

18 A. I do.

19 Q. Why were you not convinced

20 15:52:52 that you would win?

21 A. Because I had heard the song

22 that they -- the piece of music they

23 used in the commercial. And to me, it

24 didn't sound like it was reminiscent of

25 15:53:04 our song. It didn't sound close enough

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

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MARYANN SLIM

to our song that it would be identified as a sound alike. That was just my personal opinion.

15:53:13 Q. Why did you consider getting a musicologist involved?

A. Because that's the procedure in the music publishing world. If you have a song that sounds -- that is what you call a sound alike. Or where you think someone has taken a piece of your song and put it in their song, a musicologist is an expert that will come in and listen to both your song and the song that you think is infringing your copyright and will write a report to determine whether he thinks it is a take of your song or not.

15:53:50 Q. So the reason that Stage Three was considering getting a musicologist involved, was that because it is difficult for a person without musical training to determine if this was infringing or not?

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MARYANN SLIM

A. Yes. And also you would need an independent report. Otherwise, we could all be going after each other saying, I think your song sounds like my song. So you need to establish an independent report to backup your argument.

Q. Did you end up hiring a musicologist to analyze this situation?

A. I can't remember. I think they did. I think that CP Masters did in the end, but I can't remember. There is more correspondence on this.

15:54:41 But once I handed it over to Steve, he took it over because it is not my area.

Q. Do you remember if Stage Three took any action against C1000?

A. If my memory is correct, we did not because we decided it wasn't close enough.

Q. Did Stage Three send a Takedown Notice to YouTube for this clip?

15:55:07 A. No.

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MARYANN SLIM

Q. Was that also because you didn't believe that it was close enough?

15:55:16 A. Well, we hadn't established that it was our song, it was our copyright, in order to send a Takedown Notice. Until we could establish by the musicologist that this song was a sound alike, we have no right to send a Takedown Notice.

Q. Are you aware of any other works in suit in this case that you have had issue with sound alike?

15:55:48 A. With sound alike?

Q. Yes.

A. No, I can't recall.

Q. Any issues with Le Grange with regard to sound alike?

15:56:00 A. Not out of the UK office, no.

Q. I am showing you an exhibit that we will have marked as Stage Three UK Exhibit 19, Bates number ST00083895 to '908.

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MARYANN SLIM

(Whereupon, the
aforementioned documents,
ST00083895 to '908, were marked as
Stage Three UK Exhibit 19 for
identification as of this date by
the Reporter.)

Q. Have you had a chance to
look this over?

15:57:35 A. Sorry, I am reading it. Do
you want me to read the whole thing?

Q. No, you don't have to read
it. We will walk over it.

A. Yes, I have glanced at the
15:57:43 first page.

Q. This is a series of E-mails
relating to a request by an MIT
professor named Michael Snively to use
a 20-second clip of the song, "I Am
15:57:52 Glad I Hitched My Apple Wagon To Your
Star" in a video of one of his
lectures; is that correct?

A. That's correct.

Q. Do you recognize this series
15:58:05 of E-mails?

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MARYANN SLIM

A. I do.

Q. And you respond, "Wow, this is the best ad ever."

16:32:54 Do you see that?

A. I do.

Q. Did you view the YouTube link that he had provided to you?

A. Yes, I did.

16:33:02 Q. And did you want to propose to McDonald's they recreate this ad using the song, Rock On?

A. Yes, I would have liked to have done that.

16:33:16 Q. Did you present the idea to McDonald's?

A. No, I did not.

Q. What was -- did your idea ever come to fruition?

16:33:27 A. No, it did not.

Q. Why not?

A. This was -- the reason for this correspondence was when we -- was David Essex's manager informed us in a meeting, he said, you won't know this

MARYANN SLIM

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2 because it was before you had the
3 rights to the song, but Rock On was
4 used in a McDonald's ad and it had a
5 16:33:56 James Dean look alike. And he was
6 saying to us, you know, wouldn't it be
7 great if McDonald's wanted to
8 re-license that ad.

9 And clearly, as we weren't
10 16:34:07 the owners of that song at the time, we
11 had no knowledge of it, and I didn't
12 really know what he was talking about.

13 So as I was informed that
14 the commercial was in Australia, I
15 16:34:19 contacted our Australian sub-publisher
16 and asked him if he had any
17 recollection of Rock On being used in a
18 McDonald's ad. And this was then
19 followed by this correspondence.

20 16:34:33 And would I go to an
21 advertising agency or a brand and
22 advise them how to advertise their
23 product, no, I wouldn't.

24 Q. So then the last sentence of
25 16:34:46 your E-mail says, "Thank you so much

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MARYANN SLIM

for finding this so quickly - don't you just love YouTube?"

Do you see that?

16:34:55 A. I do.

Q. What did you love about YouTube?

A. YouTube is a -- it's a good service. It is a great, you know -- what you call it? It is a great site.

Q. And why do you feel like it is a great site?

A. Because it's -- it shows interesting clips. You know. He could clearly find something that I had no knowledge of, wouldn't know how to get ahold of or anything, and he was able to find it.

Q. And were there any other reasons you thought it was a great site?

A. I don't have a problem with YouTube. I think YouTube -- everyone loves YouTube, don't they? It's not that you don't love YouTube, it is just

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MARYANN SLIM

you have to protect your copyrights and
make sure they are being used
illegally -- legally and not being
16:35:54 infringed.

Q. Do you know whether the
YouTube video that Mr. Gough sent was
authorized to be on the site?

A. I don't know because the
16:36:13 license for that commercial wouldn't
have been issued by our company.

Q. I am showing you a document
that we will have marked as Stage Three
UK Exhibit 24, Bates number ST00086367
16:36:50 to '368.

(Whereupon, the
aforementioned documents,
ST00086367 to '678, were marked as
Stage Three UK Exhibit 24 for
identification as of this date by
the Reporter.)

Q. This is an E-mail chain
between yourself and Dave Wibberley
with the subject, "Ford Stuff."
16:37:35 Do you see that?

Schapiro Exhibit 100

A-711

From: Joanne Price <joanne.price@avfc.co.uk>
Sent: Monday, October 5, 2009 6:10 PM
To: Oliver Weingarten <OWeingarten@premierleague.com>
Subject: Deed of Licence - Aston Villa
Attach: Premier Goals 2007-2010.pdf

Dear Oliver,

As requested, I set out below responses to Richard Scudamore's letter to the Club dated 7 September 2009 and your additional queries dated 22 September 2009.

Letter dated 7 September 2009

1. The Club has its own dedicated YouTube channel: <http://www.youtube.com/user/avtvextra>.
2. No such documents exist.
3. The Club had a prior contractual relationship with PremierGoals, but this was terminated in April 2008 due to PremierGoals having breached certain requirements of the Deed of Licence. A copy of the expired contract is attached.

Your email dated 22 September 2009

- (a) I have already provided you with copies of our International Club TV Block contracts.
- (b) No such documents exist. The Club has not entered into any agreements in relation to International Club Mobile Contracts.
- (c) No such documents exist. The Club does not make home video devices available to the United States.

YouTube Channel

Following your correspondence, the Club has carried out an internal review of each of the videos on its YouTube channel. We appreciate that while the Deed of Licence does not prevent the Club from operating a YouTube channel, it does restrict the extent to which certain content (namely Footage, Archive Footage, Sound Materials and Stills, as defined in the Deed of Licence) may be included in such a website.

The Club has over 70 videos on the website, the vast majority of which we believe to be fully in accordance with the terms of the Deed of Licence (being "behind-the-scenes" or non-PL footage). We have discovered, however, that there were 7 videos which did not fully comply with the Deed of Licence. These are as follows:-

<http://www.youtube.com/watch?v=iofrx-HNqE> - Still photos and commentary from the Birmingham match 13/09/09.
(viewers estimate: 1,100)

http://www.youtube.com/watch?v=wS_roSN0hB4 - Still photos and commentary from the Liverpool match 24/08/09.
(viewers estimate: 1,500)

<http://www.youtube.com/watch?v=th7X2ldHuQs> - Still photos and commentary from the Blackburn match 07/02/09.
(viewers estimate: 600)

<http://www.youtube.com/watch?v=XSNXxVl3ejQ> - Still photos and commentary from the Bolton match 13/12/08.
(viewers estimate: 600)

<http://www.youtube.com/watch?v=yAHGTzS90xM> - Still photos and Commentary from the Arsenal match 15/11/08.
(viewers estimate: 3,100)

A-712

<http://www.youtube.com/watch?v=BxqBrzAK6qU> - Match footage (2 x 5 seconds) (viewers estimate: 500)

<http://www.youtube.com/watch?v=IM8N81yXLAU> - Match footage (1 x 5 seconds) (viewers estimate: 77)

All of these videos have now been taken down from the website and are no longer accessible. I have arranged to meet with our media and marketing team to discuss the issues raised by our internal review. I have also explained the terms of the Deed of Licence to the relevant Club personnel in detail to ensure that all content placed onto Club websites in future will comply with the terms of the Deed of Licence.

In particular, other than on the Club's official website (www.avfc.co.uk) which is the UK Club Website and International Club Website for the purposes of the Deed of Licence, going forward the Club will ensure that no Footage, Archive Footage or Sound Materials (as defined in the Deed of Licence) will be featured on any Club websites and no Stills or Sequences of Stills (as defined in the Deed of Licence) will be featured on any Club websites within seven days starting from midnight on the day of the relevant Club Match.

Please give me a call to discuss when you have a moment.

Joanne Price

In-House Lawyer

Aston Villa Football Club

Villa Park | Birmingham | B6 6HE

Tel: 0121 327 2299 x293

Mob: 07796 270643

Fax: 0121 327 7451

email: joanne.price@avfc.co.uk

W: www.avfc.co.uk

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Schapiro Exhibit 101

A-714

From: Oliver Weingarten <OWeingarten@premierleague.com>
Sent: Friday, October 2, 2009 5:51 AM
To: Casimir Knight <Casimir.Knight@ChelseaFC.com>
Cc: Alan Shaw <Alan.Shaw@ChelseaFC.com>; Amanda Dungate <amanda.dungate@chelseafc.com>; Virginia Leather <vleather@premierleague.com>
Subject: RE: You Tube documentation response

Cas

Thanks for this. Will get back in touch if need be.

Amanda, is there any chance you could send scanned copies of the relevant Agreements please?

Best,
Oliver

From: Casimir Knight [mailto:Casimir.Knight@ChelseaFC.com]

Sent: 01 October 2009 16:41

To: Oliver Weingarten

Cc: Alan Shaw; Amanda Dungate

Subject: You Tube documentation response

Dear Oliver,

I am writing with reference to your recent correspondence requesting information and documentation in respect of the Premier League's litigation against YouTube and its parent company Google.

1. Club's use of Youtube

- Chelsea Digital Media set up a club branded YouTube channel in February 2007. The primary purpose of this channel is to promote the club and Chelsea TV within this environment. As per the Premier League regulations, none of the video/media submitted to our Youtube channel contains any match footage whatsoever. While we accepted YouTube's standard terms and conditions via their website when setting up this channel, there is no other relevant documentation relating this that we have to send on to you.

2. Club's belief about the effect on their businesses of the availability of football related videos on Youtube

- We believe the availability of football related content via Youtube does not have a material impact on the club's activity nor the ability for the club to exploit its media rights.

3. Documents reflecting the club's making available Premier League footage by way of licensing

- Chelsea Digital Media has not licensed the use of any match footage to any website, aside from our official international club websites which are a Chinese language website operated in partnership with Premier Goals and a Russian language website – operated in partnership with the Chelsea Fan Club (Russia).

- CDM have licensed the club's international (ex UK and Eire) TV rights as follows –

1. North America – Setanta US (until June 2010)
2. All other international territories - IMG Media (until June 2013)

We also have an agreement with the Gifted Group, to whom we have licensed our DVD rights. Relevant documentation relating to the international TV and DVD rights has been posted to you separately by Amanda using special delivery.

I hope this adequately covers this off and do not hesitate to contact Alan or myself if you need to.

All the best and see you soon,

Cas Knight
Managing Director
Chelsea Digital Media

A-715

Phone: 020 7915 1980

Ext: 1280

Casimir.Knight@ChelseaFC.com

www.ChelseaFC.com

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Schapiro Exhibit 102

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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

PLAINTIFFS,)

CASE NO.
07-CV-2103

vs.)

YOUTUBE, INC., YOUTUBE, LLC, AND)
GOOGLE, INC.,)

DEFENDANTS.)

THE FOOTBALL ASSOCIATION PREMIER)
LEAGUE LIMITED, BOURNE CO., ET AL.,)
ON BEHALF OF THEMSELVES AND ALL)
OTHERS SIMILARLY SITUATED,)

PLAINTIFFS,)

CASE NO.
07-CV-3582

vs.)

YOUTUBE, INC., YOUTUBE, LLC, AND)
GOOGLE, INC.,)

DEFENDANTS.)

VIDEOTAPED 30(B)(6) DEPOSITION OF JEFFREY DUNCAN
THURSDAY, NOVEMBER 12, 2009
LOS ANGELES, CALIFORNIA

Job No. 18088

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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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

PLAINTIFFS,)

CASE NO.
07-CV-2103

vs.)

YOUTUBE, INC., YOUTUBE, LLC, AND)
GOOGLE, INC.,)

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THE FOOTBALL ASSOCIATION PREMIER)
LEAGUE LIMITED, BOURNE CO., ET AL.,)
ON BEHALF OF THEMSELVES AND ALL)
OTHERS SIMILARLY SITUATED,)

PLAINTIFFS,)

CASE NO.
07-CV-3582

vs.)

YOUTUBE, INC., YOUTUBE, LLC, AND)
GOOGLE, INC.,)

DEFENDANTS.)

VIDEOTAPED 30(B)(6) DEPOSITION OF STAGE THREE

(US), INC. through JEFFREY DUNCAN, taken on behalf of
the Defendants, at 10:06 a.m., Thursday, November 12,
2009, at 350 South Grand Avenue, Los Angeles,
California, before Elizabeth Borrelli, CSR No. 7884,
pursuant to notice.

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APPEARANCES OF COUNSEL

FOR PLAINTIFF STAGE THREE MUSIC (US), INC.:

LIEFF, CABRASER, HEIMANN & BERNSTEIN, LLP

BY: DAVID STELLINGS, ESQ.

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FOR DEFENDANT YOU TUBE:

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BY: ARIC S. JACOVER, ESQ.

71 South Wacker Drive

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(312) 782-0600

(312) 706-8674 (fax)

asjacover@mayerbrown.com

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APPEARANCES (Continued):

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BY: FIDELIS I. AGBAPURUONWU, ESQ.

1999 K Street, N.W.

Washington, D.C. 20006-1101

(202) 263-3868

(202) 762-4292 (fax)

fagbapuruonwu@mayerbrown.com

ALSO PRESENT:

MARK HOWARD, Videographer

1 11:23 Q. But you're not -- but neither co-owner is
2 required to get approval from the other before
3 licensing, correct?

4 A. Typ- --

5 11:24 MR. STELLINGS: Object to the form of the
6 question.

7 THE WITNESS: Like I said, typically, no,
8 but there are -- there are some instances where it
9 is required.

10 11:24 BY MR. JACOVER:

11 Q. In what instances is approval required?

12 A. That would depend on the composition, the
13 specific composition.

14 Q. And what about the specific composition

15 11:24 would require that the co-owner get approval?

16 A. When there's either a legal document or
17 some type of an arrangement where the co-owner has
18 requested that they be contacted prior to licensing
19 the composition.

20 11:24 Q. Does Stage Three have any agreements with
21 co-owners of compositions that it administers?

22 A. We do with Joe Egan, who's the co-writer
23 of the song "Stuck in the Middle With You," which is
24 included in one of the works in suit here.

25 11:25 And he has given us permission to enter

1 11:25 into this suit and function on his behalf.

2 Q. And does -- is approval required from Joe

3 Egan to license his songs?

4 A. He is one of the -- that is one of the

5 11:25 instances where we will go to his camp for approval

6 on a license.

7 Q. Are there any others, any other songs?

8 A. I can't recall off the top of my head

9 without having the song files to reference.

10 11:25 Q. Do you know if there are any other songs

11 that are works in suit in this case where Stage

12 Three would need to get approval from a co-owner

13 before licensing?

14 A. Yes, I know that.

15 11:26 Q. And what's the answer?

16 A. The answer is no.

17 Q. Okay.

18 Does Joe Egan own the other 50 percent of

19 "Stuck in the Middle With You"?

20 11:26 A. He does, he and his publishing entity.

21 Q. If you could turn to page 94389.

22 You'll see there's the column labeled

23 "Subpublisher (if applicable)"?

24 A. I see that.

25 11:27 Q. How many subpublishers does Stage Three

1 11:27 have?

2 A. Off the top of my head I'd have to say
3 roughly eight.

4 Q. And what territories are they responsible
5 11:27 for?

6 MR. STELLINGS: Objection. It's
7 repetitive. Ms. Slim already testified about this
8 issue.

9 You can tell him what you know.

10 11:27 THE WITNESS: Sure. That she did; yeah, I
11 did read that in Mary Ann's deposition, that she
12 pretty thoroughly went over all of that.

13 Shall I repeat?

14 BY MR. JACOVER:

15 11:27 Q. Well, it wasn't clear how many
16 subpublishers there were, so I'm just trying to get
17 a little more information on that.

18 A. Would you like me to name them
19 individually?

20 11:27 Q. Sure.

21 A. Okay. This is from memory here, so...

22 Q. Okay.

23 A. I'll do the best I can with it.

24 For the territory of Canada, we have Peer

25 11:28 Music Canada.

1 11:28 For Germany we have Wintrup Music.
2 For France we have Premiere Music.
3 For all Latin-speaking territories we have
4 Clippers Music, out of Spain.
5 11:28 For the territory of South Africa we have
6 Gresham.
7 For the territory of Japan we have
8 Watanabe.
9 Spell it? Okay.
10 11:28 For the territory of Australia we have
11 Native Tongue.
12 For minor eastern European territories we
13 have EMI.
14 For Sweden and one or two of the other
15 11:29 Nordic countries we have Bonnier.
16 And for several other minor European
17 territories we have -- we have Shubert.
18 And I believe that that's pretty
19 inclusive.
20 11:30 I might be missing one or two.
21 Q. Okay.
22 A. But that's most of the world there.
23 Q. And do the Stage Three subpublishers, do
24 they administer any of the works in suit?
25 11:30 A. Only in their territory.

1 11:30 Q. Are the subpublishers required to get
2 approval from Stage Three before issuing licenses?
3 A. Yes.
4 Q. Does that approval have to be written?
5 11:30 A. It is written, yes.
6 Q. And does Stage Three track all of the
7 subpublisher licenses?
8 A. Can you explain what you mean by "track"?
9 Q. Does Stage Three keep track of the
10 11:31 licenses issued by its subpublishers, either in a
11 database or something like that?
12 A. Well, the sync licenses are kept track of
13 in this document that we're looking at here
14 (indicating).
15 11:31 Q. And these include sync licenses issued by
16 subpublishers, as well?
17 A. Yes, that we know of -- yes, the ones we
18 know of.
19 Q. Are there some that you don't know of?
20 11:31 A. Typically, no. Yeah, it's accurate to say
21 no.
22 Q. Well, I'm a little confused. You said
23 "the ones we know of," which seems to imply that
24 there are ones that you don't know of.
25 11:31 A. And then I said "typically, no," and then

1 15:03 (Whereupon Exhibit 12 was marked for
2 identification.)

3 (Whereupon Exhibit 13 was marked for
4 identification.)

5 15:03 BY MR. JACOVER:

6 Q. So these exhibits have been marked Stage
7 Three (US) Exhibits 11, 12 and 13.

8 And have you had a chance to look these
9 over?

10 15:05 Have you -- have you seen each of these
11 documents before?

12 A. I have not seen these documents
13 specifically.

14 Q. Have you seen other take-down notices sent
15 15:05 by BayTSP on behalf of Stage Three?

16 A. I have.

17 Q. So do you know whether those other
18 take-down notices have been produced by Stage Three
19 in discovery in this case?

20 15:05 A. I do not specifically -- no, I don't know
21 that.

22 Q. Do you recall approximately what the dates
23 were for those other -- the other take-down notices
24 that you've seen?

25 15:06 A. I do not.

1 15:06 Q. Do you recall what year they were sent?

2 A. Late 2008, early 2009.

3 Q. Okay.

4 So, again, to the extent that these other
5 15:06 take-down notices have not been produced, we will
6 request production.

7 MR. STELLINGS: I mean, for the record,
8 it's my understanding that we've produced to
9 defendants all of the take-down notices. But I
10 15:06 understand that you are saying that you haven't
11 identified them, and, therefore, I will try to
12 figure out what's been produced and what has not
13 been produced, if anything.

14 MR. JACOVER: Okay.

15 15:06 BY MR. JACOVER:

16 Q. For the take-down notices that you have
17 seen, do you know if YouTube responded promptly to
18 those take-down notices?

19 A. They did.

20 15:07 Q. Has Stage Three ever had a problem with
21 YouTube not responding promptly to a DMCA-compliant
22 take-down notice?

23 A. We have not.

24 Q. Do you know how the URLs that are listed
25 15:07 in the take-down notices that you've seen were

1 15:07 identified?

2 MR. STELLINGS: Object to the form of the
3 question.

4 You can answer.

5 15:07 THE WITNESS: BayTSP identified those
6 URLs.

7 BY MR. JACOVER:

8 Q. And did anyone at Stage Three review those
9 URLs?

10 15:07 A. The process that I explained before is
11 that BayTSP collects all URLs. They are then sent
12 to our lawyers for review.

13 Q. So since you haven't seen these particular
14 take-down notices before, I'll just represent to you
15 15:08 that they have URLs for several works that are not
16 works in suit in this case.

17 So my question is, why did Stage Three
18 decide to send take-down notices for those works
19 instead of adding them to the works in suit?

20 15:08 MR. STELLINGS: You can answer to the
21 extent that it doesn't implicate any communications
22 from your lawyers.

23 THE WITNESS: Any answer that I give would
24 implicate conversations I had with my lawyers.

25 11:02 BY MR. JACOVER:

1 15:09 Q. Why did Stage Three decide to bring this
2 lawsuit with respect to the works in suit instead of
3 just sending take-down notices, as they did for some
4 of the works in suit in the exhibits I just showed
5 15:09 you?

6 MR. STELLINGS: I'll object.
7 You can answer to the extent that you can
8 do so without implicating attorney-client
9 communications.

10 15:09 THE WITNESS: Again, I mean, any answer
11 that I would give would implicate attorney-client
12 conversations.

13 And we have been discussing this in detail
14 for a long, long time, and every bit of it we've
15 15:09 discussed.

16 BY MR. JACOVER:

17 Q. I'm sorry. Every bit of it we discussed
18 what?

19 A. We've discussed.

20 15:10 MR. STELLINGS: You mean with your
21 lawyers?

22 THE WITNESS: In regards to -- yeah.

23 BY MR. JACOVER:

24 Q. Okay.

25 15:10 A. The take-down notices and specifically

1 15:10 regarding your question.

2 Q. Stage Three has never brought -- hasn't
3 brought any lawsuits or other actions against the
4 individuals that posted the clips in these take-down
5 15:10 notices or in any of the other take-down notices
6 you've seen; is that right?

7 A. There was -- there was an action brought
8 upon as a result of one -- one clip that we -- that
9 we saw relating to the Baltimore Ravens.

10 15:11 Q. Okay.

11 A. I don't -- I'm sorry. I don't -- I'm not
12 a lawyer.

13 Q. When you're looking at your lawyer, it
14 makes it seem as if you're looking to him for --

15 15:11 A. I'm looking for him to stop me if I get
16 close to saying something that, you know, exposes
17 attorney-client conversations.

18 Q. Okay.

19 A. That's all I'm doing there.

20 15:11 Q. The whole object as needed.

21 A. I speak very quickly sometimes, though.

22 Q. So can you just describe to me the
23 situation relating to the Baltimore Ravens.

24 A. The Baltimore Ravens had a contest at one
25 15:11 of their games where they played the song "Walk This

1 15:11 Way" and had fans from the audience dance to it.
2 And one of the contestants posted himself dancing to
3 "Walk This Way" on the field and posted it to
4 YouTube.

5 15:12 We became aware of this clip and contacted
6 the Baltimore Ravens, asking them why they didn't
7 come to us for a license or come to the -- and they
8 used the original master -- or coming to the label
9 for a license.

10 15:12 Q. Did you take --

11 A. And --

12 Q. Oh, go ahead.

13 A. And we ended up settling with the
14 organization.

15 15:12 Q. Did you take any action with regard to the
16 clip that was posted on YouTube?

17 A. A take-down notice was sent.

18 Q. And did you take any action against the
19 individual that had posted the clip?

20 15:12 A. No.

21 Q. Has Stage Three ever retracted a take-down
22 notice that it had sent?

23 A. Yes.

24 Q. In what instances do you remember?

25 15:13 A. We sent -- I'm sorry?

1 15:13 Q. Yeah, please describe the instances in
2 which Stage Three has retracted a take-down notice?

3 A. There was one instance where take-down
4 notices were sent to Eagle Rock Communications.

5 15:13 Q. And what was the situation with Eagle Rock
6 Communications?

7 A. Eagle Rock is a record label who produced
8 a DVD of ZZ Top live, and Stage Three entered into a
9 mechanical license with them for that DVD that also
10 15:13 included a synchronization license, because it's
11 a -- it's got a video sync, as well, and it did,
12 indeed, include -- the license did include granting
13 of the rights to post clips of the DVD on the
14 internet for -- in whole or in part.

15 15:14 Q. The unlimited internet rights?

16 A. It was all media, yes.

17 Q. And so had Eagle Rock Communications
18 posted a video on a website?

19 A. Eagle Rock had posted on YouTube, on their
20 15:14 YouTube channel, several of the ZZ Top -- clips of
21 the ZZ Top DVD.

22 Q. And so Stage Three sent a take-down notice
23 regarding those clips?

24 A. BayTSP did.

25 15:14 Q. And how did you come to be aware that

1 15:14 those clips were, in fact, authorized to be on
2 YouTube?

3 A. We received an e-mail from an
4 administrative personnel at Eagle Rock.

5 15:15 Q. And what did that e-mail inform you?

6 A. That we've been sent take-down notices by
7 BayTSP for the Stage Three Music content, and we
8 feel we have the right to post this content.
9 Please, can we discuss this. Along those lines.

10 15:15 Q. And how did Stage Three respond?

11 A. We did have a conversation with Eagle
12 Rock. We did review the license. And we did
13 ultimately allow them to keep their content posted
14 on YouTube.

15 15:15 Q. Is that video still up on YouTube, to your
16 knowledge?

17 A. It is.

18 Q. So how did BayTSP come to identify this as
19 an infringing clip for which it sent a take-down

20 15:16 notice?

21 A. Using the software that they use to
22 identify these clips in the first place.

23 Q. So would you classify this as a mistake
24 when they sent a take-down notice to YouTube?

25 15:16 A. I think "an oversight" is better.

1 15:16 Q. An oversight on BayTSP's part?

2 A. No, oversight on behalf of our lawyers.

3 Q. How so?

4 A. In that it was -- or it could -- you know,

5 15:17 excuse me. Let me back up. That could also be an

6 oversight on Stage Three's part, as well. Because,

7 as I've mentioned a couple times now, BayTSP sends

8 all occurrences of our content on YouTube to our

9 lawyers. Our lawyers review it. And there were

10 15:17 instances where some of those URLs were discussed.

11 And this was -- this should have been one of those

12 instances that was discussed. And it's possible

13 that we -- I don't recall exactly. We reviewed a

14 lot of these. And I don't -- again, I don't recall

15 15:17 exactly how it happened, but this could have been

16 one that was caught. So I say "oversight."

17 Mistake.

18 Q. Same thing?

19 A. In that -- in that neighborhood.

20 15:18 Q. Has Stage Three provided any guidelines to

21 its lawyers about when it should discuss a

22 particular URL on YouTube?

23 A. No. Again Stage Three doesn't give legal

24 advice to our lawyers. We take legal advice from

25 15:18 our lawyers.

1 15:18 Q. Well, you said that this was one -- an
2 instance that should have been discussed. I'm
3 trying to understand how you determined which URLs
4 are -- which URLs prompt this discussion -- further
5 15:18 discussion on whether --

6 A. Those decisions --

7 Q. -- they are authorized?

8 A. I'm sorry. I'll let you finish.

9 Q. I'm finished.

10 15:18 A. Those decisions were made by our lawyers.
11 They then sent us the URLs that they wanted to
12 discuss with us, not the other way around, yeah.

13 Q. So this particular URL was not sent to
14 Stage Three, then?

15 15:19 A. I don't know specifically. Like I say,
16 there were a couple. So I don't know if this made
17 it to us. But somewhere Stage Three should have
18 been able to identify that as a -- and ultimately we
19 did identify it as a licensed use.

20 15:19 Q. But not until after the take-down notice
21 had been sent, correct?

22 A. Correct.

23 Q. Were there any written communications
24 regarding this retraction of the take-down notice?

25 15:19 A. I believe there were e-mails.

1 15:40 Q. In Torrance's e-mail she includes a
2 YouTube link of the "Ax Men" trailer concerning this
3 song "Back Road Boogie", right?

4 A. Yes.

5 15:40 Q. So if you could turn, then, to the first
6 page of this document, Professor Ferrara responds to
7 Ms. Torrance's e-mail, and he says, "I listened to
8 the trailer and to 'La Grange'. There are many
9 instrumental parts and elements in the one-minute
10 15:40 long trailer requiring a great deal of musical
11 transcription. That transcription must then be
12 compared to a transcription of 'La Grange'. I
13 estimate that this will require approximately four
14 hours of transcription and analysis."

15 15:40 Do you see that?

16 A. Yes.

17 Q. Is that the typical process that a
18 musicologist would go through in analyzing one of
19 these soundalikes to determine if they are
20 15:41 infringing?

21 MR. STELLINGS: Objection.

22 You can answer if you know.

23 THE WITNESS: There is no typical.

24 I can tell you that in this instance "La
25 15:41 Grange" is a song that is rooted in the American

1 15:41 blues tradition, and there are many subtleties that
2 need to be taken into account. And that's why, I
3 think, it required that amount of work.

4 BY MR. JACOVER:

5 15:41 Q. And that's why hiring a musicologist was
6 necessary in this case, correct?

7 MR. STELLINGS: Objection.

8 You can answer.

9 THE WITNESS: We hired the musicologist --
10 15:41 well, this is -- I don't want to divulge what we've
11 discussed with our other -- our other sets of
12 lawyers that we do consult with.

13 MR. STELLINGS: Okay. And you shouldn't.

14 THE WITNESS: Because we did have
15 15:42 discussions with our lawyer regarding this
16 infringement.

17 BY MR. JACOVER:

18 Q. And did you take any action with respect
19 to this soundalike "Back Road Boogie"?

20 15:42 A. We sent -- yes. We sent a cease and
21 desist after having tried to do a -- to license the
22 composition.

23 Q. And did Professor Ferrara provide the
24 requested analysis?

25 15:42 A. He did.

1 15:42 Q. And what were the -- what was the results
2 of his analysis?

3 A. He concluded ultimately that it was not an
4 infringement.

5 15:43 Q. So if he concluded this was not an
6 infringement, why did you send a cease and desist
7 regarding this compo- -- regarding "Back Road
8 Boogie"?

9 A. It was a timing issue. While he was still
10 15:43 in the process of reviewing it, we jumped the gun a
11 bit and sent a cease and desist. By the time we
12 received the full report from the musicologist, we
13 then stood down.

14 Q. Did you send a take-down notice to YouTube
15 15:43 regarding the clip that had been posted on the site?

16 A. No.

17 Q. Why not?

18 A. It was an -- it was an advertisement for
19 the show. And it's not our composition. So if it's
20 15:44 not our composition, we can't be sending take-down
21 notices.

22 Q. When you say "it's not our composition,"
23 you're referring to "Back Road Boogie"?

24 A. "Back Road Boogie" is not a Stage Three
25 15:44 composition.

1 15:44 Q. Well, if you had determined that it was an
2 infringement, "Back Road Boogie" was an infringement
3 of "La Grange", would you then have sent a take-down
4 notice to YouTube?

5 15:44 MR. STELLINGS: Objection. Hypothetical.
6 You can answer.

7 THE WITNESS: Had we determined it was an
8 infringement, it would -- it would depend. If we
9 issued a license after the fact, we might have
10 15:45 granted all media rights and, therefore, not sent
11 out a take-down notice.

12 BY MR. JACOVER:

13 Q. In which case it would be authorized to be
14 on the site?

15 15:45 A. In which case it would be authorized to be
16 on the site, unless YouTube was excluded from that
17 language.

18 Q. Should YouTube have taken any action in
19 response to this clip appearing on the site?

20 15:45 MR. STELLINGS: Object to the form of the
21 question.

22 You can answer.

23 THE WITNESS: Should they have, according
24 to me?

25 15:45 BY MR. JACOVER:

1 16:13 A. I do.

2 Q. Is he your -- Stage Three's Australian
3 subpublisher?

4 A. No. He's an employee -- he's a former
5 16:13 employee of Native Tongue, who is Stage Three's
6 Australian's subpublisher.

7 Q. So he's affiliated -- or used to be
8 affiliated with Australia's Stage Three
9 subpublisher?

10 16:13 A. He was, yes.

11 Q. And he was affiliated with them at this
12 time, I presume, correct?

13 A. He was.

14 Q. And this is February 15, 2007, was when he
15 16:13 sent his e-mail, correct?

16 A. That's what it says, yes.

17 Q. If you could turn to page 4 of this -- of
18 the attachment.

19 There's a heading "Previous Releases" and
20 16:14 then a subheading "Previous Videos."

21 Do you see that?

22 A. I do.

23 Q. And under that subheading there are three
24 YouTube links for the videos: "Sixteen Military
25 16:14 Wives," "Los Angeles I'm Yours," and "The Solidering

1 16:14 Life."

2 A. "Soldiering."

3 Q. I guess that's spelled wrong.

4 A. It is.

5 16:14 Q. "The Soldiering Life."

6 A. You said it right; they spelled it wrong.

7 Q. Okay.

8 Do you have any idea why these YouTube
9 links were included in this marketing plan?

10 16:14 A. This was created by EMI Capital,
11 Australia. And I do not know why they would include
12 YouTube links.

13 Q. And what is EMI Capital Australia?

14 A. It's a record label.

15 16:14 Q. And are they affiliated at all with Stage
16 Three's subpublisher in Australia?

17 A. What do you mean by "affiliated"?

18 Q. Did they -- I shouldn't say "affiliated."

19 Did they work with Australia's Stage

20 16:15 Three -- sorry -- Stage Three's Australia
21 subpublisher?

22 A. It appears that they have worked with
23 them, yes.

24 Q. And do you know who may have posted these
25 16:15 clips on YouTube?

1 16:15 MR. STELLINGS: Object to the form of the
2 question.

3 THE WITNESS: I do not know.

4 BY MR. JACOVER:

5 16:15 Q. Do you know if Stage Three made any effort
6 to determine if these videos were authorized to be
7 on YouTube?

8 A. I believe that take-down notices were sent
9 for all of our content that was on YouTube that was
10 16:15 not authorized.

11 Q. And is that based on your presumption that
12 BayTSP finds and removes all of Stage Three's
13 content?

14 A. Yes.

15 16:16 Q. Do you know if anyone at Stage Three ever
16 instructed its subpublisher not to post or link to
17 videos on YouTube?

18 A. No one instructed our subpublishers not to
19 do that.

20 16:16 Q. Are you aware of any Stage Three artists
21 that have an official channel on YouTube? I should
22 say Stage Three writers.

23 A. Writers. Yeah.

24 The only one I'm aware of is the one that
25 16:16 I mentioned before, which was the Aerosmith writers.

1 16:16 Q. Did they have an official YouTube channel?

2 A. Yes.

3 Q. Okay.

4 A. So it's the one that contains the

5 16:16 interviews and Brad Whitford driving a --

6 Q. Are you aware of any other --

7 A. -- racecar.

8 Q. Sorry.

9 Are you aware of any other Stage Three

10 16:17 writers that have an official channel on YouTube?

11 A. I am not.

12 MR. JACOVER: I'm going to show you two

13 exhibits at once, which we will have marked as Stage

14 Three (US) Exhibits 17 and 18, both of which consist

15 16:17 of printouts from two different websites.

16 (Discussion off the record.)

17 MR. JACOVER: Can we go off the record for

18 one second?

19 MR. STELLINGS: Do you want to take a

20 16:18 quick bathroom break now?

21 MR. JACOVER: Sure. Take a quick break.

22 THE VIDEOGRAPHER: We are going off the

23 record at 4:19 p.m.

24 (Recess.)

25 16:19 //

1 16:40 A. Okay.

2 Now, making -- you asked me, should

3 YouTube know whether or not the content posted here

4 is authorized or unauthorized by looking at it,

5 16:41 right?

6 Q. Well, not quite what I asked, but let's --

7 A. Let's say you did.

8 Q. Let's say that's the question, okay.

9 A. Okay. And then my response to that is,

10 16:41 rather than -- my other question I answered, I was

11 answering in the frame of this is all the damages

12 that have already been done, it was saying -- this

13 is from the inception of YouTube to now. My answer

14 relating to this was business model for YouTube

15 16:41 going forward, that it should not allow any

16 content -- it's already allowed all this content --

17 unauthorized content on its website as it stands,

18 but I'm saying going forward, YouTube should know

19 what content is authorized simply by insisting that

20 16:41 anyone who uploads videos to their website have a

21 legitimate license in place.

22 That was really long. And I hope you

23 understood what I was getting at.

24 Q. I think so.

25 16:42 A. I mean, it's -- here's another way of

1 16:42 answering that question, and this is easier and
2 clearer.

3 Q. Okay. Go ahead.

4 A. We know that -- I might have bitten off
5 16:42 more than I can chew, but I'll continue. We know
6 that Stage Three and YouTube don't have any
7 agreement between the two companies, so with that in
8 mind, 99 percent of whatever is posted on YouTube is
9 unauthorized, just by virtue of knowing that any of
10 16:43 Stage Three content that ends up on YouTube is
11 unauthorized, with the exception of the occasional
12 video trailer and advertisement where we grant all
13 media rights.

14 It would actually be easier for Stage
15 16:43 Three to say, okay, here are the, you know, 15 or 20
16 instances where it's actually okay for a production
17 company or a studio to upload YouTube videos where
18 we've granted these rights; here are the 15 or 20
19 instances of that.

20 16:43 Q. And has Stage Three ever done that?

21 A. No.

22 Q. Has Stage Three ever informed YouTube of
23 the instances when the content was authorized to be
24 on the site?

25 16:43 A. We're in the process of doing that right

1 16:43 now --

2 Q. What --

3 A. -- via this suit.

4 Q. My question is, has Stage Three ever

5 16:44 informed YouTube of content that is authorized to be
6 on the site?

7 A. We've, via BayTSP, informed them of what's
8 not authorized to be on their site.

9 Q. That's not my question.

10 16:44 You just said it would be easier if
11 Stage -- hold on.

12 A. Yes.

13 Q. -- if Stage Three would inform YouTube of
14 the content that is authorized to be on the site.

15 16:44 And my question is -- it's very simple -- has Stage
16 Three ever informed YouTube --

17 A. No.

18 Q. -- of that content?

19 A. No.

20 16:44 Q. Okay.

21 A. But I'm saying that -- and I would like to
22 finish my thought here --

23 Q. Sure.

24 A. -- which is, so if we were to inform you

25 16:44 of the roughly 15 or 20 authorized uses, you could

Schapiro Exhibit 104

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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

vs.) NO. 07-CV-2203

YOUTUBE, INC., YOUTUBE, LLC,)
and GOOGLE, INC.,)
Defendants.)

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

vs.) NO. 07-CV-3582

YOUTUBE, INC., YOUTUBE, LLC, and)
GOOGLE, INC.,)
Defendants.)

VIDEOTAPED DEPOSITION OF BRIAN K. BRADFORD
SAN FRANCISCO, CALIFORNIA
THURSDAY, MARCH 12, 2009

BY: ANDREA M. IGNACIO HOWARD, CSR, RPR, CLR
JOB NO. 16590

DAVID FELDMAN WORLDWIDE, INC.
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MARCH 12, 2009

9:53 A.M.

VIDEOTAPED DEPOSITION OF BRIAN K. BRADFORD
WILSON SONSINI GOODRICH & ROSATI, LLP,
One Market Street, Spear Tower, San Francisco
California, pursuant to notice, and before,
ANDREA M. IGNACIO HOWARD, CLR, RPR, CSR
License No. 9830.

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

2

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

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19

20 ALSO PRESENT: Lou Meadows, Videographer.

21

22 ----oOo----

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25

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11:05:06 2 different names listed as copyright claimants? Do you
11:05:09 3 see that?

11:05:10 4 A Yes.

11:05:10 5 Q Can you explain who each claimant is?

11:05:13 6 A Gravitron Music and Whaddayadef Music are the
11:05:28 7 copyright claimants on behalf of Sam Tate and Kathleen
11:05:34 8 Wright, person known as Annie Tate, and Cal IV is
11:05:39 9 the rep- -- the claimant on behalf of Dave Berg.

11:05:43 10 Q Are Gravitron Music and Whaddayadef Music,
11:05:46 11 are those the same company or are they different
11:05:49 12 companies?

11:05:49 13 A I'm not completely sure because that's -- you
11:05:53 14 know, that -- that's a third party. From what my
11:05:56 15 understanding is, Gravitron Music is the SESAC
11:06:01 16 publisher for a company called Carnival Music Company
11:06:06 17 based in Nashville. And Sam Tate and Annie Tate were
11:06:14 18 under contract with that company when they wrote the
11:06:23 19 song and -- and it appears that part of their deal
11:06:27 20 included co-publishing interest, which, I believe,
11:06:30 21 is -- that's where the Whaddayadef Music is probably
11:06:32 22 the name of their co-publishing interest.

11:06:35 23 Q And at the time this registration was filed,
11:06:38 24 which, as you'll note, was June 19th, 2006, did your
11:06:42 25 company, in fact, have an ownership interest in this

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11:06:44 2 copyright?

11:06:44 3 MS. SHARP: The question may call for a legal

11:06:46 4 conclusion.

11:06:48 5 Answer to the extent you know the answer.

11:06:52 6 THE WITNESS: Yes.

11:06:55 7 MR. FRANTZ: Q. And why do you say your

11:06:56 8 company had an ownership interest?

11:06:59 9 MS. SHARP: Again, legal conclusion.

11:07:01 10 THE WITNESS: As I discussed earlier, Dave

11:07:05 11 Berg was under contract with us at the time of writing

11:07:09 12 this composition.

11:07:16 13 MR. FRANTZ: Q. And when did your company

11:07:17 14 acquire the ownership interest?

11:07:19 15 A Upon creation of the work.

11:07:20 16 Q What percent ownership in the -- in the

11:07:23 17 overall work did your company acquire?

11:07:25 18 MS. SHARP: Same objection.

11:07:26 19 THE WITNESS: Our -- our controlled

11:07:30 20 administrative interest is one-third.

11:07:33 21 MR. FRANTZ: Q. And was it one-third the

11:07:35 22 whole time or did that change at some point?

11:07:38 23 A Initially, Dave Berg had a co-publishing

11:07:44 24 arrangement with -- with Cal IV. The name of his

11:07:52 25 co-publisher was Berg -- BergBrain Music, and at the

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11:08:02 2 time the -- the contractual split between Cal IV and
11:08:05 3 his co-pub was of -- of the controlled administered
11:08:12 4 share, Cal IV had two-thirds, and BergBrain Music had
11:08:17 5 one-third, but that -- the BergBrain Music pur- --
11:08:23 6 catalog was purchased by Cal IV, and, thus, the full
11:08:26 7 share became Cal IV's share.

11:08:35 8 Q And with respect to the overall copyright
11:08:37 9 today, what percentage of the copyright does Cal IV
11:08:40 10 own?

11:08:41 11 MS. SHARP: Same objection.

11:08:49 12 THE WITNESS: Today it's one-third.

11:08:58 13 MR. FRANTZ: Okay.

11:08:58 14 Q Now, look at the second page.

11:08:59 15 Do you see at the bottom of the second page
11:09:01 16 in -- in Section No. 9 is a reference to "Bluewater
11:09:04 17 Music Services Corp/Attn: Dan Ekback"? Do you see
11:09:12 18 where I'm looking?

11:09:14 19 A Yes.

11:09:14 20 Q Okay. Do you know who Dan Ekback of
11:09:17 21 Bluewater Music Services Corp is?

11:09:23 22 A Yes.

11:09:23 23 Q Who is he?

11:09:24 24 A At the time, he was -- I'm not sure exactly
11:09:28 25 what his title was, but he was an upper-level

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11:09:36 2 administrative specialist with Bluewater Music

11:09:40 3 Services Corp.

11:09:43 4 Q And who's Bluewater Music Services Corp, if
11:09:48 5 you know?

11:09:48 6 A Bluewater is -- I -- well, I -- I'm not
11:09:52 7 completely sure what all they do. Obviously, that's a
11:09:57 8 third party, but from my understanding is they are --
11:10:06 9 and a -- a copyright administration service for other
11:10:10 10 publishers.

11:10:12 11 Q And if you look at Section 8, just above
11:10:16 12 where we're looking, very small box that's checked
11:10:20 13 that says "Authorized agent of Gravitron Music,
11:10:29 14 Whaddayadef Music," does that mean that this copyright
11:10:33 15 was filed by Bluewater on behalf of Gravitron Music
11:10:38 16 and Whaddayadef Music?

11:10:42 17 A Dan Ekback, from -- from my understanding of
11:10:45 18 this, Dan Ekback of Bluewater Music Services was --
11:10:50 19 was/is the administrator for Gravitron, Whaddayadef,
11:10:57 20 and they filed the copyright registration.

11:10:59 21 Q Did Cal IV have any involvement in the filing
11:11:02 22 of the copyright registration?

11:11:04 23 A No.

11:11:06 24 Q Did Cal IV know about the filing of the
11:11:10 25 copyright registration?

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1 BRADFORD

11:47:58 2 songwriter's agreement immediately upon its creation,

11:48:03 3 which was in 2005, I believe -- is that correct?

11:48:06 4 A Let me look at this schedule here.

11:48:16 5 Date of creation April 19th, 2005.

11:48:19 6 Q Okay. So your testimony is that the

11:48:21 7 copyright was assigned from Berg to Cal IV, at least a

11:48:26 8 certain interest of that was assigned immediately upon

11:48:29 9 creation; is that correct?

11:48:33 10 A Yes.

11:48:33 11 Q So why is there any need for the assignment

11:48:36 12 documents in 2007?

11:48:42 13 A It's a -- are you -- which one are you -- are

11:48:45 14 you referring to? Exhibit 9?

11:48:47 15 Q I'm referring to both Exhibit 8 and

11:48:49 16 Exhibit 9.

11:48:49 17 A Okay. Exhibit 8 was necessary because of the

11:48:51 18 asset sale and purchase agreement, or asset purchase

11:48:54 19 and sale agreement.

11:48:56 20 Exhibit 9 was necessary as a prescribed step

11:49:05 21 with -- that was -- that -- that was an obligation

11:49:14 22 under the songwriter agreement. It's more of a

11:49:18 23 formality to list the compositions within the

11:49:24 24 agreement.

11:49:27 25 Q But there was nothing improper about -- about

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11:49:30 2 the copyright being registered in Cal IV's name back
11:49:32 3 in 2006, because Cal IV had already acquired the
11:49:36 4 copyright immediately upon its creation; is that
11:49:38 5 correct?

11:49:38 6 A Correct.

11:49:39 7 Q Okay. Now, are there co- -- other co-owners
11:49:44 8 of the work "If You're Going Through Hell"?

11:49:48 9 A We discussed that earlier. The publishers
11:49:51 10 for Sam Tate and Annie Tate, Gravitron Music and
11:49:55 11 Whaddayadef Music.

11:49:57 12 Q And how do you know about those co- -- other
11:50:01 13 co-owners?

11:50:03 14 MS. SHARP: Form.

11:50:04 15 THE WITNESS: Well, how -- how do I know that
11:50:10 16 they are the co-owners, or how do I know about the
11:50:13 17 co-owners?

11:50:15 18 MR. FRANTZ: Q. Well, how do you know that
11:50:17 19 they are the co-owners of that work?

11:50:22 20 A Because when Dave Berg turned the song in to
11:50:26 21 us, on our -- in our process of deliveries and, you
11:50:33 22 know, we -- we need to know who he wrote songs with,
11:50:37 23 he told us that Sam Tate and Annie Tate co-wrote the
11:50:41 24 song with him, and we knew that they were contracted
11:50:46 25 writers with Carnival Music Company, which is, you

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11:50:53 2 know, the -- you know, the -- their SESAC company is
11:50:57 3 Gravitron Music. That's a subsidiary of Carnival, so
11:51:01 4 they were under agreement with them.

11:51:05 5 Q And if there were some change in the
11:51:08 6 ownership status with respect to the other co-owners
11:51:11 7 of this work, would you be notified of that?

11:51:15 8 A Not necessarily.

11:51:23 9 Q Do you agree that the other co-owners of the
11:51:26 10 work are entitled to grant licenses with respect to
11:51:30 11 the work?

11:51:34 12 A As -- as the -- controlling and administering
11:51:41 13 their exclusive rights, I would say yes.

11:51:43 14 Q Do you know whether any of the co-owners, the
11:51:46 15 other co-owners have, in fact, granted any such
11:51:49 16 licenses with respect to "If You're Going Through
11:51:52 17 Hell"?

11:51:55 18 A I honestly -- I -- I wouldn't know what kind
11:51:57 19 of licenses they grant. I don't have access to their
11:52:02 20 documents.

11:52:04 21 Q Could you acquire such information?

11:52:10 22 A Probably not.

11:52:12 23 Q When you say "Probably not," why do you say
11:52:15 24 that?

11:52:18 25 A Because they would have no reason to give me

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11:52:23 2 copies of their licenses.

11:52:24 3 MR. FRANTZ: Let's mark a new exhibit,

11:52:27 4 Exhibit 10, please.

11:52:28 5 (Document marked Bradford Exhibit 10

11:52:38 6 for identification.)

11:52:38 7 THE WITNESS: Are we done with these

11:52:40 8 exhibits? Can I get them out of my way?

11:52:42 9 MR. FRANTZ: We are for the most part, but

11:52:43 10 there is a chance I may come back to them.

11:52:46 11 THE WITNESS: Okay.

11:52:52 12 MS. SHARP: There you go, sir.

11:52:54 13 I'm sorry. Exhibit?

11:52:55 14 MR. FRANTZ: 10.

11:53:04 15 THE WITNESS: Okay.

11:53:05 16 MR. FRANTZ: Can you identify -- let me just

11:53:07 17 note for the record that its -- the Bates No. is CAL

11:53:14 18 '1593 through '97.

11:53:15 19 Q Can you identify the document?

11:53:18 20 A This is a "Lyric Reprint License Agreement"

11:53:24 21 between Cal IV and Country Music Media Group for "If

11:53:28 22 You're Going Through Hell."

11:53:28 23 Q All right.

11:53:28 24 And when you look at the first page of the

11:53:30 25 document, do you see that it says Cal IV controls

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11:53:33 2 33.34 percent of the work?

11:53:39 3 MS. SHARP: Where are you looking, Counsel?

11:53:41 4 MR. FRANTZ: I'm looking in Section 1, the
11:53:44 5 last sentence of Section 1.

11:53:47 6 THE WITNESS: Yes.

11:53:48 7 MR. FRANTZ: Okay.

11:53:49 8 Q And am I correct that at that time, which is
11:53:54 9 August 14th, 2006, what that meant is that Cal IV
11:53:58 10 itself owned 22 percent and BergBrain owned
11:54:04 11 11 percent? Is that correct?

11:54:08 12 MS. SHARP: Misleading question.

11:54:09 13 You can answer, if you understand it.

11:54:10 14 THE WITNESS: Well, to be more specific, Cal
11:54:14 15 IV 22.23, and BergBrain 11.11. That's correct.

11:54:19 16 MR. FRANTZ: Okay.

11:54:25 17 Q And if you flip to the last page, which is
11:54:28 18 '1597, do you see towards the top in the column on the
11:54:37 19 right it says "Controlled Percentage: 0"?

11:54:42 20 A Yes.

11:54:42 21 Q What does that mean?

11:54:47 22 A This -- well, this is -- for one thing, this
11:54:49 23 is a printout from RightTrack in our system, and
11:54:56 24 the -- RightTrack is not a -- a very modernized
11:55:03 25 program. It's a very old program. Basically, I use

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17:29:48 2 sentence we just read, this is, again, your e-mail,
17:29:52 3 you say, "However, our license agreements must be
17:29:57 4 specific to each use."

17:29:59 5 What did you mean by that?

17:30:03 6 A Probably specific to each use. The -- each
17:30:08 7 use, being whatever video he intended to post.

17:30:14 8 Q "Each use," does that mean each URL?

17:30:20 9 A I -- I would say a -- the URL was indicative
17:30:24 10 of the use.

17:30:25 11 Q Does "each use" mean something besides each
17:30:32 12 URL?

17:30:36 13 A Well, I would say that the -- the posting of
17:30:39 14 a video, which generates a unique URL, is a specific
17:30:45 15 use.

17:30:49 16 Q Because if we keep reading, you say, "In this
17:30:52 17 case, the URL of each video posting needs to be listed
17:30:55 18 in the license agreement."

17:30:57 19 So what I'm trying to understand here was,
17:30:59 20 were you contemplating that the license would apply
17:31:02 21 only to particular URLs?

17:31:06 22 A Yes, I believe that was the intention.

17:31:07 23 Q So does this mean that for two identical
17:31:10 24 clips, one on YouTube could be infringing and one
17:31:13 25 would not be infringing, depending on whether the

1 BRADFORD

17:31:15 2 particular URL was listed in the license agreement?

17:31:19 3 Is that correct?

17:31:24 4 A Well, this was -- this issue was specific to
17:31:28 5 Carey's videos that were being posted on his behalf,
17:31:34 6 and those were the ones that we were amenable to
17:31:41 7 agreeing to, and so I would say other uses of the same
17:31:47 8 clip, yes, they would be infringing uses.

17:31:51 9 Q And is there any way for YouTube to determine
17:32:00 10 whether two identical clips, either one of those clips
17:32:05 11 is licensed and the other is not licensed?

17:32:08 12 MS. SHARP: Objection; calls for speculation.

17:32:09 13 THE WITNESS: Well, as I stated before,
17:32:11 14 the -- they're responsible for making sure that the
17:32:15 15 content on -- on their website is legit.

17:32:19 16 MR. FRANTZ: Q. Have you provided YouTube
17:32:21 17 with the list -- or not with the list, but with all
17:32:23 18 your licenses?

17:32:30 19 A Which licenses?

17:32:31 20 Q All of your licenses respecting all of your
17:32:34 21 compositions.

17:32:34 22 MS. SHARP: Objection; vague.

17:32:35 23 THE WITNESS: Why?

17:32:38 24 MR. FRANTZ: Because if YouTube doesn't have
17:32:39 25 a full list of the licenses at issue, how could it

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17:32:42 2 possibly determine whether you, in your discretion,
17:32:45 3 determined to issue a particular license for a
17:32:48 4 particular URL?

17:32:49 5 MS. SHARP: Objection; calls for speculation.

17:32:50 6 THE WITNESS: I -- I don't believe that
17:32:53 7 burden is ours.

17:33:10 8 MR. FRANTZ: All right. Let's mark the next
17:33:12 9 exhibit.

17:33:17 10 (Document marked Bradford Exhibit 29
17:33:19 11 for identification.)

17:33:19 12 MR. FRANTZ: This is Exhibit 29, and it's CAL
17:33:24 13 '866 to '67.

17:33:40 14 THE WITNESS: Okay.

17:33:40 15 MR. FRANTZ: Q. Can you identify these
17:33:41 16 e-mails?

17:33:44 17 A Well, this is related to the Carey Ott
17:33:47 18 situation, and it looks like there's certain URLs
17:33:51 19 involved.

17:33:57 20 Q And it appears that you did decide to retract
17:34:01 21 your -- your notification to YouTube; isn't that
17:34:06 22 correct?

17:34:07 23 A It appears that way, yes.

17:34:08 24 Q Do you recall this?

17:34:10 25 A I mean, it's not in my -- you know, it's not

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BRADFORD

17:34:19

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right on the top of my mind right now, but, you know,

17:34:23

3

looking at the e-mail, yeah, it sounds familiar to me.

17:34:25

4

Q Why did you decide to retract this takedown

17:34:27

5

notice?

17:34:30

6

A Because it was part of the process with Carey

17:34:38

7

Ott. You know, it was -- it was at our discretion.

17:34:40

8

Q And flipping to page '867, do you see -- I

17:34:53

9

don't know how to pronounce that name, Bohagey Bowes;

17:34:56

10

do you see that reference?

17:34:58

11

A Yes.

17:34:58

12

Q Do you know who Mr. Bowes is?

17:35:01

13

A I don't. I think he probably has something

17:35:03

14

to do with Carey Ott's manager, but that's a guess.

17:35:10

15

Q Do you see where Mr. Bowes says in this

17:35:13

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e-mail, "There has been a mix-up involving the

17:35:16

17

copyright which is now resolved"?

17:35:20

18

A I see that.

17:35:21

19

Q Do you agree with Mr. Bowes, that there was,

17:35:24

20

in fact, a mixup involving the copyright?

17:35:27

21

A Well, I guess he's referring to this issue

17:35:29

22

with Carey Ott that we've been discussing. You know,

17:35:36

23

whether or not it's a mixup, I don't, you know,

17:35:39

24

necessarily agree with that term, but there was

17:35:42

25

definitely a situation involving this, yes.

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Intentionally Omitted

Schapiro Exhibit 108

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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

Plaintiffs,)

vs.)

) NO. 07-CV-3582

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

Defendants.)

VIDEOTAPED DEPOSITION OF

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

BY: REBECCA SCHAUMLOFFEL
JOB NO. 17720

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

FOR THE LEAD PLAINTIFFS AND
PROSPECTIVE CLASS:

PROSKAUER ROSE LLP

By: WILLIAM HART, ESQ.

1585 Broadway

New York, New York 10036-8299

WHART@PROSKAUER.COM

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

MAYER BROWN LLP

By: ARIC JACOVER, ESQ.

TERRI MAZUR, ESQ.

RICHARD S. PIANKA, ESQ.

1675 Broadway

New York, New York 10019

(212) 506-2146

Ajacover@mayerbrown.com

Tmazur@mayerbrown.com

Rpianka@mayerbrown.com

ALSO PRESENT:

Manuel Abreu, Videographer

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KEITH HAUPRICH

Q. Was Cherry Lane aware that the content verification tool was available before that date?

11:26:04 A. I believe that Cherry Lane had been sending -- excuse me. I believe, in this instance, Cherry Lane had sent a DMCA notice to YouTube that they were not able to comply with in Misty's E-mail to Basa. She asked that we resubmit the list of URLs in either the body of an E-mail or plain text or HTML because we wanted to remove the links.

11:26:36 Subsequent to this, or with this correspondence, is when we became aware of the content verification tool; with the receipt of this E-mail.

Q. So you weren't aware of the availability of this tool before April 9th, 2007?

A. Sitting here today, I do not believe that Cherry Lane was aware of the content verification tool prior to this E-mail exchange.

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KEITH HAUPRICH

Q. And you said that Cherry Lane did sign up to use the content verification tool; is that right?

11:27:05 A. Yes.

Q. When did Cherry Lane sign up to use that tool?

A. I believe it to be spring of 2007. It would have been most likely in connection with this E-mail correspondence.

Q. Does April 2007, does that sound about right, as to when Cherry Lane signed up to use the content verification tool?

MR. HART: Sorry. Just have that read back, please.

(Whereupon, the aforementioned question was read back by the Court Reporter.)

A. Yes.

Q. Did Cherry Lane use the content verification tool to find its content on --

11:27:55 MR. HART: Objection.

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KEITH HAUPRICH

Sorry, go ahead.

Q. -- on YouTube?

MR. HART: Objection to
11:27:59 form.

A. From April 2007 to date, the
content verification tool is one of the
ways we try to monitor our content on
YouTube. It is triage. Not cosmetic
11:28:17 surgery.

So all the tools are made
available to us, we are eager to use,
including the content verification
tool.

11:28:24 Q. Did Cherry Lane also use the
content verification tool to remove its
content on YouTube?

A. Yes, the content
verification tool was one of the means
11:28:36 we used to monitor our content on
YouTube.

Q. What I asked was whether
Cherry Lane had used the content
verification tool to remove its
11:28:49 content, not just to monitor it.

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KEITH HAUPRICH

A. Yes, the content verification tool is one of the ways we remove content.

11:29:02 Q. Does Cherry Lane still use the content verification tool to find and remove its content on YouTube?

A. Yes, that is one of the ways.

11:29:19 Q. Did Cherry Lane ever have any problems accessing its account for the content verification tool?

A. Accessing the account, no.

11:29:45 Q. Was Cherry Lane's account for the content verification tool ever blocked?

A. Was our access blocked?

Q. Right.

A. No.

11:29:53 Q. Was it ever closed?

MR. HART: The account?

MR. JACOVER: The account.

Q. Was the account ever closed?

A. Meaning blocked or otherwise inaccessible, not that I am aware of.

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KEITH HAUPRICH

Q. And has the content verification tool been useful to Cherry Lane in finding its content on YouTube?

11:30:21 MR. HART: Objection to form.

A. Can you repeat the question, please.

Q. Sure. Has the content verification tool been useful for Cherry Lane in finding its content on YouTube?

MR. HART: I maintain my objection as to form. Useful.

11:30:48 A. It is very useful in finding content. We submit -- when we give notice to take down the content, we use the verification tool to refind the same video coupled with the same sound bite time and time again.

So even though the initial URL goes down the first time, content of the same audio visual work and the same song constantly appears that is readily identifiable by the content

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KEITH HAUPRICH

verification tool.

Q. And just so I understand what you are saying, you are referring to content that is posted under different URLs; is that right?

A. That sounds about right.

Q. Has the content verification tool also been useful for Cherry Lane in removing its content from YouTube?

MR. HART: Asked and answered. Form. Useful.

A. As one of the ways to try to control unauthorized use of content, we use it in that context. I am going to say it is useful in that context.

Q. Are you familiar with content identification tools that are based on fingerprinting technology?

A. No, but I would like to be. This is the subject matter that's been -- this is the topic that's been subject to an ongoing letter campaign by Google and their unwillingness to enter into an engagement letter.

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KEITH HAUPRICH

Q. So you're not familiar with how fingerprinting technology works?

MR. HART: Objection to form. You mean generally or with specific reference to the Google technology?

MR. JACOVER: Generally.

MR. HART: I think there may have been a disconnect with the previous answer. But go ahead.

Q. Go ahead.

A. Am I generally aware of fingerprinting technology in the general sense? Is that the question?

Q. I am asking if you understand -- yes, are you familiar with fingerprinting technology, generally?

A. Yes.

Q. And are you familiar with how it works, generally?

A. Generally, yes.

Q. Can you give me -- can you just try to tell me how it works, in

Schapiro Exhibit 109

From: Courtney Nieman
Sent: Thursday, February 08, 2007 8:53 PM
To: 'Cahan, Adam'
Cc: Mark M. Ishikawa; Travis Hill; Evelyn Espinosa
Subject: RE: YouTube Content Verification Program

The Content Verification Tool is a proprietary based tool developed and maintained by YouTube. The use is very simple and effective. Instead of just going to YouTube and searching for videos, users, tags, the process is augmented when you log in to YouTube using the content provider account.

When you perform a search - you are provided with a check box next to each result. If the result belongs to Viacom, you click the check box. At the end of the page you then click on SUBMIT, and the CVT will open a small window with the list of checked links. Continue the process until you have reviewed every clip.

When you are ready to take down the list - you can re-review the links or just select all links in the list, and submit. The links will go down within 1-4 hours (during business hours) 12-24 (after business hours) Pacific. YouTube will then email you a report of the links you requested to take down. They do not issue a follow up report on the actual take down. The take down data is not entered into a database that could be used for reporting purposes.

We use this tool for "urgent" take downs only. We need to be able to report on our activities on behalf of the client. Let me know if you want a demonstration - we can set something up to show you how it works.

Courtney Nieman

From: Cahan, Adam [mailto:Adam.Cahan@mtvn.com]
Sent: Thursday, February 08, 2007 12:22 PM
To: Mark M. Ishikawa; Travis Hill; Courtney Nieman
Subject: FW: YouTube Content Verification Program

The BD head at YouTube just asked me to sign up for the content verification tool that they provide. He said that Bay currently uses it.

This is a web-based protocol. Is it effective? Why/Why not?

From: Chris Maxcy [mailto:chris@youtube.com]
Sent: Mon 2/5/2007 6:02 PM
To: Cahan, Adam
Subject: YouTube Content Verification Program

Adam,

We would like to take this opportunity to offer access to a new tool that we created solely to assist content owners to locate and notify us of potentially infringing content on YouTube.com.

YouTube's Content Verification Program provides an easy-to-use interface where content owners may request removal of infringing content by simply checking a box. After you have submitted a short, one page form in order to verify your identity, this system automatically provides the proper DMCA notification that we need in order to remove your content. This is the fastest way to ensure removal of content from the site - 24 hours a day, 365 days a year.

All a content owner needs to do to participate in the program and gain access to this tool is complete and submit to YouTube a short form that can be found here:

http://youtube.com/t/copyright_program

6/23/2008

A-777

Once your application has been submitted, we will follow up by providing you with a tutorial and login information to get you started and on your way!

We are committed to working in cooperation with content owners to keep infringing content off of the YouTube site! Please let me know if you have any questions.

Best,

Chris

Ps: Adam, this is the tool that I mentioned earlier today. BayTSP has been using it extensively for sometime now. Please let me know if you have any questions.

6/23/2008

Schapiro Exhibit 113

A-779

To: heather gillette <heather@youtube.com>
From: Kadetsky, Deborah <Deborah.Kadetsky@vh1staff.com>
Cc: Kevin Donahue <kevin@youtube.com>
Bcc:
Received Date: 2006-08-11 16:37:54 CST
Subject: RE: 3 clips to remove

hey guys, thanks so much for the quick turnaround. we're wondering if the message about the video being removed could be edited? We really just wanted to ask if "VH1" could be edited out, so that it just reads:

This video has been removed at the request of copyright owner because its content was used without permission

Just trying to be sensitive to internal concerns...

thanks,
deb

From: heather gillette [mailto:heather@youtube.com]
Sent: Friday, August 11, 2006 2:15 PM
To: Kadetsky, Deborah
Cc: 'Kevin Donahue'
Subject: RE: 3 clips to remove

These have been removed Deborah, thanks!

From: Kadetsky, Deborah [mailto:Deborah.Kadetsky@vh1staff.com]
Sent: Friday, August 11, 2006 10:05 AM
To: heather@youtube.com
Cc: Kevin Donahue
Subject: 3 clips to remove

Hi Heather,
I spoke to Kevin this morning about wanting to take down a few posted clips from one of our shows:

<http://www.youtube.com/watch?v=zcqJGiVRv9E>
<http://www.youtube.com/watch?v=EK1VeNVIO-8>
<http://www.youtube.com/watch?v=e46Yjexm648>

Please let me know if you need any additional info from me?

Regards,
Deb

Deborah Kadetsky
Online Marketing Director
deborah.kadetsky@vh1staff.com
phone: 212.846.7864
fax: 212.846.1870

Schapiro Exhibit 115

Subject: RE: youtube
From: Kadetsky, Deborah <EX:/O=VIACOM/OU=MTVUSA/CN=RECIPIENTS/CN=USER
ACCOUNTS/CN=USER/CN=KADETSKD>
To: Carbone, Tony
Cc: Date: Tue, 15 Aug 2006 20:52:54 +0000

i gotta send something to our friends at youtube, she wrote me back in a flash that they're down already. so great.

From: Carbone, Tony
Sent: Tuesday, August 15, 2006 4:38 PM
To: Kadetsky, Deborah
Subject: FW: youtube

From: Hohman, Ryan
Sent: Tuesday, August 15, 2006 4:37 PM
To: Carbone, Tony
Subject: RE: youtube

Here's two more. There's a few random clips of Sumthin', without the poop. If you want these removed I can get you the links. Let me know. -Ryan

<http://youtube.com/watch?v=z0IkTYOFwfs>
<http://youtube.com/watch?v=H5C6LJ6NQqw>

From: Carbone, Tony
Sent: Monday, August 14, 2006 8:44 PM
To: Hohman, Ryan
Subject: youtube

can you check again in the mornig plz? these people just won't give up...i'll also give you the rundown in the morning as to why this is such a big deal

thx man

Schapiro Exhibit 116

Subject: FW: Urgent request
From: "Cahan, Adam" <EX:/O=VIACOM/OU=MTVUSA/CN=RECIPIENTS/CN=CAHANA>
To: 'Zahavah Levine'
Cc: chris@youtube.com; chad@youtube.com
Date: Tue, 05 Sep 2006 18:21:22 +0000

Really appreciate the speedy action here. Goes a long way with our programmers.
~Owe you one :)
Adam

From: Kadetsky, Deborah
Sent: Tuesday, September 05, 2006 2:04 PM
To: Cahan, Adam; Rinzel, Mike; Taylor, Benjamin; Maxwell, Tony; Carbone, Tony
Cc: Kiechlin, Hank; Imm, Tina; Olde, Jeff
Subject: RE: Urgent request

fyi, folks. looks like the video has been officially removed.
<http://www.youtube.com/watch?v=O735CLKre8w>

From: Zahavah Levine [mailto:zahavah@youtube.com]
Sent: Tuesday, September 05, 2006 10:35 AM
To: Cahan, Adam; chris@youtube.com; chad@youtube.com
Subject: RE: Urgent request

No problem Adam, we will take it down right away.

Best,

Zahavah

From: Cahan, Adam [mailto:Adam.Cahan@mtvn.com]
Sent: Tuesday, September 05, 2006 7:13 AM
To: chris@youtube.com; chad@youtube.com; Zahavah Levine
Subject: Urgent request
Importance: High

YouTube Team -

Sorry to reach out to you directly on this but incredibly urgent from our perspective. (legal will be reaching out)

"nystudent" - someone internal at MTV Networks has released upcoming episodes of our Celebreality - Flavor Flav episode.

Anything you can do to quickly take this down would be greatly appreciated.

<<http://www.youtube.com/watch?v=O735CLKre8w>> <http://www.youtube.com/watch?v=O735CLKre8w>

Schapiro Exhibit 120

From: Courtney Nieman
Sent: Wednesday, June 07, 2006 8:20 PM
To: heather gillette
Subject: RE: [html] RE: Content Verification Program - Videos flagged by bayp1s1t

Thanks - that's exactly what I needed to know. It will be my pleasure to talk you up to the Paramount Executives.

Courtney

From: heather gillette [mailto:heather@youtube.com]
Sent: Wednesday, June 07, 2006 12:49 PM
To: Courtney Nieman
Subject: RE: [html] RE: Content Verification Program - Videos flagged by bayp1s1t

Dear Courtney,

If we receive the notification during normal business hours then we take them down in about a half an hour. If it is received outside of business hours it takes about 8 hours.

Thank you very much for acknowledging our prompt responses!

Heather

From: Courtney Nieman [mailto:courtneyni@baytsp.com]
Sent: Wednesday, June 07, 2006 12:39 PM
To: heather gillette
Subject: RE: [html] RE: Content Verification Program - Videos flagged by bayp1s1t

Heather,

I want to bring YouTube up and give you credit for the means and speed you perform the take down task. In case I am asked, what is that average time between a request for removal and the actual removal, when someone uses your tool and method?

Our phone call with Paramount takes place at 4pm today, so any response before then will be appreciated.

Courtney

From: heather gillette [mailto:heather@youtube.com]
Sent: Wednesday, June 07, 2006 11:49 AM
To: csm
Subject: [html] RE: Content Verification Program - Videos flagged by bayp1s1t

Removed, thank you!

From: YouTube Service [mailto:service@youtube.com]
Sent: Wednesday, June 07, 2006 8:49 AM
To: csm@baytsp.com; Copyright Bulk
Subject: Content Verification Program - Videos flagged by bayp1s1t

 YouTube Logo

The following videos have been flagged as infringing by bayp1s1t (the content owner) and need to be reviewed for deletion:

6/23/2008

<http://www.youtube.com/watch?v=SxvPLYnxZWE&search=Over%20The%20Hedge%20Lycaein>
<http://www.youtube.com/watch?v=cGcUj2l35M&search=Over%20The%20Hedge%20Lycaein>
http://www.youtube.com/watch?v=JEGkTb_d164&search=Over%20The%20Hedge%20Lycaein
<http://www.youtube.com/watch?v=d0YTYyIF8yg&search=Over%20The%20Hedge%20Lycaein>
<http://www.youtube.com/watch?v=KTNnzqEZYLE&search=Over%20The%20Hedge%20Lycaein>
<http://www.youtube.com/watch?v=MFfUJdBajbs&search=Over%20The%20Hedge%20Lycaein>
<http://www.youtube.com/watch?v=vx1v1TR3vdQ&search=Over%20The%20Hedge%20Lycaein>
<http://www.youtube.com/watch?v=MJMtvWQ4pqo&search=Over%20The%20Hedge%20Lycaein>
<http://www.youtube.com/watch?v=2oWuWoxpoxE&search=Over%20The%20Hedge%20Lycaein>

If you are the content owner, you are receiving this email as verification that we have received your deletion requests.

Copyright © 2006 YouTube, Inc.

copyright_cop.tpl

--
No virus found in this incoming message.
Checked by AVG Free Edition.
Version: 7.1.394 / Virus Database: 268.8.2/357 - Release Date: 6/6/2006

--
No virus found in this incoming message.
Checked by AVG Free Edition.
Version: 7.1.394 / Virus Database: 268.8.2/357 - Release Date: 6/6/2006

6/23/2008

Schapiro Exhibit 121

From: Copyright Service [copyright@youtube.com]
Sent: Thursday, October 19, 2006 12:50 AM
To: Courtney Nieman
Subject: Re: [Fwd: Notice ID: 158-4325 Notice of Unauthorized Use of Viacom Property]

Courtney,

Thanks for your explanation! It makes much more sense now. Did you notice any that did not get removed from yesterday? Or even previous days? I got 2 more from Viacom today (IDs: 158-4328 & 158-4329) that were blank as well. I'm assuming that if you aren't getting videos that weren't removed it isn't a problem. But I want to keep you updated in case it is. Let me know if you need any more info, or if you want me to forward the specific emails back to you.

Misty
The YouTube Team

PS Don't work too late!

Courtney Nieman wrote:

> Misty,
>
> That's good to know that you only got one blank email. We are only
> sending 1 or 2 emails at you each day, but each email may contain a
> number of videos. We can check in the morning.
>
> To summarize how things work on our end...We have a crawlers that find
> infringements on a number of protocols (including YouTube). In the case
> of streaming video, we take the list and "hash it", that is we manually
> check each link to be sure it is out client's content. Then we build a
> list of enforceable infringements, and bundle them together by property
> holder. Then one email per property holder gets sent to the streaming
> video source, i.e. YouTube.
>
> To follow up, we check the next day if the video came down. If not we
> will contact YouTube and dbl check that the email arrived, and if not we
> will re-send the email. We enjoy the relationship we have with you and
> always talk positively about the YouTube experience when it comes to
> copyright enforcement.
>
> For now, we'll check on the clips in the morning and follow up with
> Heather and/or yourself at that time.
>
> PS - I'm working late because of another customer issue - there is never
> any rest for customer service. Have a good night and I'll touch base
> tomorrow.
>
>
> Courtney
>
> -----Original Message-----
> From: Copyright Service [mailto:copyright@youtube.com]
> Sent: Tuesday, October 17, 2006 6:06 PM
> To: Courtney Nieman
> Subject: Re: [Fwd: Notice ID: 158-4325 Notice of Unauthorized Use of
> Viacom Property]
>
> Courtney,
>
> I believe this is the only blank email we have gotten so far today. But

A-790

> I know in the past we have gotten a few that were blank. Do you have a
> list of the videos you would like removed? I can double check that they
> were taken down. Also, I can forward any in the future that we get that
> are blank. I am assuming that the system is finding no videos that are
> in the search terms but is still sending us an email?
>
> Misty
>
>
> Courtney Nieman wrote:
>> Misty,
>>
>> I'm not sure what the problem is, but we are looking into it. Does
>> this mean you have not taken down any videos today that belong to
>> Viacom? If that is the case can you send me a list of "notice id"s
>> that have come up blank. We can resend if necessary.
>>
>>
>> Courtney
>>
>> -----Original Message-----
>> From: Copyright Service [mailto:copyright@youtube.com]
>> Sent: Tuesday, October 17, 2006 4:49 PM
>> To: Courtney Nieman
>> Subject: [Fwd: Notice ID: 158-4325 Notice of Unauthorized Use of
>> Viacom Property]
>>
>> Hey Courtney,
>>
>> Ive been getting a few blank no-reply emails a day... Do you know why
>> they are coming through empty? I just don't want us to miss anything,
>> if it is possible there is some sort of error before the message is
> sent?
>> Thanks so much!
>>
>> Misty
>>
>>
>

Schapiro Exhibit 122

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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

Plaintiffs,)

vs.)

NO. 07-CV-2103

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

Defendants.)

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

Plaintiffs,)

vs.)

NO. 07-CV-3582

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

Defendants.)

VIDEOTAPED DEPOSITION OF WARREN SOLOW
NEW YORK, NEW YORK
JANUARY 14TH, 2010

JOB NO. 18509

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VIDEOTAPED DEPOSITION OF WARREN
SOLOW, held at the offices of Wilson,
Sonsini, Goodrich & Rosati, PC, 1301
Avenue of the Americas, New York, New
York, pursuant to notice, before
Maureen Ratto, Registered Professional
Reporter and Notary Public of the State
of New York on January 14, 2010, at
10:13 a.m.

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A P P E A R A N C E S

FOR THE PLAINTIFFS:

JENNER & BLOCK, LLP

BY: SUSAN J. KOHLMANN, ESQ.

919 Third Avenue, New York, NY 10022

(212) 891-1690

skohlmann@jenner.com

FOR THE DEFENDANTS:

WILSON, SONSINI, GOODRICH & ROSATI, LLP

BY: MICHAEL H. RUBIN, ESQ.

650 Page Mill Road, Palo Alto, CA 94304

650-849-3311

MRUBIN@wsgr.com

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right?

MS. KOHLMANN: Objection.

Misstates the record. You can answer.

14:40:10 A. Importance is a subjective word but that certainly is information that I'd like to have.

Q. What value does that information provide to you in the execution of your responsibilities at Viacom?

14:40:17 A. It adds an increased level of precision.

Q. In what sense?

14:40:38 A. It helps mitigate the removal of clips that some parts of the organization would prefer to stay in place.

14:40:50 Q. It prevents Viacom from mistakenly removing content that it itself has authorized to be on the service. Isn't that right?

MS. KOHLMANN: Objection as to form.

14:40:57 A. Those are your words. I answered that using my words a moment ago.

1 Q. Is there anything inaccurate
2 about what I said?

3 A. I prefer to speak with my own
4 words and not another person's words.
5 14:41:05 So I'll stick with the answer I used
6 originally.

7 Q. Is there anything inaccurate
8 about what I said?

9 A. I have no idea. I'd prefer my
10 14:41:12 words and not yours.

11 Q. I'm just trying to get some
12 clarity here, Mr. Solow.

13 A. I think the best way to get
14 clarity is to accept the words that I
15 14:41:21 use.

16 Q. But do you see a difference
17 between the version of your statement
18 and mine?

19 A. I don't know how you define the
20 14:41:32 words that you use. I know how I
21 define the words that I use. So I'm
22 more comfortable using the words that
23 come out of my mouth.

24 Q. Viacom hires third parties to
25 14:41:59 upload content to YouTube from time to

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time. Isn't that right?

A. I believe that to be so.

Q. Is information related to that activity also provided to your department?

14:42:13

MS. KOHLMANN: Objection as to form.

A. Information of that variety has been provided to my department.

14:42:21

Q. Do you also instruct Mr. Housley to maintain information related to that activity?

A. Yes.

14:43:14

Q. Have you ever heard the term, Mr. Solow, white list?

A. Yes.

Q. What do you understand the term white list to mean?

A. In what context?

14:43:28

Q. In the context in which you heard it in your employment capacity at Viacom.

A. I've heard our approved outside counsel list referred to in that list, preferred vendor lists, I've heard

14:43:47

1 lists of video content that we would
2 like, that has been authorized for
3 placement in various locations on the
4 internet referred to in that regard
5 14:44:10 also.

6 Q. Have you also heard lists of
7 authorized user names from whom
8 postings to websites such as YouTube
9 should not be removed referred to as a
10 14:44:25 white list?

11 MS. KOHLMANN: Objection as to
12 form.

13 A. I've heard of -- not lists of
14 user names but that user name -- user
15 14:44:39 names have been a component of such
16 white lists, yes.

17 Q. Is the information that
18 Mr. Housley compiles, that we were just
19 referring to a moment ago, referred to
20 14:44:53 as a white list?

21 A. By some people.

22 Q. By you, Mr. Solow?

23 A. Generally not.

24 Q. Have you ever referred to that
25 14:45:02 as a white list?

1 A. I may have been on
2 communications where the term is used
3 but I generally try to avoid it because
4 I find it offensive.

5 14:45:15 Q. What do you find offensive about
6 that term?

7 A. I see a racial component in the
8 entomology of that phrase that I find
9 offensive.

10 14:45:29 Q. Interesting. It is a term that
11 is used at Viacom to describe, as you
12 explained, content that's been
13 authorized to be on the YouTube service
14 and should not be removed, though,
15 14:45:43 right?

16 MS. KOHLMANN: Objection as to
17 form.

18 A. I have noted the use of the term
19 white list and various usages at
20 14:45:55 Viacom. I often make my objections
21 known then also.

22 Q. Well, to be clear, going forward
23 in the line of questioning that I'm
24 going to ask you about, I may refer to
25 14:46:13 that phrase from time to time,

1 certainly not meant to relay any racial
2 overtone whatsoever. I'm simply
3 referring to it because it is the way
4 Viacom has referred to it in documents
5 14:46:22 produced to us and we want to make sure
6 we are consistent with the internal
7 terminology, to the extent there are
8 other ways of referring to it in-house,
9 I understand that it may be done that
10 14:46:32 way, for ease of reference in the
11 deposition.

12 A. I completely understand that.

13 Q. Your content based objection is
14 duly noted and I can see the basis for
15 14:46:42 it.

16 A. I understand.

17 Q. Please take no offense of the
18 use of the term today.

19 A. I won't.

20 14:46:49 Q. But do you understand what I
21 mean when I refer to white list in the
22 context of the uploading activity that
23 Viacom and its agents have done and are
24 doing on the YouTube website?

25 14:47:01 MS. KOHLMANN: Objection as to