

A-801
SCOTT P. ROESCH - HIGHLY CONFIDENTIAL

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2 12:34:04 that, what that process looked like?

3 12:34:07 A. Uh-huh.

4 12:34:09 Q. Let's start with the end user perspective.

5 12:34:12 How did it look like from the user sitting at

6 12:34:15 their -- their computer?

7 12:34:19 A. The user would visit the upload page on

8 12:34:24 AddictingClips and would select a file to upload

9 12:34:31 from their hard drive, would enter some text

10 12:34:39 associated with the video file, a title and a

11 12:34:45 description, and they would click "Upload."

12 12:34:50 And I believe there was a status indicator

13 12:34:54 that indicated the video was in the process of

14 12:34:57 uploading, after which they were taken to a -- some

15 12:35:04 kind of a confirmation page, or possibly it was a --

16 12:35:07 a profile page. I don't recall which.

17 12:35:12 Q. Was a user required to have a registered

18 12:35:14 account with AddictingClips prior to that upload

19 12:35:21 process?

20 12:35:22 A. Yes, and -- and the exhibit -- the flow

21 12:35:26 that I just described was in the event that a user

22 12:35:29 had previously registered.

23 12:35:33 Q. What, specifically, was a user prompted to

24 12:35:38 enter about the video for upload? You indicated, I

25 12:35:45 believe, title and tags?

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2 12:35:49 MR. WILKENS: Was there a time period that

3 12:35:50 you're asking about in particular?

4 12:35:52 BY MR. RUBIN:

5 12:35:53 Q. At launch.

6 12:35:53 A. I believe I indicated title and

7 12:35:57 description. Would you like -- I could -- if I

8 12:35:58 could refresh my memory.

9 12:36:01 Q. Sure.

10 12:36:02 A. Tags may have been on there.

11 12:36:04 Q. Which exhibit are you referring to,

12 12:36:06 Mr. Roesch?

13 12:36:06 A. I'm going to look through Exhibit 19.

14 12:37:08 Yes, I believe tags were another piece of

15 12:37:12 information entered in order to remember more or

16 12:37:17 other types of information.

17 12:37:18 I'm going to look at Exhibit 20.

18 12:37:21 Q. Okay.

19 12:37:22 A. If I may continue?

20 12:37:23 Q. Please do.

21 12:38:00 A. Okay. I -- based this on information in

22 12:38:04 Exhibit 20, and which strikes me as an accurate

23 12:38:10 representation of the -- of what ended up on the

24 12:38:12 page, users were asked for title, description, tags,

25 12:38:17 and they were able to select one to three channels

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2 12:39:51 Q. Did the AddictingClips terms of service at

3 12:39:54 this time grant AddictingClips license to the

4 12:39:57 content that was being uploaded by users?

5 12:40:03 A. Yes.

6 12:40:06 THE REPORTER: Was that a "yes" --

7 12:40:07 THE WITNESS: Yes.

8 12:40:07 THE REPORTER: -- or a "no"?

9 12:40:08 THE WITNESS: Yes.

10 12:40:08 BY MR. RUBIN:

11 12:40:09 Q. Did the terms of service at this time give

12 12:40:12 AddictingClips the right to sublicense the clips

13 12:40:15 being uploaded by users?

14 12:40:21 A. I don't recall.

15 12:40:35 Q. Did AddictingClips transcode the videos

16 12:40:39 that were uploaded by users?

17 12:40:41 A. Yes.

18 12:40:43 Q. What does "transcode" mean?

19 12:40:47 A. My understanding is that it means taking a

20 12:40:51 digital video file and converting it into a -- you

21 12:40:55 know, another, or other forms of digital video for

22 12:40:59 playback to the end user.

23 12:41:07 Q. Following the transcoding of a video by --

24 12:41:13 pardon me. Following the transcoding of a video

25 12:41:16 that had been uploaded by an end user, do you know

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12:41:18 what happens to the original video that was
12:41:21 uploaded?

A. I believe that it was archived or stored
12:41:28 at Reality Digital or a third party I had contracted
12:41:32 with.

Q. Do you know why it was archived or stored?

A. In case the original video file needed to
12:41:44 be retrieved later.

Q. Why would the original video file need to
12:41:50 be retrieved later?

MR. WILKENS: Objection to the form.

THE WITNESS: The -- you know, in the --
12:42:03 the process of transcoding sometimes would fail, and
12:42:08 that the video would need to be re-encoded.

BY MR. RUBIN:

Q. Do you know how many copies of the encoded
12:42:20 file were made during the transcoding process?

A. How many copies of one file were
12:42:29 made, such as one --

Q. Yes, in the context of the -- of the
12:42:34 upload of one video, in the process of the encoding
12:42:38 of that video -- pardon me -- the transcoding of
12:42:42 that video --

A. Uh-huh.

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2 12:42:44 Q. -- do you know how many copies resulted

3 12:42:45 from that transcoding process?

4 12:42:48 A. No.

5 12:42:48 Q. Could it have been more than one?

6 12:42:50 MR. WILKENS: Objection to the form.

7 12:42:51 THE WITNESS: Yes.

8 12:42:55 BY MR. RUBIN:

9 12:42:55 Q. Did AddictingClips users instruct

10 12:43:01 AddictingClips to transcode the videos they were

11 12:43:04 uploading?

12 12:43:05 MR. WILKENS: Objection to the form.

13 12:43:13 THE WITNESS: I believe they authorized

14 12:43:14 it.

15 12:43:16 BY MR. RUBIN:

16 12:43:16 Q. What leads you to believe that?

17 12:43:19 A. I believe the terms of service gave --

18 12:43:24 give us the right to do that to files that we

19 12:43:26 received.

20 12:43:27 Q. Do you believe the terms of service used

21 12:43:31 the word "transcode"?

22 12:43:33 A. I don't know if they used that word.

23 12:43:35 Q. If they didn't use that word, but used

24 12:43:38 something more general, do you think it would still

25 12:43:41 authorize the transcoding?

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2 12:43:44 MR. WILKENS: Objection to the form.

3 12:43:45 THE WITNESS: I'd have to look at the

4 12:43:47 language.

5 12:44:04 BY MR. RUBIN:

6 12:44:04 Q. Did AddictingClips authorize the copying

7 12:44:07 of the videos to third parties, such as the

8 12:44:10 streaming provider you described earlier?

9 12:44:15 A. I believe that was authorized in the terms

10 12:44:17 of service.

11 12:44:21 Q. Do you know where in the terms of service?

12 12:44:24 A. No.

13 12:44:41 MR. RUBIN: I'd like to introduce Roesch

14 12:44:44 Exhibit 21.

15 12:44:45 (Roesch Deposition Exhibit Number 21 was

16 12:44:45 marked for identification.)

17 12:44:59 BY MR. RUBIN:

18 12:45:00 Q. Mr. Roesch, this is a version of the terms

19 12:45:02 of service from Atom Entertainment, but this was

20 12:45:12 linked to the AddictingClips website, that we

21 12:45:17 retrieved from the Internet Archive. These were the

22 12:45:20 versions that were in place on or about

23 12:45:22 January 25th, 2006.

24 12:45:39 MR. WILKENS: Repeat the same objection

25 12:45:41 about the previous exhibits from archive.org.

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2 12:45:50 BY MR. RUBIN:

3 12:45:50 Q. Do you know if Atom Entertainment

4 12:45:54 maintains historical versions of its terms of

5 12:45:57 service anywhere within its possession, custody, or

6 12:46:00 control?

7 12:46:01 A. I don't know.

8 12:46:01 Q. How would you go about answering that

9 12:46:03 question?

10 12:46:04 A. I would ask our legal department.

11 12:46:08 Q. Who in your legal department would you

12 12:46:10 ask?

13 12:46:16 A. In this -- in this scenario, what time

14 12:46:20 period would I be interested in?

15 12:46:22 Q. The period starting December of 2006 to

16 12:46:27 the present.

17 12:46:31 A. I would -- I would ask Victoria Libin, and

18 12:46:54 I may ask the Comedy Central business and legal

19 12:46:57 team, which has taken over legal -- now -- now is

20 12:47:00 our legal counsel.

21 12:47:02 Q. Who in the Comedy Central legal team would

22 12:47:04 you ask?

23 12:47:05 A. I would ask Debbie Spander.

24 12:47:12 Q. How about during the 2005 period?

25 12:47:14 A. Victoria Libin.

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2 12:47:20 Q. Have you had an opportunity to look at

3 12:47:22 Exhibit 21?

4 12:47:25 A. No.

5 12:47:26 Q. Please do.

6 12:47:29 MR. WILKENS: Take your time and read

7 12:47:30 through it.

8 12:48:39 THE WITNESS: Okay.

9 12:48:40 BY MR. RUBIN:

10 12:48:40 Q. Have you now had an opportunity to review

11 12:48:42 the document?

12 12:48:42 A. Not in extensive detail, but I've skimmed

13 12:48:45 it.

14 12:48:45 Q. Well, but, generally speaking, you've

15 12:48:49 reviewed it now?

16 12:48:50 A. I've skimmed it.

17 12:48:51 Q. Does it appear to you to be the terms of

18 12:48:54 service that were in effect in the 2006 time period

19 12:48:58 for AddictingClips upload site?

20 12:49:02 A. Yeah, I'm -- I'm just reading the "Last

21 12:49:04 Updated on January 12th, 2006" date. I interpret

22 12:49:09 that to mean that this was in place from that date

23 12:49:12 until some date in the future.

24 12:49:14 Q. What portion of these terms of service do

25 12:49:20 you believe granted the right -- pardon me. Through

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2 12:49:25 what portion of these terms of service do you

3 12:49:28 believe AddictingClips or Atom Entertainment was

4 12:49:35 granted the right to transcode videos uploaded by

5 12:49:39 the users?

6 12:49:39 A. I wouldn't --

7 12:49:41 MR. WILKENS: Object to the form of the

8 12:49:42 question.

9 12:49:43 THE WITNESS: I'm not sure if that is in

10 12:49:44 this document or not.

11 12:49:46 BY MR. RUBIN:

12 12:49:46 Q. Would it be in paragraph 8?

13 12:50:21 A. I'm not aware -- my -- my layman's reading

14 12:50:26 of that is that that paragraph might cover the right

15 12:50:30 to -- the ability to transcode.

16 12:50:35 BY MR. RUBIN:

17 12:50:35 Q. Would this paragraph -- might this

18 12:50:37 paragraph also cover the right to copy materials to

19 12:50:40 a third-party streaming system?

20 12:50:43 MR. WILKENS: Objection to the form.

21 12:50:44 Calls for a legal conclusion.

22 12:51:19 THE WITNESS: I think so.

23 12:51:21 BY MR. RUBIN:

24 12:51:21 Q. Okay. Were users able to rank video clips

25 12:51:29 that they watched on the AddictingClips upload

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2 12:51:36 sites?

3 12:51:38 A. Were -- in what time period?

4 12:51:41 Q. At any time period.

5 12:51:45 A. This -- it's not in relation to this

6 12:51:47 document?

7 12:51:48 Q. Sorry. Yeah. I'm moving on. You can set

8 12:51:50 that document aside for now.

9 12:51:53 A. To rank them. There -- there was a

10 12:52:03 ranking of clips. I don't recall whether individual

11 12:52:06 users were able to specify their own personal

12 12:52:09 ranking.

13 12:52:10 Q. Could users search for clips based on

14 12:52:13 ranking?

15 12:52:17 A. No.

16 12:52:18 Q. Could users rate clips?

17 12:52:21 A. Yes.

18 12:52:23 Q. Could users provide comments to clips?

19 12:52:26 A. Yes.

20 12:52:37 Q. What search functions did AddictingClips

21 12:52:46 have for the service?

22 12:52:49 A. There were two search functions. One was

23 12:52:52 a function to search the content hosted on the

24 12:52:57 website, or in -- in -- in -- hosted by Reality

25 12:53:05 Digital or its affiliates.

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2 12:53:07 THE REPORTER: I'm sorry. "Hosted by" --

3 12:53:07 THE WITNESS: Hosted by Reality Digital or

4 12:53:07 its affiliates.

5 12:53:07 And the other was a web search function to

6 12:53:11 search content on other websites.

7 12:53:14 Q. We discussed earlier Blinks, and Blinks

8 12:53:17 being a search provider for the AddictingClips link

9 12:53:23 site. Is that what you're referring to when you

10 12:53:25 mentioned the web search?

11 12:53:27 A. Yes.

12 12:53:34 Q. Who provided the search function for

13 12:53:38 the -- searching the clips that were uploaded by

14 12:53:43 users to the AddictingClips service?

15 12:53:47 A. Reality Digital.

16 12:53:48 Q. Do you know if it was an in-house search

17 12:53:51 function, or whether it was a third party search

18 12:53:54 function?

19 12:53:55 A. I believe it was an in-house function.

20 12:54:00 Q. Do you have any details about the nature

21 12:54:02 and implementation of that search function?

22 12:54:11 A. I don't believe so.

23 12:54:13 Q. What do you know about it?

24 12:54:18 A. About what?

25 12:54:19 Q. That search functionality.

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2 12:54:21 A. I know that it enabled users to type a

3 12:54:23 keyword, submit the keyword, and it would return

4 12:54:29 content and pages from the AddictingClips website

5 12:54:34 that were associated with that keyword.

6 12:54:37 Q. Do you know if that -- by "keyword," what

7 12:54:42 you're referring to is a searching of metadata that

8 12:54:45 had been indexed based on the data populated by

9 12:54:49 users when they uploaded videos?

10 12:54:52 MR. WILKENS: Objection to the form.

11 12:54:52 BY MR. RUBIN:

12 12:54:53 Q. Do you understand the question,

13 12:54:55 Mr. Roesch?

14 12:54:55 A. Yes.

15 12:54:57 Q. Can you answer it?

16 12:54:59 A. Yes, I believe that's an accurate,

17 12:55:03 possibly partial description.

18 12:55:06 Q. Is there anything you can add to the

19 12:55:07 description?

20 12:55:08 A. The function may also have searched other

21 12:55:12 texts on AddictingClips web pages that users had not

22 12:55:17 contributed but might have been written by site

23 12:55:20 editors.

24 12:55:25 Q. Do you know if there was a limit to the

25 12:55:29 number of results that could -- that would -- could

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2 12:55:31 be returned in any given query to the search

3 12:55:35 function?

4 12:55:35 A. I don't know.

5 12:55:44 Q. Do you know if AddictingClips created

6 12:55:47 thumbnails of user-submitted videos?

7 12:55:50 A. Yes, it did.

8 12:55:55 Q. Did AddictingClips display those

9 12:55:57 thumbnails to users?

10 12:55:58 A. Yes.

11 12:56:01 Q. If a clip was removed from the service --

12 12:56:04 in other words, a user uploaded a video, and it's

13 12:56:10 subsequently removed -- was the thumbnail of that

14 12:56:13 video retained somewhere on the service, or was it

15 12:56:17 purged?

16 12:56:21 A. And are you referring to the publicly

17 12:56:23 accessible service?

18 12:56:25 Q. I am.

19 12:56:29 A. I believe the thumbnail was removed.

20 12:56:32 Q. Was there a non-publicly available

21 12:56:35 service?

22 12:56:37 A. No.

23 12:56:41 Q. So what did you mean in response to the

24 12:56:43 last question about whether I was referring to the

25 12:56:45 publicly available service?

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12:56:47 A. I -- I was -- I was trying to clarify your
12:56:51 use of the word "purge," and whether that meant that
12:56:54 a thumbnail was no longer available to the user, or
12:56:58 whether it was also no longer available to Atom or
12:57:02 Reality Digital staff.

12:57:04 Q. Would there have been a way that you or
12:57:05 other Atom or Reality Digital staff would have been
12:57:10 able to find a thumbnail from a video that had been
12:57:12 removed?

12:57:25 A. I think so.

12:57:27 Q. How?

12:57:32 A. I believe that the material removed from
12:57:37 the website was archived somehow.

12:57:47 Q. Regardless of the reason for which it was
12:57:50 removed?

12:57:52 MR. WILKENS: Objection to the form.

12:58:01 THE WITNESS: I -- I don't know if there
12:58:03 was a -- I'm not sure if there was a distinction
12:58:06 based on a reason, or if the policy changed based on
12:58:09 that.

12:58:10 BY MR. RUBIN:

12:58:12 Q. Do you know if there was any ability for
12:58:17 Addict- -- AddictingClips users to customize their
12:58:21 profile?

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12:58:23 A. Yes.

12:58:24 Q. What degree of customization was there?

12:58:30 A. Users could include information about
12:58:35 themselves. They could link to videos they'd upload
12:58:47 on web -- the website. They could include a
12:58:51 photograph associated with their profile that would
12:58:55 display on their profile. There may have been
12:58:58 others, but I don't recall.

12:59:03 Q. Did AddictingClips employees feature
12:59:06 certain videos?

12:59:08 A. Yes.

12:59:10 Q. Was there a mobile upload functionality?

12:59:13 A. Yes.

12:59:14 Q. Did AddictingClips allow embeds?

12:59:24 A. In what -- in what sense do you mean
12:59:25 "allow"?

12:59:27 Q. Did AddictingClips permit the videos
12:59:31 hosted on their service to be embedded on
12:59:36 third-party websites?

12:59:38 A. Yes.

12:59:38 Q. Could users flag videos for later review
12:59:42 by Atom or AddictingClips' staff?

12:59:45 MR. WILKENS: Can you clarify the time
12:59:47 frame?

1 SCOTT ROESCH

2 12:59:47 BY MR. RUBIN:

3 12:59:47 Q. At any time.

4 12:59:49 A. Yes.

5 12:59:51 Q. At launch?

6 12:59:54 A. At launch of the Version 2 of the service,

7 12:59:57 yes.

8 12:59:58 Q. Version 2 -- just to be clear, you're

9 13:00:01 referring to the introduction of the user-uploaded

10 13:00:04 video portion of the service; correct?

11 13:00:07 A. Yes.

12 13:00:07 Q. Was there any change over time to the

13 13:00:10 nature and type of flags that a user could make to

14 13:00:14 the video for later review by Atom or other

15 13:00:26 AddictingClips staff?

16 13:00:27 A. I don't recall.

17 13:00:28 Q. But there may have been?

18 13:00:29 A. It's possible.

19 13:00:36 Q. Were users able to download videos from

20 13:00:39 the AddictingClips website?

21 13:00:44 A. There is no -- there was no download

22 13:00:47 function.

23 13:00:49 Q. So there was no download functionality

24 13:00:51 built into the AddictingClips website for users to

25 13:00:56 download videos with the sanction of AddictingClips;

1 SCOTT ROESCH

2 13:01:00 is that right?

3 13:01:01 A. Correct.

4 13:01:02 Q. Do you know if it occurred, nonetheless?

5 13:01:04 MR. WILKENS: Objection to the form.

6 13:01:06 THE WITNESS: I don't know if it occurred.

7 13:01:07 BY MR. RUBIN:

8 13:01:08 Q. Do you know if it was possible that it

9 13:01:10 occurred?

10 13:01:11 MR. WILKENS: Objection to the form.

11 13:01:18 THE WITNESS: I -- I think it was

12 13:01:20 possible.

13 13:01:20 BY MR. RUBIN:

14 13:01:21 Q. Are you aware of technology known as

15 13:01:25 stream ripping?

16 13:01:28 A. I don't think I'm familiar with that term.

17 13:01:31 Q. Do you know what I'm referring to when I

18 13:01:33 use it?

19 13:01:34 A. I'm not sure.

20 13:01:34 Q. Are you familiar with the ability, or a

21 13:01:37 technology that enables a user to download content

22 13:01:43 that is streamed over the Internet, even if download

23 13:01:51 functionality was not intended, or indeed, even if

24 13:01:55 it was expressly not intended to be a part of the

25 13:01:58 content that's being viewed?

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2 13:02:00 A. I'm aware that it exists.

3 13:02:02 Q. Are you aware of any means deployed by

4 13:02:07 AddictingClips to stop the use of stream rippers --

5 13:02:12 stream rippers or any functionalities like that by

6 13:02:16 end users?

7 13:02:32 A. Are you -- are you asking for,

8 13:02:36 specifically, technology that would prevent the

9 13:02:40 stream ripping from occurring, or just from any

10 13:02:43 unauthorized use of the content?

11 13:02:47 Q. Specifically the former.

12 13:02:49 A. I'm not sure.

13 13:03:01 Q. How about the latter?

14 13:03:04 A. We -- we may have implemented secure

15 13:03:09 streaming, some -- some kind of domain protection,

16 13:03:13 but I'm not 100 percent sure if -- if we did.

17 13:03:18 Q. Who would --

18 13:03:18 A. I know it was considered.

19 13:03:19 Q. Who would know more about that?

20 13:03:23 A. Reality Digital would probably know.

21 13:03:26 Q. And who at Reality Digital do you think

22 13:03:28 would know most about that?

23 13:03:35 A. Randy St. Jean.

24 13:03:46 Q. Did AddictingClips, Version 2, the upload

25 13:03:49 version -- may as well use that as a shorthand for

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2 13:03:55 it.

3 13:03:55 A. Okay.

4 13:03:56 Q. -- have private video functionality?

5 13:03:59 A. Yes.

6 13:04:00 Q. Was it always intended to have private

7 13:04:03 video functionality from the inception of the

8 13:04:05 concept?

9 13:04:07 MR. WILKENS: Objection to the form.

10 13:04:11 THE WITNESS: I don't recall. I mean, I

11 13:04:18 could check the documents, if you'd like.

12 13:04:20 BY MR. RUBIN:

13 13:04:21 Q. Let's compare.

14 13:04:21 A. Okay.

15 13:04:22 Q. If I could ask you to turn to Exhibit 18,

16 13:04:28 please, page 6 of the exhibit. 4.2.1. Would you

17 13:04:56 compare that with the same page, and indeed the same

18 13:05:02 section, 4.2.1, of Exhibit 19.

19 13:05:22 Have you had an opportunity to compare the

20 13:05:23 two exhibits?

21 13:05:25 A. Yes.

22 13:05:25 Q. Does that refresh your recollection as to

23 13:05:27 whether or not private video functionality was

24 13:05:31 always intended to be a -- a portion -- rather a

25 13:05:35 feature of the AddictingClips Version 2?

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2 13:05:45 A. Doesn't refresh my recollection of that,
3 13:05:47 but I take the text at face value.

4 13:05:50 Q. What does the text, at face value, tell
5 13:05:54 you?

6 13:05:54 A. Tells me that on December 21 of '05 we
7 13:05:58 were not planning to launch with the feature, that
8 13:06:01 we were considering it for the future.

9 13:06:03 And on February 14, '06, we had updated
10 13:06:10 our plans to launch with the private clip feature
11 13:06:15 with the option to turn it off at a later time.

12 13:06:20 Q. Do you know what the reason is for that
13 13:06:23 change in plans?

14 13:06:26 MR. WILKENS: I'm going to just caution
15 13:06:27 the witness not to get into attorney-client
16 13:06:30 privileged communications. If you can answer
17 13:06:32 without doing that, please go ahead.

18 13:06:43 THE WITNESS: I don't recall.

19 13:06:43 BY MR. RUBIN:

20 13:06:44 Q. Did you have any discussions, Mr. Roesch,
21 13:06:46 with any lawyer about whether or not the service
22 13:06:48 could launch with or without private videos?

23 13:06:55 A. I -- I don't recall a conversation.

24 13:06:58 Q. You don't recall having a conversation
25 13:07:00 with a lawyer about that?

1 SCOTT ROESCH

2 13:10:37 Q. Okay. So Brendan Jackson was brought on

3 13:10:45 uniquely to work on AddictingClips?

4 13:10:48 A. That's right.

5 13:10:49 Q. Is he still with the company?

6 13:10:50 A. No.

7 13:10:50 Q. When did he leave?

8 13:10:52 A. He probably left in -- in late '07 or

9 13:10:55 maybe early '08.

10 13:10:56 Q. Do you know why he left?

11 13:11:01 A. He got another job opportunity.

12 13:11:03 Q. So he left by his own volition?

13 13:11:06 A. Yes.

14 13:11:08 Q. Have you spoken with him recently?

15 13:11:11 A. It's been a month or two, probably.

16 13:11:14 Q. But you still maintain some contact with

17 13:11:17 him?

18 13:11:17 A. A bit.

19 13:11:22 Q. How did a user go about making a video

20 13:11:26 private, versus publicly available, on the Version 2

21 13:11:33 AddictingClips site?

22 13:11:39 A. I believe it was an option they could

23 13:11:43 select during the upload process.

24 13:11:44 Q. Do you know if the public/private status

25 13:11:53 treatment changed post upload?

1 SCOTT ROESCH

2 13:11:57 A. I think so.

3 13:11:58 Q. Do you know if there was a limit on the

4 13:12:00 number of videos that a user could set to private?

5 13:12:07 A. I don't know.

6 13:12:15 Q. Did AddictingClips superimpose any logos

7 13:12:19 on its video player?

8 13:12:31 A. I believe we -- hm. I believe it -- there

9 13:12:39 was a logo superimposed on the embedded video

10 13:12:43 player. I don't recall if there was one on the

11 13:12:46 player that was served on the website itself.

12 13:12:53 Q. Could users recommend videos to one

13 13:12:57 another?

14 13:12:57 A. Yes.

15 13:12:58 Q. Could users recommend videos to nonusers

16 13:13:01 of the site?

17 13:13:02 MR. WILKENS: Objection to the form.

18 13:13:06 THE WITNESS: Yes.

19 13:13:06 BY MR. RUBIN:

20 13:13:10 Q. Did AddictingClips advertise on the

21 13:13:13 website?

22 13:13:17 A. Did we allow advertisements on the

23 13:13:19 website?

24 13:13:21 Q. Yes.

25 13:13:24 A. Yes.

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SCOTT ROESCH

13:13:26 Q. What types of advertisements did you allow
13:13:29 on the website?

13:13:31 A. There were banner style display
13:13:33 advertisements, and I believe there were search --
13:13:41 there were text advertisements on the search pages.

13:13:46 Q. Where on -- was there any place on the
13:13:54 AddictingClips website, any given page, that did not
13:13:59 have advertising on it?

13:14:04 A. Yes.

13:14:05 Q. What page or pages were those?

13:14:08 A. Well, pages that framed third-party sites.
13:14:13 As I described earlier, when we would link out to
13:14:16 third-party sites we would include a thin frame at
13:14:20 the top of the page?

13:14:22 Q. Why wasn't -- why weren't advertisements
13:14:25 included on those pages in those frames?

13:14:30 MR. WILKENS: To the extent that that
13:14:31 would require you to reveal attorney-client
13:14:34 communications, I caution you -- I would instruct
13:14:36 you not to answer, but if you can answer otherwise,
13:14:39 please do.

13:14:40 THE WITNESS: We would believe -- we
13:14:42 believed it would require too large of a -- of a
13:14:46 frame, and it would irritate the third-party sites.

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SCOTT ROESCH

13:14:49 BY MR. RUBIN:

13:14:50 Q. So the -- the design element of it, too
13:14:55 large a frame, what do you mean by "irritate the
13:14:58 third-party sites"?,

13:14:59 A. You know, there -- it would -- it -- you
13:15:03 know, a large -- a large frame served at the top of
13:15:07 a third party's website made -- would make the
13:15:10 experience on the website less attractive, thus,
13:15:14 perhaps irritating to them.

13:15:17 Q. Is there any other consideration that led
13:15:20 to not using advertisements in the frames to a site
13:15:26 linked to from AddictingClips?

13:15:46 A. Yes.

13:15:47 Q. What were they?

13:15:48 MR. WILKENS: To the extent that would
13:15:49 require you to reveal attorney-client privilege, I
13:15:52 instruct you not to answer. Otherwise you can
13:15:54 answer.

13:15:55 THE WITNESS: Now, we -- we didn't have
13:15:58 sufficient demand for the advertisements to need to
13:16:02 serve them there.

13:16:03 BY MR. RUBIN:

13:16:03 Q. Any other reason?

13:16:05 MR. WILKENS: Same caution as I gave you a

1 SCOTT ROESCH

2 13:19:00 MR. RUBIN: That's fine. You're going to

3 13:19:01 disagree with everything I say today, so that's

4 13:19:01 okay.

5 13:19:01 BY MR. RUBIN:

6 13:19:02 Q. With respect to any other page, was there

7 13:19:04 any other page on the AddictingClips service -- was

8 13:19:07 there any page on Version 2 of the Addictive Clips

9 13:19:12 service on which advertisements were not disclosed?

10 13:19:15 A. Yes.

11 13:19:16 Q. Which page was that?

12 13:19:18 A. The terms of service.

13 13:19:19 Q. Any others?

14 13:19:20 A. The privacy policy.

15 13:19:21 Q. Any others?

16 13:19:25 A. I don't think so.

17 13:19:34 Q. So ads were displayed on the search page?

18 13:19:38 A. Yes.

19 13:19:38 Q. And ads were displayed on the pages on

20 13:19:41 which videos were displayed?

21 13:19:43 A. Yes.

22 13:19:47 Q. On the search page, were the ads CPM or

23 13:19:51 CPC ads?

24 13:19:58 A. I believe there were both.

25 13:20:02 Q. And on the -- for lack of a better word

1 SCOTT ROESCH

2 13:20:07 I'll refer to them as "watch pages." On the watch

3 13:20:09 pages, were the ads CPM ads or CPC ads?

4 13:20:18 A. Typically, I believe they're CPM ads,

5 13:20:21 although I don't know the -- the deals behind every

6 13:20:24 advertisement that is on there.

7 13:20:36 Q. Was there any time at which, in the

8 13:20:39 Version 2 of the site, from the moment the company

9 13:20:44 allowed for the upload of videos by users to today,

10 13:20:49 that AddictingClips did not put ads on all watch

11 13:20:58 pages?

12 13:21:11 A. I don't think so.

13 13:21:22 Q. Was there administrative level access to

14 13:21:25 the AddictingClips website in Version 2?

15 13:21:28 A. Yes.

16 13:21:30 Q. How did that access differ from access

17 13:21:34 by -- than ordinary user, member of the public would

18 13:21:41 have?

19 13:21:41 A. It granted the person who had logged in

20 13:21:44 with administrative rights to be able to make

21 13:21:48 changes to the website that a non-user wouldn't be

22 13:21:52 able to make.

23 13:21:53 Q. What sorts of changes?

24 13:21:55 A. For example, banning a video.

25 13:22:00 Q. Removing a video?

1 SCOTT ROESCH

2 13:22:02 A. Yes.

3 13:22:03 Q. Could you remove a user?

4 13:22:07 A. I believe so, yes.

5 13:22:12 Q. Were these unique accounts, or were

6 13:22:15 certain permissions given to regular accounts to

7 13:22:19 make them admin-enabled?

8 13:22:30 MR. WILKENS: Objection to the form.

9 13:22:31 THE WITNESS: I'm sorry. Can you -- can

10 13:22:33 you repeat?

11 13:22:34 BY MR. RUBIN:

12 13:22:34 Q. Sure. You testified that -- to

13 13:22:36 administrative rights, and I'm trying to understand

14 13:22:39 if these were unique accounts, or whether they were

15 13:22:44 permissions, rights, granted to existing accounts

16 13:22:47 that -- that gave them the ability to do this?

17 13:22:50 MR. WILKENS: Objection to the form.

18 13:22:59 THE WITNESS: The -- these were accounts

19 13:23:01 with greater privileges. I don't know -- I'm not

20 13:23:06 sure I -- I understand the distinction.

21 13:23:07 BY MR. RUBIN:

22 13:23:07 Q. Do you have an admin-enabled account to

23 13:23:12 the AddictingClips, or the current version of the

24 13:23:16 service?

25 13:23:20 A. There is one. There is a -- there is a --

1 SCOTT ROESCH

2 13:23:22 an admin account on the current Atom.com service.

3 13:23:30 Q. Do you have -- is it -- is it separate

4 13:23:31 from the account that you use to log into the

5 13:23:33 service?

6 13:23:34 A. Yes.

7 13:23:34 Q. It's a unique account, not associated with

8 13:23:34 any individual?

9 13:23:34 MR. WILKENS: Objection to the form.

10 13:23:34 THE WITNESS: Yes, it's a -- it's a unique

11 13:23:34 account.

12 13:23:48 BY MR. RUBIN:

13 13:23:48 Q. So then with the account that you, Scott

14 13:23:51 Roesch, use to log into the service, can you remove

15 13:23:54 a video from the service?

16 13:24:00 A. Speaking for today?

17 13:24:01 Q. Sure.

18 13:24:02 A. No.

19 13:24:02 Q. But you have access to the administrative

20 13:24:04 credentials to log in and do so; right?

21 13:24:14 A. I don't believe so, today.

22 13:24:16 Q. Who has access to those credentials?

23 13:24:33 A. Members of the -- well, the -- the

24 13:24:40 administration of accounts is -- is a more

25 13:24:44 centralized function now. It's members of the team

1 SCOTT ROESCH

2 13:24:47 entitled Flux. The Flux team has access to that.

3 13:24:52 Q. What is Flux?

4 13:24:54 A. Flux is a -- it's a set of social

5 13:25:01 networking and community tools.

6 13:25:09 Q. When were those tools developed?

7 13:25:11 A. I don't know.

8 13:25:12 Q. Was there a time at which you had

9 13:25:15 administrative rights associated with your account

10 13:25:18 for the AddictingClips website?

11 13:25:25 A. I don't think so.

12 13:25:26 Q. Was there a time in which you had the

13 13:25:28 ability to remove videos from the AddictingClips

14 13:25:31 website?

15 13:25:32 A. Yes.

16 13:25:33 Q. How did you do that?

17 13:25:35 A. I would use the administrative account.

18 13:25:37 Q. So there was a -- a -- there was a special

19 13:25:40 administrative account, apart from your own personal

20 13:25:43 account?

21 13:25:45 A. Yes.

22 13:25:47 Q. Could that account approve videos for

23 13:25:51 publication to the service?

24 13:25:53 MR. WILKENS: Objection to the form.

25 13:26:00 THE WITNESS: I think so.

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SCOTT ROESCH

13:27:19 A. I think Reality Digital would know that.

13:27:22 Q. And who at Reality Digital?

13:27:24 A. Probably Randy St. Jean.

13:27:33 Q. Did AddictingClips engage in the same

13:27:39 rights clearance process in Version 2 that Atom

13:27:43 Films did before allowing user supplied clips to

13:27:54 appear on the service.

13:27:56 THE REPORTER: I'm sorry. "Before" --

13:27:56 MR. RUBIN: Allowing the user supplied

13:27:56 clips to appear on the service.

13:27:57 THE WITNESS: No.

13:27:58 BY MR. RUBIN:

13:27:58 Q. Why not?

13:28:00 MR. WILKENS: To the extent that that

13:28:02 question would -- your answering that question would

13:28:06 reveal attorney-client privilege, I'm instructing

13:28:10 you not to answer, but if you can do it without

13:28:12 referring to those communications, please go ahead.

13:28:19 THE WITNESS: Because the nature of the

13:28:22 method by which content went onto the website made

13:28:26 it impossible to -- eliminated the time needed to,

13:28:33 for example, sign a contract.

13:28:35 BY MR. RUBIN:

13:28:35 Q. Could you explain that?

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SCOTT ROESCH

13:28:36 A. Yes. So if -- if -- you know, as I
13:28:40 described, the user had the ability to upload a
13:28:43 video directly from their computer onto the website.

13:28:49 Q. And at that point it appeared
13:28:51 automatically onto the website; right?

13:28:53 A. Right.

13:28:54 Q. Okay. And then so -- what is it about
13:28:57 that that made doing the rights clearance process
13:29:08 impossible?

13:29:09 A. The -- the Atom staff was not involved in
13:29:12 the publication of -- of the video. It was -- the
13:29:14 end user published it themselves.

13:29:17 Q. Did you get any assurance from the end
13:29:19 user that they had the rights to upload it before
13:29:22 you allowed them to upload it?

13:29:24 A. Yes.

13:29:24 Q. What sort of assurances did you obtain?

13:29:27 A. The -- in the process of uploading the
13:29:30 video, the user needed to check a box indicating
13:29:35 that they had read and agreed to the terms of
13:29:40 service of the site.

13:29:44 Q. You think it would have been impractical,
13:29:47 though, to go beyond that?

13:29:48 MR. WILKENS: Objection to the form.

1 SCOTT ROESCH

2 13:29:58 THE WITNESS: I would need -- I would need

3 13:29:59 to know what unit, specifically -- what you'd

4 13:30:02 recommend -- what unit you would be referring to.

5 13:30:04 BY MR. RUBIN:

6 13:30:05 Q. I'm trying to get an understanding of what

7 13:30:07 you were testifying to earlier, actually.

8 13:30:10 We talked earlier, much earlier this

9 13:30:12 morning, about the process that Atom Films engaged

10 13:30:16 in, this rights clearance process. Do you think it

11 13:30:19 would be impractical in the context of the Version 2

12 13:30:23 AddictingClips site to engage in that process for

13 13:30:29 the upload of user generated content?

14 13:30:32 MR. WILKENS: Objection to the form.

15 13:30:34 THE WITNESS: It was -- it was a different

16 13:30:36 process.

17 13:30:37 BY MR. RUBIN:

18 13:30:37 Q. I understand that.

19 13:30:49 A. Yes.

20 13:30:56 Q. Did AddictingClips ever block the uploaded

21 13:31:00 videos based on keywords contained in the metadata

22 13:31:04 supplied by the users?

23 13:31:14 A. I don't -- I don't know.

24 13:31:18 Q. Did it have the technical ability to do

25 13:31:21 so?

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SCOTT ROESCH

14:02:30 BY MR. RUBIN:

14:02:30 Q. Do you know if Audible Magic or any other
14:02:35 video identification technology can determine
14:02:38 whether a video constitutes fair use or not?

14:02:42 MR. WILKENS: Objection to the form.

14:02:43 THE WITNESS: I don't know.

14:02:43 BY MR. RUBIN:

14:02:43 Q. Did AddictingClips create md5 hashes of
14:02:48 uploaded videos?

14:02:50 A. I -- I don't know what that is.

14:02:51 Q. You don't know what an md5 hash is?

14:02:54 A. No.

14:02:55 Q. Okay. Did AddictingClips in any way block
14:02:58 users from submitting the identical video more than
14:03:03 once?

14:03:10 A. I don't know.

14:03:12 Q. Did AddictingClips deploy any technology
14:03:15 that would prevent users from submitting videos that
14:03:21 had been previously removed from the service for
14:03:23 terms of use violations or based on allegations of
14:03:29 copyright infringement?

14:03:40 A. I believe there -- we had the ability to
14:03:44 ban members who we believed were repeatedly, you
14:03:49 know, abusing the site, and by uploading material

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SCOTT ROESCH

14:03:53 they shouldn't be uploading, and so they -- we were
14:03:56 able to prevent them from re-uploading anything
14:04:00 from -- from those accounts.

14:04:02 Q. Could you prevent that same user from
14:04:04 registering again and uploading the same content in
14:04:07 a different account?

14:04:08 A. No, I don't believe so.

14:04:10 Q. Could you prevent a completely different
14:04:14 user, totally unconnected with that user, from
14:04:17 uploading the same account, or that -- pardon me --
14:04:19 the same content that you had previously removed?

14:04:23 A. I don't think so.

14:04:26 Q. Do you know if AddictingClips ever
14:04:29 developed any software tools that allowed content
14:04:32 owners to send notices of alleged infringement
14:04:37 pursuant to the DMCA in an electronic fashion?

14:04:42 MR. WILKENS: Objection to the form.

14:04:43 THE WITNESS: I don't know.

14:04:44 BY MR. RUBIN:

14:04:44 Q. Do you know if AddictingClips ever
14:04:46 included any copyright education manuals on its
14:04:52 website?

14:04:53 MR. WILKENS: Objection to the form.

14:05:00 THE WITNESS: I believe -- I believe we

1 SCOTT ROESCH

2 14:05:03 included -- we may have included some guidelines,

3 14:05:07 high level guidelines, and I wouldn't describe what

4 14:05:10 I'm recollecting as a -- as a manual.

5 14:05:13 BY MR. RUBIN:

6 14:05:13 Q. Okay. Do you know if AddictingClips ever

7 14:05:16 developed any proprietary software to help content

8 14:05:20 owners locate potentially infringing content on the

9 14:05:24 service?

10 14:05:24 MR. WILKENS: Objection to the form.

11 14:05:34 THE WITNESS: You know, given, you know,

12 14:05:35 we had had just a very low incidence of -- of any

13 14:05:39 takedown notices, so -- so, no, we didn't -- that

14 14:05:42 never rose to the top of our development list.

15 14:05:45 BY MR. RUBIN:

16 14:05:45 Q. Do you know if Atom ever developed any

17 14:05:49 proprietary technology or software to help content

18 14:05:52 owners locate potentially infringing content?

19 14:05:57 A. No, I don't believe we did.

20 14:05:59 Q. Do you know if any division of Viacom

21 14:06:03 ever developed, or considered developing, any

22 14:06:08 proprietary software to help content owners, such as

23 14:06:12 itself or others, locate potentially infringing

24 14:06:15 content --

25 14:06:16 MR. WILKENS: Objection to the form.

1 SCOTT ROESCH

2 14:06:17 BY MR. RUBIN:

3 14:06:18 Q. -- on its services or others?

4 14:06:20 MR. WILKENS: Objection to the form.

5 14:06:24 THE WITNESS: Is your question about

6 14:06:26 technology that Viacom developed?

7 14:06:29 BY MR. RUBIN:

8 14:06:29 Q. Uh-huh.

9 14:06:31 A. I'm not aware of technology that the

10 14:06:33 company developed itself. However, it may have

11 14:06:35 licensed tools of that sort.

12 14:06:40 Q. Did AddictingClips have a duration limit

13 14:06:43 for uploaded clips?

14 14:06:54 A. I know we had a file size limit, and I am

15 14:06:57 unclear if we implemented a run-time limit.

16 14:07:02 Q. Do you know what the reason was for the

17 14:07:04 file size limit?

18 14:07:05 A. There were multiple reasons. One was a --

19 14:07:08 you know, wanting to limit band width costs, and

20 14:07:12 another was, you know, wanting to make it difficult

21 14:07:18 for people to distribute extremely long and possibly

22 14:07:25 infringing works.

23 14:07:38 MR. RUBIN: I'd like to introduce Roesch

24 14:07:41 Exhibit Number 23.

25 14:07:42 (Roesch Deposition Exhibit Number 23 was

1 SCOTT ROESCH

2 14:07:42 marked for identification.)

3 14:08:03 BY MR. RUBIN:

4 14:08:04 Q. Mr. Roesch, Exhibit 23 is a web page that

5 14:08:07 I printed out from the Internet Archive showing the

6 14:08:10 top-rated clips page on the AddictingClips website

7 14:08:14 on or around April 22nd, 2006. As with the other

8 14:08:22 printouts, the URL is reflected in the address line

9 14:08:29 of Internet Explorer.

10 14:08:31 Do these pages look like -- well, does

11 14:08:31 this page look like an accurate capture of the

12 14:08:35 AddictingClips website from that time frame?

13 14:08:37 MR. WILKENS: Before we get into the

14 14:08:38 exhibit, I'm going to make the same objection I made

15 14:08:41 to the other archive -- web archive exhibits that

16 14:08:44 have been used.

17 14:08:47 BY MR. RUBIN:

18 14:08:54 Q. I'll restate my question. Do these three

19 14:08:56 pages look like accurate captures of the

20 14:09:04 AddictingClips website in that time frame?

21 14:09:16 A. I think you referred to this first page as

22 14:09:19 the top-rated --

23 14:09:20 Q. Yeah, I think I miss -- misreferred to it.

24 14:09:22 I apologize. These are three various pages -- these

25 14:09:27 are various pages, three, that I printed out from

1 SCOTT ROESCH

2 14:14:47 THE WITNESS: I don't know what this clip

3 14:14:48 actually is, so I -- it's difficult to speculate on

4 14:14:56 what I would have done, given that I haven't seen

5 14:14:58 it.

6 14:14:58 BY MR. RUBIN:

7 14:14:58 Q. If -- if you had encountered a thumbnail

8 14:15:01 of a video with a title "Family Guy," and the

9 14:15:04 thumbnail was inconclusive in your view as to

10 14:15:07 whether it constituted a posting of a clip from "The

11 14:15:10 Family Guy" or not, what would you have done?

12 14:15:15 MR. WILKENS: Objection to the form.

13 14:15:18 THE WITNESS: I probably would have

14 14:15:21 watched it or asked somebody to watch it.

15 14:15:24 BY MR. RUBIN:

16 14:15:25 Q. And if it was, in fact, from "The Family

17 14:15:27 Guy," what would you have done?

18 14:15:30 MR. WILKENS: Objection to the form.

19 14:15:34 THE WITNESS: We would have e-mailed to

20 14:15:37 the legal team.

21 14:15:39 BY MR. RUBIN:

22 14:15:40 Q. And at this time, April of 2006, who was

23 14:15:48 on the legal team?

24 14:15:50 A. Victoria Libin and Adam Lovingood.

25 14:15:54 Q. Are they both still on the legal team?

1 SCOTT ROESCH

2 14:15:58 A. Adam is no longer with the company.

3 14:16:01 Victoria is still employed by MTV Networks, but is

4 14:16:05 not involved in the Atom business.

5 14:16:14 Q. Eventually, and we've hit upon this a

6 14:16:17 couple times today, the AddictingClips Version 2,

7 14:16:21 the entire site, in fact, was rebranded as

8 14:16:26 AtomUploads; is that right?

9 14:16:28 A. Did you specify a time period or --

10 14:16:31 Q. I didn't. I was going to ask you that

11 14:16:33 question.

12 14:16:34 A. It was later rebranded, yes.

13 14:16:36 Q. At some time it was. Do you know when

14 14:16:38 that took place?

15 14:16:39 A. I think it was in 2007.

16 14:16:41 Q. Do you know when in 2007?

17 14:16:47 A. I -- I -- I would be guessing, so no.

18 14:16:56 Q. Do you know why the change was made?

19 14:17:03 A. Yes.

20 14:17:04 Q. Why?

21 14:17:11 A. We wanted to associate the service with

22 14:17:17 the Atom brand, as opposed to the Addicting -- the

23 14:17:21 AddictingGames brand.

24 14:17:24 Q. Any other reasons?

25 14:17:35 A. I -- I don't think so.

1 SCOTT ROESCH

2 14:17:38 Q. Was Brendan Jackson working for the

3 14:17:40 company at the time of the rebrand?

4 14:17:43 A. Yes.

5 14:17:53 Q. Was there a change to the upload process

6 14:17:58 for videos that occurred in conjunction with the

7 14:18:02 rebrand?

8 14:18:05 A. I don't think so.

9 14:18:11 Q. When we came back from lunch we discussed

10 14:18:13 the current aspects of the current upload process in

11 14:18:23 the version of the site that exists today.

12 14:18:26 A. (Nods head.)

13 14:18:27 Q. When Version 2 of the AddictingClips site

14 14:18:30 was launched, you testified earlier that videos were

15 14:18:33 published immediately after they were uploaded.

16 14:18:38 A. Yes.

17 14:18:39 Q. At some point that changed; right?

18 14:18:41 A. Right.

19 14:18:41 Q. When did that change?

20 14:19:02 A. It changed sometime in 2007.

21 14:19:12 MR. RUBIN: I'd like to introduce Roesch

22 14:19:15 Exhibit 25.

23 14:19:15 (Roesch Deposition Exhibit Number 25 was

24 14:19:15 marked for identification.)

25 14:19:16 //

1 SCOTT ROESCH

2 14:19:23 BY MR. RUBIN:

3 14:19:24 Q. Mr. Roesch, this document was produced by

4 14:19:29 Viacom and bears Bates number VIA 00466749 through

5 14:19:36 -50.

6 14:19:41 Have you seen this document before?

7 14:19:43 A. Yes.

8 14:19:49 Q. What is this document?

9 14:19:51 MR. WILKENS: Take your time to look

10 14:19:52 through it if you need to.

11 14:20:08 THE WITNESS: This is a document that

12 14:20:09 describes changes in the service. I believe this

13 14:20:17 was distributed to employees.

14 14:20:19 BY MR. RUBIN:

15 14:20:21 Q. And does this indicate that the rebrand of

16 14:20:26 AddictingClips to AtomUploads occurred on or around

17 14:20:31 May 22nd?

18 14:20:33 A. This document indicates that.

19 14:20:39 Q. It doesn't say in 2007.

20 14:20:40 A. It doesn't state the year, but I believe

21 14:20:42 that it was in 2007.

22 14:20:44 Q. Do you see a section that says "What is

23 14:20:46 changing?"

24 14:20:48 A. Yes.

25 14:20:50 Q. Do you see number 3?

1 SCOTT ROESCH

2 14:20:56 Would you read that aloud, please.

3 14:20:58 A. (Reading:)

4 14:20:59 "3. Safe content: All uploads will be

5 14:21:03 screened before publishing. Content that

6 14:21:05 is approved will generally be published

7 14:21:08 within approximately 20 minutes. Content

8 14:21:10 with standards or legal problems will be

9 14:21:12 rejected (in other words -- no porn or

10 14:21:15 stolen content.)"

11 14:21:17 Q. So does this reflect -- refresh your

12 14:21:20 recollection that prior to the rebrand there was no

13 14:21:23 monitoring or pre-publication -- pardon me -- there

14 14:21:27 was no pre-publication review of the content of

15 14:21:30 AddictingClips?

16 14:21:31 A. Well, no. What it -- what it refreshes,

17 14:21:33 actually, is -- is my recollection that the

18 14:21:37 pre-screening of content occurred at the time of the

19 14:21:40 AtomUploads rebrand, which I had forgotten.

20 14:21:51 Q. Was it coincidental?

21 14:21:53 A. It's -- I don't know if it was

22 14:21:55 coincidental or not.

23 14:22:00 Q. Why did Atom begin proactively monitoring

24 14:22:04 content before it went live on the service around

25 14:22:08 this time?

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SCOTT ROESCH

14:22:09 MR. WILKENS: I'm going to caution the
14:22:10 witness at this time not to get into attorney-client
14:22:13 privilege. If you can answer without doing that,
14:22:15 please do.

14:22:18 THE WITNESS: Well, Atom Entertainment was
14:22:24 acquired by MTV Networks in 2006. And MTV Networks
14:22:28 had different approaches to users of content --
14:22:34 usage of content on its websites for, for example,
14:22:40 standards and practices reasons, and -- and
14:22:48 intellectual property reasons.

14:22:59 BY MR. RUBIN:

14:23:00 Q. The change to allowing user-generated
14:23:07 content to be published immediately to proactive
14:23:12 monitoring occurred sometime in the May 2007 time
14:23:17 frame, based on this document; is that right?

14:23:22 A. That's right.

14:23:22 Q. The acquisition occurred in 2006; isn't
14:23:25 that right?

14:23:26 A. Correct.

14:23:29 Q. Why was there a delay in bringing Atom in
14:23:35 line with the different approach, as you indicated
14:23:41 it was, at MTV Networks?

14:23:45 MR. WILKENS: I'm going to caution you not
14:23:47 to get into attorney-client communications. If you

1 SCOTT ROESCH

2 14:23:49 can answer without doing it, please do.

3 14:23:59 THE WITNESS: I think there were two basic

4 14:24:00 reasons. One was we -- AddictingClips was an

5 14:24:04 extremely small site with few resources. We were

6 14:24:10 unable to make significant changes very quickly.

7 14:24:16 And the other major reason, I think it

8 14:24:19 took the company some time to get to know us in a

9 14:24:24 way that -- and -- and get to know our policies to

10 14:24:27 the extent -- and discuss how they should be

11 14:24:30 evolved. So those two factors combined to affect

12 14:24:34 the timing.

13 14:24:37 Q. MTV was aware that content was being

14 14:24:40 immediately published with no review prior to its

15 14:24:44 acquisition of Atom Films of AddictingClips -- of

16 14:24:51 Atom Films and the AddictingClips site, wasn't it?

17 14:24:55 MR. WILKENS: Objection. No foundation.

18 14:24:56 THE WITNESS: I don't know.

19 14:24:57 BY MR. RUBIN:

20 14:24:58 Q. Did you have any discussions with anyone

21 14:25:00 at MTV Films prior to the acquisition regarding

22 14:25:05 monitoring of content on the AtomFilms website?

23 14:25:12 A. And to clarify, I didn't have any

24 14:25:14 discussion with MTV Films or anybody at MTV Networks

25 14:25:20 regarding that.

1 SCOTT ROESCH

2 14:25:21 Q. Were you involved in the acquisition of

3 14:25:23 Atom Films in any way?

4 14:25:26 A. Yes.

5 14:25:27 Q. In what way were you involved?

6 14:25:30 A. I was responsible for a -- a group within

7 14:25:33 the company that was acquired.

8 14:25:35 Q. Did you have any interaction with MTV in

9 14:25:39 connection with the acquisition?

10 14:25:43 MR. WILKENS: Objection to the form.

11 14:25:45 THE WITNESS: Prior to the agreement, no.

12 14:25:47 BY MR. RUBIN:

13 14:25:48 Q. During the due diligence phase?

14 14:25:59 A. Yes.

15 14:26:01 Q. Do you know who was interacting -- who at

16 14:26:04 Atom was interacting with MTV Networks, and for

17 14:26:08 Viacom more broadly, prior to your involvement?

18 14:26:14 A. Yes, I -- I'm aware of at least some of

19 14:26:16 the people involved.

20 14:26:18 Q. Who would they have been?

21 14:26:19 A. Mika Salmi was involved.

22 14:26:23 Q. Who else?

23 14:26:24 A. Margaret McCarthy, our chief operating

24 14:26:28 officer.

25 14:26:28 Q. Who else?

1 SCOTT ROESCH

2 14:26:29 A. Victoria Libin.

3 14:26:33 Q. And who else?

4 14:26:34 A. And beyond that, I'm not sure.

5 14:27:15 Q. Okay. Were you involved in the review of

6 14:27:19 content on the AtomUploads site prior to it being

7 14:27:30 published to the service?

8 14:27:41 A. Not on any regular basis.

9 14:27:48 Q. Do you know how the user upload process

10 14:27:51 worked, following the transition to Atom Uploads?

11 14:28:00 A. What aspect of the upload process?

12 14:28:03 Q. What happened following the upload by the

13 14:28:05 user.

14 14:28:08 A. Yeah, at high level, I'm familiar with it.

15 14:28:10 Q. Could you please describe it?

16 14:28:12 A. The content was reviewed. The content was

17 14:28:21 viewable in an administrative -- in a -- on a page,

18 14:28:25 viewable by people with administrative access to the

19 14:28:29 website, where they would watch the content and

20 14:28:32 either approve it for publication, reject it, or

21 14:28:38 mark it for further review.

22 14:28:50 MR. RUBIN: I'd like to mark Exhibit 26.

23 14:28:52 (Roesch Deposition Exhibit Number 26 was

24 14:28:52 marked for identification.)

25 14:28:55 MR. RUBIN: Pardon me -- Exhibit 26?

1 SCOTT ROESCH

2 14:29:00 MS. WILSON: Uh-huh.

3 14:29:31 BY MR. RUBIN:

4 14:29:31 Q. Mr. Roesch, Exhibit 26 is an e-mail string
5 14:29:36 between you and Andrew Rosen dated February 1st,
6 14:29:43 2007, produced by Viacom in this litigation, bearing
7 14:29:47 Bates number VIA 01675542.

8 14:29:52 Do you recall this e-mail?

9 14:29:57 A. Yes, I do.

10 14:30:04 Q. Andrew wrote to you and -- and said he:
11 14:30:06 ". . . learned from Dave at Shockwave that
12 14:30:08 you have been getting up at 4:00 a.m. to
13 14:30:11 moderate."

14 14:30:12 Do you see that?

15 14:30:13 A. I do.

16 14:30:14 Q. Was that true?

17 14:30:15 A. I don't know if 4:00 a.m. was true, but we
18 14:30:18 were getting up pretty early.

19 14:30:20 Q. And you responded that:
20 14:30:22 ". . . a few of us are tackling the early
21 14:30:25 morning and late night shifts,"
22 14:30:26 and calling it porn patrol. Do you see that?

23 14:30:30 A. I do.

24 14:30:30 Q. You're smiling. Do you remember this
25 14:30:32 period of time fondly?

1 SCOTT ROESCH

2 14:30:39 A. I -- I -- the name "porn patrol" always

3 14:30:44 makes me laugh.

4 14:30:45 Q. Who came up with that name? Do you know?

5 14:30:47 A. I don't recall.

6 14:30:48 Q. Why was it called "porn patrol"?

7 14:30:52 A. Well, the -- in -- in the process of

8 14:30:59 executing these moderating responsibilities

9 14:31:01 described in this e-mail, we would, you know,

10 14:31:06 semi-regularly encounter pornographic material that

11 14:31:10 needed to be removed from the website. So we dubbed

12 14:31:13 it "porn patrol."

13 14:31:25 Q. And did all members of the porn patrol

14 14:31:27 have access to the administrative interface you

15 14:31:31 mentioned in your prior answer?

16 14:31:38 A. Yes, I -- I don't recall if there was only

17 14:31:41 one administrative -- sorry. There was one

18 14:31:45 administrative interface. There may have been

19 14:31:48 multiple log-ins for it.

20 14:31:50 Q. And when you were getting up early in the

21 14:31:53 morning, 4:00 a.m., whatever it was, were you coming

22 14:31:58 in to the office, or were you logging in from home?

23 14:32:01 A. We were logging in from home.

24 14:32:06 Q. Could you describe -- describe how the

25 14:32:14 porn patrol process worked?

1 SCOTT ROESCH

2 14:32:21 A. Yes. At predefined times, generally late

3 14:32:29 in the evening and early in the morning, the person

4 14:32:34 on duty would look at the thumbnails and metadata

5 14:32:40 associated with content that had been published on

6 14:32:43 the website after the last time somebody had been on

7 14:32:48 duty, and would look at problematic content. And if

8 14:32:57 there was a thumbnail or a text that suggested the

9 14:33:01 content may be problematic, the person on duty would

10 14:33:05 watch it and take further action as necessary.

11 14:33:17 Q. What would make a thumbnail or text

12 14:33:26 problematic?

13 14:33:26 A. Well, within the context of -- of --

14 14:33:28 keeping on the porn patrol theme, a thumbnail that

15 14:33:33 included nudity would -- would be problematic.

16 14:33:38 Q. Was the porn patrol only looking for

17 14:33:42 pornography?

18 14:33:43 A. No.

19 14:33:43 Q. What else were you looking for?

20 14:33:45 A. We were looking for content that was out

21 14:33:49 of step with our terms of service in any way.

22 14:33:54 Q. And what other type of content beyond

23 14:33:57 pornography did you consider to be out of step with

24 14:34:00 your terms of service?

25 14:34:02 A. The content that depicted illegal acts.

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SCOTT ROESCH

14:34:06 For example, I think it was -- I think that was
14:34:09 mentioned in the terms of service. And content that
14:34:14 was infringing, and probably more. Big paragraph in
14:34:19 there.

14:34:20 Q. And by "infringing," do you mean
14:34:21 infringing copyright?

14:34:23 A. Yes.

14:34:26 Q. Did you find it fairly easy to make
14:34:29 determinations about which clips should be rejected
14:34:32 for violating pornography guidelines?

14:34:37 MR. WILKENS: Objection to the form.

14:34:43 THE WITNESS: Generally, it was -- it was
14:34:44 fairly easy to figure out what needed -- you know,
14:34:48 what should be disqualified on pornographic grounds.

14:34:51 BY MR. RUBIN:

14:34:52 Q. What made that so easy?

14:34:55 MR. WILKENS: Objection to the form.

14:34:59 THE WITNESS: You know, there's a famous
14:35:00 line, "You know it when you see it."

14:35:02 BY MR. RUBIN:

14:35:02 Q. Uh-huh. Indeed there is.

14:35:07 A. And gen- -- I should also -- generally,
14:35:11 there -- I believe the policy was, if the -- if the
14:35:14 image or clip contained nudity, we would ban that.

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SCOTT ROESCH

14:35:20 Q. So you had all of the information at your
14:35:22 fingertips upon viewing the clip, or the fingernail
14:35:28 of the clip, to make the determination of whether it
14:35:31 should be approved or not?

14:35:32 MR. WILKENS: Objection to the form.

14:35:34 THE WITNESS: Did you mean we had -- did
14:35:36 we have the functionality to execute that, or --

14:35:39 BY MR. RUBIN:

14:35:40 Q. No, I mean, if the policy is no nudity,
14:35:44 you can tell simply by looking at the image whether
14:35:48 or not it contains nudity, and therefore determine
14:35:52 whether or not it should be approved or not; right?

14:35:54 A. Right.

14:35:55 Q. Did you have the functionality to approve
14:35:57 it or reject it right there, at your fingertips --
14:35:59 tips as well?

14:36:01 A. Yeah, I think we did.

14:36:02 Q. And that was through this administrative
14:36:04 interface you've referred to; right?

14:36:06 A. Yes.

14:36:08 Q. Did you find it just as easy to make
14:36:11 determinations about which clips should be rejected
14:36:15 or approved for out -- for being infringing on
14:36:20 copyright?

1 SCOTT ROESCH

2 14:36:21 MR. WILKENS: Objection to the form.

3 14:36:25 THE WITNESS: No.

4 14:36:25 BY MR. RUBIN:

5 14:36:26 Q. Why not?

6 14:36:37 A. Because we didn't always have access to

7 14:36:44 information about the uploader or the rights that

8 14:36:49 uploader might hold to the content.

9 14:36:55 BY MR. RUBIN:

10 14:36:55 Q. In the context of monitoring the content,

11 14:37:01 your role in porn patrol, did the length of a clip

12 14:37:06 ever play a role in whether or not you approved or

13 14:37:11 rejected it?

14 14:37:21 A. I'm not sure.

15 14:37:31 Q. Do you know if the materials that you were

16 14:37:36 reviewing were published on the AddictingClips

17 14:37:41 website and viewable to the public for any amount of

18 14:37:46 time prior to being approved or rejected?

19 14:37:49 A. At which time period?

20 14:37:51 Q. At any time period.

21 14:37:56 A. I'm sorry. Could you repeat the question?

22 14:37:59 Q. Sure. And I'll step back so we can get

23 14:38:02 some context.

24 14:38:03 There was a period of time when the

25 14:38:05 service was referred to as AddictingClips -- I think

1 SCOTT ROESCH

2 14:38:08 we've talked about it today as Version 2 -- when

3 14:38:10 users of the service could upload clips and they

4 14:38:14 were immediately published. There came a time when

5 14:38:20 those clips were reviewed.

6 14:38:26 I'm asking you whether there was ever a

7 14:38:29 time when that review period occurred after they

8 14:38:32 went live on the site, as opposed to occurring

9 14:38:35 before they went live on the site, such that you, as

10 14:38:40 a member of the porn patrol, for example, might have

11 14:38:43 ultimately determined that a clip should come down,

12 14:38:47 say for copyright infringement, but it would have

13 14:38:51 been a clip that actually had been live for some

14 14:38:55 period of time before you were able to make that

15 14:38:58 determination.

16 14:38:59 A. I understand.

17 14:39:00 Q. Yes. How long a period of time was that

18 14:39:02 the work flow?

19 14:39:09 A. Well, if the AtomUploads site went live in

20 14:39:15 May, and included moderation before the clips were

21 14:39:21 published, I believe we started moder- -- I believe

22 14:39:23 we started reviewing clips after they were published

23 14:39:26 possibly in late '06 or early '07. So that's the

24 14:39:31 general time frame.

25 14:40:32 MR. RUBIN: I'd like to introduce Roesch

1 SCOTT ROESCH

2 14:40:35 27.

3 14:40:36 (Roesch Deposition Exhibit Number 27 was

4 14:40:36 marked for identification.)

5 14:40:49 BY MR. RUBIN:

6 14:41:03 Q. Mr. Roesch, this is a document that Viacom

7 14:41:05 produced in this litigation. It's an e-mail string

8 14:41:07 from January 9th, 2007, in which you participated,

9 14:41:12 bears Bates number VIA 01959682 to -83.

10 14:41:21 Do you recognize this e-mail?

11 14:41:43 A. I recognize it.

12 14:41:48 Q. Do you see in the e-mail, last-in-time

13 14:41:51 e-mail, that you sent, the second paragraph:

14 14:41:57 "Important point"? Do you see that?

15 14:42:05 A. I do see that.

16 14:42:06 Q. Could you read that paragraph out loud,

17 14:42:08 please?

18 14:42:09 A. (Reading:)

19 14:42:12 "Important point -- if you find

20 14:42:15 problematic material, go ahead and remove

21 14:42:18 it from the site before sending Jesse the

22 14:42:20 notification. (This is different than the

23 14:42:22 past process, but we need to remove stuff

24 14:42:25 right away after seeing it.)"

25 14:42:27 Q. What was the "past process" being referred

1 SCOTT ROESCH

2 14:42:30 to in that e-mail?

3 14:42:34 A. I believe the process was to send -- was

4 14:42:40 to escalate the content question or issue to Jesse,

5 14:42:46 and have -- and -- and -- who was a member of the

6 14:42:54 legal team, and allow the legal team to take further

7 14:42:58 action.

8 14:42:58 Q. And the new process was to remove it right

9 14:43:04 away?

10 14:43:04 A. The new -- the complete new process was to

11 14:43:06 remove it from the site right away, and send Jesse

12 14:43:11 the notification.

13 14:43:12 Q. Do you know what the volume, roughly, of

14 14:43:14 uploads to the AddictingClips service was around

15 14:43:17 this time?

16 14:43:20 A. I -- I have a general recollection that it

17 14:43:22 may have been in the 50-to-100 uploads per day

18 14:43:26 range.

19 14:43:34 Q. And if you look at the earlier e-mail from

20 14:43:36 Carla Gaytan, is that a fairly typical

21 14:43:43 representation of work distribution for the -- for

22 14:43:48 monitoring the service?

23 14:43:53 A. Typical of -- of what?

24 14:43:55 Q. Of this time period for reviewing user

25 14:44:01 submissions.

1 SCOTT ROESCH

2 14:44:02 A. I don't recall, be- -- beyond just reading

3 14:44:05 this. I don't have any reason to doubt it.

4 14:44:20 MR. RUBIN: I'd like to introduce Roesch

5 14:44:22 28.

6 14:44:23 (Roesch Deposition Exhibit Number 28 was

7 14:44:23 marked for identification.)

8 14:44:31 THE WITNESS: Thank you.

9 14:44:33 BY MR. RUBIN:

10 14:44:49 Q. Mr. Roesch, this is a document that Viacom

11 14:44:51 produced from your files titled "Challenge." It

12 14:44:54 bears Bates number VIA 00155715 to 75- -- -716,

13 14:44:56 rather.

14 14:45:05 Do you recognize this document?

15 14:45:23 A. I don't recognize the document.

16 14:45:32 Q. If you can look at Arabic 2, "Short Term

17 14:45:38 Solution. Current solution."

18 14:45:47 MR. WILKENS: If we could just -- if we

19 14:45:49 could just go off the record for a second. I want

20 14:45:52 to check whether this document was drafted by a

21 14:45:55 lawyer.

22 14:46:00 MR. RUBIN: Okay. Let's go off the

23 14:46:02 record.

24 14:46:04 THE VIDEOGRAPHER: We are now going off

25 14:46:05 the record. The time is 2:46 p.m.

1 SCOTT ROESCH

2 14:46:10 (Short break.)

3 14:48:52 THE VIDEOGRAPHER: We are now back on the

4 14:48:53 record. The time is 2:49 p.m.

5 14:48:58 BY MR. RUBIN:

6 14:49:00 Q. Can I turn your attention back to Exhibit

7 14:49:02 28, please, Mr. Roesch?

8 14:49:04 A. Yes.

9 14:49:06 Q. Arabic 2.a.2. This is describing the

10 14:49:11 "Current solution." It's the one we were just

11 14:49:14 discussing. A con was that:

12 14:49:18 "It does not review clips before they were

13 14:49:21 posted, does not provide for 24-hour

14 14:49:24 monitoring, and is not very scalable."

15 14:49:27 Do you agree with that assessment?

16 14:49:29 A. Can you refresh my memory on the date of

17 14:49:32 this document?

18 14:49:49 MR. WILKENS: It's not dated -- it isn't

19 14:49:50 -- it's not dated, so I guess the question is

20 14:49:52 whether you're aware of a metadata date.

21 14:50:00 MR. RUBIN: I believe it -- yeah, I do

22 14:50:02 have it. January 20th, 2007.

23 14:50:04 THE WITNESS: Okay.

24 14:50:04 BY MR. RUBIN:

25 14:50:05 Q. So it is dated 11 days after the e-mail in

1 SCOTT ROESCH

2 14:50:11 Exhibit 27.

3 14:50:14 MR. WILKENS: We'll accept your

4 14:50:15 representation about what the metadata says.

5 14:50:18 MR. RUBIN: Sure. I'm -- I'm basing it on

6 14:50:19 information that you provided us.

7 14:50:21 THE WITNESS: Okay. I'm -- so what was

8 14:50:23 the question again?

9 14:50:24 BY MR. RUBIN:

10 14:50:24 Q. The question was whether you agree that

11 14:50:26 that was a con of the current solution.

12 14:50:33 A. Well, there are three cons listed here.

13 14:50:39 Q. I'm looking at -- let's just make sure

14 14:50:41 we're at the same place. 1 -- 1 is "Long term

15 14:50:44 solution"?

16 14:50:44 A. Yes.

17 14:50:44 Q. 2 is "Short Term Solution," and "a,"

18 14:50:48 "Current solution"?

19 14:50:49 A. Yeah.

20 14:50:49 Q. And then I'm looking at the little "2" of

21 14:50:51 that --

22 14:50:53 A. Are you --

23 14:50:53 Q. -- and I'm asking whether or not you

24 14:50:55 agree, at this particular point, is a con, it would

25 14:50:58 be -- or these three subpoints in this con?

1 SCOTT ROESCH

2 14:51:01 MR. WILKENS: He's trying to answer that

3 14:51:02 question.

4 14:51:03 MR. RUBIN: Great.

5 14:51:07 THE WITNESS: Well, I'll -- I'll -- I'll

6 14:51:09 take them in reverse order. I agree that it was not

7 14:51:12 very scalable. I agree that it did not provide for

8 14:51:16 24-hour monitoring. And I agree that it didn't --

9 14:51:24 the current practice didn't allow us to review clips

10 14:51:26 before they were posted, which was, at the time, our

11 14:51:30 objective. I -- I agree.

12 14:51:33 BY MR. RUBIN:

13 14:51:34 Q. Did you personally view the fact that

14 14:51:37 clips were not being reviewed before they were

15 14:51:40 posted as a con?

16 14:51:56 A. Yes.

17 14:51:57 Q. Why?

18 14:52:00 A. Because we had a business objective to

19 14:52:02 review clips, and this solution didn't meet it, so I

20 14:52:07 saw that as a con.

21 14:52:08 Q. It was a con in the context of meeting a

22 14:52:10 business objective?

23 14:52:11 A. Yes.

24 14:52:15 Q. And who set that business objective?

25 14:52:24 A. The legal -- legal team, I believe, set

1 SCOTT ROESCH

2 14:52:25 that objective -- or, I -- I'm sorry. I shouldn't

3 14:52:29 say -- MTV Networks set that objective, and I

4 14:52:33 believe it included people from the standards and

5 14:52:39 practices department and the legal team.

6 14:52:42 Q. Who is in -- who in particular from the

7 14:52:44 standards and practices team?

8 14:52:46 A. I don't recall.

9 14:52:48 Q. Do you know who was a member of that team?

10 14:52:50 A. No, not offhand.

11 14:53:20 MR. RUBIN: I'd like to introduce Roesch

12 14:53:22 Exhibit 29.

13 14:53:23 (Roesch Deposition Exhibit Number 29 was

14 14:53:23 marked for identification.)

15 14:53:39 BY MR. RUBIN:

16 14:53:40 Q. Mr. Roesch, Exhibit 29 is an e-mail that

17 14:53:49 you sent to Jesse Hollister and Brendan Jackson on

18 14:53:55 February 23rd, 2007. Viacom produced it in this

19 14:53:59 litigation, bearing Bates number VIA 00251028.

20 14:54:04 "Subject: Dawn patrol."

21 14:54:10 Do you recall this e-mail?

22 14:54:14 A. Yeah, I don't recall it.

23 14:54:16 Q. Do you recall generally sending e-mails

24 14:54:19 summarizing your early morning monitoring

25 14:54:22 activities?

1 SCOTT ROESCH

2 15:28:37 Flux moderation team is responsible for moderation?

3 15:28:42 A. I know some of them. I'm not sure I know

4 15:28:45 all of them.

5 15:28:46 Q. Could you list the ones that you are aware

6 15:28:48 of?

7 15:28:49 A. Yes. Atom.com, certain -- certain

8 15:28:55 MTV-related sites, and if -- if I named any more I'd

9 15:29:09 be speculating.

10 15:29:10 Q. Do you know --

11 15:29:11 A. There are others.

12 15:29:12 Q. Do you know if, today, there are any

13 15:29:16 Viacom-owned sites that allow for the upload of

14 15:29:20 user-generated content, that is published

15 15:29:23 automatically, without review at all, prior to

16 15:29:25 publication?

17 15:29:30 A. I don't believe so. But I -- I -- I can't

18 15:29:34 speak for the entire company.

19 15:29:49 Q. We talked earlier a little bit about

20 15:29:52 Audible Magic. When did you first hear of Audible

21 15:29:56 Magic?

22 15:30:06 A. Must have been sometime in 2006 or 2007.

23 15:30:09 Q. How did you hear about them?

24 15:30:27 A. I don't recall. From someone within the

25 15:30:32 company.

1 SCOTT ROESCH

2 15:30:36 Q. In what context did you hear about them?

3 15:30:40 A. I believe I heard the company was

4 15:30:44 considering using Audible Magic.

5 15:30:49 Q. Did you consider using Audible Magic in

6 15:30:51 connection with the UGC deployment for

7 15:30:57 AddictingClips, that is, AddictingClips Version 2?

8 15:31:11 A. I think we may have.

9 15:31:12 Q. Why didn't you?

10 15:31:13 MR. WILKENS: Objection to the form.

11 15:31:15 BY MR. RUBIN:

12 15:31:15 Q. I'll restate it. Why didn't Atom or

13 15:31:21 AddictingClips utilize Audible Magic in connection

14 15:31:27 with the user-generated content site it launched,

15 15:31:30 the -- what we've been referring to today as Version

16 15:31:31 2 of Addicting Clips, the one that was run as a

17 15:31:33 white label solution by Reality Digital?

18 15:31:39 A. Well, I'm not sure that, at the time when

19 15:31:42 we launched it, if we knew about it. There were a

20 15:31:50 lot of features we thought were interesting. We

21 15:31:53 just didn't have the time or resources to implement.

22 15:31:56 So some combination of those factors is -- explains

23 15:32:01 why it wasn't there at -- at the initial launch.

24 15:32:04 BY MR. RUBIN:

25 15:32:04 Q. Do you know if you investigated the

1 SCOTT ROESCH

2 15:32:07 options available for content filtering prior to the

3 15:32:10 launch of Version 2 of the AddictingClips site?

4 15:32:17 MR. WILKENS: Objection to the form.

5 15:32:19 THE WITNESS: I'd be -- I'd be happy to

6 15:32:20 look at the project document, if you would like me

7 15:32:25 to, but without that, I don't recall.

8 15:32:27 BY MR. RUBIN:

9 15:32:27 Q. You don't recall whether you did or not,

10 15:32:28 as you sit here today?

11 15:32:30 A. No.

12 15:32:31 Q. The RFP that is Exhibit 16 makes no

13 15:32:52 reference to any automated filtering service, makes

14 15:32:57 no reference to Audible Magic at all.

15 15:33:00 MR. WILKENS: Objection. Are you asking

16 15:33:01 the witness a question or testifying?

17 15:33:03 MR. RUBIN: I'm going to -- I'm about to

18 15:33:04 ask him a question, yes. Don't -- please don't

19 15:33:06 interrupt, Scott.

20 15:33:07 BY MR. RUBIN:

21 15:33:07 Q. Was it a conscious decision by Atom not to

22 15:33:13 seek to implement content filtering on the UGC

23 15:33:19 version -- site that it was deploying.

24 15:33:22 MR. WILKENS: Objection, assumes facts. I

25 15:33:24 move to strike the testimony that Mr. Rubin

1 SCOTT ROESCH

2 15:33:29 attempted to give.

3 15:33:30 If you understand the question, you can

4 15:33:31 answer.

5 15:33:35 THE WITNESS: Are you -- are you referring

6 15:33:35 to November 2005, the period when the RFP was

7 15:33:39 issued?

8 15:33:39 BY MR. RUBIN:

9 15:33:39 Q. I'm referring to Exhibit 16, which will

10 15:33:42 speak for itself, Scott. I'm not testifying.

11 15:33:46 It does not contain anything about Audible

12 15:33:48 Magic. It does not contain anything about UCB

13 15:33:51 filtering. I'm asking whether it was a conscious

14 15:33:53 omission or whether you simply weren't aware of it

15 15:33:57 at the time?

16 15:34:01 MR. WILKENS: Same objection.

17 15:34:02 THE WITNESS: So Exhibit 16 is from

18 15:34:04 November 2005, and I don't think we knew about it at

19 15:34:11 the time, but I'm not 100 percent sure.

20 15:34:14 BY MR. RUBIN:

21 15:34:14 Q. And -- and do you recall whether any

22 15:34:16 investigation of the marketplace was undertaken by

23 15:34:19 anyone at Atom into the availability of filtering

24 15:34:24 technologies that could be used in connection with

25 15:34:26 the -- with the launch of a UGC service?

1 SCOTT ROESCH

2 15:34:31 MR. WILKENS: Objection. Asked and

3 15:34:32 answered.

4 15:34:33 THE WITNESS: I don't know if that was

5 15:34:34 done.

6 15:34:34 BY MR. RUBIN:

7 15:34:34 Q. Did you do an investigation of the market

8 15:34:36 place?

9 15:34:36 A. The marketplace for filtering technologies

10 15:34:40 at the time we were preparing that service?

11 15:34:43 Q. Correct.

12 15:34:43 A. I did not.

13 15:34:44 Q. Do you know if Mika Salmi did?

14 15:34:47 A. I don't know if Mika did.

15 15:34:49 Q. Did you -- do you recall any discussions

16 15:34:51 with Mr. Salmi about that topic?

17 15:35:10 A. I don't recall it. It's possible that --

18 15:35:13 that we discussed it.

19 15:35:15 Q. Did Joel Sanders conduct any investigation

20 15:35:18 of that issue?

21 15:35:24 A. Joel or Brendan may have investigated it

22 15:35:26 at some point. I believe it was at some point after

23 15:35:31 that RFP period.

24 15:35:33 Q. At the time of the launch, in that

25 15:35:35 process, were they directed to investigate it,

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SCOTT ROESCH

15:35:39 either Mr. Sanders or Mr. Jackson?

15:35:41 A. I -- I don't -- I don't recall the timing,
15:35:44 and I -- obviously, I clearly don't recall if it was
15:35:48 actually done. There was, as time went on, some
15:35:51 discussion of these technologies, and we ultimately
15:35:54 did implement Audible, but the timing of when and
15:35:58 how we investigated that, I -- I don't know.

15:36:01 Q. But you did not have Audible Magic or any
15:36:05 other content filtering technology implemented by
15:36:09 the service at the time it was launched; isn't that
15:36:13 right?

15:36:13 A. That's right.

15:36:15 Q. Was the omission of that feature, or
15:36:20 availability on the service, designed to foster
15:36:24 infringement?

MR. WILKENS: Objection to the form.

THE WITNESS: No.

BY MR. RUBIN:

15:36:34 Q. You didn't purposely omit this content --
15:36:40 the Audible Magic content filtering, or any other,
15:36:45 in order to foster users uploading infringing
15:36:48 content, did you?

MR. WILKENS: Objection to the form.

THE WITNESS: No, we didn't do that.

1 SCOTT ROESCH

2 15:37:01 BY MR. RUBIN:

3 15:37:01 Q. And do you recall the specific time frame

4 15:37:04 when Audible Magic first began to consider deploying

5 15:37:11 Audible Magic?

6 15:37:12 MR. WILKENS: Object -- objection. I

7 15:37:13 think you might want to rephrase that question, if

8 15:37:16 you read the --

9 15:37:17 MR. RUBIN: Thank you.

10 15:37:17 BY MR. RUBIN:

11 15:37:18 Q. Do you recall the specific time frame when

12 15:37:22 AddictingClips began to consider deploying Audible

13 15:37:25 Magic for its service?

14 15:37:27 MR. WILKENS: Objection. Asked and

15 15:37:28 answered.

16 15:37:33 THE WITNESS: I -- I don't recall the

17 15:37:35 specific timing of that, no.

18 15:37:38 MR. RUBIN: I'd like to introduce Roesch

19 15:37:40 Exhibit 35.

20 15:37:40 (Roesch Deposition Exhibit Number 35 was

21 15:37:40 marked for identification.)

22 15:37:54 THE WITNESS: Thank you.

23 15:37:55 BY MR. RUBIN:

24 15:37:55 Q. Mr. Roesch, Exhibit 35 is a document

25 15:37:57 produced in this litigation by Viacom. It's an

1 SCOTT ROESCH

2 16:57:59 July 17th, 2007. Pardon me.

3 16:58:06 Do you recall this e-mail?

4 16:58:12 A. Yes.

5 16:58:14 Q. What was this e-mail about?

6 16:58:20 A. It relates to playback problems with video

7 16:58:25 on Atom Uploads.

8 16:58:28 Q. And does this e-mail look accurate to you?

9 16:58:32 A. "Accurate" in what sense?

10 16:58:38 Q. Accurate in the sense that the information

11 16:58:40 contained on it is correct, that you wrote it.

12 16:58:51 A. I -- yeah, I -- I wrote the parts of it

13 16:58:56 that's attributed to me. Yeah.

14 16:58:58 Q. Do you see the line where you say:

15 16:59:00 "We are in the process of upgrading the

16 16:59:02 streaming setup to Limelight and getting

17 16:59:04 off Reality Digital's internal setup"?

18 16:59:06 A. I do, yeah.

19 16:59:07 Q. Did that process of upgrading actually

20 16:59:11 occur?

21 16:59:12 A. Yes, it did.

22 16:59:14 Q. So are you no longer on Reality Digital's

23 16:59:18 internal setup?

24 16:59:20 A. We're no longer on any of Reality

25 16:59:22 Digital's systems at this point.

1 SCOTT ROESCH

2 16:59:24 Q. Is that what this is referring to?

3 16:59:26 A. No.

4 16:59:27 Q. What is this referring to?

5 16:59:31 A. My comment at 11:28:08?

6 16:59:35 Q. Indeed.

7 16:59:36 A. It's referring to changing the way our

8 16:59:42 streaming video content is delivered from Reality

9 16:59:46 Digital's internal setup to Limelight.

10 16:59:52 Q. What is Limelight?

11 16:59:53 A. Limelight is a third-party hosting

12 16:59:56 handler, streaming company.

13 16:59:59 Q. And you utilize them now, or have utilized

14 17:00:04 them in the past, to stream video content?

15 17:00:07 A. We have used them in the past. We may be

16 17:00:13 using them now. I'm not sure.

17 17:00:19 Q. When did Atom stop utilizing the white

18 17:00:24 label solution provided by Reality Digital for its

19 17:00:28 UGC service?

20 17:00:32 A. June 2008.

21 17:00:33 Q. Why did Atom stop using the Reality

22 17:00:38 Digital service?

23 17:00:41 A. We began using technology and systems

24 17:00:48 developed or controlled internally at MTVN.

25 17:00:52 Q. Were you involved in any way in the

1 SCOTT ROESCH

2 17:00:54 transition from Reality Digital internal to MTVN

3 17:01:02 systems?

4 17:01:03 A. Yes.

5 17:01:03 Q. Do you know if the information relating to

6 17:01:06 the services that Reality Digital provided has been

7 17:01:10 retained?

8 17:01:16 A. What information are you referring to?

9 17:01:19 Q. The information that was in the possession

10 17:01:21 of Reality Digital regarding the operation of their

11 17:01:24 service.

12 17:01:25 A. So --

13 17:01:26 Q. Pardon me. The information that was in

14 17:01:27 the possession of Reality Digital regarding the

15 17:01:28 services they were providing in connection with the

16 17:01:30 Atom, and previously the AddictingClips, service.

17 17:01:36 MR. WILKENS: Objection to the form.

18 17:01:42 THE WITNESS: Can you give me an example

19 17:01:44 of a specific -- of a specific type of information

20 17:01:45 you're interested in?

21 17:01:47 BY MR. RUBIN:

22 17:01:48 Q. Information relating to the design of

23 17:01:51 the -- the design or technical implementation of the

24 17:01:57 service that they provided for Atom.

25 17:02:01 A. We have some information in that -- in