

## A-601

116

1 DIRECT - PIERRE-LOUIS

2 that are subject to the fair use  
3 defense?

4 MR. HOHENGARTEN: I will  
5 11:48:15 instruct the witness not to  
6 answer.

7 Q. Other than BayTSP using the  
8 list we discussed earlier, are there  
9 any steps taken to avoid identifying  
10 11:48:29 clips that were uploaded to YouTube  
11 with authorization from Viacom?

12 MR. HOHENGARTEN: I instruct  
13 the witness not to answer.

14 Q. Are there any steps taken to  
15 11:48:51 ensure that Viacom owns valid  
16 copyrights for all works in suit?

17 MR. HOHENGARTEN: I am not  
18 even certain what you are asking,  
19 but I am going to instruct the  
20 11:49:05 witness not to answer. To the  
21 extent I understand it, it is the  
22 process of determining what to do  
23 to include the works in suit.

24 Q. To your knowledge, are there  
25 11:49:20 any clips that have been determined to

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be infringing but have not been designated as works in suit?

MR. HOHENGARTEN: I instruct you not to answer.

Q. To your knowledge, are there any clips that have been determined not to be infringing yet have been designated as works in suit?

MR. HOHENGARTEN: I think you can answer that.

A. I don't know. Not that I am aware of. I don't even understand the question to be honest with you. It had a lot of do not not's on the emphasis.

Q. I will restate it.

To your knowledge, do the works in suit include any material that is actually non-infringing?

A. Not to my knowledge.

Q. Are you familiar with something called video ID?

MR. HOHENGARTEN: You can answer yes or no.

A. I think I have heard the

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Q. At this time, Viacom has --  
at least as of now, Viacom is not using  
Vobile?

12:15:32 A. Viacom is not currently  
using Vobile.

Q. But is it considering it?

A. Yes.

Q. If a company -- if a website  
12:15:55 prescreens videos before they are  
posted to the site, do you believe that  
that provides the site with knowledge  
and control for purposes of the DMCA?

MR. HOHENGARTEN: I instruct  
12:16:11 you not to answer.

Q. Well, you've given CLE  
presentations about the DMCA, correct?

A. I have given CLE  
presentations about the DMCA.

12:16:22 Q. And you have described what  
you called as a catch 22 that companies  
like -- that companies that host video  
space, correct?

MR. HOHENGARTEN: Objection  
12:16:36 as to form. You can testify about

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what you have said publicly.

A. During CLE presentations, I have outlined for the attendees the various arguments raised by each side about these issues, not injecting any personal or corporate view, but rather outlining the issues so they are made aware of the arguments.

12:16:49 Q. I am going to read a couple of sentences and ask if you recall saying this at a seminar on copyright in May 2007 at PLI in New York City.

Quote, "There is no duty to monitor your site's activities. So that's been an interesting part of a lot of these cases because if you have no duty to look, you're not going to look. Therefore, you have no knowledge. But if you look and try to make, you know, some kind of deterrence policy, then you have knowledge. So there is sort of a catch 22 that many online service providers have sort of thrown their hands up at and basically

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said, you know, we are just not going to look. Otherwise, we risk, you know, being liable for some reason. So it is kind of an odd result."

12:18:13 MR. HOHENGARTEN: I object to reading a quotation from a document which has not been given to the witness to examine.

12:18:26 MR. SCHAPIRO: What I am going to do, and we are at about the lunch break, so this might work out in terms of time. If you wish, just play an excerpt from a DVD recording of your presentation and you can tell us whether it is you or not and whether you agree.

12:18:36 MR. HOHENGARTEN: Do we have copies of the DVDs to place on the record?

12:18:49 MR. SCHAPIRO: Yes.

MR. HOHENGARTEN: So you want to do it after the lunch break?

12:18:53 MR. SCHAPIRO: Yes, we will

1 DIRECT - PIERRE-LOUIS  
2 take a lunch break. We will set  
3 it up. So no one has to wait  
4 around while we deal with the  
5 12:18:59 inevitable technical difficulties.

6 THE VIDEOGRAPHER: The time  
7 is 12:19 p.m. We're going off the  
8 record.

9 (Whereupon, a lunch recess  
10 12:40:34 was held.)

11 (Whereupon a DVD was played  
12 off the record.)

13 THE VIDEOGRAPHER: The time  
14 is 1:06 p.m. We are back on the  
15 13:06:01 record.

16 BY MR. SCHAPIRO:

17 Q. Just a moment ago, I think  
18 we can stipulate that we, together,  
19 watched a portion of a DVD from an  
20 13:06:19 advanced seminar on copyright law given  
21 by the Practicing Law Institute, 2007.  
22 We watched a portion in which  
23 Mr. Pierre-Louis was speaking.

24 Are we on agreement on that?

25 13:06:28 MR. HOHENGARTEN: Yes, I

1 DIRECT - PIERRE-LOUIS  
2 stipulate to that and lodge an  
3 objection to the extent we haven't  
4 had a chance to view the entire  
5 13:06:36 CD, but we don't do that at this  
6 time.

7 Are you going to enter the  
8 CD into the record as an exhibit?

9 MR. SCHAPIRO: Yes, but if  
10 13:06:43 we can deal with the physical  
11 aspect of this later, we will save  
12 time. We will make that the next  
13 defense exhibit. We are getting  
14 copies of it. It actually turns  
15 13:06:51 out, because we are scrupulous  
16 about copyright, it turns out we  
17 only have one copy. We ordered  
18 other ones from BLI which was  
19 supposed to be here today. We  
20 13:07:02 will make the one we have here the  
21 exhibit and we will get everyone  
22 the exhibits from PLI.

23 MR. HOHENGARTEN: That's  
24 fine.

25 13:07:08 Q. Mr. Pierre-Louis, is it --

1 DIRECT - PIERRE-LOUIS  
2 would you like me to read, again, the  
3 excerpt I read before we broke for  
4 lunch. I note that I provided you with  
5 13:07:21 a typed up copy of the excerpt during  
6 the lunch break.

7 A. I have the excerpt.  
8 MR. SCHAPIRO: Can I ask,  
9 Andy, do you want to enter that as  
10 13:07:28 an exhibit as well?

11 MR. HOHENGARTEN: Sure. We  
12 will do that.

13 (Whereupon, the  
14 aforementioned DVD was marked as  
15 Pierre-Louis Exhibit 2 for  
16 identification as of this date by  
17 the Reporter.)

18 (Whereupon, the  
19 aforementioned typed copy of an  
20 excerpt was marked as Pierre-Louis  
21 Exhibit 3 for identification as of  
22 this date by the Reporter.)

23 Q. So when you said there is no  
24 affirmative duty to monitor, that was  
25 13:08:05 your interpretation of the description



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of the DMCA, correct?

MR. HOHENGARTEN: Objection

as to form.

13:08:11 A. The presentation I gave while I was at Kay Sholler was part of an instructional seminar on copyright meant to provide attendees with a survey of emerging and timely areas of

13:08:31 copyright law and I was providing them with various viewpoints to enable them to understand the scope of arguments being made by various sides. So in that context, I made these statements.

13:08:46 Q. Well, you just watched the discussion leading up to this excerpt; am I correct?

A. Yes.

Q. And before that sentence when you said there is no duty to monitor your site's activities, you didn't say some people think or it could be claimed, you said -- you were describing what the provisions of the

13:09:03 DMCA are, correct?

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MR. HOHENGARTEN: Objection

as to form.

A. I was providing them with an  
13:09:12 understanding that many have with  
respect to the DMCA.

Q. Did you say that?

MR. HOHENGARTEN: Objection

as to form.

A. We watched eight minutes of  
13:09:20 it, but with respect to the DMCA, I  
think it speaks for itself. I was  
providing information to the attendees.

Q. And you were there as a  
13:09:33 teacher, correct? You were an  
instructor?

A. I was the one of four  
panelists speaking on copyright issues.

Q. And people were getting  
13:09:42 continuing legal education credit for  
attending, correct?

A. Yes.

Q. Do you believe there is a  
duty to monitor the site's activities  
13:09:52 under the DMCA?

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2 MR. HOHENGARTEN: Now,  
3 parting from what he said in the  
4 public forum?

5 13:09:56 MR. SCHAPIRO: Yes, because  
6 he just said he was recounting  
7 what some people have said.

8 MR. HOHENGARTEN: I instruct  
9 the witness not to answer.

10 13:10:03 Q. Do you believe a site that  
11 engages in active monitoring and  
12 becomes aware of infringement  
13 automatically becomes liable for  
14 infringement if it fails to remove that  
15 13:10:14 content?

16 MR. HOHENGARTEN: Now, you  
17 are --

18 MR. SCHAPIRO: Separate and  
19 apart from the presentation.

20 13:10:22 MR. HOHENGARTEN: I instruct  
21 you not to answer.

22 Q. Does Viacom have user  
23 generated video websites?

24 MR. HOHENGARTEN: Objection  
25 13:10:40 as to form. I think you can

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provide a general answer.

13:10:53 A. Viacom owns sites that in some instances permit users to upload content.

Q. And in some instances can that content be video?

A. Yes.

13:11:05 Q. I am going to ask that this document be marked as Exhibit 4.

(Whereupon, the aforementioned E-mail was marked as Pierre-Louis Exhibit 4 for identification as of this date by the Reporter.)

13:11:25 Q. Am I correct that this appears to be an E-mail from Susan Kohlmann to the various parties in this case stating, "This list represents the Viacom online properties that support or have" -- " or have supported UGC/UGV"?

MR. HOHENGARTEN: Objection

as to form.

13:13:14 A. That is what the E-mail

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2 states.

3 Q. And what -- do you have any  
4 understanding of what the acronym UCG  
5 13:13:21 or UGV stand for?

6 A. As I understand it, UCG  
7 would be user generated content and UGV  
8 would be user generated video.

9 Q. And could you take a look at  
10 13:13:32 the list that's attached? Can you tell  
11 us of the sites that are listed here,  
12 are there any that -- do you know if  
13 all of these sites support user  
14 generated video?

15 13:13:57 A. I do not believe that all of  
16 the sites on this list support the  
17 upload of videos by users.

18 Q. Can you pick out some that  
19 might be examples that do support the  
20 13:14:21 upload of video? Are you familiar with  
21 some that provide -- that allow a user  
22 to upload a video?

23 A. The iFilm site permits users  
24 to upload videos.

25 13:14:33 Q. And I see that the list

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provided by Miss Kohlmann shows up  
under the word "Spike." Do you have an  
understanding of what Spike is?

13:14:42 A. Spike is one of the brand  
channels that make up the MTV Networks,  
so my film would fall within the  
purview of the Spike brand.

Q. If you look further down the  
13:14:57 page you see a heading "Nickelodeon."  
Can you tell us what Nickelodeon is?

A. Nickelodeon is a brand --  
branded channel within the MTV Networks  
that primarily targets family-oriented  
13:15:13 programming.

Q. Under the heading  
Nickelodeon, do you see towards the  
bottom it is written,  
"www.addictingclips.com."

13:15:28 A. Yes, I see that.

Q. Do you know what that is or  
was?

A. I don't know the specific  
target audience or target company. I  
13:15:43 know it was a company that we acquired,

**Schapiro Exhibit 103**

**A-616**

**User Abuse Manual**



**Atom Entertainment, Inc. for Addicting Clips and  
Any Other Applicable Sites.**

2006



**Proprietary and Confidential Information**

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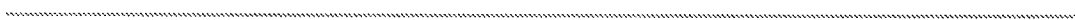
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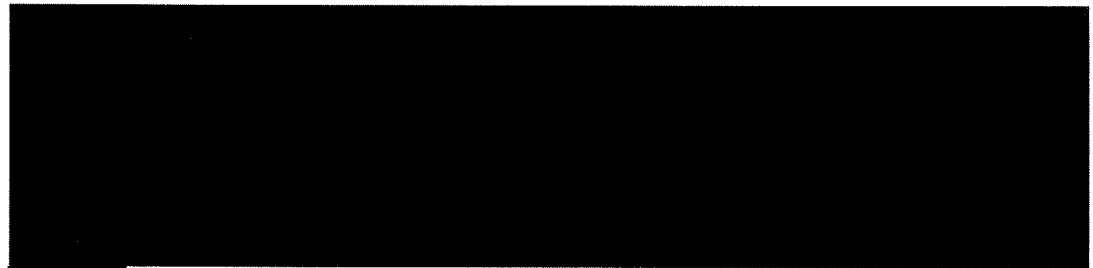
## Introduction

- User generated content should never be monitored

Something that can't bear enough repeating is that the User Abuse Team, and Atom Entertainment in general, does not, and should not, actively monitor any of its Web sites for content violations regarding content submitted or generated by its users. The Abuse Team reviews a site only after receiving a complaint from an outside party, or if alerted by an Atom Entertainment employee who encountered a seemingly objectionable website in the course of performing normal job duties.

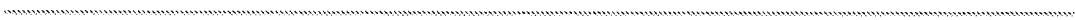


- Implications of hit content



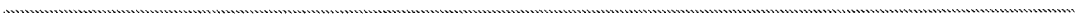
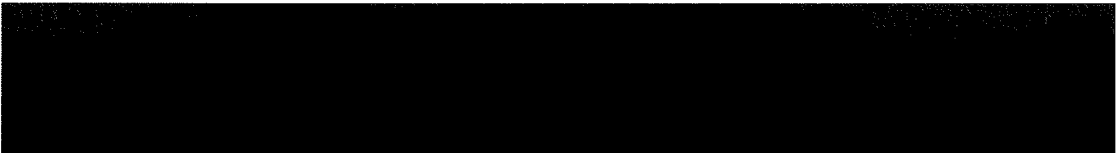
The need to avoid losing popular content needs to be balanced against the ramifications of potential bad publicity for hosting legal, yet objectionable, content.

**Important:** If none of the recommendations in this manual happen to apply to the case at hand, please don't hesitate to consult our legal counsel (Victoria Libin or Adam Lovingood), or Scott Roesch, or both. If legal counsel or Scott is not available to discuss the matter, then bring it to the attention of Margaret McCarthy.



- Removal of offending material: Site or account?

It's up to you to determine whether it's in our best interest to delete just the offending piece of content, or the account altogether.

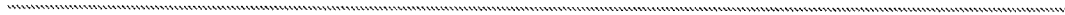


- Password protection

Addicting Clip's password protection feature for sharing content privately is a useful tool for keeping family, club, adult, and other content private.



Therefore, if we receive a complaint about content behind a password, it should be removed.



➤ Risk analysis



**Messaging Procedure**

➤ Maintaining the proper tone

One of the more difficult aspects of working in abuse administration is handling difficult correspondents – both complainants and abusers. A parent reporting pornography on a our site can be as difficult to placate as an advertiser demanding to know why his ad was shown next to offensive content. A number of correspondents will resort to the full range of abusive language, from profanity to promises of legal action.

If a message contains nothing but insults and obscenities, the best course of action is to simply not answer it. Occasionally, however, people get justifiably frustrated, and deserve a response despite the surface profanity.

Rule #1: Maintain an even tone at all times. Never escalate the tenor of the exchange, or match abuse for abuse. Make an effort to set limits. If you say too much or make excessive assurances

or concessions – or go overboard in admitting error – the complainant (or abusive user) will do his best to exploit the language you use to his benefit. Depending on the circumstances, the goal in abuse messaging is to strike the right balance between being specific and being vague, being receptive and being firm.

Rule #2: Never give legal advice. [REDACTED]

---

➤ The importance of notifying abusers

Make sure you notify all abusers of actions taken. [REDACTED]

Most deletion canned emails are deliberately vague, and simply state the following:

`It was brought to our attention that your content violated our terms of service. It was therefore removed from the AddictingClips web site.`

Some abusers will know exactly what we are referring to, and will not reply. Others will demand a more detailed explanation. In such cases, it is best to invoke the terms of service, for example:

`Thanks for your message. Our records indicate that your site content violated one or more terms of Section 4 of our Terms of Use, which states that users may not:`

`create a user name or screen name or upload to, distribute through or otherwise publish through the Site any Materials which are indecent, libelous, defamatory, obscene, threatening, invasive of privacy or publicity rights, abusive, illegal, harassing, contain expressions of hatred, bigotry, racism or pornography, or are otherwise objectionable, or that would constitute or encourage a criminal offense, violate the rights of any party or violate any law.`

If the user demands more specific details of the violation, it is up to you whether to reply. [REDACTED]

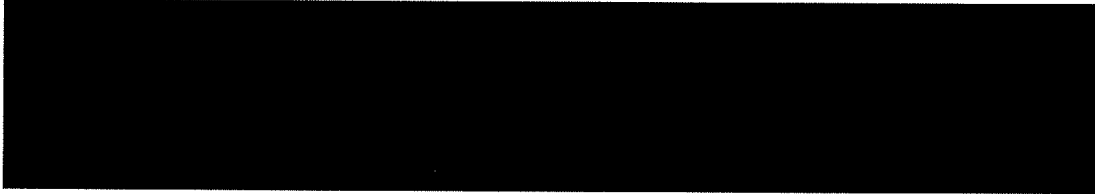
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➤ Ending an exchange

Some abusers are unusually tenacious in demanding to know why their accounts were closed. It is a bad idea to become ensnared into telling abusers exactly why you made your decision. Doing so will only guarantee sustained and ridiculous debate. Try not to let an exchange run to more than three messages total: Original notification, (their) response, and (our) clarification.

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➤ Invoking the User Agreement

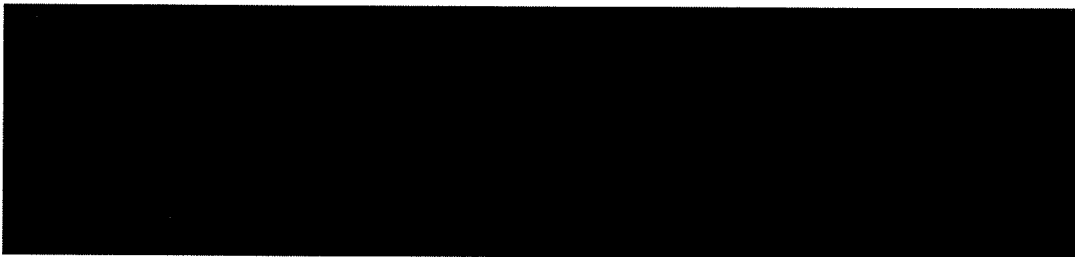


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➤ The 'passive conduit' disclaimer

All responses to persons who send original complaints must contain the following disclaimer:

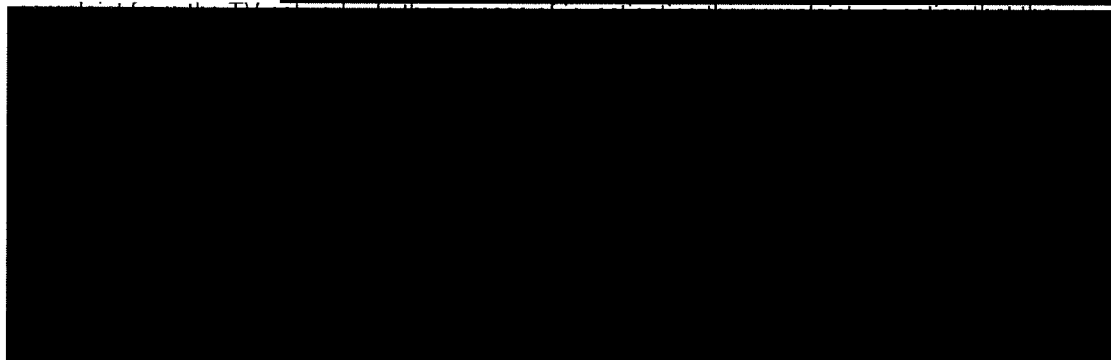
**As a passive conduit, we cannot monitor user websites, but we respond to breaches of our Terms of Service when we learn of such behavior.**



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➤ The multiple-violation rule

If a user account has three or more content violations that separately might not warrant an outright account deletion, it may be desirable to terminate the account and delete all content submitted by the user.



---

➤ Messaging nuts and bolts

Theoretically, more than half of all abuse messages will be notices to users informing them that we deleted infringing content after receiving a complaint, and are therefore originated messages.

Please follow the procedures below when responding to the complainant and notifying the abusive user.

- All responses to the complainant should bear the subject line "Atom Entertainment Abuse Team"
- All account-deletion messages to the abusive user should also bear the subject line "Atom Entertainment Abuse Team", followed by the case number of the complainant's original message (ex.: Atom Entertainment Abuse Team [Case# 1654994])

(In short, all originated messages should have a case# in the subject line)

- Always begin the message to the complainant (and to the user who write back to complain) with "Thank you for your message"
- Always use the standard Abuse Team signature – no names, please! You can make an exception to this rule when messaging law-enforcement personnel, Better Business Bureau staffers, and select others.

Make sure you record all account deletions and reactivations on a spreadsheet that you keep in your user folder. You should have a number for the user's login, email, type of content, and type of abuse.

## Dealing with the authorities

### ➤ Our privacy policy

Ordinary citizens, parents, students, school administrators, foreign law-enforcement officials and attorneys often assume that we will disclose the identity of users upon request. These parties must be informed that we will not release such information without a court order:


**Atom Entertainment, Inc. acknowledges and has considered your request that we divulge the identity of the user in question. However, in light of our privacy policy, we are unable to comply with your request.**

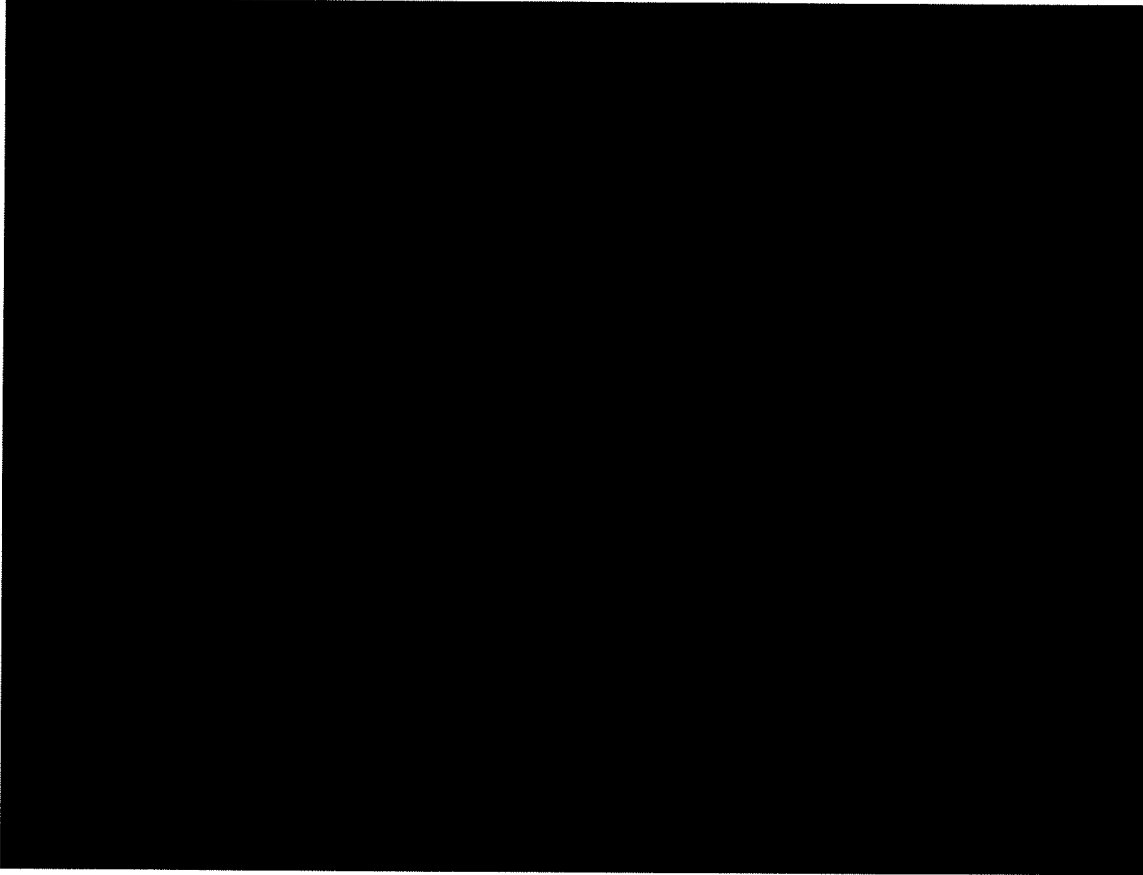
**Atom Entertainment, Inc. will, however, disclose user account information upon receipt of a valid court order and we will notify the user of such order prior to any disclosures.**

---

### ➤ Court orders


Sometimes law enforcement or other government Agencies will email demanding user information after the see porn or other illegal clips. In order for us to release basic user information, we require a subpoena, and to release more specific information, such as IP logs, we require a search warrant.

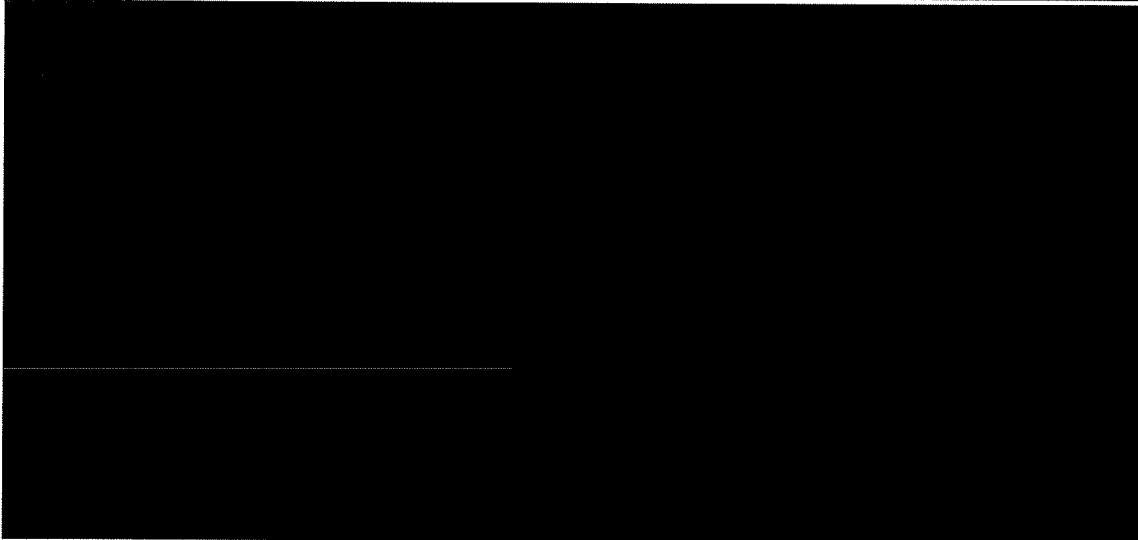
Something important to remember is that we are obligated by law to notify the user before disclosing any personal information. 



---

➤ Procedure

When you receive a court order, whether it's a subpoena or search warrant, have our legal counsel review it. 





Following is an example of a letter responding to a court order:

April 15, 2005

IA Helen Ramirez  
Federal Bureau of Investigation  
2500 E. TC Jester  
Houston, TX 77008

VIA FACSIMILE

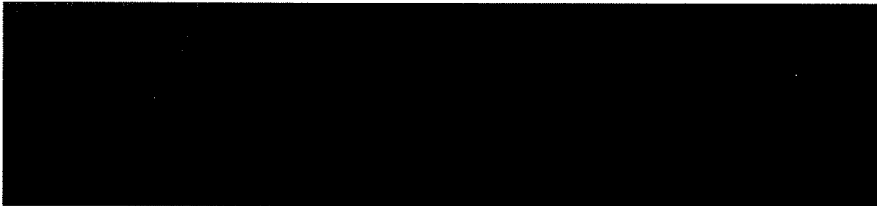
Case number 305A-BA-80998-AS6611-HO

Dear Investigator Ramirez,

The information supplied in this facsimile is in response to the subpoena requiring information for the account referenced as [addictingclips.com/xxxxmachine](http://addictingclips.com/xxxxmachine).

Unfortunately, we have a policy of deleting content from accounts that have terminated.

Nevertheless, the account's registered e-mail address (which was supplied upon registration) is still intact in our records, as are the dates for the creation of the account, and the last login to the account. They are as follows:



Please let me know if you have any questions regarding the above information.

Regards,

Bob Tarter  
Abuse Administrator  
Atom Entertainment, Inc.

.....

➤ Notifying the User about a warrant or subpoena

As mentioned earlier, we will need to notify the user that we have received a subpoena ordering us to disclose his identity (or his site content, or both). Unless the court order contains explicit language ordering us not to notify the user, we must contact him at his account's registered e-

# A-626

mail address notifying him of the court order and giving him the opportunity to file a petition and obtain a protective order to block the disclosure.

Below is an example of such a notification, sent by e-mail:

Hello,

We have received a subpoena from the Hinterland County (Texas) Prosecutor's Office ordering us to disclose user information for your Addicting Clips account, which was referenced in the subpoena under the URL greatpyramid.addictingclips.com. The subpoena was dated March 19, 2006. We are providing this notification as a courtesy.

The Subpoena requires that responsive documents be produced no later than April 5, 2006. If you object to these documents being produced, you must obtain a protective order or other court order that relieves Atom Entertainment, Inc. of its legal obligation to respond to the Subpoena.

For further information concerning the Subpoena, you may contact the attorney who served the Subpoena:



Please let us know if you have any questions.

Regards,

Abuse Administrator  
Atom Entertainment, Inc.

Cc Victoria Libin, Sr. Director of Legal Affairs

**Note:** The deadline for receiving the documents blocking our obligation to disclose user information should be ten working days after the date of the court order (as in the March 19 – April 5 example above). Always make sure that the original deadline in the subpoena or court order requesting disclosure is met. If it is not possible to meet the deadline, have legal counsel request an extension.

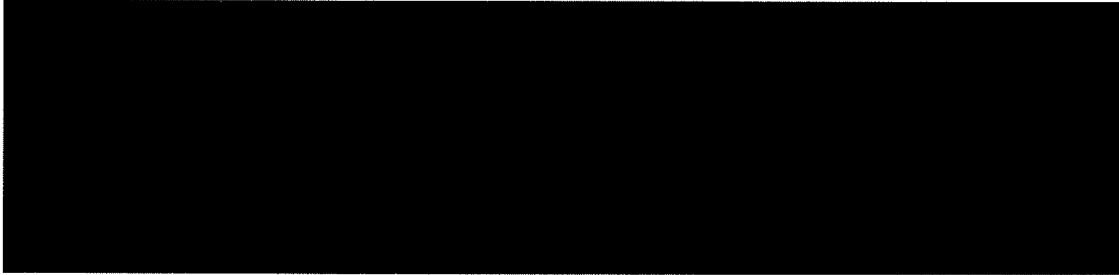
If you receive paperwork before the stated deadline that blocks disclosure, have our legal counsel review it. Once s/he has confirmed that the paperwork is legitimate, immediately contact the authorities who issued the subpoena. Write a cover letter detailing our Privacy Policy and procedure for notifying users about disclosure of their information, and fax along the paperwork you received from the user. Notify the user that you have received his documents, and have faxed copies to the authorities who issued the subpoena (Keep our legal counsel informed of what you are doing at all times; you will need assistance from her on the specifics).

**Important:**

- Make sure you keep copies (or originals) of all associated paperwork, including e-mails.
- In all correspondence, be as specific as possible about dates.

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➤ Abusive discussion board entries or reviews



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➤ Referring people to the police

Complainants who alert us to threatening site content that appears likely to cause physical harm or is evidence of a crime should be referred to the local authorities with the following response:

We are anxious to work with you to resolve this matter.

Atom Entertainment's privacy policy precludes us from giving out our registered user information except to legal authorities.

Therefore, please have your local police department (or other law enforcement agency) contact our legal department. Here is the contact information for our legal team:

Legal Department  
c/o Atom Entertainment, Inc.

225 Bush, Suite 1200, San Francisco, CA 94104

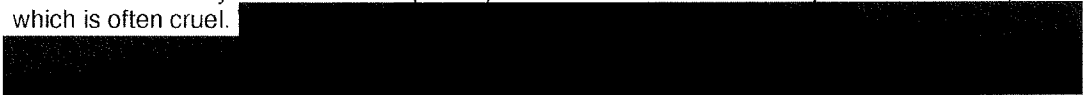
FAX: (415) 503-2425

As a passive conduit, Atom Entertainment, Inc. cannot monitor user content, but we respond to breaches of our Terms of Service when we learn of such behavior.

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➤ Dealing with parents

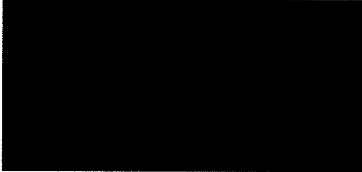
You may find it desirable to employ a more personal tone when dealing with parents of minors who are affected by user abuse – especially when the children are the objects of the abuse, which is often cruel.



➤ Threats to Atom Entertainment

All physical threats to our company, whether they involve hacking our network, bombing our offices, or inflicting physical harm on Mika, our board users, our management team, or our employees, must be reported immediately to a local field office of the FBI. If the threat is contained in a discussion board entry or a review, send the FBI the IP address obtained by our technical people; if the threat is contained in an e-mail, make sure you include the full header along with the message body.

Here is our contact information for the FBI:



Following is an example of a faxed letter to the FBI:

July 2, 2005

National Infrastructure Protection Center  
J. Edgar Hoover Building  
935 Pennsylvania Ave, NW  
Washington, D.C. 20535-0001

VIA FACSIMILE

Hello,

Atom Entertainment, Inc. is a company providing user generated content and other short format entertainment through various websites, including [www.addictingclips.com](http://www.addictingclips.com).

On the afternoon of Wednesday, June 27, a disgruntled user posted hacking and bombing threats on one of our community discussion boards.

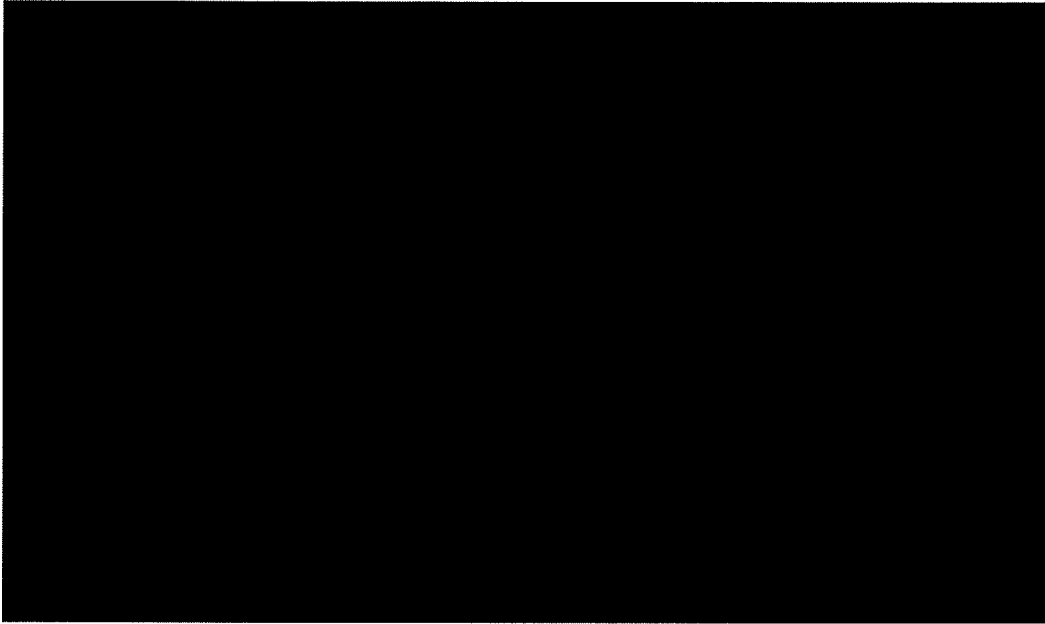
Here is the text of the post, with the threat highlighted in boldface:

This is not fair. I have not only spent alot of time submitting film clips to AddictingClips, as a fairly new user, but also spent over an hour reviewing various films, Atom Entertainment sites will get hacked on July the 9th, I plan to destroy Atom Entertainment, Inc.s headquarters on 07/09/01,



Following is the IP information we were able to obtain. (Please note that the the last IP is from an Inktomi cache server somewhere in London similar to the kind AOL uses):





Here is the personal information we have in our records regarding this user:



While we have reason to believe that the threat was simply an ill advised attention-grabbing scheme, we have decided, as a matter of policy, to report all physical threats to the FBI.

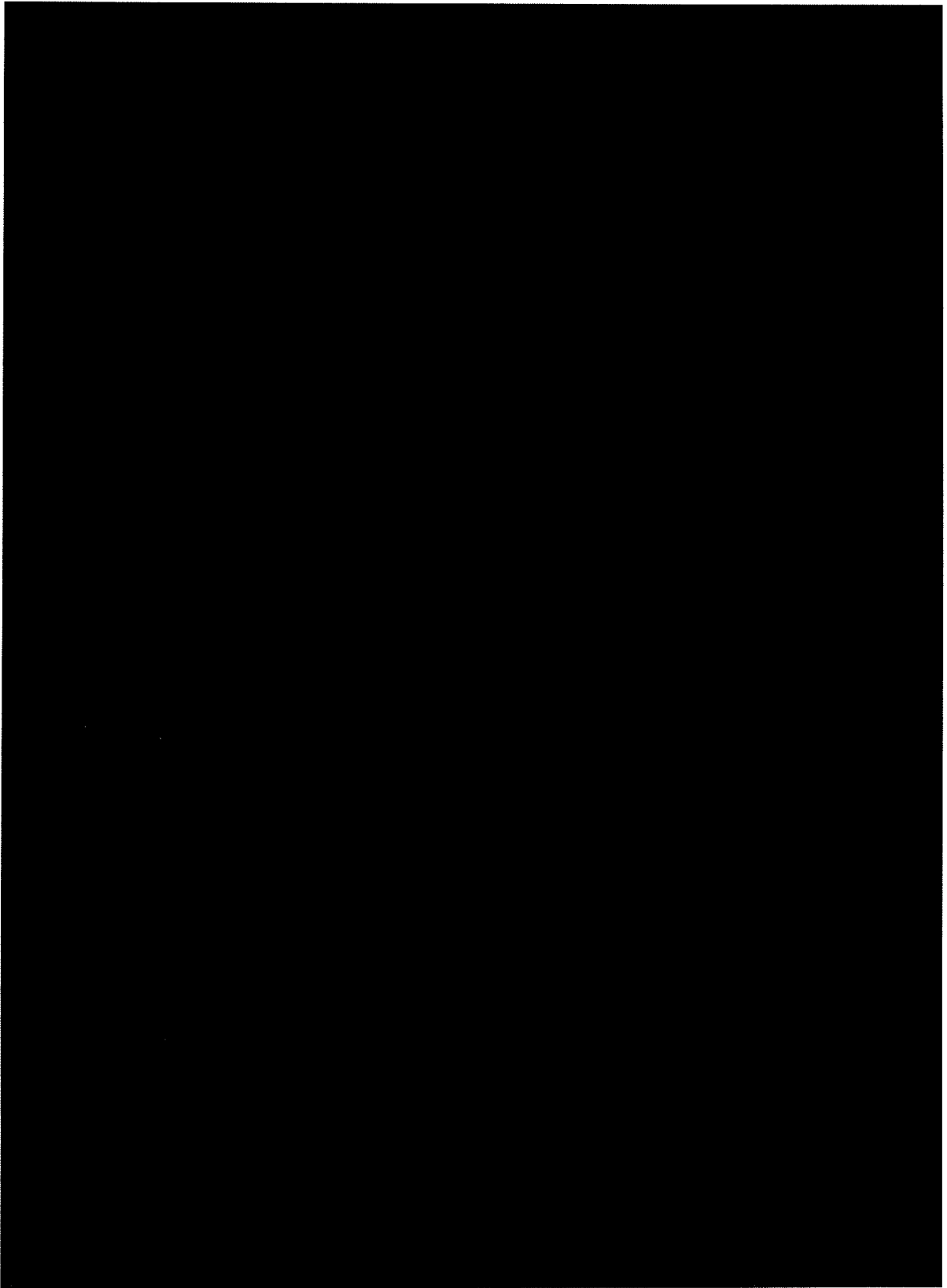
Because the threat against Atom Entertainment jeopardizes the integrity of our servers as well as the safety of our employees, thereby creating potential liability for Atom Entertainment, Inc., we in good faith believe that disclosure of the information we have provided in this letter is both necessary and appropriate.

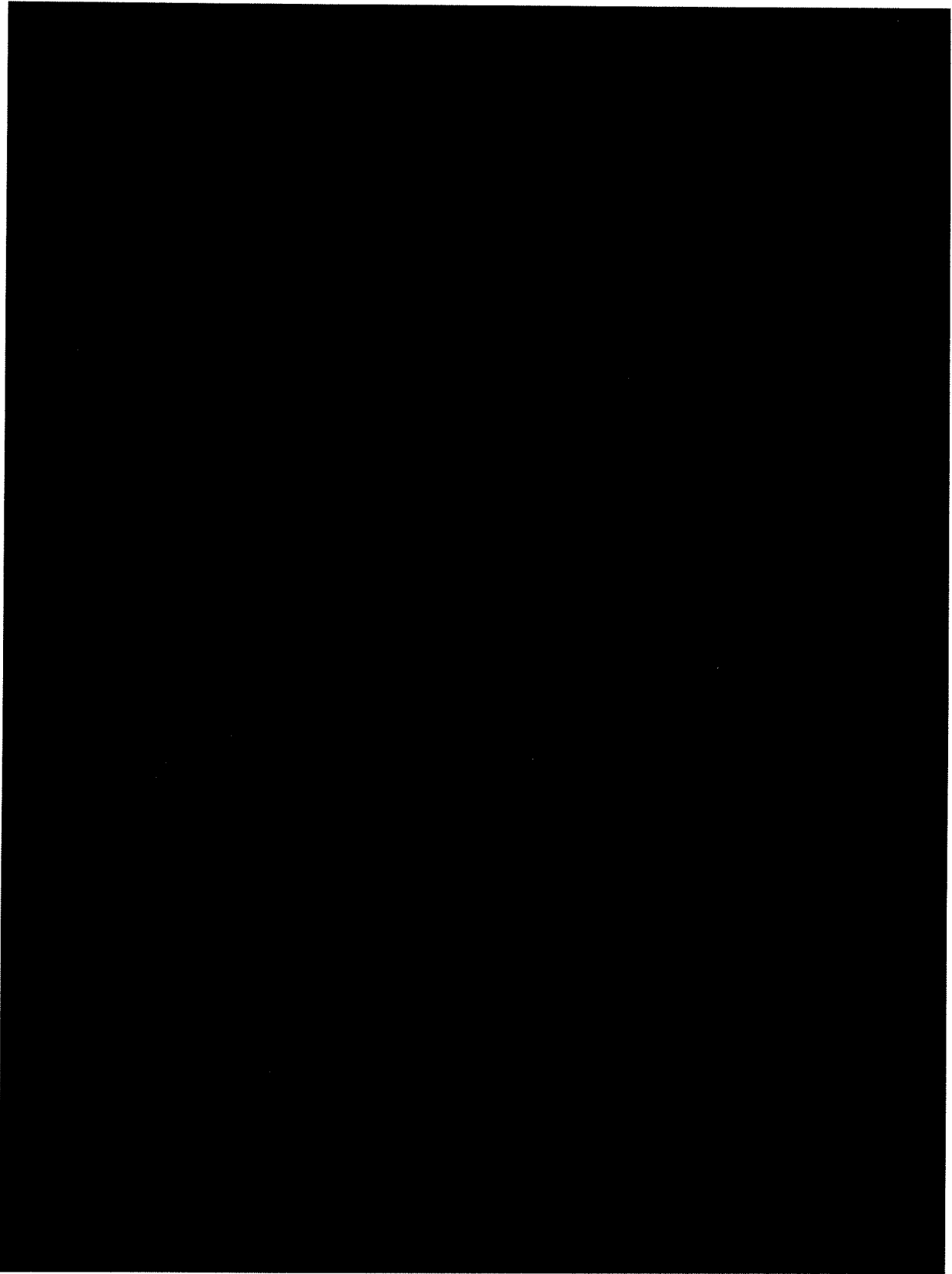
Regards,

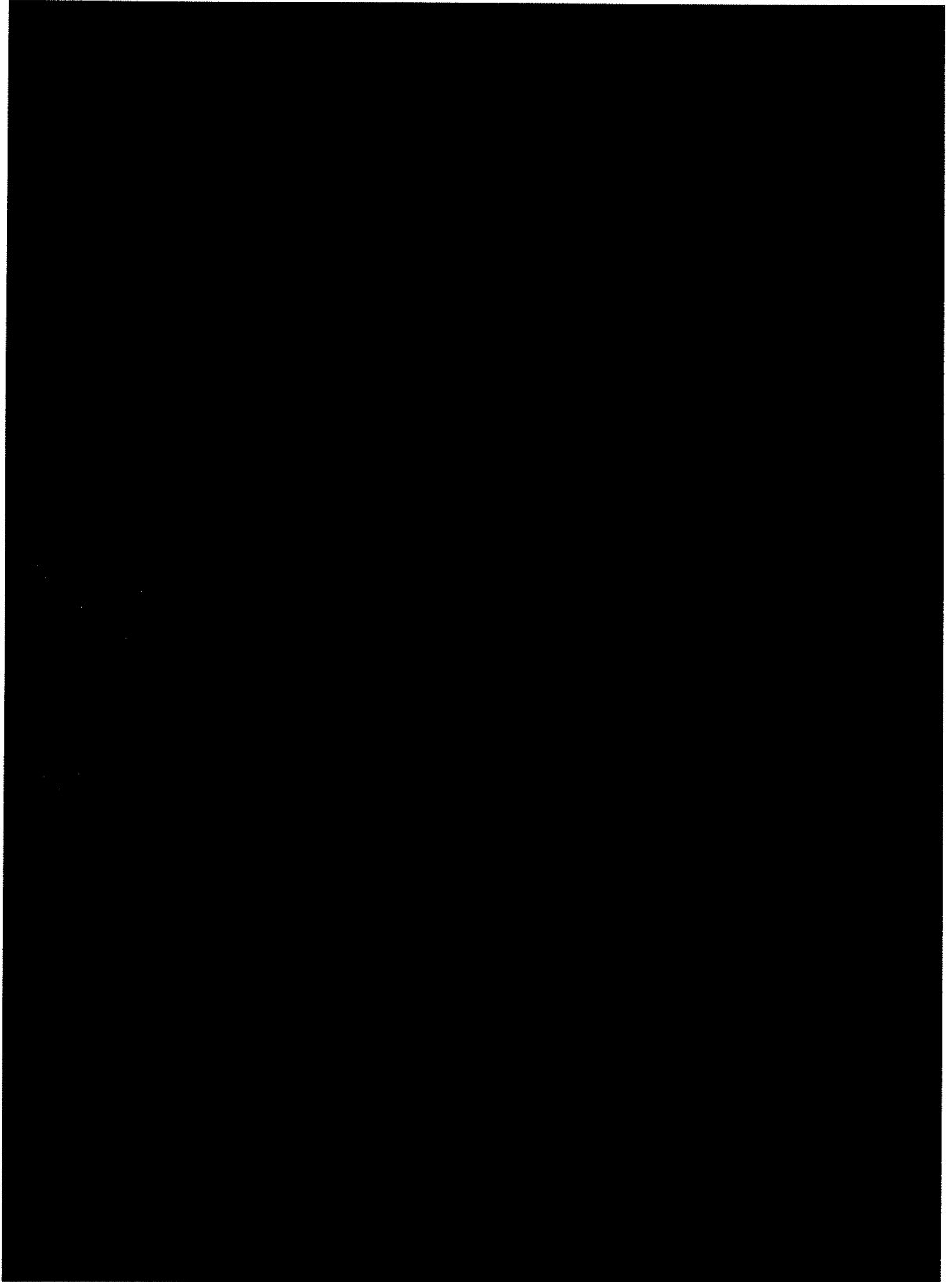
Bob Tarter  
Abuse Administrator  
Atom Entertainment, Inc.

Copyright and other Intellectual Property Infringement

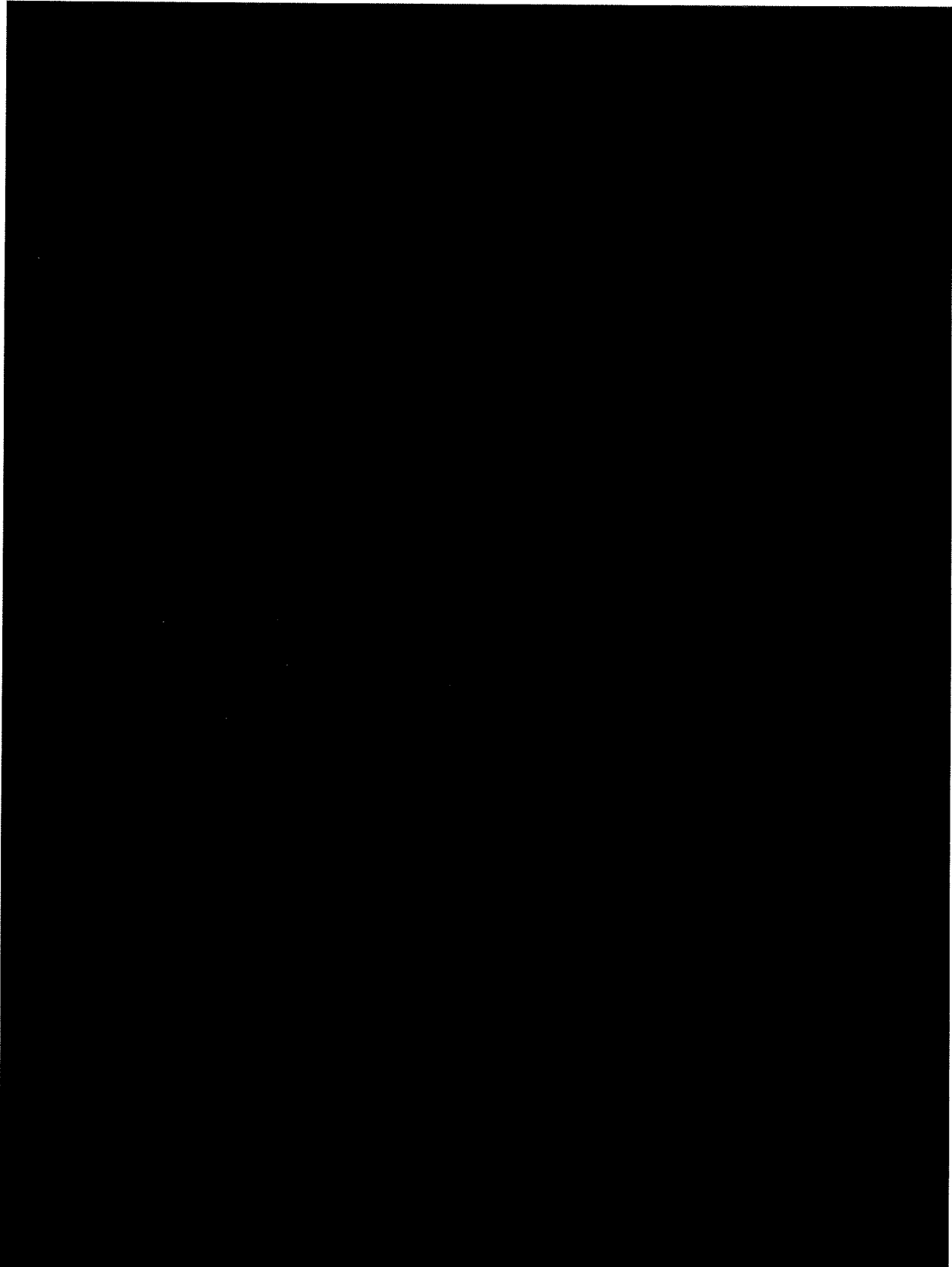


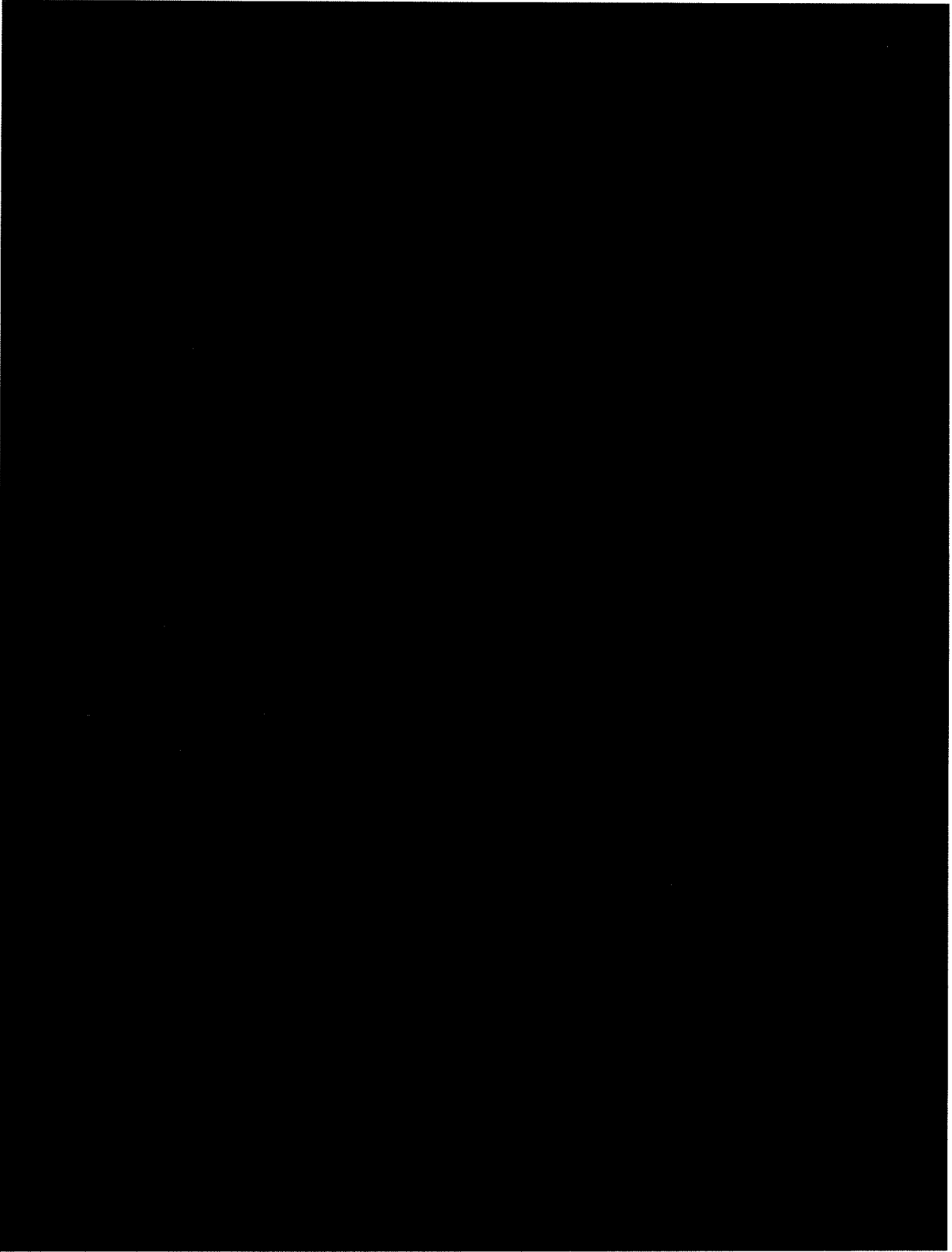


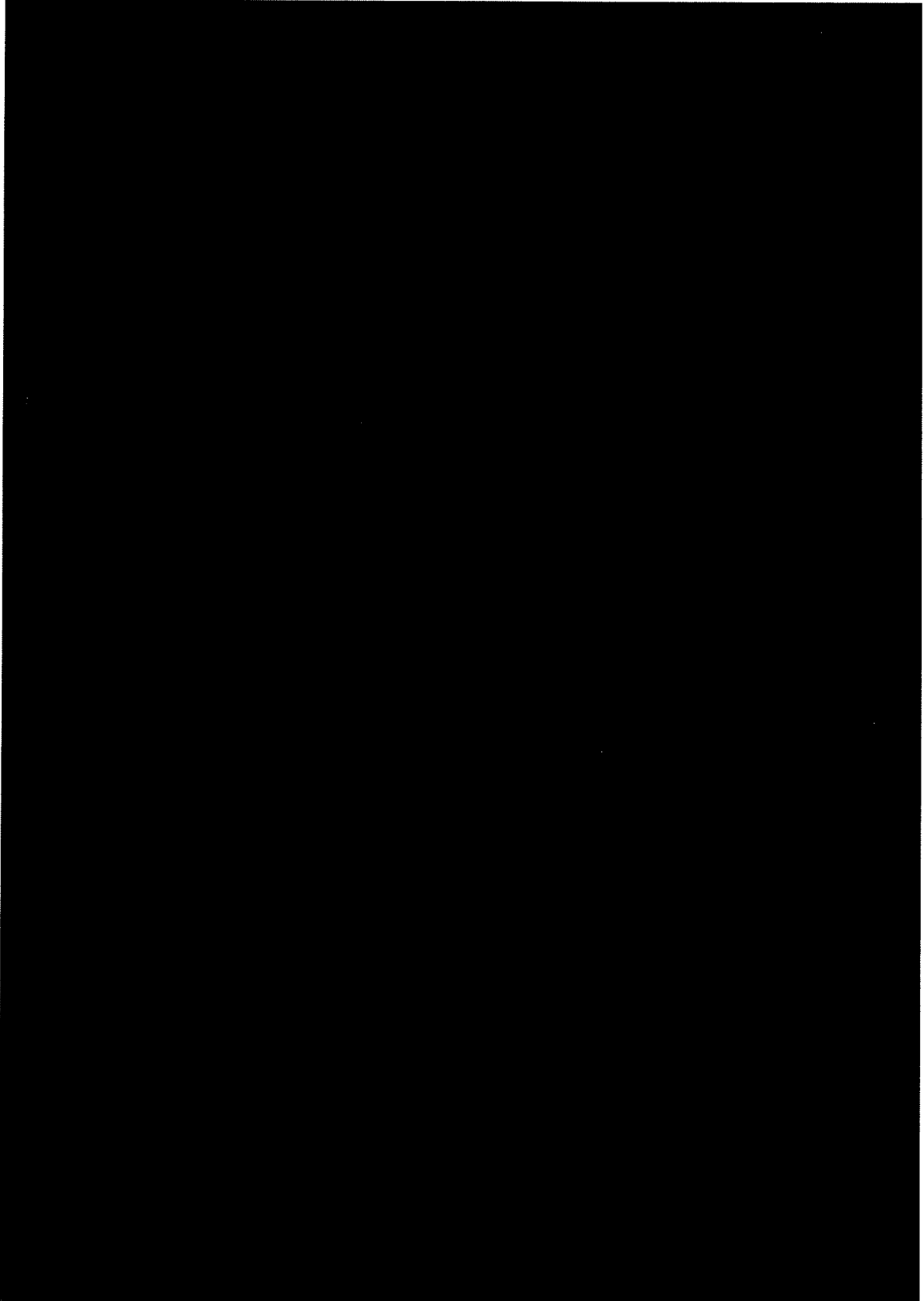




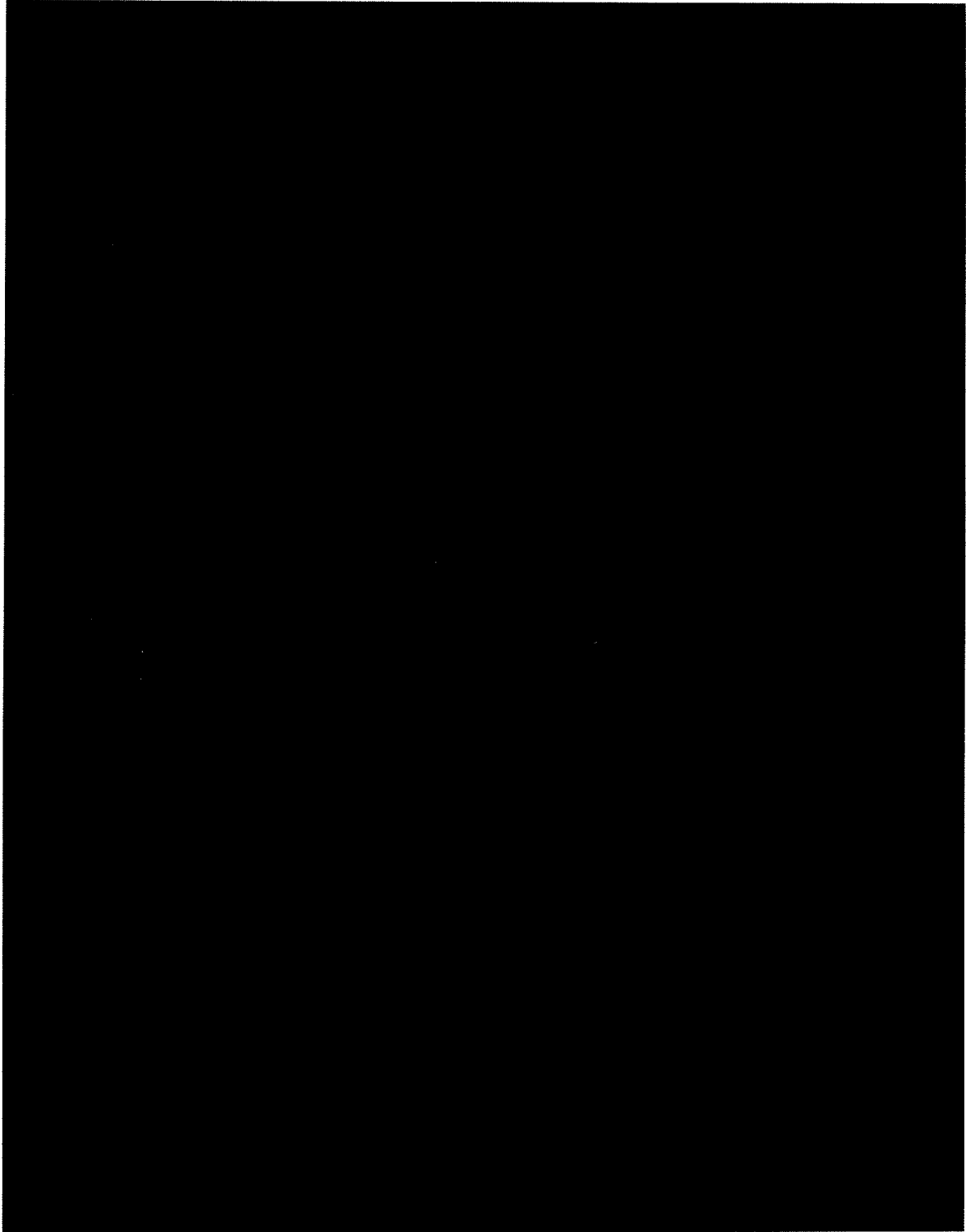


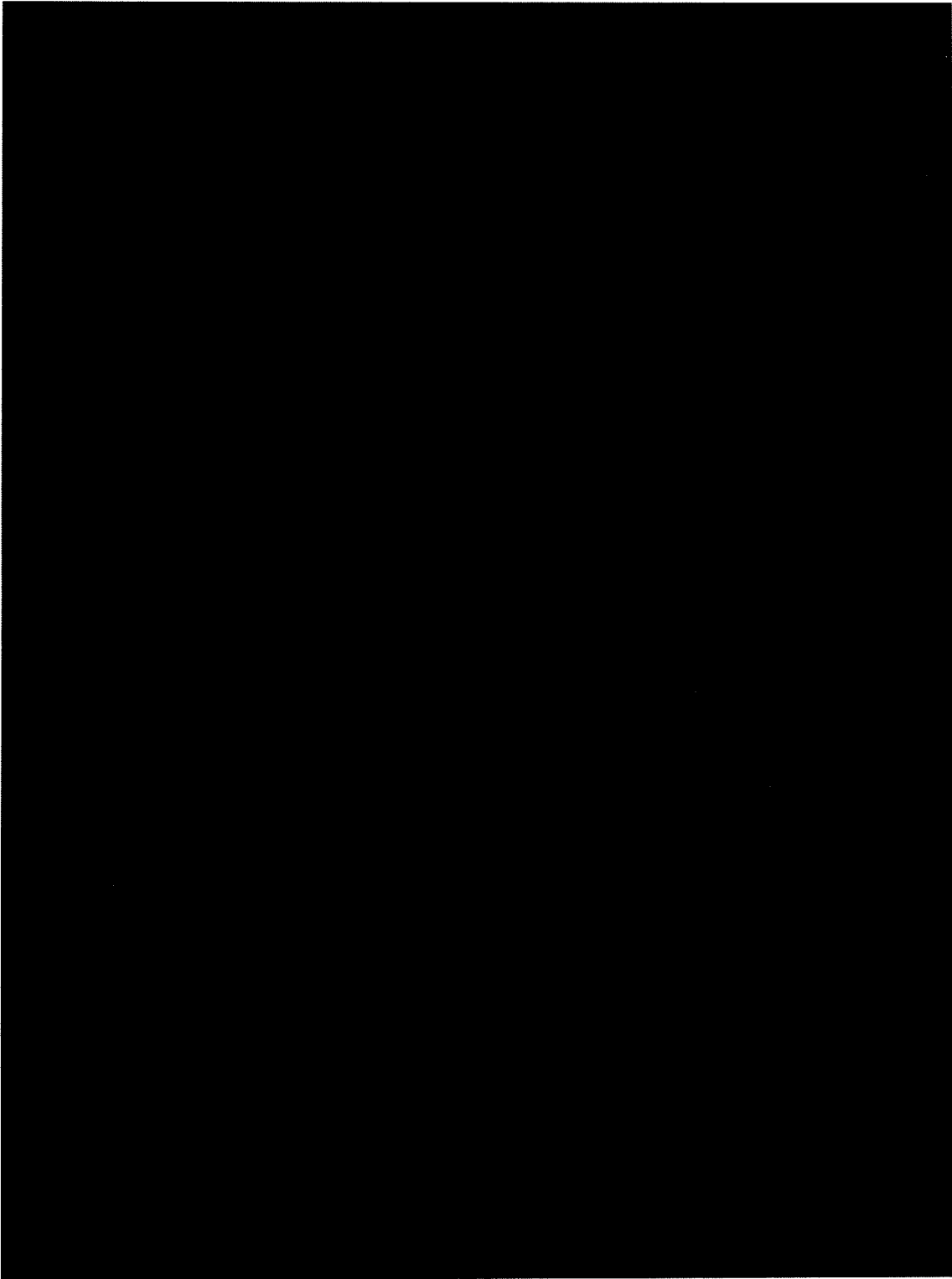




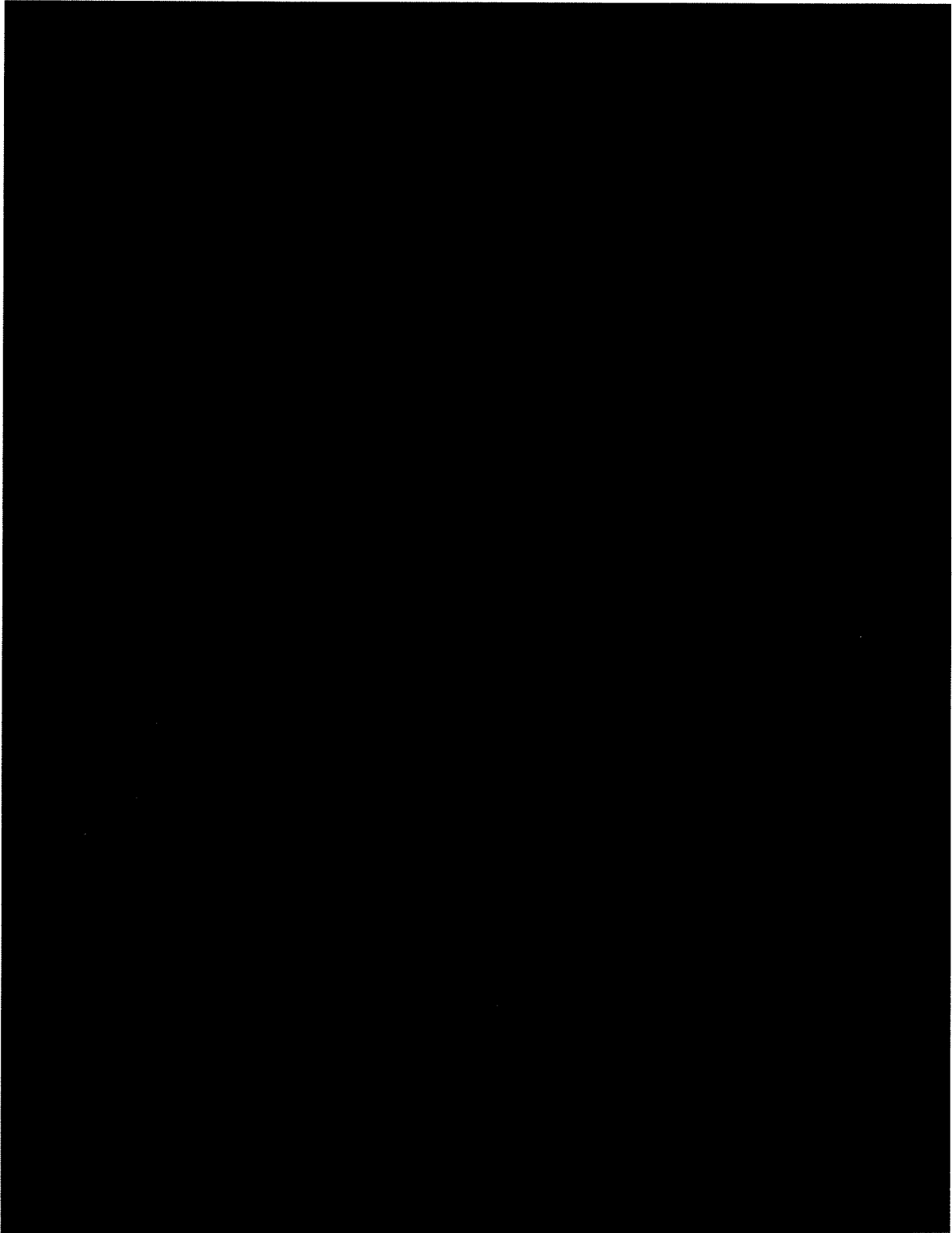


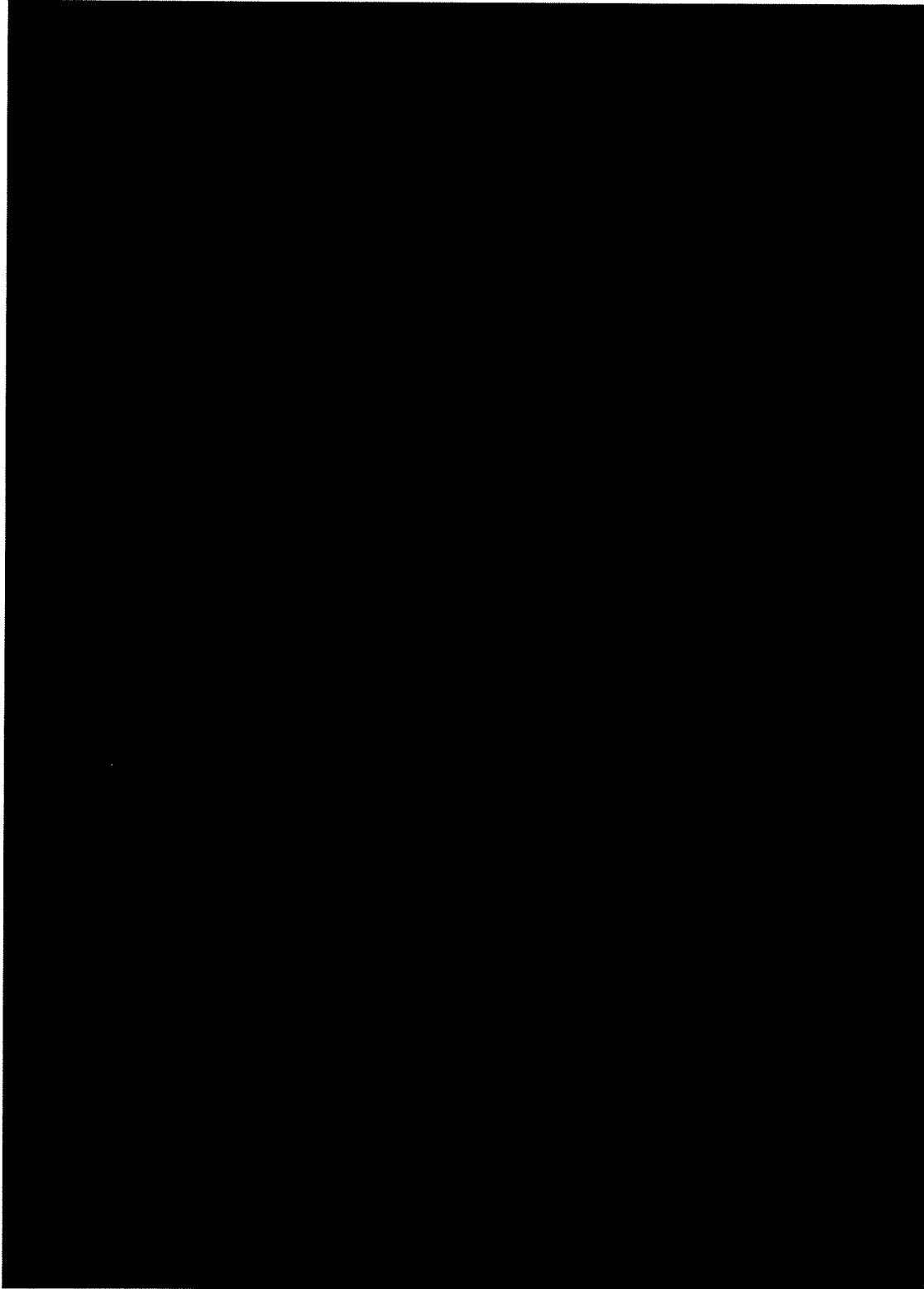
Invasion of Privacy

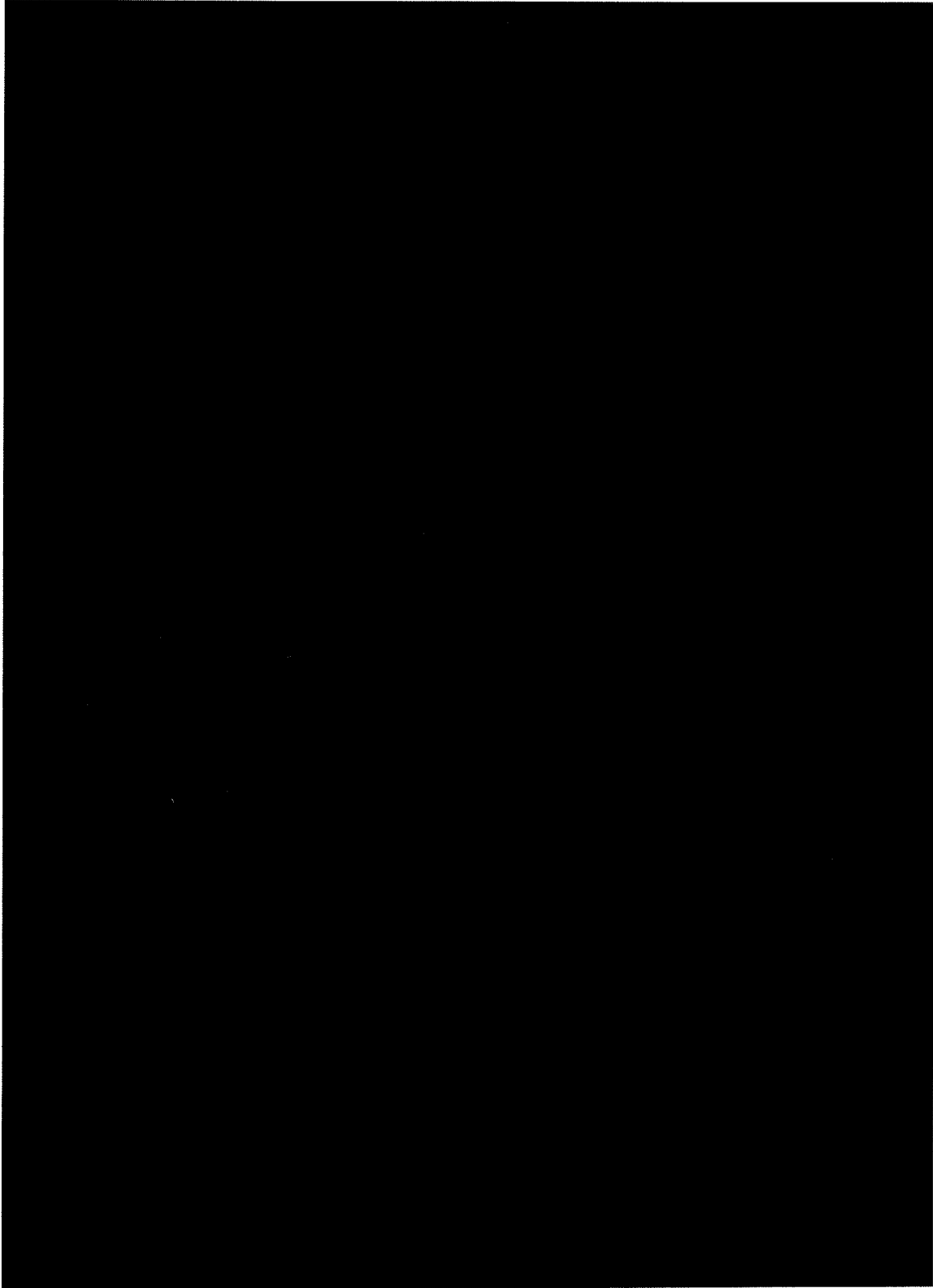




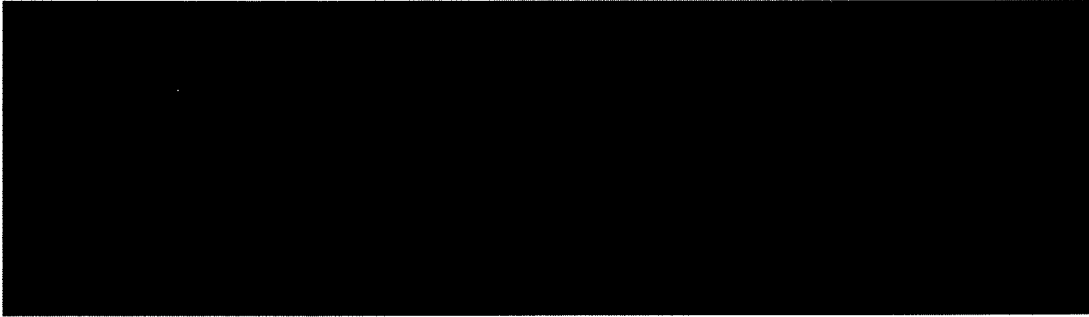
Obscenity



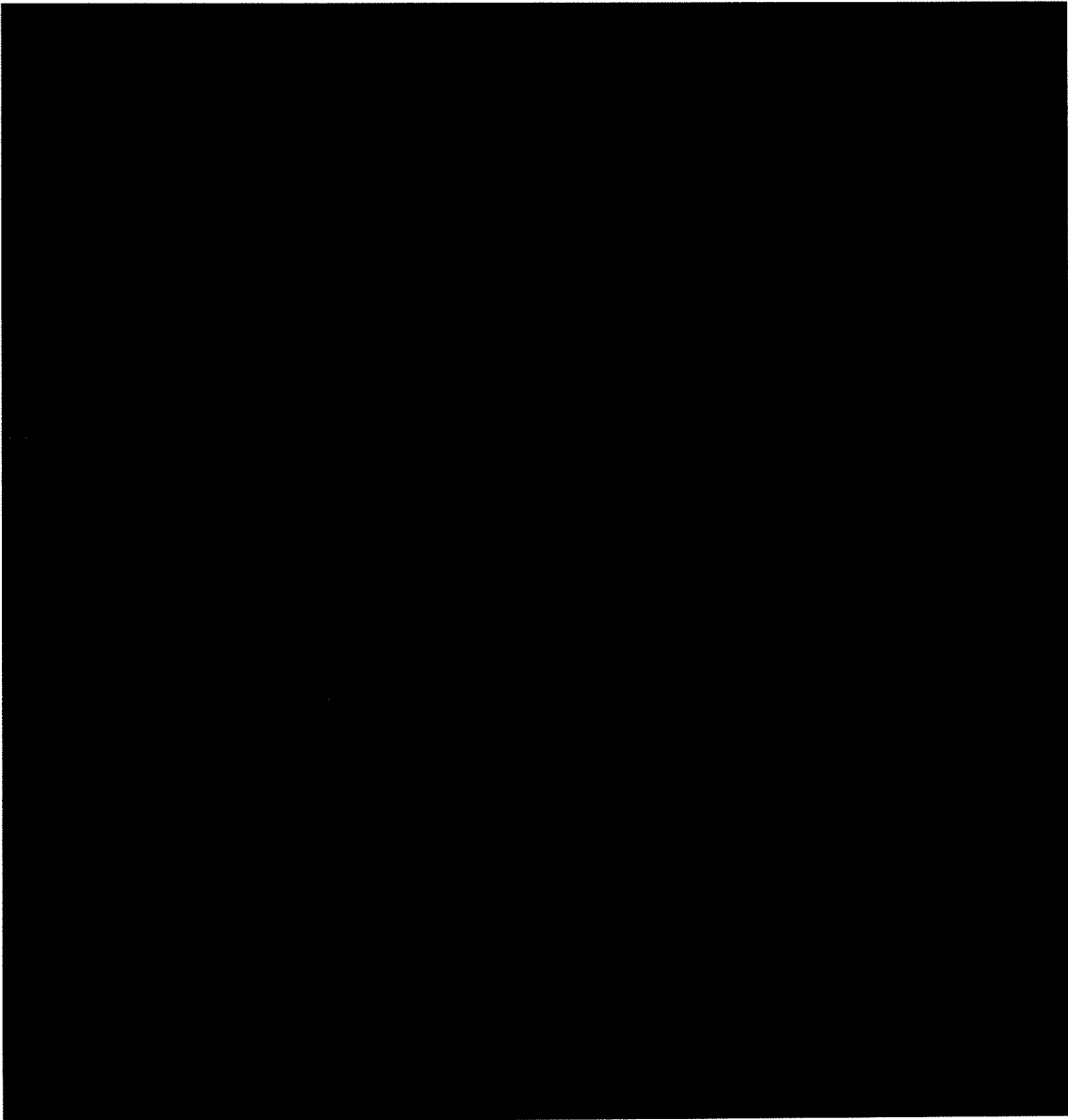


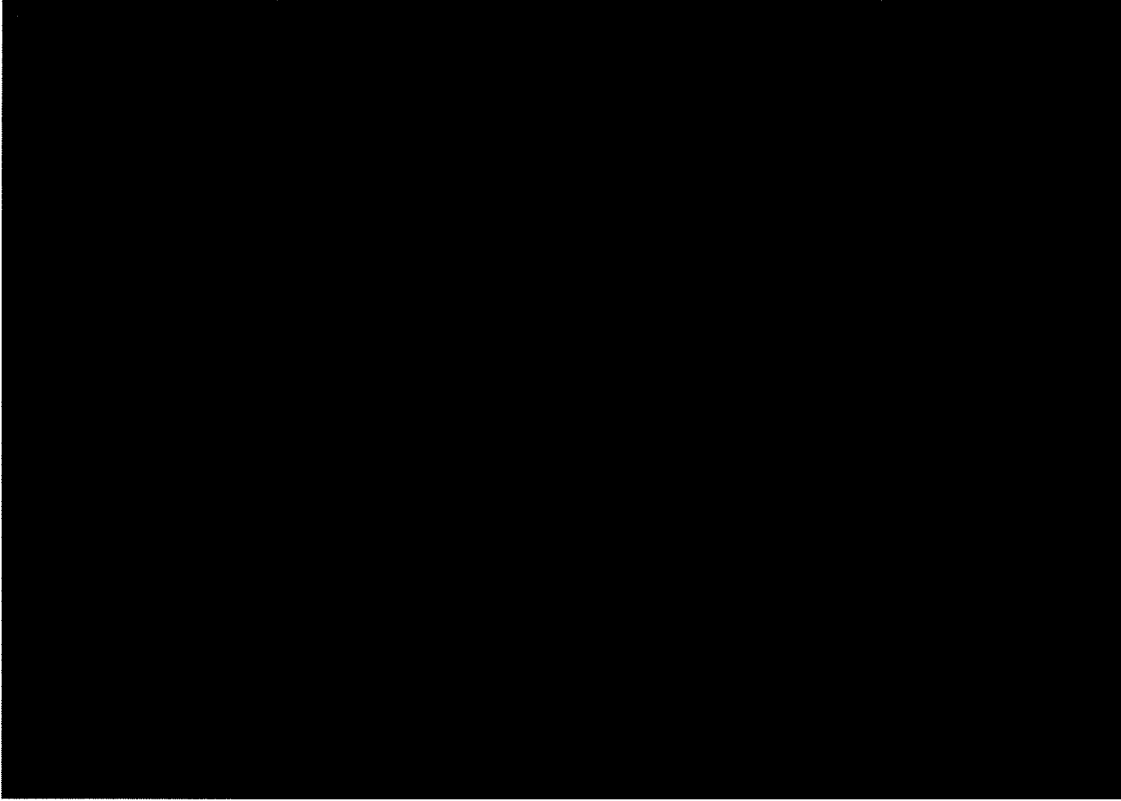






Hate





COPPA





**Canned Response Cheat Sheet**

Following is a list of the sections of this manual, along with brief descriptions of the canned responses mentioned in each. Since the Abuse can library contains as many as 80 canned responses, this list is not exhaustive. Please take some time to familiarize yourself with the Abuse category tree in Kana.

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**Schapiro Exhibit 106**

# A-645

Hi All,

As you know we recently launched the Addicting Clips service. This is a "service site" for content creators and a very new type of website for us! Addicting Clips is our first effort providing an Internet service for users to upload, host, and share their own content. The service is there to give budding and amateur filmmakers and flash authors an inexpensive means for sharing their original and unique content with a large audience. Unlike AtomFilms.com or Shockwave.com, we do not have a content acquisition team picking and choosing the clips. We do not edit or manage content on the site or in any other way control or program the site. That is all up to our filmmakers and flash authors contributing to the site and our users watching clips on the site. In legal lingo you may hear often—AddictingClips is a "passive conduit."

The AddictingClips service must comply with the Digital Millennium Copy Right Act ("DMCA"). The DMCA prohibits content hosting companies like us from actively monitoring content or exercising editorial control over the content that gets hosted. Think of it as a similar to a telephone service—the phone company does not control what you say on the phone and we do not control what folks put on the site. Actively monitoring the site or exercising editorial control over the content that gets uploaded violates the DMCA and has tremendously bad implications for the company and employees at Atom Entertainment.

The DMCA also requires us to provide a method for any copyright owners or users on the site to report any piece of content they see on our site that they believe infringes on their own or someone else's work.. If we get a notice, we must review the content and rapidly remove it IF it is infringing. We have such a reporting mechanism on the Addicting Clips service. On each content landing page, there is a link labeled "Report a content violation" for users to report infringing content—and also content that violates our Terms of Service (described below). The link features a pull down menu listing the various types of violations, e.g. infringement, pornography, illegal activity, etc.). The Customer Support team receives all notices and follows set procedures to either remove or approve the content (often working with Adam and Victoria). Employees of Atom Entertainment should not be watchdogs about the type of content that gets uploaded onto the Addicting Clips service.

What can employees do at the Addicting Clips site? Enjoy it as a user. If you have content to share that does NOT violate our Terms of Service, please upload it! If you want to surf the site for amusement, please do! Some of you will also have jobs requiring frequent visits to the site for Q/A purposes or testing purposes. Please do your jobs! BUT--please remember that if any of you ever see any content that you think infringes or otherwise violates our Terms of Service, YOU MUST REPORT IT BY FLAGGING IT ON THE SITE. If you are not positive it violates but you think it might, report it anyway.

## TERMS OF SERVICE

The Addicting Clips Terms of Service specifically states that users cannot upload User Materials (clips) that are: "indecent, libelous, defamatory, obscene, threatening, invasive of privacy or publicity rights, abusive, illegal, harassing, contain expressions of hatred, bigotry, racism or pornography, or are otherwise objectionable, or that would constitute or encourage a criminal offense, violate the rights of any party or violate any law...[or] infringe the copyright, trademark, publicity/privacy right or other intellectual property right of any third party." In other words, users cannot upload clips that they took from a TV show, that contain music that they did not create (both are examples of copyright infringement), clips that are pornographic, or clips that otherwise violate any areas of the law listed above. All users—but specially employees who decide to create user accounts on Addicting Clips—must abide by the terms of service. In the event that we encounter a user who is repeat offender, we will terminate his/her account.

If we do not follow all the DCMA requirements mentioned in this email, we will be held responsible for all the content hosted on Addicting Clips and the liability would be enormous. Therefore, we need everyone's help to ensure our compliance.

Thanks!  
Mika

**Schapiro Exhibit 109**

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,	)	
	)	
	)	Case No.
Plaintiffs,	)	07-CV-3582
vs.	)	
	)	
	)	
YOUTUBE, INC., YOUTUBE, LLC, and	)	
GOOGLE, INC.,	)	
	)	
	)	
Defendants.	)	
_____	)	

VIDEOTAPED DEPOSITION OF:

MARYANN SLIM

NEW YORK, NEW YORK

FRIDAY, OCTOBER 23, 2009

BY: REBECCA SCHAUMLOFFEL  
JOB NO. 17852

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

FOR THE PLAINTIFFS:  
LIEFF, CABRASER, HEIMANN &  
BERNSTEIN, LLP  
BY: DAVID S. STELLINGS, ESQ.  
250 Hudson Street, 8th floor  
New York, New York 10013-1413  
Dstellings@lchb.com

FOR THE DEFENDANTS YOUTUBE, INC., YOUTUBE,  
LLC and GOOGLE, INC.:  
MAYER BROWN, LLP  
BY: ARIC S. JACOVER, ESQ.  
FIDELIS I. AGBAPURUONWU, ESQ.  
1675 Broadway  
New York, New York 10019  
(212) 506-2146  
Asjacover@mayerbrown.com  
Fagbapuruonwu@mayerbrown.com

ALSO PRESENT:

Carlos King, Videographer



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FEDERAL STIPULATIONS

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

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

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

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MARYANN SLIM

2003, correct?

MR. STELLINGS: The document speaks for itself.

11:41:47 You can answer, if you know.

A. 2005, doesn't say at the top here, on the cover sheet?

Q. If you can turn to page '72466 --

11:42:01 A. Sorry.

Q. -- the actual assignment of copyright, it says, "Executed this 3rd day of June 2003."

Do you see that?

11:42:10 A. Yes, I do.

Q. And do you recognize this exhibit?

A. Yes.

Q. You have seen it before?

11:42:19 A. Yes, I have.

Q. Do you know if the Jerry Lynn Williams compositions, that have been assigned under this Agreement, are covered by either of the Stage Three internal Sub-publishing Agreements that

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MARYANN SLIM

we discussed earlier?

MR. STELLINGS: Objection.

Calls for a legal conclusion.

11:42:45 You can answer, if you know.

A. I would imagine they are, but I don't know because I haven't seen them, the documents.

Q. Do you know who would know?

11:42:59 A. Jeff Duncan, Alan Kading.

Q. Okay. If you can turn to page '72467, you will see a schedule of compositions. Do you see that?

A. I do.

11:43:30 Q. And there is a column that lists the percentage of total copyright of entire composition to be assigned?

A. I see that.

Q. And you can see there is a list of percentages. And I will represent to you that all of them on the schedule are less than 100 percent.

A. That's correct.

Q. So does that mean that there are other third parties that own a

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MARYANN SLIM

percentage of the copyright for these compositions?

MR. STELLINGS: Object to

11:44:03 the form of the question.

You can answer.

A. Yes, it does.

Q. So for -- let's just take an example. The first one, A Woman Has

11:44:17 Her Way, the percentage owned or assigned to Stage Three UK is 11.25%.

Do you see that?

A. I do.

Q. Do you know how many other co-owners there are for that song?

11:44:28 A. No. I would have to look in our system to see.

Q. And what system would you look at?

11:44:36 A. Music Maestro Counterpoint. It is the system I referred to previously.

Q. It is called Music Maestro Counterpoint?

11:44:46 A. Yes.

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MARYANN SLIM

Q. And that system would have a database -- would include a database that has all the co-owners for compositions owned by Stage Three?

A. Where information is available on co-owners, it is in there. Otherwise, it will be down as unknown.

Q. So sometimes you don't have information about the other co-owners?

A. Correct.

Q. Do you have any idea how many different co-owners there are for this song?

A. This particular song, no. I would have to check our system.

Q. Are you familiar with the writer, Gerry Rafferty?

A. Yes, I am.

Q. And is he a UK or US writer?

A. He is a UK writer.

Q. Do you know if the Gerry Rafferty songs are subject to internal Sub-publishing Agreements we discussed earlier?

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MARYANN SLIM

MR. STELLINGS: Objection.

You can answer, if you know.

A. Again, I haven't seen  
11:46:02 documentation of it, but I would think  
that they are, yes.

Q. And would Jeff Duncan know  
that?

A. Yes, he would.

11:46:12 Q. David Essex, is he a US or  
UK writer?

A. He is a UK writer.

Q. Do you know if David Essex's  
songs are subject to any of the  
11:46:25 internal Sub-publishing Agreements?

MR. STELLINGS: Same  
objection.

You can answer.

A. Same answer. I haven't seen  
11:46:30 documentation, but I would take it that  
they are.

Q. The Subways, are they a US  
or UK writer?

A. They are a UK writer.

11:46:38 Q. I take it you don't know

1 MARYANN SLIM  
2 provide this to our sub-publishers in  
3 the other territories when they come to  
4 us trying to clear a song for sync  
5 11:54:17 license use. Because often, they come  
6 to us and they give us minimal  
7 information. So this is, again, to  
8 speed up the process, help them to help  
9 us. If they can answer as many of  
10 11:54:29 these questions as possible, then the  
11 whole process goes more quickly rather  
12 than toeing and frowing with the whole  
13 process to get this information.

14 Q. Is Connie Ashton your  
15 11:54:39 counterpart in the US?

16 A. She is.

17 Q. Is there any other written  
18 guidelines on sync licensing other than  
19 those contained in this document?

20 11:54:46 A. No.

21 Q. Are there any unwritten  
22 guidelines on sync licensing?

23 A. No.

24 Can I just amend that  
25 11:55:06 answer?

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MARYANN SLIM

Q. Sure.

A. Other than the Aerosmith document that I referred to earlier on this morning.

Q. Okay. You mentioned earlier that a number of songs administered by Stage Three are co-owned by other third parties; is that right?

A. That's correct.

Q. Do you ever consult with those other co-owners on licensing matters?

A. Only insofar as to ascertain that they do own the other share. For instance, if someone comes to me to approve the song that we don't control 100 percent, I want to help them find the correct other publisher to go to.

So if I have the information or don't have the information, I might ring up and say, do you have the writer X and do you control his share. Can I -- I am going to send this person to you because they are trying to clear



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MARYANN SLIM

this song.

Q. And you testified that sometimes you don't have that information on the other co-owners?

A. Um-hum. Sometimes we don't.

Q. What would you do in that case?

A. In that case, I would ask Alan Kading to see if he could find out, from the MCPS, who should have full registrations of all songs, if he can find out who the co-owners are.

Q. MCPS is what?

A. It is the MCPS PRS. In the United Kingdom, it is a collecting society for performance royalties. Plus, it does various licensing on behalf of all the publishers in the UK, which is standard industry blankets that we have no control over.

Q. Are you ever required to consult with the other co-owners of a song before licensing -- doing any sync licensing?

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MARYANN SLIM

MR. STELLINGS: Objection to  
the extent it calls for a legal  
conclusion.

11:57:05 You can answer, if you know.

A. I don't really understand  
the question how it is different from  
the previous question.

Q. Does Stage Three UK have any  
11:57:17 other agreements --

A. No.

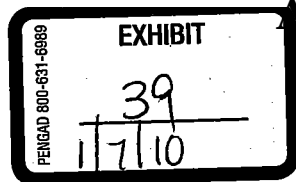
Q. -- with the other co-owners  
with regard to licensing?

A. No.

11:57:22 Q. You mentioned that Stage  
Three UK has a database to keep track  
of licensing information; is that  
right?

A. We have the Music Maestro,  
11:57:44 which I was talking about earlier.  
That's not to keep track of licensing.  
That Music Maestro is the admin side of  
the company's system for registering  
songs and seeing -- putting in all the  
11:57:58 song information. So that when

**Schapiro Exhibit 111**



today at HFA | license music | affiliation | about hfa | jobs @ hfa | contact |

home publisher information licensee information information center

Terms of Use | Privacy

registered user login

>home >today at HFA

Last Updated: MAY 19, 2008

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#### ACCESS AND AUTHORITY TO USE SONGFILE.

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**Your Songfile Username and Password.** You agree to use your Songfile username and password and access to Songfile only to conduct business on behalf of yourself or, if applicable, the organization you represent. You further agree that you will not transfer, assign or sell your username or password to any other person, even within your organization, or permit the use thereof by anyone else under any circumstance. HFA will not be liable in the event of the loss of a username or password or the misuse by anyone of a username or password. It is your sole responsibility to secure and maintain your username and password and to keep current any personal or business information provided to HFA. You agree that you will (1) log out and close down access to Songfile at the end of each Songfile

session; and (2) immediately notify HFA of your loss, or any unauthorized use of, your username and/or password, or any other breach of security. You have the option to change your password as often as you wish by creating a new password. It is recommended that you change your password at least once every 60 days.

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## About ASCAP

### ASCAP WEB SITE TERMS OF USE, RESTRICTIONS, LEGAL NOTICES, ONLINE PRIVACY STATEMENT

**Introduction: Agreement**

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- [Notification of Claimed Copyright Infringement](#)
- [Counter Notification to Claimed Copyright Infringement](#)
- [Policy Regarding Repeat Infringers](#)
- [ASCAP Copyright Agent Contact Information](#)

**TOP****Notification of Claimed Copyright Infringement**

If you believe that your copyrighted work has been used and made available through the ASCAP website in a manner that constitutes copyright infringement please provide notice to ASCAP's copyright agent, the contact information for whom is set forth below.

As required by the Digital Millennium Copyright Act of 1998 ("DMCA"), this notice must include the following information (see 17 U.S.C. 512(c)(3)):

- A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;
- Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site;

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- Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit the service provider to locate the material;
- Information reasonably sufficient to permit the service provider to contact the complaining party, such as address, telephone number, and, if available, an electronic mail address at which the complaining party may be contacted;
- A statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law;
- A statement that the information in the notification is accurate and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

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### Counter Notification to Claimed Copyright Infringement

If you believe that a copyright infringement notice has been wrongly filed against you as a result of mistake or a misidentification of the material, you may file a counter notification with our Copyright Agent, the contact information for whom is set forth below. As required by the DMCA, the counter notification must include the following information (see 17 U.S.C. 512(g)(3)):

- A physical or electronic signature of the subscriber;
- Identification of the material that has been removed or to which access has been disabled and the location at which the material appeared before it was removed or access to it was disabled;
- A statement under penalty of perjury that the subscriber has a good faith belief that the material was removed or disabled as a result of mistake or misidentification of the material to be removed or disabled;
- The subscriber's name, address, and telephone number, and a statement that the subscriber consents to the jurisdiction of Federal District Court for the judicial district in which the address is located, or if the subscriber's address is outside of the United States, for any judicial district in which the service provider may be found, and that the subscriber will accept service of process from the person who provided notification or an agent of such person.

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### Repeat Infringers

ASCAP respects the intellectual property rights of others, is committed to complying with U.S. intellectual property laws including the DMCA, and will terminate all users who are repeat infringers of intellectual property laws.

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### ASCAP Copyright Agent

Howard Girao  
One Lincoln Plaza, 6th Floor  
New York, NY 10023  
Telephone: (212) 621-6269  
Fax: (212) 787-1381  
Email: [WebSupport@ascap.com](mailto:WebSupport@ascap.com)

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### Description of ACE

ASCAP created the dial-up ACE System in 1993 as a useful tool for music professionals. It was a well-received industry innovation then, and now we are extremely proud to make an enhanced World Wide Web version of this Database available.

The Database contains information on all compositions in the ASCAP repertory which have appeared in any of ASCAP's domestic surveys, including foreign compositions licensed by ASCAP in the United States. As ASCAP's new registration format is rolled out, all works registered since November 1990, whether surveyed or unsurveyed, will be available for viewing via ACE. In the meantime, if you are a member and your composition does not appear on ACE, please [check with ASCAP](#) to verify that it has been registered with the Society.

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- The ACE database contains the names of ASCAP writer members and the names of their co-writers who are either affiliated with other performing rights organizations, or not affiliated with any other organization.
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- When you click on the title of a song, the names of ASCAP writers, and writers affiliated with foreign performing rights organizations whose works are licensed through ASCAP for performances in the United States, appear in blue; the names of co-writers affiliated with other U.S. performing rights organizations, or not affiliated with any other organization, appear in black and only under the listings for their titles.
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- The publisher contact addresses in the ACE database are intended for music users within the United States *only*. Music users outside the U.S. should contact their local performance or mechanical rights organizations for publisher contact information applicable to them.
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**Schapiro Exhibit 113**

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 VANCE IKEZOYE  
PALO ALTO, CALIFORNIA  
THURSDAY, SEPTEMBER 10, 2009

JOB NO. 17619

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SEPTEMBER 10, 2009

9:40 a.m.

VIDEOTAPED DEPOSITION OF VANCE IKEZOYE,  
WILSON SONSINI GOODRICH & ROSATI,  
650 Page Mill Road, Palo Alto, California,  
pursuant to notice, and before me,  
ANDREA M. IGNACIO HOWARD, CLR, RPR, CRR, CSR  
License No. 9830.

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

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

FOR THE DEPONENT:

BLY LAW FIRM, PC

By: William Bly, Esq.

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Los Angeles, California 90025

(888) 893-6189

ALSO PRESENT: Kelly Truelove, Consultant  
Armando Carrasco, Videographer.

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IKEZOYE, V.

Q Okay. Can you explain a little how it was that the two of you came to found Audible Magic.

A I've known Jim for -- from Hewlett-Packard for many years, and we -- we had kept in touch. Jim had an idea about using technology to identify content on broadcast radio. We started developing a business plan and later on founded the company and got the company funded.

Q Okay. And when was it that you founded the company?

A Originally, in July of 1999, but it was a different company name at the time. That was called Wired Air. We changed the name to Audible Magic Corporation in December of 1999.

Q Mr. Ikezoye, generally speaking, what types of services does Audible Magic provide to its customers?

A We provide copyright identification services to a variety of different kinds of classes of customers. We -- some of our customers are university -- universities who buy a product and service from us to identify content on their networks.

We have a service called Repliecheck that we sell to the CD manufacturing industry to identify

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IKEZOYE, V.

09:50:54 copyrighted music, and then we also sell services to  
09:50:59 various digital media companies, like Web 2.0 social  
09:51:04 networks, to identify copyrighted content that is  
09:51:07 being uploaded by users.

09:51:16 Q Looking at the last of the services that you  
09:51:27 just mentioned, the digital -- the work that you do  
09:51:30 for digital media services, when did YouTube --  
09:51:33 sorry -- when did Audible Magic begin providing those  
09:51:36 kinds of services?

09:51:41 A To Web 2.0 companies or to just anybody in  
09:51:45 the space?

09:51:46 Q Let's just start generally with anybody in  
09:51:47 the space.

09:51:48 A We started providing some of the services to  
09:51:52 the peer-to-peer companies in, I believe, 2004, in the  
09:52:00 2004 time frame, and for those companies we helped the  
09:52:11 peer-to-peer companies identify content that their  
09:52:14 users were introducing into their networks.

09:52:18 Q Okay. In the 2004 time frame that you're  
09:52:24 talking about, was your client base primarily  
09:52:28 peer-to-peer services?

09:52:29 A Yes.

09:52:29 Q Can you describe -- well, actually strike  
09:52:33 that.

1  
2 09:52:33 Can you identify who some of those  
3 09:52:35 peer-to-peer services were? Who were your customers  
4 09:52:38 in the 2004 time frame?  
5 09:52:42 A Yes. Yeah, iMesh was one of our customers  
6 09:52:50 who was a peer-to-peer company, and later we had --  
7 09:52:54 Kaza was a customer of ours.  
8 09:52:56 Q And what exactly is a peer-to-peer service?  
9 09:53:00 A A peer-to-peer service is a peer-to-peer --  
10 09:53:02 it's an application that allows the sharing and  
11 09:53:08 transmittal of -- of copyrighted files between users.  
12 09:53:15 Similar to Naps- -- the way Napster originally was.  
13 09:53:20 So users could download this application, download  
14 09:53:24 files, copyrighted movie and music files, and then  
15 09:53:28 also they can make those available to other users.  
16 09:53:34 Q Did there come a time when Audible Magic  
17 09:53:37 began providing these -- these copyright  
18 09:53:47 identification services to digital media services  
19 09:53:49 other than peer-to-peer networks?  
20 09:53:51 A Yes, we did do that.  
21 09:53:53 Q Okay. Can you describe how or the type of  
22 09:53:58 customer that Audible Magic next started servicing?  
23 09:54:03 A We started servicing some of the more -- the  
24 09:54:06 classic Web 2.0 social network companies, where some  
25 09:54:12 people call it user-generated content, where users may

1 IKEZOYE, V.

2 09:54:19 have audio or video files, and they upload these files

3 09:54:22 to websites, and these websites then allow other users

4 09:54:27 to stream and to view or listen to the content.

5 09:54:32 Q Do you recall who Audible Magic's first

6 09:54:41 customer was in the social networks base?

7 09:54:44 MS. REES: Objection; vague and ambiguous.

8 09:54:46 THE WITNESS: Our first customer that we

9 09:54:49 announced was MySpace.

10 09:54:59 MR. DESANCTIS: Q. Do you recall when that

11 09:55:00 announcement was?

12 09:55:01 A The -- the first quarter of 2007.

13 09:55:09 Q Did additional customers -- actually, when I

14 09:55:24 say "customer" -- do you prefer customer or client?

15 09:55:26 A Customer is fine.

16 09:55:28 Q Okay. Did additional customers follow

17 09:55:30 MySpace?

18 09:55:31 A Yes.

19 09:55:31 Q And who -- what was the next customer in this

20 09:55:34 space that Audible Magic began providing services to?

21 09:55:38 MR. BLY: Objection to the extent that it

22 09:55:39 calls for confidential information.

23 09:55:41 You can talk about the ones that are publicly

24 09:55:44 announced.

25 09:55:44 THE WITNESS: Right.

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IKEZOYE, V.

09:55:45 Other customers were YouTube, Sony Pictures  
09:55:53 had a website called Grouper. Microsoft had Soapbox,  
09:56:03 was a customer. In total, I believe we had over --  
09:56:10 over the period of 30 plus customers.

09:56:15 MR. DESANCTIS: Q. When you say "over the  
09:56:16 period," what period are you talking about?

09:56:18 A From -- from 2006 through today.

09:56:26 Q And when you say "30 plus customers," do you  
09:56:29 mean 30 plus customers in the social network space  
09:56:34 that you were describing, or are you now talking about  
09:56:38 a broader space of clients?

09:56:41 A No, the Web 2.0 social networking space.

09:56:47 Q Okay. Who are Audible -- Audible Magic's  
09:57:04 primary competitors for content identification  
09:57:07 services in the Web 2.0 space?

09:57:12 A It changed over time, but some of the  
09:57:16 people -- some of the companies that were in the space  
09:57:17 were Gracenote, Volvo, Auditude, and there are  
09:57:26 probably other customers that I can't remember names  
09:57:34 of.

09:57:35 Q Do you know whether Audible Magic does more  
09:57:38 business in the Web 2.0 space than any of the  
09:57:41 competitors you named?

09:57:43 A It's my belief. I'm not aware of anybody

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2 10:07:00 submitted -- or why you submitted this declaration in  
3 10:07:03 that case?  
4 10:07:06 A Because we, again, we wanted to make -- grow  
5 10:07:12 awareness of our services and our capabilities to the  
6 10:07:16 market.  
7 10:07:17 Q If you could flip to the last page. It's  
8 10:07:28 dated February 2, 2006, and is that your signature  
9 10:07:31 underneath it?  
10 10:07:32 A Yes, it is.  
11 10:07:33 Q Okay. I'm going to ask you the same question  
12 10:07:36 that I asked you about the last document, which is, is  
13 10:07:39 there -- as you sit here today, is there any reason to  
14 10:07:42 think that anything in this declaration was inaccurate  
15 10:07:46 at the time it was submitted? And if you want to take  
16 10:07:50 a minute to look through it again, feel free.  
17 10:08:40 A Okay.  
18 10:08:49 Q Then, as you sit here today, Mr. Ikezoye, is  
19 10:08:52 there any reason to -- that you know of why anything  
20 10:08:54 in this -- or let me withdraw that and rephrase.  
21 10:08:59 As you sit here today, do you have any reason  
22 10:09:07 to believe, Mr. Ikezoye, that anything in that  
23 10:09:10 declaration was inaccurate at the time it was  
24 10:09:12 submitted?  
25 10:09:12 A No.

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IKEZOYE, V.

10:09:17 Q Direct your attention to paragraph 18 of the  
10:09:29 exhibit, which is on page five. The last sentence of  
10:09:39 that paragraph states, "The Audible Magic iMesh filter  
10:09:44 has scaled seamlessly to 5 million lookups per day and  
10:09:50 easily could scale to meet the needs of any network in  
10:09:52 use today."

10:09:53 Can you first explain what the Audible Magic  
10:09:57 iMesh filter was that you were talking about here in  
10:09:59 this paragraph?

10:10:01 A We had provided iMesh a -- software and  
10:10:09 services that they integrated in their software  
10:10:14 application that users used, and so the service was to  
10:10:21 identify content that was being uploaded or downloaded  
10:10:25 within this network.

10:10:27 Q And iMesh -- is iMesh an example of one of  
10:10:34 the Web 2.0 sites that we were talking about earlier  
10:10:36 this morning?

10:10:37 A No, it's a peer-to-peer network, file sharing  
10:10:40 network provider.

10:10:42 Q Okay. And what does it mean or what did you  
10:10:46 mean when you said "the filter has scaled seamlessly  
10:10:50 to 5 million lookups per day"?

10:10:56 Actually, let me break that down. Let's  
10:10:58 start with, what does "5 million lookups per



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2 10:11:02 day" mean?  
3 10:11:04 A It means a lookup is when we have -- we're  
4 10:11:08 presented with an unknown file and we're looking that  
5 10:11:11 up and trying to match the characteristics against a  
6 10:11:14 database of known content. So one lookup is one  
7 10:11:18 unknown file being -- trying to be identified.  
8 10:11:22 Q Okay. Let me just try to make sure I  
9 10:11:24 understand that.  
10 10:11:25 Who submits the unknown file to Audible  
11 10:11:29 Magic?  
12 10:11:31 A The iMesh application. So millions of users  
13 10:11:35 had the iMesh application, piece of software running  
14 10:11:38 on their computers. Our library was integrated in  
15 10:11:43 that piece of software that users used, and so the  
16 10:11:49 application automatically, when a file was gonna be  
17 10:11:54 shared or was downloaded, we would take measurements  
18 10:11:59 and then the application itself would automatically go  
19 10:12:02 do a lookup against our servers. So users didn't have  
20 10:12:07 to operate -- it was all operated within --  
21 10:12:09 automatically within the software itself.  
22 10:12:13 Q So when measurements were taken of -- of a  
23 10:12:40 file to be downloaded on iMesh, does that mean -- is  
24 10:12:44 that the same way of saying a fingerprint was made of  
25 10:12:46 the file?

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IKEZOYE, V.

10:12:47 A Yeah, a fingerprint was taken, as well as  
10:12:49 other information about the file --

10:12:51 Q Okay.

10:12:52 A -- and we --

10:12:53 Q What other information was taken?

10:12:55 A I believe we would take the -- the metadata  
10:12:59 title of the -- the file, and I also believe that we  
10:13:03 would take a -- a -- information -- a hash of the  
10:13:08 file.

10:13:08 Q Okay. An MD5 hash?

10:13:12 A Yes.

10:13:12 Q And what then, if anything, would Audible  
10:13:17 Magic compare that fingerprint and additional  
10:13:19 information against?

10:13:21 A We had a database of -- of fingerprints, as  
10:13:28 well as associated MD5 hashes, and so we would compare  
10:13:35 that against known hashes and then also known  
10:13:39 fingerprints.

10:13:42 Q And at that time, what fingerprints were in  
10:14:01 your database of fingerprints?

10:14:09 A At the time, according to this, it looks like  
10:14:11 we had about 6 million copyrighted songs in our  
10:14:15 database. So fingerprints were about that many songs.

10:14:18 Q And from whom were those fingerprints

1  
2 10:38:25 Q So if my math is correct, does that mean that  
3 10:38:33 there are far -- far more false negatives than there  
4 10:38:36 are false positives?  
5 10:38:39 A Yes.  
6 10:38:39 Q Okay. Do you know why that is?  
7 10:38:44 A We've optimized the technology to minimize  
8 10:38:48 the false positives, because we -- some of the  
9 10:38:53 identifications are used for rights or royalty  
10 10:38:56 purposes. And so if you incorrectly identify  
11 10:38:59 something, then you can -- you are attributing  
12 10:39:03 something to somebody who may not -- may or may not --  
13 10:39:08 you may misidentify a piece of content, apply the  
14 10:39:14 wrong business rules or pay the wrong person, versus  
15 10:39:17 no ID is much better; and so we optimize for false --  
16 10:39:25 minimizing false positives, and that's why a little of  
17 10:39:28 that -- that -- those ratios.  
18 10:39:32 Q I'd like to change gears for a minute, you  
19 10:40:01 can put that declaration aside, and ask you some  
20 10:40:03 questions about the databases in which Audible Magic  
21 10:40:09 stores its reference fingerprints.  
22 10:40:13 Let me just start by asking, so again that  
23 10:40:15 we're on the same page: Is it the case that Audible  
24 10:40:19 Magic stores its reference fingerprints in databases?  
25 10:40:22 A Yes.

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2 10:40:23 Q Okay. Are they all in one big database or  
3 10:40:25 are there different databases?  
4 10:40:29 A We have a -- a -- a main database that  
5 10:40:33 contains all of the content submitted by copyright  
6 10:40:37 holders, so we have one master database. We also have  
7 10:40:44 other smaller databases that are -- contain subsets of  
8 10:40:51 that master database that are used in different  
9 10:40:54 applications or with different customers.  
10 10:41:01 Q Does that master database or main database  
11 10:41:03 have a particular name that I should use so that we  
12 10:41:06 know we're talking about the same thing?  
13 10:41:08 A We can call it a "master database."  
14 10:41:10 Q Okay. Is there something called a commercial  
15 10:41:29 music database or commercial music library?  
16 10:41:32 A Yes. It's -- we refer to our -- all of our  
17 10:41:40 fingerprints or registrations of -- from the music  
18 10:41:44 labels as our commercial music database.  
19 10:41:47 Q Okay. So what fingerprints populate -- what  
20 10:41:50 types of fingerprints would populate the commercial  
21 10:41:53 music database?  
22 10:41:54 A They are fingerprints of commercially  
23 10:41:56 available musical sound recordings received from  
24 10:42:03 record companies, majors and independents.  
25 10:42:07 Q Approximately how many fingerprints -- or

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IKEZOYE, V.

10:42:12 unique fingerprints are in that database? Do you

10:42:15 know?

10:42:16 A Today, it's over 7 million fingerprints in

10:42:19 our database.

10:42:24 Q Is there something called a commercial TV and

10:42:39 movie library or database at Audible Magic?

10:42:45 A Yes. We have also a -- we refer to all the

10:42:50 fingerprints from -- that we receive from film and TV

10:42:58 studios as our film and TV database.

10:43:13 Q Do you know, approximately, how many

10:43:18 fingerprints populate the film and TV database today?

10:43:22 A I believe the number is over 80,000

10:43:29 works/titles, that includes both full-length movies,

10:43:34 TV shows, as well as clips that some of the studios

10:43:42 also make available.

10:43:48 Q Now, are those audio or video fingerprints

10:43:52 that populate the film and TV database?

10:44:00 A A majority -- all of the 80,000 are audio

10:44:04 fingerprints, but we have also begun to register video

10:44:11 fingerprints, as well, of content.

10:44:14 Q When did that begin?

10:44:17 A Probably within the last year.

10:44:21 Q Can you describe how it is that an audio

10:44:54 fingerprint can identify a piece of film or video?

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IKEZOYE, V.

10:45:03 A Yes. Film and television shows all have  
10:45:07 audio soundtracks that, in general, are very unique to  
10:45:12 those programs and those titles. So a movie has a  
10:45:17 unique soundtrack, TV shows have unique soundtracks,  
10:45:22 so our technology can be used to identify the  
10:45:26 soundtrack and hence identify the piece of content.

10:45:30 Q And describe what you mean by "soundtrack"?

10:45:35 A The audio track of a movie or television  
10:45:42 show. The sound of -- of -- the dialogue, the music,  
10:45:46 all of the sound that is synced up with the video.

10:45:51 Q Okay. So when you say "soundtrack," you're  
10:45:53 not just talking about the theme sound?

10:45:55 A No.

10:45:55 Q You're talking about the -- the dialogue and  
10:46:00 all of the sound in a particular movie or TV show?

10:46:04 A That's correct. We identify -- we take a  
10:46:05 fingerprint of the entire audio track attached to the  
10:46:15 video, the TV show, or the movie.

10:46:25 Q We've talked about the commercial music  
10:46:58 database or library, and the commercial film and TV  
10:47:04 library.

10:47:05 Are there any other libraries of that type  
10:47:12 that Audible Magic maintains of that breadth, or are  
10:47:17 those the -- or does it break down into those two

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2                   IKEZOYE, V.  
3                   14:21:40       database, to -- for Google Video as well.  
4                   14:21:46            Q    Okay.  
5                   14:22:15            A    Can I make one thing -- going back?  
6                   14:22:17            Q    Yes.  
7                   14:22:18            A    The Google Video contract seems to be 20,000,  
8                   14:22:21       but I don't know that for sure.  
9                   14:22:23            Q    Okay.  Is there a separate written contract  
10                   14:22:26       between Audible Magic and Google Video?  
11                   14:22:29            A    Yes; there was an amendment to this contract.  
12                   14:22:34            Q    Okay.  Then -- then putting the Google Video  
13                   14:22:56       contract aside and just looking at the Audible Magic  
14                   14:22:58       relationship, can you -- can -- can you tell us what  
15                   14:23:06       the fees are -- what they were and what they are today  
16                   14:23:12       that YouTube is paying Audible Magic?  
17                   14:23:16            A    When we originally did the agreement for the  
18                   14:23:19       first period, the original term, it was ████████ per  
19                   14:23:24       month, and then there's a period of -- from  
20                   14:23:32       January 1st, 2008, through December 31st, 2008, where  
21                   14:23:36       the fees went up to ████████ a month, and then there  
22                   14:23:40       was an extension for 2009 and there is an option on an  
23                   14:23:47       extension for 2010.  
24                   14:23:50            Q    And was there a -- any sort of one-time lump  
25                   14:23:59       sum additional fee owed to Audible Magic from YouTube  
                 14:24:03       at the beginning of the contract?

1  
2 14:24:05 A Yeah, there was a [REDACTED] amount due that  
3 14:24:14 needed to be paid on execution.  
4 14:24:16 Q Okay. So -- and did YouTube actually pay  
5 14:24:19 Audible Magic [REDACTED] on execution of the contract?  
6 14:24:22 A I believe so.  
7 14:24:23 Q Okay. Is YouTube still using Audible Magic  
8 14:24:31 content ID services today?  
9 14:24:34 A Yes.  
10 14:24:34 Q Is it still being governed by this same  
11 14:24:37 contract?  
12 14:24:38 A Yes.  
13 14:24:38 Q Okay. Do you know what it would cost YouTube  
14 14:25:05 to include in its custom database fingerprints from  
15 14:25:15 Audible Magic's film and TV reference database?  
16 14:25:24 A Not specifically, because the way our pricing  
17 14:25:27 would go for this would be, we would need to  
18 14:25:29 understand the transaction volume, and so  
19 14:25:34 understanding the transaction volume, I could give you  
20 14:25:37 a price.  
21 14:25:38 Q Okay. If you assumed that the transaction  
22 14:25:41 volume -- volume was the same as the transaction  
23 14:25:47 volume covered in the existing contract that we're  
24 14:25:50 looking at now, can you approximate what that price  
25 14:25:55 would be?



1  
2 14:25:56 A My guess would be at least [REDACTED] the price  
3 14:25:59 that's listed here.  
4 14:26:00 Q Okay. Does that mean [REDACTED] the monthly fees  
5 14:26:19 and double the one-time start-up fee? In other words,  
6 14:26:22 would there be a new one-time start-up fee?  
7 14:26:25 A It's all subject to negotiation, but we  
8 14:26:27 probably wouldn't have a start-up fee, that one-time  
9 14:26:30 fee. We would [REDACTED] the monthly fee.  
10 14:26:34 Q I -- I'm sorry. You said you probably would  
11 14:26:36 not have --  
12 14:26:36 A Would not.  
13 14:26:36 Q -- a start-up fee?  
14 14:26:37 A We probably would not have a start-up fee.  
15 14:26:40 Q But you would [REDACTED] the monthly fee?  
16 14:26:45 A Right.  
17 14:26:45 Q Okay. Do you recall whether YouTube's  
18 14:27:24 testing of Audible Magic's content ID services began  
19 14:27:30 at the time this contract was executed or whether it  
20 14:27:33 began prior to that?  
21 14:27:35 A I believe it was prior to the execution of  
22 14:27:37 this contract.  
23 14:28:14 MR. DESANCTIS: Okay. Can we go off the  
24 14:28:15 record for two minutes and just take a very short  
25 14:28:21 break.

1   IKEZOYE, V.

2     14:28:21                   THE VIDEOGRAPHER: We are now going off the

3     14:28:22     record.

4     14:28:23                   The time is approximately 2:24 p.m.

5     14:28:25                   (Recess taken.)

6     14:41:42                   THE VIDEOGRAPHER: We are now going back on

7     14:41:43     the record.

8     14:41:44                   The time is approximately 2:37 p.m.

9     14:41:47                   MR. DESANCTIS: Q. Mr. Ikezoye, before we

10    14:41:51     broke, we were looking at what's been marked as

11    14:41:57     Ikezoye Exhibit 9. Do you still have that in front of

12    14:42:01     you?

13    14:42:01             A    Yes.

14    14:42:01             Q    And that is the -- that is the e-mail with

15    14:42:06     the YouTube/Audible Magic contract attached; correct?

16    14:42:10             A    Correct.

17    14:42:10             Q    I want you to consider the services that were

18    14:42:18     contracted for in the agreement and that -- that

19    14:42:23     YouTube actually agreed to provide -- that Audible

20    14:42:28     Magic agreed to provide to YouTube.

21    14:42:30                   Was -- was Audible Magic capable of providing

22    14:42:37     those services in October of 2006 when this contract

23    14:42:44     was signed?

24    14:42:45             A    Which services?

25    14:42:46             Q    The services that were contracted for in the

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2 17:37:43 content and how it's used, in general, it means how,  
3 17:37:47 if rights change, for example, allow it to block or  
4 17:37:52 block to allow, that's what -- how rights are changed,  
5 17:37:57 what it refers to.  
6 17:37:58 MS. REES: Okay.  
7 17:38:05 Q And do you understand the author of this  
8 17:38:06 e-mail to be Nick Rockwell, who was an MTVN employee?  
9 17:38:12 A Yes.  
10 17:38:12 Q Okay. Exhibit 31.  
11 17:38:45 (Document marked Ikezoye Exhibit 31  
12 17:38:46 for identification.)  
13 17:38:46 MS. REES: Q. Can you identify Exhibit 31?  
14 17:39:17 A Well, it looks like an e-mail between some  
15 17:39:20 people at -- in MTV Viacom.  
16 17:39:25 Q And in the, I guess, third e-mail down,  
17 17:39:31 there's a statement, "AM is examining our mpeg files  
18 17:39:36 to figure out why they cannot get an audio  
19 17:39:40 fingerprint, still a software issue"; do you see that?  
20 17:39:44 A Yes.  
21 17:39:44 MR. DESANCTIS: Objection.  
22 17:39:45 MS. REES: Q. Do you recall an issue in or  
23 17:39:46 about April 2007 where Audible Magic was having  
24 17:39:46 difficulty getting an audio fingerprint on some Viacom  
25 17:39:51 content?

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IKEZOYE, V.

17:39:51 MR. DESANCTIS: Objection to the form and  
17:39:52 foundation.

17:39:55 THE WITNESS: There may have been. I don't  
17:39:57 recall the specific problem, though.

17:39:59 MS. REES: Q. And looking at the very top  
17:40:02 e-mail in this chain, there's a statement in response  
17:40:08 to the question, "So has anything been fingerprinted  
17:40:10 and loaded onto their database just the CC online  
17:40:14 content"; do you see that?

17:40:16 A Yes.

17:40:16 Q Do you have any understanding as to what the  
17:40:18 CC online content refers to?

17:40:20 MR. DESANCTIS: Objection to form and  
17:40:21 foundation.

17:40:22 THE WITNESS: Yes. The online content were  
17:40:24 clips that were -- that they provided access to us  
17:40:29 that were on some of the MTV sites.

17:40:35 MS. REES: Exhibit 32.

17:40:54 (Document marked Ikezoye Exhibit 32  
17:41:07 for identification.)

17:41:07 MS. REES: Q. Can you identify Exhibit 32?

17:42:06 A Yes. It is the -- a service agreement to  
17:42:10 MTVN -- MTV Networks with Audible Magic for content  
17:42:17 identification services.