

Case No. 16-56843

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

DISNEY ENTERPRISES, INC., ET AL.,
Plaintiffs-Appellees,

v.

VIDANGEL, INC.
Defendant-Appellant.

Appeal from the United States District Court
for the Central District of California
Case No. 16-cv-04109-AB (PLAx)
The Honorable André Birotte Jr., Presiding

**APPELLEES' SUPPLEMENTAL APPENDIX
VOLUME 5
(Pages S.A.958 - S.A.1045)**

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9

10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA
12 WESTERN DIVISION

13

14 DISNEY ENTERPRISES, INC.;
LUCASFILM LTD. LLC;
15 TWENTIETH CENTURY FOX FILM
CORPORATION and WARNER
16 BROS. ENTERTAINMENT INC.,

17 Plaintiffs and Counter-
Defendants,

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vs.

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VIDANGEL, INC.,

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21 Defendant and Counter-
Claimant.

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Case No. 16-cv-04109-AB (PLAx)

**FILED UNDER SEAL PURSUANT
TO ORDER OF THE COURT
DATED OCTOBER 5, 2016 [DKT.
97]**

**SUPPLEMENTAL DECLARATION
OF ROBERT SCHUMANN IN
SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY
INJUNCTION**

Judge: Hon. André Birotte Jr.
Date: October 31, 2016
Time: 10:00 a.m.
Crtrm.: 4

Trial Date: None Set

1 I, Robert Schumann, declare as follows:

2 1. I have personal knowledge of the facts set forth herein, except as to
3 those stated on information and belief and, as to those, I am informed and believe
4 them to be true. If called as a witness, I could and would testify competently to the
5 facts stated herein.

6 2. I submit the following supplemental declaration on behalf of Plaintiffs
7 in the above-referenced action. In addition to the materials listed in my declaration
8 of August 22, 2016, I have reviewed the declarations of Sigurd Meldal and Neal
9 Harmon; the deposition transcript of Tedd Cittadine; and VidAngel's Opposition to
10 Plaintiffs' Motion For Preliminary Injunction. I also have reviewed the other
11 documents identified in Exhibit A hereto and any other documents referenced in this
12 Supplemental Declaration or in my August 22 Declaration.

13 **Dr. Meldal Agrees That CSS, AACS And BD+ Prevent Access To, And**
14 **Copying Of, Content On DVDs And Blu-Ray Discs**

15 3. As I explained in my August 22 Declaration, CSS, AACS and BD+ use
16 a combination of encryption and authentication measures to prevent unauthorized
17 access to or copying of the encrypted content on DVDs and Blu-ray discs. *See*
18 Schumann Decl. ¶¶ 20-34. These mechanisms are designed to ensure that the
19 content on a protected disc will be played only by authorized DVD and Blu-ray
20 players that have the necessary "keys" to decrypt the encrypted content and the
21 required credentials to authenticate the player to the disc drive. Absent the
22 introduction of illegal circumvention technology, DVD and Blu-ray players have
23 those keys and credentials only if they are licensed by the relevant licensing
24 organization, such as the DVD Copy Control Association ("DVD CCA") in the case
25 of CSS; or the Advanced Access Content System Licensing Administrator ("AACS
26 LA") in the case of AACS.

27 4. Although licensed players can decrypt content on discs protected by
28 CSS, AACS or BD+ during playback, licensed players *cannot* decrypt the content

1 on an encrypted disc to allow *copying* of that content. CSS, AACS and BD+ thus
2 ensure that a licensed player will enable the contemporaneous decryption of the disc
3 and playback of content on that viewer. CSS, AACS and BD+ do not otherwise
4 allow for access to that content, including access that would allow the user to copy
5 the content without encryption. In other words, if a user somehow were able to
6 bypass or remove the measures that prevent access and copying, the content still
7 would be encrypted, meaning that the user could not view the content, convert it to a
8 different format or edit that content. The user would need to decrypt the content in
9 order to carry out any of those processes.

10 5. Dr. Meldal agrees with my conclusion that CSS, AACS and BD+ use a
11 combination of encryption and authentication to prevent unauthorized access to the
12 content on DVDs and Blu-ray discs. *See* Meldal Decl. ¶¶ 9-10 (stating that he
13 “agree[s] with [Mr. Schumann’s] descriptions of how CSS, AACS and BD+ each
14 function” and that “[b]y definition, it is impossible to access, view, copy or alter in
15 any way a motion picture contained on an encrypted digital disc without first
16 unlocking the encryption”). He also agrees that, in the absence of software that
17 removes or bypasses the encryption (software that is, as I discuss below, illegal),
18 CSS, AACS and BD+ would prevent the ordinary consumer from copying or
19 otherwise gaining access to the content on encrypted DVDs or Blu-ray discs. *Id.* at
20 ¶¶ 9-10, 12.

21 **Dr. Meldal Agrees That VidAngel Decrypts The Encrypted Content On DVDs**
22 **And Blu-ray Discs**

23 6. As I explained in my August 22 Declaration, because VidAngel uses
24 DVDs and Blu-ray discs to obtain the copies of Plaintiffs’ works that VidAngel
25 streams, VidAngel must first use illegal software to decrypt the encrypted content
26 on the discs in order to allow it to create digital copies of that content (a process
27 generally referred to as “ripping”) and convert it to a useable format. At his
28 deposition, Mr. Harmon described this process as “open[ing] a decrypted version of

1 the files,” and he confirmed that, to complete the process, VidAngel “use[s] a
2 program [it] purchas[ed] called AnyDVD HD.” Ex. B (Tr. 64:6-8). VidAngel’s
3 Director of Technology described VidAngel’s process for decrypting and copying
4 the content on encrypted DVDs even more bluntly: [REDACTED]

5 [REDACTED] [REDACTED]] See Schumann Decl. Ex. D.

6 7. Dr. Meldal’s declaration confirms that VidAngel accesses and copies
7 content from DVD and Blu-ray discs by using a “software program such as
8 AnyDVD HD.” Meldal Decl. ¶ 37(ii). Dr. Meldal states that VidAngel uses such
9 software “to automatically allow read-access for the purpose of mounting the DVD
10 or Blu-ray files for uploading onto a computer, in the process necessarily removing
11 restrictions on DVD or Blu-ray content access.” *Id.* That is a technical way of
12 saying that VidAngel uses AnyDVD HD and similar products to decrypt the
13 encrypted content on DVDs and Blu-ray discs, so that VidAngel can access the
14 content on those discs and copy that content onto VidAngel’s computer system
15 and/or servers in a usable format. As I have discussed, that is copying that CSS,
16 AACS and BD+ would prevent in the ordinary course of their operation.

17 8. AnyDVD HD is software that, without authorization from copyright
18 owners or the licensing organizations for CSS, AACS or BD+, removes or bypasses
19 the encryption measures on DVDs and Blu-ray discs.

20 9. AACS and BD+ are continually updated in response to software such
21 as AnyDVD HD. In turn, the developers of the unauthorized software will
22 frequently develop new techniques for bypassing the updated protection mechanism.
23 This in essence is a constant process of “cat-and-mouse” between the authorities that
24

25
26 ¹ In this context, [REDACTED] is simply the process of combining multiple files that
27 have been ripped off of a DVD or Blu-ray disc (for example, the audio and video
28 files).

1 license AACS and BD+, and people and entities determined to bypass those
2 protection measures.

3 10. AnyDVD HD enables its customers to receive updates to its illegal
4 circumvention software through an online database. When a customer like
5 VidAngel “buys” AnyDVD HD, that customer is not receiving a one-time product,
6 such as a software file on a computer disc. The customer instead is paying for a
7 subscription, which provides access to whatever is the most up-to-date version of
8 the illegal software. The customer then can use the updated software to circumvent
9 AACS and BD+ on new titles as they are released on Blu-ray discs.

10 11. Dr. Meldal describes AnyDVD HD as “readily available software” that
11 is “easily accessible, despite the fact that much of that software is no longer readily
12 sold in the United States.” Meldal Decl. ¶ 12. Dr. Meldal neglects to mention,
13 however, the reason why such programs are generally unavailable in the United
14 States: They are widely recognized to be illegal ripping software, the sale and
15 distribution of which I understand to be prohibited under the DMCA.

16 12. AnyDVD HD is currently sold by an entity called RedFox, which
17 operates from Belize. *See* Ex. C (screenshot of RedFox page discussing its
18 products, including AnyDVD HD, showing its URL as “www.redfox.bz”). RedFox
19 is a successor to the company SlySoft, which was shut down in February of this
20 year, and which previously sold AnyDVD HD.² During its existence, SlySoft
21 operated from Antigua and Barbuda.

22 13. SlySoft was included—along with sites like ThePirateBay.se and
23 Rapidgator.net—in the Office of United States Trade Representative’s (“USTR”)
24 2013 Out-of-Cycle Review of Notorious Markets, which “identifies select online
25

26 ² *See, e.g.*, ArtsTechnica, “DRM Defeaters Defeated? Slysoft Ceases Operations,”
27 *available at* <http://arstechnica.com/tech-policy/2016/02/drm-defeaters-defeated-slysoft-ceases-operations/>.
28

1 and physical marketplaces that reportedly engage in and facilitate substantial piracy
2 and counterfeiting.” Ex. D at 27. The USTR selects websites for inclusion “both
3 because they exemplify concerns about trademark counterfeiting and copyright
4 piracy on a global basis and because the scale and popularity of these marketplaces
5 can cause economic harm to U.S. and other IPR holders.” *Id.* The USTR report
6 described SlySoft as a company that “sells software that removes region coding and
7 other technological protection measures from optical disks so that they can be
8 viewed and copied without authorization of copyright holders.” *Id.* at 34.

9 14. In 2014, the owner of SlySoft, Giancarla Bettini, was found guilty in
10 Antigua of criminally violating that country’s anti-circumvention law.³

11 15. On February 5, 2016, shortly before SlySoft was shut down, AACS LA
12 requested that the USTR add Antigua and Barbuda as a priority watch country under
13 Section 182 of the Trade Act of 1974 for its “failure to provide adequate remedies to
14 enforce its prohibition on circumvention of technological protections measures.”
15 *See* Ex. E at 46. AACS LA noted that SlySoft’s AnyDVD HD program is “the best
16 known, and to [AACS LA’s] knowledge the most widely used, program for
17 circumventing implementations of AACS Technology and gaining access to the
18 motion picture content protected by [AACS].” *Id.* at 47.

19 16. Dr. Meldal and I agree that, if VidAngel did not use AnyDVD HD or
20 similar products to decrypt DVDs and Blu-ray discs, VidAngel would be not have
21 the ability to: (a) copy the unencrypted digital content from encrypted discs;
22 (b) upload the content onto VidAngel’s internal computer system or third-party
23 servers; (c) convert that content to a format that facilitates streaming; or (d) stream it
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25

26 ³ *See, e.g.,* DigitalDigest.com, “SlySoft Owner Found Criminally Guilty For Making
27 Blu-ray Ripper,” *available at* [http://www.digital-digest.com/news-63893-Slysoft-
28 Owner-Found-Criminally-Guilty-For-Making-Blu-ray-Ripper.html](http://www.digital-digest.com/news-63893-Slysoft-Owner-Found-Criminally-Guilty-For-Making-Blu-ray-Ripper.html).

1 over the Internet. VidAngel takes all of these actions to operate its streaming
2 service.

3 17. Dr. Meldal states that decryption is necessary for VidAngel to filter
4 content obtained from DVDs and Blu-ray discs. *See* Meldal Decl. ¶ 18. It is
5 fundamental, however, that decryption is necessary for VidAngel to *stream* the
6 content that it rips from DVDs and Blu-ray discs. If VidAngel did not decrypt using
7 illegal circumvention software, VidAngel would not be able convert the protected
8 content into the viewable digital copies that VidAngel uses to stream performances
9 to its customers.

10 18. Dr. Meldal states that he finds VidAngel’s use of AnyDVD HD and
11 similar software to be analogous to the “unlocking” of encryption that occurs when
12 a licensed player is used to lawfully view a DVD or Blu-ray disc. Meldal Decl.
13 ¶ 40. Both processes involve decryption, but they are not equivalent. As I have
14 described above, an authorized DVD or Blu-ray player decrypts a DVD or Blu-ray
15 disc during playback pursuant to a license from the relevant licensing organization.
16 Decryption occurs with authorization and at the same time that the disc is played; no
17 permanent, decrypted copy of the content is made as part of the authorized
18 playback. CSS, AACS and BD+ are specifically designed to *allow* such authorized
19 decryption, while otherwise preventing access to the digital content on the protected
20 disc.

21 19. VidAngel, by contrast, uses illegal ripping software to bypass CSS,
22 AACS and BD+ protection in order to create an unencrypted, permanent digital
23 copy of the content on the disc. I understand that the CSS, AACS and BD+
24 licensing terms do not authorize this type of access. Licensed disc players are
25 specifically designed to prevent—and, in the ordinary course of their operation, do
26 prevent—users like VidAngel from copying unprotected digital content from discs,
27 manipulating that content and streaming it over the Internet.

28

1 20. I therefore disagree with Dr. Meldal that “[i]t is inherent in the
2 decryption process that a local version of the unlocked content be created—be it in
3 memory or storage.” *Id.* ¶ 20. While it is true that licensed CSS, AACS and BD+
4 implementations must decrypt content, that decrypted content must be placed into
5 protected memory, cannot be maintained in that memory for longer than necessary
6 to affect the playback, and represents a minor fraction of the overall content at any
7 point in time. In short, licensed CSS, AACS, and BD+ implementation are allowed
8 to maintain ephemeral snippets of the content in the clear. They are specifically NOT
9 allowed to put it in “other storage” as Dr. Meldal states. As a result, a primary
10 purpose of using illegal ripping software is that, in the ordinary course of their
11 operation, CSS, AACS and BD+ use encryption, among other measures, to prevent
12 access to and copying of content contained on DVDs and Blu-ray discs. People use
13 AnyDVD HD and similar software precisely so that the content on the disc will be
14 stripped of its protective layers and copied to another medium without protection.

15 **Dr. Meldal Agrees That VidAngel Creates Digital Copies Of The Content On**
16 **Blu-ray Discs And DVDs And Uploads That Content Onto Computer Servers**

17 21. My review of Dr. Meldal’s Declaration confirms my original opinion
18 about how VidAngel works. Dr. Meldal uses highly technical terms in his
19 declaration. The process that Dr. Meldal describes is quite straightforward:
20 (a) VidAngel purchases a copy of a movie on DVD or Blu-ray disc (I use “movie”
21 in this Declaration to refer to motion pictures and television programs contained on
22 DVDs or Blu-ray discs); (b) VidAngel inserts a copy of the disc into the optical
23 drive of a computer; (c) AnyDVD HD (or a similar ripping program) runs in the
24 background, decrypting the contents of the encrypted disc; (d) VidAngel copies the
25 content of the disc; (e) VidAngel uploads the digital copy of the content onto
26 computer servers; (f) VidAngel prepares the content for filtering and converts it into
27 the proper format for HTTP Live Streaming (“HLS”); and (g) VidAngel streams the
28 content from a copy of the movie that VidAngel has uploaded to and stored on the

1 computer servers, not from the original DVD or Blu-ray disc. *See* Meldal Decl.
2 ¶ 37.

3 22. Dr. Meldal’s declaration also confirms my original understanding of
4 how VidAngel’s filtering technology works. *See id.* VidAngel streams content to
5 its customers over the Internet via HLS. HLS works by dividing a movie into short
6 segments (generally, no more than ten seconds in length) that the user’s computer
7 then requests, in the correct order, to play the movie. VidAngel’s filtering
8 technology allows it to “tag” segments as containing particular types of content that
9 the user may want to filter. The user then selects which filters to apply.

10 23. When a user chooses to filter a certain type of visual content, such as a
11 fight between two characters, VidAngel’s technology causes the user’s computer not
12 to obtain the stream of the segment that includes that particular piece of visual
13 content. That segment is skipped and never streamed to the user. If a user chooses
14 to filter audio content, VidAngel’s technology creates an *altered* segment that mutes
15 the audio content while leaving the visual content unchanged. The user’s computer
16 then downloads the altered segment, rather than the original segment.

17 24. Dr. Meldal does not dispute that VidAngel [REDACTED]
18 [REDACTED].

19 25. While I agree with Dr. Meldal about how VidAngel’s service operates,
20 I disagree with his conclusion that “VidAngel’s service does not even make a ‘copy’
21 of the original motion picture in any traditional sense.” Meldal Decl. ¶ 38. Based
22 on my review of Dr. Meldal’s declaration, Mr. Harmon’s deposition and VidAngel’s
23 documents, it is my professional opinion that VidAngel makes and stores at least
24 *four* different, digital copies of each work that it offers to its users. Those copies are
25 stored on the third-party servers that VidAngel leases and are streamed to
26 VidAngel’s customers over the Internet.

27 26. Mr. Harmon, for example, testified at his deposition that in order to
28 provide filtering, VidAngel must “make a copy of the M2TS files—or the MPEG 2

1 files” on the discs, and must “make a copy of the disc.” “M2TS” and “MPEG 2” are
2 merely different formats for storing audio-visual content. *See* Ex. B (Harmon Dep.
3 60:4-21). When Mr. Harmon refers to copying the “MPEG 2” and “M2TS” files, he
4 is referring to making a digital copy of the movie content on a DVD or Blu-ray disc
5 (after that content has been decrypted using AnyDVD HD).

6 27. Dr. Meldal similarly refers to copying the content on discs and
7 uploading that content onto third party servers. Meldal Decl. ¶ 37.⁴ That content is
8 ultimately converted into a different format that facilitates HLS streaming.
9 According to Dr. Meldal, VidAngel creates at least four copies of the movie in that
10 format, each at a different “bitrate.” *Id.* ¶ 37(vi)(a).⁵

11 28. Because, as I noted above, HLS operates by dividing content into short
12 segments, which are then downloaded by the customer’s computer and displayed to
13 the costumer in the correct order, VidAngel may not store the digital copies of
14 Plaintiffs’ works as a single file. Rather, at least according to Dr. Meldal’s
15 declaration, *see* Meldal Decl. ¶ 37(b), VidAngel appears to store that content in
16 segments. That the digital copies of the movies may be stored in segments,
17 however, does not mean that they are not copies. It is simply an artifact of how
18 streaming works. If one were to put all of the segments together, one would have
19 the entire movie, and in fact this is exactly what happens when a VidAngel user
20 “views” a movie. Further, these digital copies are the ones that are streamed to the
21
22

23 ⁴ Dr. Meldal refers to copying “Matroska” files. As relevant here, “Matroska” is
24 simply a particular format for digitally storing audio or visual content—in this case,
25 the audio or visual content contained in the Matroska files *is* the digital copy of the
26 movie that VidAngel has ripped from a DVD or Blu-ray disc.

27 ⁵ “Bitrate” is a term that refers to the amount of data allocated to represent the
28 content in its compressed form, typically on average and typically described as bits
per second. Generally, files with higher bitrates allow for higher quality streaming.

1 user: The user's computer requests each segment from VidAngel's servers and plays
2 them in order.

3 29. Dr. Meldal states that VidAngel's technology "does not create any
4 watchable copy of Plaintiffs' works" and notes that "a user can view the contents of
5 each segment [of a movie] only after it has been streamed in sequence, decrypted
6 with the correct keys . . . and rendered with a VidAngel media player." Meldal
7 Decl. ¶ 38. The fact that VidAngel places encryption on the segments it streams
8 does not mean that VidAngel has not copied the movie. The content on DVDs and
9 Blu-ray discs is also encrypted, and cannot be viewed absent decryption. But that
10 does not mean that DVDs and Blu-ray discs do not contain copies of movies.

11 **It Is Possible To Run A Filtering Service Without Circumventing The**
12 **Technological Protection Measures On DVDs And Blu-Ray Discs**

13 30. I understand that VidAngel has argued that it is impossible to run a
14 service that filters streamed movies without using an illegal ripping product such as
15 AnyDVD HD to decrypt DVDs and Blu-ray discs. I disagree with that contention.

16 31. Dr. Meldal himself makes clear that at least one company, ClearPlay,
17 provides filtering without circumvention. *See* Meldal Decl. ¶ 15. Dr. Meldal states
18 that ClearPlay operates by selling a special DVD player that allows customers to
19 apply filters when watching content on DVDs that they have lawfully obtained.
20 ClearPlay's DVD player could not function unless it decrypted the content on DVDs
21 during playback. Dr. Meldal, however, states that ClearPlay has lawfully obtained
22 from DVD CCA the CSS "keys" that allow decryption during playback. Assuming
23 that ClearPlay's DVD Player is properly licensed by the DVD CCA, then that player
24 is *authorized* to decrypt the content on DVDs during playback. I am not aware of
25 any evidence that ClearPlay uses illegal ripping software to remove CSS protections
26 from DVDs without authorization.

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

Executed on October 3, 2016, at Reston, Virginia.



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8 Attorneys for Plaintiffs

9

10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA
12 WESTERN DIVISION
13

14 DISNEY ENTERPRISES, INC.;
LUCASFILM LTD. LLC;
15 TWENTIETH CENTURY FOX FILM
CORPORATION and WARNER
16 BROS. ENTERTAINMENT INC.,

17 Plaintiffs and Counter-
Defendants,

18 vs.

19 VIDANGEL, INC.,

20 Defendant and Counter-
21 Claimant.

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Case No. 16-cv-04109-AB (PLAx)

**FILED UNDER SEAL PURSUANT
TO ORDER OF THE COURT
DATED OCTOBER 5, 2016 [DKT.
97]**

**DECLARATION OF ALLYSON
BENNETT IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

Judge: Hon. André Birotte Jr.

Date: October 31, 2016

Time: 10:00 a.m.

Crtrm.: 4

Trial Date: None Set

1 I, Allyson Bennett, hereby declare:

2 1. I am an attorney with the law firm of Munger, Tolles & Olson LLP,
3 counsel for Plaintiffs in this matter. I am a member of the California Bar and am
4 admitted to practice before this Court. I have knowledge of the matters set forth
5 below based on my direct involvement in this matter or the direct involvement of
6 other lawyers at my firm. If called as a witness, I could and would testify
7 competently to the facts stated herein.

8 2. Attached as Exhibit **A** are true and correct copies of ClearPlay's
9 Frequently Asked Questions about streaming, *available at*
10 https://www.clearplay.com/t-streaming_support.aspx and a ClearPlay Letter posted
11 to its website explaining that "ClearPlay filtering works together with movies
12 streamed from Google Play." The Frequently Asked Questions document is
13 attached as Exhibit D to the declaration of VidAngel's expert, Sigurd Meldal, but
14 the attachment to the Meldal declaration is not in color.

15 3. Attached as Exhibit **B** is a true and correct copy of screenshot printouts
16 from ClearPlay's Streaming Sign-Up Page, which features a video demonstrating
17 ClearPlay's streaming product. The Video is accessible at
18 <https://try.clearplay.com/streaming-sign-up/> (last visited October 2, 2016).¹

19 4. Attached as Exhibit **C** are true and correct copies of screenshot
20 printouts from VidAngel's Facebook pages, containing user comments.

21 5. Attached as Exhibit **D** are true and correct copies of screenshot
22 printouts from VidAngel's Facebook pages, containing user comments posted since
23 the filing of Plaintiffs' Motion on August 22, 2016.

24 6. Attached as Exhibit **E** are true and correct copies of a screenshot
25 printout of the VidAngel "After Movie" survey in which VidAngel asks its users

26 _____
27 ¹ Plaintiffs have included a slipsheet with a true and correct copy of a screenshot of
28 the video. If the Court would prefer, Plaintiffs will submit DVDs containing copies
of these videos for the Court's review.

1 “Would you have watched [name of movie] without a filter?” This Exhibit also
2 attaches the correspondence from VidAngel’s counsel, Mr. Marquart, to Plaintiffs’
3 counsel, in which Mr. Marquart represents that this document is the “on-line survey
4 questionnaire Mr. Harmon referred to [in his declaration].”

5 7. To date, VidAngel has not disclosed to Plaintiffs the total number of
6 DVDs or Blu-ray Discs (“Discs”) VidAngel has purchased or the number of streams
7 it has made to users. Exhibit AA to the Declaration of Rose Leda Ehler (“Ehler
8 Decl.”) (Dkt. 30) is a document entitled [“VidAngel Board Meeting, July 20, 2016”]
9 (“Board Presentation). According to the Board Presentation, VidAngel has provided
10 at least [2 million streams, which the Board Presentation refers to as “purchases”]
11 since August 2015. Ehler Decl. Ex. AA at 315. At deposition, VidAngel’s CEO,
12 Mr. Harmon, testified that since January 2016, VidAngel has made between [1.5
13 million and 2 million] streams. *Id.* Ex. EE Tr. 190:2-8. VidAngel also produced an
14 Excel file containing a line for each Disc VidAngel has purchased (and its inventory
15 number). The bates number for that document is D00195 but I have not attached it
16 because a printout of the file is over 1,000 pages. That Excel file contains
17 approximately [103,450] entries, which would correspond to [103,450] Discs
18 purchases as of mid-July 2016, when VidAngel stated the spreadsheet was created.
19 A conservative estimate of the ratio of streams to Discs is [19.3
20 (=2,000,000/103,450)]. In other words, based on VidAngel’s documents and
21 information produced to date, it appears that VidAngel on average makes [between
22 19 and 20] streams to different users for each Disc VidAngel has purchased and
23 maintains in its inventory.

24 8. Attached as Exhibit **F** is a true and correct copy of a screenshot printout
25 from VidAngel’s Facebook page showing an advertisement for Disney’s new
26 release, *Captain America: Civil War* (2016).

27 9. Attached hereto as Exhibit **G** is a true and correct copy of a screenshot
28 printout from the Harmon Brothers’ website showing the “Team.”

1 10. Attached hereto as Exhibit **H** is a true and correct copy of
2 correspondence dated July 7, 2016, between Plaintiffs’ counsel and VidAngel’s
3 counsel. In that correspondence, VidAngel’s counsel agreed that Plaintiffs could
4 produce a single witness to testify regarding irreparable harm matters common to all
5 Plaintiffs.

6 11. Attached as Exhibit **I** is a true and correct copy of correspondence
7 dated September 15 and 16, 2016, between counsel for VidAngel, Mr. Marquart,
8 and Plaintiffs’ counsel, in which Plaintiffs’ counsel requests the production of
9 underlying survey evidence.

10 12. Attached as Exhibit **J** is a true and correct copy of deposition exhibit
11 **No. 41** from the August 11, 2016, deposition of Defendants’ Rule 30(b)(6) designee
12 and CEO of VidAngel, Neal Harmon.

13 13. Attached hereto as Exhibit **K** is a true and correct copy of
14 correspondence dated June 10, 2016, between Plaintiffs’ counsel and Mr. Harmon
15 asking VidAngel to “stipulate to the entry of a preliminary injunction during the
16 pendency of this litigation.” VidAngel considered this request until June 21, 2016
17 when VidAngel’s counsel informed Plaintiffs’ counsel that it would prefer to litigate
18 the issue.

19 14. Attached as Exhibit **L** is a true and correct copy of correspondence
20 dated July 5 , 2016 from Plaintiffs’ counsel to VidAngel’s counsel regarding the
21 stipulated expedited discovery.


22 15. Attached hereto as Exhibit **M** are true and correct copies of excerpts
23 from the August 11, 2016, deposition of Defendants’ Rule 30(b)(6) designee and
24 CEO of VidAngel, Neal Harmon.

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

Executed this 3rd day of October, 2016 in Los Angeles, California.



Allyson R. Bennett

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Counter-Defendants
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10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA
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14 DISNEY ENTERPRISES, INC.;
LUCASFILM LTD. LLC;
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CORPORATION and WARNER
16 BROS. ENTERTAINMENT INC.,
17 Plaintiffs and Counter-
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18 vs.
19 VIDANGEL, INC.,
20 Defendant and Counter-
21 Claimant.
22

Case No. 16-cv-04109-AB (PLAx)
**FILED UNDER SEAL PURSUANT
TO ORDER OF THE COURT
DATED AUGUST 23, 2016 (DKT. 32)**
**DECLARATION OF ROBERT
SCHUMANN IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**
Judge: Hon. André Birotte Jr.
Date: October 24, 2016
Time: 10:00 a.m.
Crtrm.: 4
Trial Date: None Set

1 VidAngel and the deposition testimony of Neal Harmon, it is my professional
2 opinion that VidAngel operates as follows.

3 8. VidAngel delivers content to users by streaming that content over the
4 Internet. In this context, “streaming” simply means the delivery of content to a
5 user’s device over the Internet. Here, VidAngel streams content to consumers
6 using, among other technologies, a video content delivery protocol called HTTP
7 Live Streaming, or HLS. Rather than using a single huge file, HLS divides the
8 content into many short media segments, with each segment generally lasting
9 between two and ten seconds and downloaded by the user’s device individually. At
10 the beginning of an HLS streaming session, the user’s device downloads an index
11 file, which provides the device a list of segment files that the device can then request
12 and play in order to watch the content.

13 9. VidAngel’s filtering technology allows it to [REDACTED]
14 [REDACTED]
15 [REDACTED] For
16 example, VidAngel may “tag” certain segments as containing violence and others as
17 containing profanity. Until the lawsuit was filed, one category of filterable content
18 that VidAngel offered was skipping the opening or closing credits. [REDACTED]
19 [REDACTED]

20 10. When a user streams a movie or television show from VidAngel, the
21 filtering technology [REDACTED]
22 [REDACTED]

23 [REDACTED] When a user streams a movie and selects filters
24 for audiovisual content, [REDACTED]
25 [REDACTED]
26 [REDACTED]

27 11. [REDACTED]
28 [REDACTED]

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[REDACTED]

12. Based on my review of VidAngel’s documents and the deposition testimony of Neal Harmon, I believe that [REDACTED]

[REDACTED]

VidAngel Obtains Plaintiffs’ Content On DVDs And Blu-ray Discs

13. To implement its streaming service, VidAngel requires a digital copy of Plaintiffs’ films and television content. To acquire the digital version of a particular piece of content VidAngel purchases copies of Plaintiffs’ movies and television shows on DVDs and Blu-ray discs, circumvents the digital content protection associated with the Blu-ray and DVD content and then copies that content onto its

1 servers. This process of removing content protection then copying the unprotected
2 content is popularly referred to as “ripping.”

3 14. A DVD, or “Digital Versatile Disc,” is a high capacity digital storage
4 medium, which can store data such as personal files, emails, etc. Depending on its
5 configuration, a DVD can store up to a maximum of 18 gigabytes of data. By
6 comparison, a typical audio CD will store about 700 megabytes of data. Since one
7 gigabyte equals 1024 megabytes, a 9 gigabyte DVD holds many times more—more
8 than 12 times more—data than a 700 megabyte CD.

9 15. DVDs’ large capacities allow them to store motion pictures (movies).
10 DVDs used to store motion pictures will most often hold approximately 9 gigabytes
11 of data. Content on DVDs is stored in a Standard Definition format. This format is
12 a relatively low-resolution format (640x480 pixels per frame) and thus provides a
13 good picture but not a modern High Definition image.

14 16. Blu-ray discs are a newer high capacity storage medium. The term
15 “blu-ray” refers to the blue laser that is used to read the disc. Blu-ray discs can store
16 even more data than DVDs. A Blu-ray disc can store a maximum of 128 gigabytes
17 of data, and, when used for motion pictures, will most commonly hold about 50
18 gigabytes—more than five times the storage capacity of the typical DVD. Content
19 on Blu-ray discs is encoded in a high definition format, typically 1080P, which
20 represents an image of 1920x1280 pixels per frame. Blu-ray discs have a
21 significantly higher image quality than DVD discs due to their denser pixel count.

22 17. Subject to the security and encryption restrictions discussed below,
23 both DVDs and Blu-ray discs are viewable either on a television (using a stand-
24 alone DVD player or Blu-ray player) or on a computer with a DVD or Blu-ray drive
25 and specialized playback software.

26 18. DVDs and Blu-ray discs offer many advantages over VHS cassettes,
27 including a much better viewing experience, but they also make a more attractive
28 target for individuals to copy their content without authorization. When one copies

1 the contents from a VHS tape, the quality of the copy is less than that of the original.
2 The same is not true for digital formats like DVDs and Blu-ray discs. For those
3 formats, the copy and the original are of the same quality. Further, digital copies are
4 much easier to distribute than analog copies. Accordingly, a movie that has been
5 copied can easily be uploaded online and distributed around the world. There are,
6 therefore, security measures that can be used for both DVDs and Blu-ray discs to
7 protect their contents.

8 19. Based on my review of VidAngel’s documents, my own review of the
9 VidAngel service, and the deposition testimony of Neal Harmon, I believe that
10 VidAngel almost always uses [REDACTED] as the source of the digital copies rather
11 than [REDACTED]. This allows VidAngel to make higher quality copies of the movies and
12 television shows. VidAngel will use [REDACTED] as the source for their ripped content
13 only when [REDACTED] are unavailable [REDACTED]
14 [REDACTED]
15 [REDACTED]” See Ex. D.

16 **CSS Is An Effective Access-Control System For DVDs**

17 20. Plaintiffs in this case use the Content Scramble System (“CSS”) in
18 order to protect their copyrighted works on DVDs. CSS is a digital rights
19 management system that prevents access to—but not viewing of—digital copies of
20 works stored on DVDs in order to prevent effective copying. Both DVD player
21 manufacturers and DVD content distributors can obtain authorization to use CSS
22 only through a license from the DVD Copy Control Association (“DVD CCA”). A
23 license allows a DVD player manufacturer to obtain the necessary requirements and
24 specifications for building a CSS-compliant DVD player (i.e., one that is capable of
25 lawfully accessing and playing a DVD that is protected by CSS) and for obtaining
26 access to the necessary “keys” that enable the content on a CSS-protected DVD to
27 be lawfully unscrambled.

28

1 21. CSS uses several layers of different types of protection mechanisms,
2 including authentication, encryption, secure storage of encryption keys, time-
3 variable session keys, and other technological measures. CSS works slightly
4 differently depending on whether the user is using a computer or a standalone DVD
5 player to access a DVD disc. Because I understand VidAngel to use a computer to
6 circumvent CSS protections from DVDs, this declaration focuses on the aspects of
7 CSS that control access to CSS-protected content with computers.

8 22. CSS has control measures that operate across three different mediums:
9 the DVD disc itself, software players (players that are implemented primarily as
10 software on computer systems) and the DVD drive (an optical DVD Disc reader that
11 is capable of operating as an internal or peripheral component of a personal
12 computer or other computing device). First, the data on the DVD disc is encrypted,
13 with decryption “keys” stored in areas of the disc that are inaccessible without
14 software that implements CSS. Second, the DVD drive provides an additional layer
15 of protection. It requires authentication, which requires that receiving software
16 programs are trustworthy, and uses other methods of encryption before it will
17 transmit certain types of information from the disc.

18 23. For example, CSS provides for a “locking” mechanism, whereby a
19 computer’s DVD Drive will not allow access to CSS-protected content on a DVD
20 disc unless and until the DVD Drive has confirmed that the software seeking access
21 is an authentic CSS-compliant DVD player that can be trusted. If the DVD player
22 software is unable to provide this authentication, indicating to the DVD drive that it
23 is “safe” to release the DVD data, then the protected contents of the DVD will
24 remain “locked” in the DVD drive.

25 24. CSS also utilizes encryption. Encryption selectively scrambles the
26 video stream. Only devices that have access to the “decryption keys” can
27 descramble the data. This encryption provides an additional layer of copy- and
28 access-protection to the protection provided by the “locking” mechanism. Thus,

1 even if one were able to defeat the “locking” mechanism and gain unauthorized
2 access to the protected files on the DVD disc, the data would be scrambled and thus
3 neither viewable nor playable.

4 25. In addition to encryption, CSS utilizes an “authentication” mechanism,
5 which requires that an authorized player engage in a bi-directional dialogue with the
6 DVD Drive before playing back the video content of a DVD disc. This
7 authentication mechanism further ensures that the DVD content cannot be played
8 back unless such authentication with the DVD Drive is successful. Authentication
9 with the DVD Drive will fail if the DVD being played is not in the DVD Drive.

10 26. Notably, the process described above allows a licensed-DVD player to
11 enable the *viewing* of an authorized DVD’s contents. The DVD CCA license
12 prohibits DVD players from copying, or enabling the copying of, the content on a
13 CSS-protected DVD.

14 **AACS And BD+ Are Effective Access-Control Systems For Blu-ray Discs**

15 27. In order to protect the copyrighted content on Blu-ray discs, all
16 Plaintiffs use the Advanced Access Content System (“AACS”), and Twentieth
17 Century Fox Film Corporation (“Fox”) additionally uses BD+ protection for content
18 on Fox’s Blu-ray discs. Like CSS, both AACS and BD+ effectively prevent access
19 to the digital content on Blu-ray discs, while still allowing the viewing of that
20 content through the use of licensed Blu-ray players. Also similar to CSS, Blu-ray
21 player manufacturers and Blu-ray content distributors can obtain authorization to
22 use AACS and BD+ only through the authorized licensing organization.

23 28. Like CSS, AACS uses a combination of encryption and authentication
24 to protect the content on Blu-ray discs. The content on a Blu-ray disc is encrypted.
25 It can be decrypted only by using certain “keys,” called “Title Keys.” Each Title
26 Key is also encrypted, using a different key generated from the “Media Key” (which
27 is necessary to decrypt the encrypted Title Key) stored on the Blu-ray disc, along
28 with the encrypted Title Key. The place where the Media Key is stored is called the

1 “Media Key Block.” In addition to storing Keys, the Media Key Block also
2 provides a mechanism whereby certain Blu-ray players can be prevented from being
3 able to play back content if the players become compromised.

4 29. The Blu-ray disc also contains a Volume ID, which is an identifier
5 stored on the disc.

6 30. In order to play content protected by AACS, licensed Blu-ray players
7 contain several “Device Keys” that allow the players to decrypt the content on the
8 Blu-ray disc. First, the Blu-ray player must decrypt the Media Key Block, which
9 provides the player with the Media Key. Second, the player must obtain the Volume
10 ID, which requires the player to have the correct certificate from the licensing body
11 that develops and licenses AACS (the Advanced Access Content System Licensing
12 Administrator (“AACS LA”). Only by using both the Volume ID and the Media
13 Key can the player decrypt the Title Key, which is, in turn, used to decrypt the
14 encrypted content on the Blu-ray disc.

15 31. In the absence of the appropriate keys and certificate, even if one were
16 able to copy the contents off a Blu-ray disc onto another storage device, the content
17 would still be encrypted. Thus, the content would be neither viewable nor playable.
18 Nor would a user be able to manipulate this encrypted content, such as by editing
19 the content or changing the files from one format to another.

20 32. BD+ is a second, optional, layer of protection that can be used on top of
21 AACS. BD+ is a protection system that is implemented through the use of security
22 programs that are specific to a particular movie title (or a particular version of that
23 movie title) that are included on the Blu-ray disc. Those programs are then read and
24 executed by a special BD+ software module, known as a “virtual machine,” that is
25 included in licensed Blu-ray players. When executed by the Virtual Machine, the
26 BD+ security programs can perform various functions, including determining
27 whether the Blu-ray player has been compromised.

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1 33. In addition, when a disc is protected by BD+, the files on the disc can
2 be scrambled in a way that is specific to the relevant title. The BD+ virtual machine
3 then obtains the title-specific code from the disc as well as a “fix-up” table that
4 allows the virtual machine to descramble the scrambled content. In the absence of a
5 licensed Blu-ray player, the content would remain scrambled and could not be
6 viewed or played.

7 34. A key feature of both the AACS and BD+ protection systems is the
8 ability to dynamically change, over time, components of the system and thus allow
9 content owners to continually update their security protocols. Thus, entities that
10 seek to illegally remove AACS and/or BD+ protections from Blu-ray discs can do
11 so only if they are also able to continually update their software.

12 **VidAngel Removes The Encryption From CSS-Protected DVDs And BD+ And**
13 **AACS-Protected Blu-ray Discs And Copies The Unencrypted Contents To Its**
14 **Internal Computer System**

15 35. As noted above, in order to obtain digital copies of Plaintiffs’ content,
16 VidAngel must copy that content off of DVDs and Blu-ray discs. VidAngel does so
17 as follows:

18 36. Regardless of whether VidAngel uses DVDs or Blu-ray discs,
19 [REDACTED]. In the
20 ordinary course, however, those files would remain encrypted by CSS, AACS
21 and/or BD+. Accordingly, even if VidAngel could copy the files, it could not view
22 them, play them, or manipulate them. VidAngel admits that it uses a product called
23 AnyDVD HD to remove CSS protection from DVDs and AACS and BD+
24 protection from Blu-ray discs.

25 37. VidAngel places the disc, whether it be a Blu-ray disc or a DVD [REDACTED]
26 [REDACTED] AnyDVD HD then runs in the background,
27 circumventing the encryption from the DVD or Blu-ray disc. [REDACTED]
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[REDACTED]

[REDACTED].

38. AnyDVD HD is a well-known, windows-based circumvention software that allows for read-access to DVDs protected by CSS and Blu-ray discs protected by AACS and BD+, in the process removing those protections from the Blu-ray and DVD discs.

39. AnyDVD is currently sold by RedFox. RedFox is based in Belize. According to RedFox’s website, RedFox is run by developers and staff members of the former company SlySoft,¹ whose owner was previously convicted in a foreign jurisdiction of providing tools to circumvent AACS encryption.² SlySoft, whose logo was a red fox, was shut down earlier this year due to “regulatory requirements.”³

VidAngel Prepares The Digital Files Obtained From The DVD And Blu-ray Discs For Filtering And Streaming

40. After obtaining the digital contents of DVDs and Blu-ray discs, VidAngel prepares the content for filtering and streaming. [REDACTED]

[REDACTED]

¹ See “About,” RedFox.bz available at <https://www.redfox.bz/en/about.html> (last visited Aug. 21, 2016).

² Slysoft DVD Ripper Owner Found Guilty in Criminal Action, TorrentFreak available at <https://torrentfreak.com/slysoft-dvd-ripper-owner-found-guilty-in-criminal-action-140403/> (last visited Aug. 21, 2106).

³ See Eric Bangeman, “DRM Defeaters Defeated? SlySoft Ceases Operations”, ArsTechnica.com, available at <http://arstechnica.com/tech-policy/2016/02/drm-defeaters-defeated-slysoft-ceases-operations/> (last visited Aug. 21, 2016); see also SlySoft, available at <http://www.slysoft.com/> (last visited Aug. 21, 2016).

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[REDACTED]

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**By Removing The Encryption From DVDs And Blu-Ray Discs And Allowing
The Digital Content Of The Discs To Be Copied Onto A Computer In A
Useable Format, VidAngel Circumvents The Technological Measures Designed
To Prevent The Accessing And Copying of Copyrighted Content On DVDs And
Blu-ray Discs**

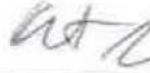
43. As described above, VidAngel not only accesses and copies files off of DVDs and Blu-ray discs, but it does so in a way that allows the files to be viewed, played, and edited. None of those functions would be possible if CSS, AACS or BD+ protections remained in place. Rather, VidAngel uses the circumvention

1 software, AnyDVD HD, to remove the encryption from DVDs and Blu-ray discs to
2 make a usable copy of the digital content on the discs.

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

3 Executed on August 22, 2016, at Reston, Virginia.

4 

5 _____
6 Robert Schumann
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EXHIBIT DD

**FILED UNDER SEAL
PURSUANT TO
ORDER OF THE
COURT DATED
AUGUST 23, 2016
(DKT. 32)**

From: Josh Jackson customer@groovehq.com
Subject: VidAngel Support: Josh Jackson gave you an awesome rating for your reply
Date: February 19, 2015 at 9:07 AM Asia/Calcutta
To: neal@vidangel.com



Josh Jackson - josh@joshjacksonphotography.com gave you an awesome rating for your reply:

Hi Josh,

YouTube videos do not apply to the new program. What you see is what you get on YouTube videos. No sell back. Rentals and purchases only.

YouTube only works on the desktop and laptop with the chrome browser. There is not an easy way to get YouTube to your TV with our filter unfortunately.

Angel HD works on iPhone, iPad, Apple TV, Roku, Chromecast, Android, etc. It's the best way to watch the filtered movie on your TV.

As for the fee, in order for us to stream a filtered movie to you (unless we had licensing directly from the studios like YouTube does), you have to own the movie first. We can't change to a rental unless we get licensing from Hollywood. We'll have to be a lot bigger to do that. Until then, we sell DVDs and Blu-Rays to you, vault them in our warehouse, and stream you a filtered movie. The buy back system was the most creative way we could come up with in order to offer you the value of a Redbox while staying buttoned up legally.

Great question though.
- Neal

Josh Jackson's comment

Great, quick and courteous customer service

Review it by following the link below:
https://vidangel.groovehq.com/groove_client/tickets/2400410



D 13763

From: Neal Harmon neal@vidangel.com
Subject: Fwd: VidAngel Support: Josh Jackson gave you an awesome rating for your reply
Date: February 19, 2015 at 9:10 AM Asia/Calcutta
To: Chani Boyce chani@vidangel.com



In the help section tomorrow, under the YouTube section, we need to describe the difference between YouTube and Angel HD

----- Forwarded message -----

From: Josh Jackson <customer@groovehq.com>
Date: Wed, Feb 18, 2015 at 8:37 PM
Subject: VidAngel Support: Josh Jackson gave you an awesome rating for your reply
To: neal@vidangel.com

Josh Jackson - josh@joshjacksonphotography.com gave you an awesome rating for your reply:

Hi Josh,

YouTube videos do not apply to the new program. What you see is what you get on YouTube videos. No sell back. Rentals and purchases only.

YouTube only works on the desktop and laptop with the chrome browser. There is not an easy way to get YouTube to your TV with our filter unfortunately.

Angel HD works on iPhone, iPad, Apple TV, Roku, Chromecast, Android, etc. It's the best way to watch the filtered movie on your TV.

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Great question though.

- Neal

Josh Jackson's comment

Great, quick and courteous customer service

Review it by following the link below:

https://vidangel.groovehq.com/groove_client/tickets/2400410

--
Neal

cell: 801-228-8444
<http://www.vidangel.com>

D 13764

D 13765

S.A.0994

CONFIDENTIAL

EXHIBIT DD
EHLER-368

EXHIBIT EE

**FILED UNDER SEAL
PURSUANT TO
ORDER OF THE
COURT DATED
AUGUST 23, 2016
(DKT. 32)**

1 UNITED STATES DISTRICT COURT
2 CENTRAL DISTRICT OF CALIFORNIA
3 WESTERN DIVISION
4

5 DISNEY ENTERPRISES, INC.;)
6 LUCASFILM LTD., LLC;) No. 16-cv-04109-
7 TWENTIETH CENTURY FOX FILM) AB (PLAx)
8 CORPORATION and WARNER BROS.)
9 ENTERTAINMENT, INC.,)
10 Plaintiffs and Counter-)
11 Defendants,)
12 VS.)
13 VIDANGEL, INC.,) Pages 1-325
14 Defendant and Counter-)
15 Claimant.)
16 _____)
17

18 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY
19 VIDEOTAPED DEPOSITION OF FEDERAL RULE 30(b)(6)
20 WITNESS FOR VIDANGEL, INC.:
21 NEAL HARMON
22 THURSDAY, AUGUST 11, 2016
23 9:43 A.M.
24 Reported by: LINDA NICKERSON
25 CSR No. 8746

1 Deposition of NEAL HARMON, the witness, taken
2 on behalf of the Plaintiffs, on THURSDAY, AUGUST 11,
3 2016, 9:43 a.m., at 2029 Century Park East,
4 Sixteenth Floor, Los Angeles, California, before
5 LINDA NICKERSON, CSR No. 8746, pursuant to NOTICE.

6

7 APPEARANCES OF COUNSEL:

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13

14 ALSO PRESENT:

15 JEMAL JUDKINS (Videographer)

16 DAVID QUINTO (In-House Counsel)

17 GRANT ARNOW (Summer Associate)

18

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I N D E X

WITNESS	EXAMINATION	PAGE
NEAL HARMON		
	By Mr. Klaus	10

E X H I B I T S

NUMBER	PAGE	DESCRIPTION
Exhibit 10	23	Data (D 00002)
Exhibit 11	27	Plaintiffs' Titles
Exhibit 12	37	Screenshot (D 00003)
Exhibit 13	37	Screenshot (D 00004)
Exhibit 14	67	RedFox.bz Invoice O3F-R7Q (D 00044)
Exhibit 15	77	Current Workflow (D 00134-D 00137)
Exhibit 16	108	How to Rip/Mux/Upload DVDs (D 00040)

1	E X H I B I T S (Continued)		
2	NUMBER	PAGE	DESCRIPTION
3	Exhibit 17	108	New Movie/TV Checklist
4			(D 00041-D 00043)
5	Exhibit 18	123	VidAngel, Inc.'s Answer and
6			Affirmative Defenses to
7			Complaint and
8			Counter-Complaint
9	Exhibit 19	132	Encoding and Segmenting
10			(D 00045)
11	Exhibit 20	132	Abstract
12			(D 00115-D 00133)
13	Exhibit 21	136	Board Meeting, dated 1-9-15
14			(D 02543-D 02559)
15	Exhibit 22	141	E-mail dated 10-10-14 from
16			Paul Ahlstrom with attachment
17			(D 14075-D 14097)
18	Exhibit 23	167	E-mail chain ending on
19			9-29-15 from Neal Harmon
20			(D 02416-D 02422)
21	Exhibit 24	177	Investor Update, dated
22			October 2015
23			(D 05632-D 05640)
24	///		
25	///		

1	E X H I B I T S (Continued)		
2	NUMBER	PAGE	DESCRIPTION
3	Exhibit 25	181	Press Release: VidAngel Lets
4			Customers Stream Filtered
5			Movies for One Bleeping
6			Dollar
7			(D 14650-D 14651)
8	Exhibit 26	183	Investor Intro, dated
9			November 2015
10			(D 13619-D 13642)
11	Exhibit 27	205	Board Meeting, dated 1-21-16
12			(D 02337-D 02358)
13	Exhibit 28	206	Summary of Business
14			(D 14723-D 14724)
15	Exhibit 29	225	E-mail chain ending on
16			4-20-16 from Neal Harmon with
17			attachment
18			(D 02423-D 02474)
19	Exhibit 30	226	Board Meeting, dated 7-20-16
20			(D 02359-D 02373)
21	Exhibit 31	230	Message to Users
22			(D 00154)
23	Exhibit 32	238	E-mail from Liz to Kip
24			(D 00149)
25	///		

1	E X H I B I T S (Continued)		
2	NUMBER	PAGE	DESCRIPTION
3	Exhibit 33	239	Service Organization Control
4			Report
5			(D 00007-D 00039)
6	Exhibit 34	244	Twitter Screenshot
7			(PL0000287)
8	Exhibit 35	248	Article: VidAngel: Not Just
9			for Religious Nuts
10			(PL0000120-PL0000128)
11	Exhibit 36	250	Facebook Screenshot
12			(PL0000293)
13	Exhibit 37	255	List of Opening & Closing
14			Credits Movies
15	Exhibit 38	256	E-mail dated 2-19-15 from
16			Josh Jackson with attachment
17			(D 13763-D 13765)
18	Exhibit 39	279	E-mail dated 5-28-14 from
19			Neal Harmon with attachment
20			(D 14018-D 14021)
21	Exhibit 40	288	E-mail dated 12-12-14 from
22			Neal Harmon with attachment
23			(D 14345-D 14349)
24	///		
25	///		

1	E X H I B I T S (Continued)		
2	NUMBER	PAGE	DESCRIPTION
3	Exhibit 41	288	E-mail dated 3-11-15 from
4			Neal Harmon
5			(D 14367-D 14368)
6	Exhibit 42	288	E-mail dated 3-14-15 from
7			Neal Harmon with attachment
8			(D 13807-D 13814)
9	Exhibit 43	301	Letter dated 7-23-15 from
10			David W. Quinto
11			(D 14747-D 14749)
12			
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1 LOS ANGELES, CALIFORNIA

2 THURSDAY, AUGUST 11, 2016; 9:43 A.M.

3 09:41:06

4 THE VIDEOGRAPHER: Here begins Volume 09:42:19

5 Number I in the 30(b)(6) deposition for VidAngel, 09:42:20

6 Neal Harmon, in the matter of Disney Enterprises 09:42:29

7 versus VidAngel, in the United States District 09:42:35

8 Court -- excuse me -- for the Central District of 09:42:41

9 California in the Western Division. The case number 09:42:43

10 is 16-cv-04109-AB (PLAx). 09:42:46

11 Today's date is August 11, 2016. The time 09:42:59

12 on the video monitor is 9:43. The video operator 09:43:02

13 today is Jemal Judkins, contracted by DTI at 20750 09:43:05

14 Ventura Boulevard, Suite 205, Woodland Hills, 09:43:12

15 California. 09:43:16

16 This video deposition is taking place at 09:43:16

17 2029 Century Park East in Los Angeles, California. 09:43:20

18 Counsel, please voice identify yourselves 09:43:24

19 and state whom you represent. 09:43:28

20 MR. KLAUS: I'm Kelly Klaus from Munger, 09:43:29

21 Tolles & Olson representing the plaintiffs. I'm 09:43:32

22 joined by my colleague, Allyson Bennett, and also by 09:43:33

23 Grant Arnow who is a summer associate with our law 09:43:40

24 firm. 09:43:44

25 MR. MARQUART: I'm Jaime Marquart of Baker, 09:43:44

1 Marquart, LLP, and we represent the defendant and 09:43:48
2 counter-complainant, VidAngel, Inc., and I am joined 09:43:52
3 by David Quinto of VidAngel, Inc. 09:43:56

4 THE VIDEOGRAPHER: The court reporter today 09:43:59
5 is Linda Nickerson of DTI. 09:44:01

6 Would the reporter please swear in the 09:44:04
7 witness. 09:44:05

8
9 NEAL HARMON,
10 having been first duly sworn, was
11 examined and testified as follows:

12 09:44:14

13 THE VIDEOGRAPHER: Please begin. 09:44:14

14
15 EXAMINATION

16 BY MR. KLAUS:

17 Q Good morning, Mr. Harmon. 09:44:16

18 A Good morning, Kelly. 09:44:17

19 Q Could you please state and spell your full 09:44:18
20 name for the record. 09:44:22

21 A Neal Harmon, N-e-a-l, H-a-r-m-o-n. 09:44:23

22 Q Have you been deposed before, Mr. Harmon? 09:44:28

23 A I have not. 09:44:31

24 Q Your counsel, I'm sure, went over some of 09:44:32
25 the basic ground rules for the depo, but let me 09:44:39

1 movies to include on VidAngel? 10:03:02

2 A There have been a number of people who have 10:03:06
3 made that decision. 10:03:10

4 Q Who does it today? 10:03:10

5 A The content management is Ricky Cole. 10:03:11

6 Q And who does Ricky Cole report to? 10:03:22

7 A He reports to Liz Ellis. 10:03:30

8 Q And Liz Ellis reports to you, correct? 10:03:32

9 A Yes. 10:03:34

10 Q If a -- if a -- if a movie is coming out on 10:03:35
11 DVD and it's had over \$10 million in box office 10:03:52
12 sales, generally going to be something that VidAngel 10:03:57
13 is going to offer on its service? 10:04:00

14 MR. MARQUART: Objection; foundation, vague 10:04:03
15 and ambiguous. 10:04:04

16 THE WITNESS: Again, I think that this 10:04:04
17 document outlines that there needs to be a favorable 10:04:07
18 rating in addition to the sales. 10:04:12

19 MR. KLAUS: I'm going to ask Ms. Nickerson 10:04:22
20 to mark and hand to you what we'll mark as Exhibit 10:04:23
21 11, and Exhibit 11, Mr. Harmon, is the list of 10:04:27
22 plaintiffs' titles that was attached as Exhibit A to 10:04:56
23 the complaint in this matter. 10:04:59

24 (The document referred to was marked by the
25 Reporter as Plaintiffs' Exhibit 11 for

1 identification and is attached hereto.)

2 BY MR. KLAUS:

3 Q You've seen Exhibit 11 before today,

10:05:02

4 correct?

10:05:04

5 A I've seen Exhibit A of the complaint

10:05:04

6 before.

10:05:09

7 Q And is it your understanding, Mr. Harmon,

10:05:11

8 that all of the titles that are listed on Exhibit A

10:05:14

9 are currently available on VidAngel, Inc.?

10:05:18

10 MR. MARQUART: Objection; foundation.

10:05:22

11 THE WITNESS: That would be my

10:05:29

12 understanding, but I'm not certain without actually

10:05:30

13 checking that they're all there.

10:05:32

14 BY MR. KLAUS:

10:05:34

15 Q When you looked at Exhibit A to the

10:05:34

16 complaint, did you -- were there any titles that you

10:05:41

17 believe were not available on VidAngel?

10:05:48

18 A No.

10:05:53

19 Q Has anyone at any time since the filing of

10:05:53

20 the complaint told you that any of the titles that

10:05:57

21 are listed on Exhibit A are not on VidAngel?

10:06:00

22 A No.

10:06:03

23 MR. MARQUART: Sir, please give me an

10:06:04

24 opportunity.

10:06:06

25 THE WITNESS: Oh, I'm sorry, sorry.

10:06:06

1 MR. MARQUART: Anytime he asks you has 10:06:08
2 anyone told you, I'm going to make sure to remind 10:06:11
3 you not to disclose attorney-client communications. 10:06:12

4 THE WITNESS: Okay. Okay. 10:06:15

5 BY MR. KLAUS: 10:06:15

6 Q Okay. With that, your answer is the same, 10:06:15
7 I take it? 10:06:19

8 A Yes, my answer is the same. 10:06:19

9 Q And since the filing of the complaint, has 10:06:21
10 VidAngel removed any of the titles on Exhibit A from 10:06:24
11 its service? 10:06:27

12 MR. MARQUART: Foundation. 10:06:28

13 THE WITNESS: My answer would be the same. 10:06:29
14 To my knowledge, no. 10:06:33

15 BY MR. KLAUS: 10:06:34

16 Q And is it also the case that unless the 10:06:34
17 court were to tell VidAngel to stop offering these 10:06:44
18 titles, you would leave all of these titles up on -- 10:06:49
19 on VidAngel? 10:06:53

20 MR. MARQUART: Objection; foundation, vague 10:06:54
21 and ambiguous, calls for a legal conclusion. 10:06:57

22 BY MR. KLAUS: 10:07:03

23 Q You can answer the question, sir. 10:07:03

24 A Okay. Our understanding is that this 10:07:04
25 technology allows our customers to filter these 10:07:16

1 movies and that this is their right to do so, and so 10:07:18
2 we will continue to offer them that technology, yes. 10:07:29

3 Q So my -- and just to be clear, my question 10:07:38
4 was: Unless and until a court tells you to stop, 10:07:40
5 it's VidAngel's intent to continue to offer the 10:07:44
6 movies that are on Exhibit A, correct? 10:07:47

7 A To offer -- 10:07:49

8 MR. MARQUART: Sorry. Same objections and 10:07:50
9 also please don't disclose any information you've 10:07:51
10 obtained from conversations with your counsel. 10:07:54

11 THE WITNESS: Okay. The -- the only 10:07:58
12 correction I would make to your statement is that we 10:08:04
13 will continue to offer filtered versions of the 10:08:07
14 titles. 10:08:09

15 BY MR. KLAUS: 10:08:11

16 Q But with that -- with that amendment to 10:08:11
17 your answer, is the answer still, yes, you'll 10:08:15
18 continue to offer the filtered versions of the 10:08:18
19 titles until told to stop? 10:08:20

20 A That's correct. 10:08:21

21 Q Okay. And you -- the complaint in this 10:08:22
22 case was filed on June the 9th. 10:08:28

23 Does that sound about right to you? 10:08:29

24 A That sounds correct. 10:08:30

25 Q And since that time, VidAngel has added 10:08:32

1 other titles to its service offering, correct? 10:08:37

2 A Correct. 10:08:40

3 MR. MARQUART: Objection; foundation. 10:08:40

4 THE WITNESS: Oh, excuse me. 10:08:41

5 BY MR. KLAUS: 10:08:42

6 Q And you will continue in the ordinary 10:08:42

7 course of your operations to add titles as they 10:08:47

8 become available and as you select them to be added, 10:08:50

9 correct? 10:08:53

10 MR. MARQUART: Objection; vague and 10:08:54

11 ambiguous, foundation, calls for speculation. 10:08:55

12 THE WITNESS: We do plan to continue to 10:08:56

13 offer titles. 10:09:02

14 BY MR. KLAUS: 10:09:03

15 Q Okay. And so just to take an example, one 10:09:03

16 of my clients Disney has released this summer on DVD 10:09:08

17 and Blu-ray the movie Zootopia. 10:09:13

18 You're familiar with Zootopia? 10:09:17

19 A Yes. 10:09:18

20 Q You've seen Zootopia? 10:09:19

21 A I have. 10:09:20

22 Q And that's a -- that's a -- that's a title 10:09:21

23 that you've added to -- to VidAngel, correct? 10:09:25

24 A Correct. 10:09:28

25 Q And you know that -- you're familiar with 10:09:29

1	Pixar?	10:09:42
2	A I am familiar with Pixar.	10:09:42
3	Q You know that Pixar is part of the Walt	10:09:44
4	Disney Company?	10:09:46
5	MR. MARQUART: Objection; foundation.	10:09:47
6	BY MR. KLAUS:	
7	Q Is that your general understanding?	10:09:48
8	A That is my general understanding.	10:09:49
9	Q Okay. You know that Pixar released a movie	10:09:51
10	called Finding Dory this summer?	10:09:54
11	A Yes.	10:09:57
12	Q And you -- it has not yet been released on	10:09:57
13	DVD, but you understand that it's very likely that	10:10:04
14	the movie will be released on DVD and Blu-ray?	10:10:07
15	A Yes.	10:10:14
16	Q And it would be VidAngel's intent to add	10:10:14
17	Finding Dory to its offerings, correct?	10:10:17
18	MR. MARQUART: Objection; foundation and	10:10:20
19	it's vague and ambiguous.	10:10:21
20	THE WITNESS: We will add a -- in the	10:10:25
21	ordinary course of business, I understand that we	10:10:36
22	will add that title and its relevant tags for our	10:10:39
23	filtering technology.	10:10:45
24	BY MR. KLAUS:	10:10:46
25	Q One of my clients is Warner Bros. You've	10:10:46

1 heard of Warner Bros.?
10:10:54

2 A Yes.
10:10:55

3 Q And are you familiar that Warner Bros.
10:10:56

4 released a motion picture called Suicide Squad
10:11:01

5 within the last couple weeks? Have you heard about
10:11:05

6 that?
10:11:06

7 A I did hear about that movie.
10:11:06

8 Q And the movie is still in theaters, but
10:11:08

9 based on your understanding of the way the market
10:11:14

10 for home entertainment works, you would expect
10:11:17

11 Suicide Squad at some point in the future to be
10:11:21

12 released on DVD and Blu-ray, correct?
10:11:24

13 A How are its sales?
10:11:26

14 Q The news -- according to the newspaper
10:11:30

15 reports I read, about \$150 million in box office
10:11:34

16 sales during its first weekend.
10:11:37

17 A Then I -- I should anticipate that a lot of
10:11:39

18 customers would request that movie, and we will add
10:11:44

19 it in the ordinary course of business.
10:11:46

20 MR. MARQUART: Sir, please answer the
10:11:47

21 question that's asked.
10:11:51

22 The question -- can you please read back
10:11:52

23 the question. Please listen to the question as it's
10:11:53

24 read back.
10:11:56

25 THE REPORTER: Well, he made a statement

1 about the box office sales. The question is before
2 that. So read the question before that?

3 MR. MARQUART: Read the question before
4 that.

5 (The record was read as follows:

6 "Q And the movie is still in
7 theaters, but based on your
8 understanding of the way the market
9 for home entertainment works, you
10 would expect Suicide Squad at some
11 point in the future to be released
12 on DVD and Blu-ray, correct?")

13 MR. MARQUART: Please just answer the 10:12:23
14 question that was asked. 10:12:24

15 THE WITNESS: Okay. Yes, I would 10:12:26
16 understand that it would be released on DVD or 10:12:28
17 Blu-ray. 10:12:30

18 BY MR. KLAUS: 10:12:31

19 Q Okay. And based on what I've asked you to 10:12:31
20 assume about its box office numbers and commercial 10:12:33
21 popularity, you would expect that in the ordinary 10:12:38
22 course, that would be a title that you would add to 10:12:42
23 VidAngel's offering, correct? 10:12:46

24 MR. MARQUART: Objection; assumes facts, 10:12:48
25 vague and ambiguous, and foundation. 10:12:49

1 THE WITNESS: I would assume that we would 10:12:54
2 create tags for that movie and offer it as a title 10:12:55
3 to be filtered. 10:12:59

4 BY MR. KLAUS: 10:13:00

5 Q You know that one of my clients in this 10:13:00
6 case is Twentieth Century Fox. 10:13:05

7 You understand that? 10:13:08

8 A Yes. 10:13:08

9 Q And are you familiar with the X-Men film 10:13:09
10 franchise? 10:13:14

11 A Yes. 10:13:15

12 Q And you know that the most -- the newest 10:13:16
13 installment in that is X-Men: Apocalypse? Have you 10:13:25
14 heard about that? 10:13:31

15 MR. MARQUART: Foundation, vague and 10:13:31
16 ambiguous. 10:13:32

17 THE WITNESS: I haven't heard about that. 10:13:32

18 BY MR. KLAUS: 10:13:34

19 Q Okay. IS IT your understanding that the 10:13:34
20 X-Men film franchise is a commercially popular 10:13:37
21 series of films? 10:13:41

22 A Yes. 10:13:42

23 Q Okay. And if there's a new X-Men movie 10:13:43
24 that Fox releases on DVD and Blu-ray disc, would it 10:13:47
25 be your expectation that in the ordinary course, 10:13:53

1 VidAngel would add that title to its service? 10:13:58

2 MR. MARQUART: Objection; foundation. 10:14:01

3 THE WITNESS: Again, in the ordinary course 10:14:04

4 of business, we would tag a popular movie like X-Men 10:14:06

5 and offer it on our service. 10:14:11

6 BY MR. KLAUS: 10:14:13

7 Q And you will -- you will -- VidAngel will 10:14:13

8 continue to add these and other titles that my 10:14:20

9 clients release in the ordinary course unless and 10:14:26

10 until a court tells you that you can't do that, 10:14:33

11 correct? 10:14:35

12 MR. MARQUART: Objection; vague and 10:14:36

13 ambiguous, calls for a legal conclusion, foundation. 10:14:38

14 BY MR. KLAUS: 10:14:43

15 Q You can answer the question, sir. 10:14:43

16 A Okay. So could you repeat the question to 10:14:44

17 me one more time? 10:14:51

18 (The record was read as follows: 10:14:52

19 "Q And you will -- you will --

20 VidAngel will continue to add these

21 and other titles that my clients

22 release in the ordinary course

23 unless and until a court tells you

24 that you can't do that, correct?")

25 THE WITNESS: Oh, okay. Provided that it 10:15:07

1 matches the criteria that we've previously 10:15:09
2 discussed, we will at our customers' request tag the 10:15:12
3 movies and offer them on our site for filtering, 10:15:18
4 yes. 10:15:21

5 MR. KLAUS: Ask the court reporter to mark 10:15:26
6 as Exhibit 12. I'll also ask you if you'll mark 10:15:28
7 this as Exhibit 13.

8 MR. MARQUART: Counsel, my understanding of 10:15:59
9 the current draft protective order in our interim 10:16:00
10 agreement is that all of the transcripts are 10:16:05
11 provisionally marked highly confidential and then 10:16:07
12 portions can be designated or de-designated. 10:16:10

13 But for my own ease of reference, I'd like 10:16:13
14 to note in certain instances when a particular topic 10:16:16
15 is going to be marked attorneys' eyes only or highly 10:16:22
16 confidential, and in this instance, I would like to 10:16:27
17 make that note to the record that Exhibits 12 and 13 10:16:29
18 appear to be highly confidential themselves -- I 10:16:34
19 know they were marked highly confidential and that 10:16:38
20 the testimony is likely to be highly confidential. 10:16:40

21 (The documents referred to were marked by
22 the Reporter as Plaintiffs' Exhibits 12 and 13 for
23 identification and are attached hereto.)

24 BY MR. KLAUS: 10:16:51

25 Q Mr. Harmon, I put before you documents 10:16:51

1 okay. Say the question again. I'm sorry. 10:32:35
2 BY MR. KLAUS: 10:32:38
3 Q I'll rephrase it. 10:32:38
4 A Yeah. 10:32:39
5 Q You get a -- you get -- you buy -- you buy 10:32:39
6 a package. You buy either a DVD, a Blu-ray disc, or 10:32:46
7 a combo pack, and you get the package -- an 10:32:49
8 individual package, you put a bar code on that 10:32:54
9 package, right? 10:32:55
10 A Uh-huh. 10:32:56
11 Q Is that a yes? 10:32:56
12 A Yes, that's a yes. 10:32:57
13 Q And the bar code has, I take it, a number 10:32:59
14 that it's associated with, correct? 10:33:04
15 A Yes. 10:33:06
16 Q And that number is used in your inventory 10:33:07
17 tracking and management system, correct? 10:33:15
18 MR. MARQUART: Objection; vague and 10:33:16
19 ambiguous, foundation. 10:33:17
20 THE WITNESS: Yes. 10:33:18
21 BY MR. KLAUS: 10:33:20
22 Q When VidAngel acquires a combo pack, does 10:33:20
23 it put one bar code or two bar codes on the combo 10:33:27
24 pack package? 10:33:32
25 MR. MARQUART: Same objections. 10:33:33

1 Q You just put it into a computer and what 10:40:08
2 happens once you put it into the computer? 10:40:11

3 A We open the disc and we make a copy of the 10:40:14
4 MPEG 2 files. 10:40:23

5 Q And in order to make that copy, you -- 10:40:25
6 you've heard the term "ripping" before, right? 10:40:30

7 A Uh-huh. 10:40:33

8 Q You know -- that's a yes? 10:40:33

9 A Yes. 10:40:34

10 Q And you know generally what ripping refers 10:40:35
11 to, right? 10:40:37

12 MR. MARQUART: Objection; vague and 10:40:38
13 ambiguous and calls for speculation as well. 10:40:42

14 Counsel, if you want to define some term 10:40:46
15 that you're using and we can use that definition, 10:40:48
16 that's fine, but that's vague and ambiguous and 10:40:50
17 calls for speculation. 10:40:52

18 BY MR. KLAUS:

19 Q Well, let's see -- you know what, let's do 10:40:53
20 it this way. You just told me that you -- you've 10:40:56
21 heard of the term "ripping." 10:40:59

22 What do you understand ripping to be? 10:41:00

23 MR. MARQUART: Counsel -- Counsel, okay, 10:41:04
24 that's the same objections as before. I'd prefer to 10:41:05
25 use language that the witness understands. 10:41:10

1	Q	What is it?	11:11:08
2	A	It's a receipt.	11:11:09
3	Q	For what?	11:11:10
4	A	AnyDVD HD.	11:11:14
5	Q	And the date on this invoice is June 6,	11:11:17
6		2016.	11:11:22
7		Do you see that?	11:11:22
8	A	Yes.	11:11:23
9	Q	Did VidAngel purchase other software --	11:11:23
10		AnyDVD or other comparable software prior to June 6,	11:11:34
11		2016?	11:11:39
12	A	We purchased AnyDVD when we began our --	11:11:40
13		yes, we did.	11:11:49
14	Q	Okay. When did you first purchase AnyDVD?	11:11:50
15		MR. MARQUART: Objection; foundation,	11:11:53
16		assumes facts.	11:11:56
17		THE WITNESS: Can I give you an estimate?	11:11:57
18		BY MR. KLAUS:	11:11:58
19	Q	Yeah, please.	11:11:58
20	A	I would estimate fourth quarter of 2014.	11:12:01
21	Q	And did VidAngel purchase AnyDVD from a	11:12:10
22		company called RedFox?	11:12:28
23		MR. MARQUART: Objection; vague as to time.	11:12:30
24		BY MR. KLAUS:	11:12:32
25	Q	At the time that you -- at the time you	11:12:32

1 first purchased AnyDVD, was it purchased from 11:12:35

2 RedFox? 11:12:38

3 MR. MARQUART: Foundation. 11:12:42

4 THE WITNESS: No. 11:12:43

5 BY MR. KLAUS: 11:12:43

6 Q Was it from a company called SlySoft? 11:12:43

7 A Yes. 11:12:46

8 Q And is it your understanding that RedFox is 11:12:46

9 a continuation of SlySoft? 11:12:49

10 A Yes. 11:12:52

11 Q Do you know what happened to SlySoft? 11:12:52

12 A Yes. 11:12:59

13 Q What happened to them? 11:12:59

14 A SlySoft changed their business name to 11:13:00

15 RedFox. I don't know exactly what happened. I know 11:13:06

16 that they changed their business. 11:13:15

17 MR. MARQUART: I'm just going to interject 11:13:17

18 foundation, calls for speculation. 11:13:19

19 BY MR. KLAUS: 11:13:21

20 Q Do you know -- have you heard of SlySoft's 11:13:21

21 former CEO -- familiar that he is subject to 11:13:27

22 criminal fines for distributing illegal ripping 11:13:36

23 software? Do you know that? 11:13:39

24 MR. MARQUART: Objection; foundation, calls 11:13:40

25 for speculation, and calls for a legal conclusion. 11:13:41

1 Q What is -- what is your understanding of a 11:48:30
2 front-channel mute? 11:48:34

3 MR. MARQUART: Objection; assumes facts, 11:48:36
4 foundation. 11:48:38

5 THE WITNESS: I can only speak for my own 11:48:40
6 understanding here, but I assume that that means the 11:48:43
7 potentially objectionable content is contained in 11:48:48
8 the front center channel of the audio. 11:48:51

9 BY MR. KLAUS: 11:48:53

10 Q And is it also correct to say that that's 11:48:53
11 the -- if that's the objectionable content somebody 11:48:56
12 wants taken out and that's where it's located, 11:49:01
13 that's where the mute will be in the playback? 11:49:04

14 A That's correct. 11:49:08

15 Q Okay. If I could ask you to look at 11:49:09
16 paragraph number 17. 11:49:13

17 A Okay.

18 Q So Mr. McDonald writes here, "The 11:49:20
19 transformed segments are stored on the server and 11:49:22
20 streamed back to the user as the HTTP response." 11:49:28

21 Do you see that? 11:49:31

22 A Yes. 11:49:34

23 Q What are the transformed segments? What's 11:49:34
24 your understanding of what that refers to? 11:49:37

25 MR. MARQUART: Objection; foundation and 11:49:39

1 server. 11:54:18

2 Do you see that? 11:54:18

3 A Yes. 11:54:26

4 Q And is it your understanding that the edge 11:54:26

5 server is the particular computer server owned by 11:54:31

6 the Cloud delivery company you contract with where 11:54:38

7 the content files are stored and then streamed to 11:54:44

8 VidAngel's customers? Is that your understanding of 11:54:48

9 what the edge server is? 11:54:51

10 MR. MARQUART: Objection; foundation. 11:54:53

11 THE WITNESS: Yes, that's my understanding. 11:54:54

12 BY MR. KLAUS: 11:54:55

13 Q [REDACTED] 11:54:55

[REDACTED] 11:55:00

[REDACTED] 11:55:08

[REDACTED] 11:55:13

[REDACTED] 11:55:18

[REDACTED] 11:55:28

[REDACTED] 11:55:31

20 MR. MARQUART: Objection; vague and 11:55:34

21 ambiguous, foundation, calls for speculation. 11:55:36

22 THE WITNESS: I'll have to hear that 11:55:39

23 question -- that whole phrase again, please. 11:55:40

24 (The record was read as follows:

25 "Q [REDACTED]

1 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] ")
11 MR. MARQUART: Objections were foundation, 11:56:08
12 calls for speculation. 11:56:09
13 THE WITNESS: [REDACTED] 11:56:22
[REDACTED] 11:56:24
15 BY MR. KLAUS: 11:56:31
16 Q [REDACTED] 11:56:31
[REDACTED] 11:56:34
[REDACTED] 11:56:38
[REDACTED] 11:56:40
[REDACTED] 11:56:44
21 MR. MARQUART: Objection; foundation and 11:56:46
22 calls for speculation. 11:56:47
23 THE WITNESS: [REDACTED] 11:56:48
24 BY MR. KLAUS: 11:56:49
25 Q [REDACTED] 11:56:49

█ [REDACTED] 12:16:27

█ [REDACTED] 12:16:28

3 MR. MARQUART: Objection; foundation. 12:16:29

4 THE WITNESS: █ 12:16:30

5 BY MR. KLAUS: 12:16:30

6 Q [REDACTED] 12:16:30

7 A █ 12:16:33

8 Q [REDACTED] 12:16:34

9 MR. MARQUART: Objection; vague and 12:16:38

10 ambiguous. 12:16:39

11 THE WITNESS: █ 12:16:39

12 BY MR. KLAUS: 12:16:39

13 Q [REDACTED] 12:16:39

█ [REDACTED] 12:16:44

15 A [REDACTED] 12:16:44

█ [REDACTED] 12:16:46

█ [REDACTED] 12:16:54

█ [REDACTED] 12:16:57

19 Q [REDACTED] 12:16:58

█ [REDACTED] 12:17:04

█ [REDACTED] 12:17:09

█ [REDACTED] 12:17:11

23 MR. MARQUART: Objection; foundation and 12:17:12

24 assumes facts. 12:17:13

25 THE WITNESS: [REDACTED] 12:17:15

█	[REDACTED]	12:17:17
█	[REDACTED]	12:17:22
3	BY MR. KLAUS:	12:17:28
4	Q [REDACTED]	12:17:28
█	[REDACTED]	12:17:30
6	A [REDACTED]	12:17:31
7	Q [REDACTED]	12:17:31
█	[REDACTED]	12:17:38
█	[REDACTED]	12:17:44
█	[REDACTED]	12:17:49
█	[REDACTED]	12:17:51
12	A [REDACTED]	12:17:52
13	Q [REDACTED]	12:17:53
█	[REDACTED]	12:17:57
█	[REDACTED]	12:18:01
█	[REDACTED]	12:18:05
█	[REDACTED]	12:18:07
18	MR. MARQUART: Objection; foundation, calls	12:18:12
19	for speculation.	12:18:13
20	THE WITNESS: [REDACTED]	12:18:14
█	[REDACTED]	12:18:16
22	BY MR. KLAUS:	12:18:20
23	Q [REDACTED]	12:18:20
█	[REDACTED]	12:18:23
█	[REDACTED]	12:18:28

1 from needing a break and we're close to lunch, does 12:30:49

2 that -- 12:30:51

3 MR. KLAUS: That's fine. I've only got 12:30:51

4 about five to ten minutes of questions on this for 12:30:52

5 right now. 12:30:55

6 MR. MARQUART: Okay. I assume you 12:30:56

7 answered -- 12:30:57

8 BY MR. KLAUS:

9 Q If you could look at -- if you could look 12:30:58

10 at page 2, there's a photo that takes up a big part 12:30:59

11 of this page. 12:31:02

12 First of all, tell me who is -- it says 12:31:05

13 that this is the manager of VidAngel's storage 12:31:11

14 vault. 12:31:14

15 Do you recognize her? 12:31:15

16 A Yes. 12:31:16

17 Q Who is that? 12:31:16

18 A Liz Ellis. 12:31:17

19 Q She's your COO? 12:31:18

20 A Uh-huh. 12:31:20

21 Q And she's also the manager. I take it, one 12:31:21

22 of her duties is to manage the storage vault; is 12:31:24

23 that correct? 12:31:27

24 A Well, she's responsible for it, the 12:31:27

25 management of the storage vault. 12:31:33

1 THE WITNESS: I really don't know, but I 12:34:10
2 would say that is probably -- Revenant was one of 12:34:12
3 our more successful titles. So I would say it's 12:34:15
4 probably over average. 12:34:19

5 BY MR. KLAUS: 12:34:22

6 Q Okay. And the process that we've looked at 12:34:22
7 in some of the earlier documents about acquiring the 12:34:25
8 copy from the disc and then uploading that, does 12:34:29
9 VidAngel do that with respect to every one of the 12:34:36
10 physical copies in its inventory or a lower number? 12:34:44

11 A This process. 12:34:52

12 Q By "this process," if you're looking at the 12:34:53
13 exhibits we looked at before, which I think were 12:34:56
14 Exhibits 15 through 17, those processes -- 12:34:58

15 A Okay. 12:35:05

16 Q -- does VidAngel follow those processes 12:35:05
17 with respect to a single disc or with respect to 12:35:07
18 every disc that it has in its physical inventory? 12:35:12

19 A We prepare the filtering information for 12:35:15
20 the title just one time. 12:35:19

21 Q And the upload to the -- to the servers, do 12:35:22
22 you -- does VidAngel through its Cloud server 12:35:27
23 network that it contracts with -- strike that. 12:35:32

24 How many copies reside on the -- of a 12:35:38
25 particular title reside on the content delivery 12:35:43

1 It's listed on page 33 -- 12:38:22

2 Q Yep. 12:38:25

3 A -- lines 9 through pages 34, line 21. 12:38:26

4 Q Yep. 12:38:31

5 A This is a description of the copies that 12:38:36

6 are made in preparing the files for -- for 12:38:39

7 filtering. 12:38:46

8 Q Okay. Let me ask the question this way. 12:38:47

9 Is there a -- is there a single copy of The 12:38:51

10 Revenant located on an Amazon Cloud server that 12:38:59

11 corresponds to every one of the thousand physical 12:39:04

12 packages that Ms. Ellis is pictured behind on page 2 12:39:07

13 of your answer? 12:39:13

14 MR. MARQUART: Objection; vague and 12:39:14

15 ambiguous as to "copy" and it assumes facts not in 12:39:15

16 evidence. 12:39:18

17 THE WITNESS: So would you like me to read 12:39:26

18 how the system works for you or -- 12:39:28

19 BY MR. KLAUS: 12:39:29

20 Q No. I'd like you to answer the question, 12:39:29

21 sir, which is Ms. Ellis is pictured behind something 12:39:32

22 that may be about a thousand physical copies. 12:39:36

23 Is there a -- is there on Amazon's Cloud 12:39:38

24 server a copy that corresponds to every one of those 12:39:41

25 discs? 12:39:44

1 MR. MARQUART: So objection; vague and 12:39:46
2 ambiguous as to "copy," misstates his prior 12:39:47
3 testimony as to the process, and I'm not sure he can 12:39:49
4 answer the question as phrased, but -- 12:39:53

5 THE WITNESS: I will -- I will say this, 12:39:57
6 that this process that we use to prepare the movie 12:39:59
7 for filtering happens one time. 12:40:04

8 BY MR. KLAUS: 12:40:08

9 Q Okay. Okay. Let me just ask a couple more 12:40:08
10 questions and then we can break for lunch. 12:40:14

11 A Can I just make one addition? I suppose it 12:40:16
12 could happen more than one time if there was a 12:40:19
13 mistake made in the process. 12:40:22

14 Q Is the intent behind the process in its 12:40:23
15 ordinary course to have that happen one time per 12:40:28
16 title? 12:40:31

17 A Yes, yes. 12:40:31

18 Q Let me ask you -- Exhibit -- I'm going to 12:40:32
19 mark -- can you give me the folder with this Exhibit 12:40:50
20 10 -- tab 10. 12:40:56

21 And then also why don't you give me tab 11 12:41:05
22 and ask the court reporter to mark this as Exhibit 12:41:08
23 19 -- these will be very quick questions -- mark 12:41:10
24 this as Exhibit 20. 12:41:23

25 MR. MARQUART: Each page -- well, I've got 12:41:25

1 series of segments in the different bit rates are 02:13:52
2 displayed to the user according to their filter 02:13:56
3 preferences. 02:14:01

4 Q Okay. Anything else you want to add to 02:14:02
5 that answer? 02:14:04

6 A No. 02:14:05

7 Q Okay. Thanks. So, Mr. Harmon, let me 02:14:05
8 ask -- VidAngel was formed in about October 2013, 02:14:14
9 correct? 02:14:32

10 A I believe that that was the month that we 02:14:32
11 formed VidAngel, LLC. 02:14:39

12 Q And in around October 2013, during the 02:14:41
13 early years of VidAngel, we'll call them, during the 02:14:53
14 time period of VidAngel, one of the things that you 02:14:56
15 did was to develop a website that allowed customers 02:15:02
16 to filter movies and videos that were available on 02:15:05
17 YouTube and the Google Play Hollywood library; is 02:15:09
18 that correct? 02:15:13

19 A Yes. 02:15:13

20 MR. MARQUART: Vague and ambiguous. 02:15:13

21 THE WITNESS: Excuse me. Yes. 02:15:14

22 BY MR. KLAUS: 02:15:17

23 Q And was that done with some form of like 02:15:17
24 what is commonly called a plug-in software program? 02:15:20

25 A I believe the term that Google Chrome uses 02:15:24

1 is an extension.

02:15:32

2 Q And so you -- VidAngel implemented its
3 filters through a Google Chrome extension during the
4 first part of VidAngel's existence, correct?

02:15:33

02:15:38

02:15:42

5 A We implemented it via a Google Chrome
6 extension, and also through an embedded I-frame in
7 other instances.

02:15:46

02:15:50

02:15:54

8 Q At some point during the year 2014, did
9 VidAngel decide to make what it called a pivot in
10 its business?

02:15:56

02:16:02

02:16:08

11 A Yes, at some point in 2014, we changed the
12 direction of our business.

02:16:08

02:16:18

13 Q Was it in around the October 2014 time
14 frame that you did that?

02:16:19

02:16:26

15 A It was -- it was during a period of time
16 that -- really the decision built up throughout the
17 year of 2014.

02:16:27

02:16:34

02:16:45

18 MR. KLAUS: Okay. And just see if I can
19 put some context around this, ask the court reporter
20 to mark Exhibit 21 and hand that to you. Let me
21 know when you have that.

02:16:49

02:16:54

02:16:58

02:17:07

22 (The document referred to was marked by the
23 Reporter as Plaintiffs' Exhibit 21 for
24 identification and is attached hereto.)

25 BY MR. KLAUS:

02:17:22

1 Do you see that? 02:30:14

2 A Yes. 02:30:15

3 Q And what's under here, up through "On 02:30:15

4 Ultraviolet," is your written response to his 02:30:18

5 question regarding the sustainability of the DVD 02:30:22

6 model, correct? 02:30:25

7 A Yes. 02:30:25

8 Q And you wrote to him, "Even though VidAngel 02:30:27

9 is using a license that comes with a disc purchase, 02:30:31

10 VidAngel is not" -- capital N-O-T -- "a disc 02:30:35

11 service. VidAngel is a streaming service that is 02:30:40

12 superior to all other current streaming services 02:30:43

13 because it uses the best of all technology and 02:30:47

14 licensing available." 02:30:50

15 Do you see that? 02:30:53

16 A Yes. 02:30:54

17 Q What did you mean by the "license that 02:30:54

18 comes with a disc purchase"? 02:30:58

19 A I would just provide for context that this 02:31:00

20 e-mail is sent by Paul and my reply are not 02:31:07

21 referencing the current technology of VidAngel. 02:31:15

22 They are referencing a technology that we -- I'm not 02:31:19

23 even sure what parts of it I can reveal because of 02:31:29

24 privilege, but it was a technology that we were 02:31:31

25 exploring and never offered to customers. 02:31:34

1 Q What was that technology? 02:31:36

2 MR. MARQUART: Again, don't reveal any 02:31:38

3 communications with counsel. You can reveal what 02:31:40

4 the technology was, but don't reveal any 02:31:43

5 communications with counsel. I don't know what your 02:31:47

6 answer is going to be, but I heard something that 02:31:49

7 sounded like it could include. 02:31:51

8 THE WITNESS: Okay. Yeah, the -- what was 02:31:53

9 the technology? Could you give me a more specific 02:32:05

10 question? What do you mean by "What was the 02:32:08

11 technology"? 02:32:10

12 BY MR. KLAUS: 02:32:11

13 Q You said that the service that you're 02:32:11

14 discussing in this e-mail exchange in Exhibit 22 is 02:32:13

15 not the current VidAngel service. 02:32:18

16 Tell me what the service was that you were 02:32:21

17 discussing with him. 02:32:23

18 A To the best of my knowledge and memory, 02:32:24

19 this was a service that was based on the premise of 02:32:34

20 drawing -- actually drawing a similar analogy from 02:32:45

21 the marketplace. It was more akin to -- have you 02:32:48

22 heard of the service called Movie Swap? 02:32:52

23 Q I've heard of it, but that's just going to 02:32:58

24 lead me to ask you to continue to describe what that 02:33:01

25 is for the record. 02:33:03

1 A That's fine. That's fine. At any rate, it 02:33:04
2 was -- it was more like a service where people would 02:33:06
3 add their own DVDs, and they could trade or share. 02:33:10
4 I don't remember all the details of the service, but 02:33:19
5 this -- it was an idea that was a nascent idea that 02:33:21
6 never saw the light of day. 02:33:35

7 Q Is it accurate to say that the service that 02:33:40
8 VidAngel is offering today is not a disc service but 02:33:43
9 is a streaming service that is superior to all other 02:33:48
10 current streaming services? 02:33:52

11 A No. 02:33:53

12 Q In what way is that not an accurate 02:33:53
13 description of the service that you use today? 02:33:57

14 A Well, this -- the servant that we use -- 02:33:58
15 the service that we use today is -- is superior to 02:34:09
16 other services for people who want to filter their 02:34:12
17 movies and TV shows and could be considered by many 02:34:15
18 to be inferior to other services where their -- if 02:34:25
19 their goal is not to filter movies and TV shows. 02:34:32

20 So Netflix has an amazing offering and 02:34:35
21 other services have features that we don't have. So 02:34:44
22 that is not a true statement. 02:34:50

23 Q Is it a true statement that today VidAngel 02:34:51
24 is not a disc service? 02:34:56

25 A I would say that VidAngel is a filtering 02:34:59

1 A Yes, I believe that I compiled the slides 03:34:49
2 from information that was given me from others. 03:34:53

3 Q And what was the purpose of this slide 03:34:55
4 deck? 03:34:58

5 A This slide deck, November 2015, "Investor 03:35:01
6 Intro," this was a slide deck for prospective 03:35:05
7 investors in VidAngel. 03:35:09

8 Q I'd like to ask you -- and just to ask a 03:35:23
9 couple of questions. The first pictured slide, 03:35:26
10 which is 13620, "One bleeping dollar new releases \$1 03:35:34
11 per night with sellback," do you see that? 03:35:41

12 A Yes. 03:35:43

13 Q Is this an introduction to prospective 03:35:43
14 investors, sort of a splash screen introduction to 03:35:48
15 them? 03:35:52

16 A This was -- 03:35:52

17 MR. MARQUART: Objection; vague and 03:35:53
18 ambiguous. 03:35:54

19 THE WITNESS: This was a -- I think this 03:35:54
20 was a screen capture from an image on our website. 03:35:58

21 BY MR. KLAUS: 03:36:07

22 Q Okay. If you look at page 13622, it says, 03:36:07
23 "VidAngel vault (provisional patent protection)." 03:36:15

24 Do you see that? 03:36:18

25 A Yes. 03:36:19

1 Q What is the -- what is it you were trying 03:36:19
2 to illustrate on this slide? 03:36:22

3 A I'm trying to illustrate that new releases 03:36:28
4 we acquire discs, and we place them into our vault, 03:36:37
5 and then we sell them, and we buy them back. 03:36:50

6 And the second option is a hypothetical 03:36:56
7 scenario that doesn't exist where existing VidAngel 03:36:59
8 users could add their own movies to their VidAngel 03:37:04
9 library to be able to filter them. 03:37:11

10 Q Let me ask, if you would, to turn to page 03:37:20
11 13637. Let me know when you're there. 03:37:27

12 A 13637, 13637? I'm on 13637. 03:37:30

13 Q And are these financial projections that 03:37:59
14 you had developed to present to prospective 03:38:01
15 investors about how you hoped to grow the business? 03:38:05

16 A Yes. 03:38:11

17 Q And it says, in 2015, 18,770. Do you see 03:38:11
18 that in terms of total number of customers? 03:38:19

19 A Yes. 03:38:22

20 Q To the best of your recollection, was that 03:38:22
21 approximately the number of customers that you had 03:38:24
22 or -- as of November 2015 or anticipated to have as 03:38:28
23 around year-end? 03:38:32

24 A To the best of my recollection. 03:38:33

25 MR. MARQUART: Sorry. Objection; vague as 03:38:37

1 Q Okay. Do you know what the -- and is it 03:42:25
2 your recollection that as of around November or 03:42:30
3 December of 2015, you had around 63,000 sales as you 03:42:36
4 describe them? 03:42:41

5 MR. MARQUART: Objection; calls for 03:42:44
6 speculation, foundation. 03:42:45

7 You can answer if you're able. 03:42:45

8 THE WITNESS: I really don't remember. 03:42:46

9 BY MR. KLAUS: 03:42:48

10 Q Sound like it's probably something in that 03:42:48
11 ballpark of 63,000? 03:42:53

12 A I think it was higher than that. 03:42:55

13 Q Do you think it was over a hundred thousand 03:43:02
14 by year-end of 2015? 03:43:04

15 A Could have been. 03:43:09

16 Q It then -- if you move over, you're 03:43:10
17 anticipating for 2016 having 1.7 million movies 03:43:16
18 sold. 03:43:24

19 Do you see that? 03:43:24

20 A Yes. 03:43:25

21 Q What's your -- what are the number of 03:43:25
22 sales, as you describe them, so far during calendar 03:43:30
23 year 2016? 03:43:36

24 A I don't know. 03:43:39

25 Q Over a million? 03:43:39

1	A	Uh-huh.	03:43:40
2	Q	Over 1 1/2 million?	03:43:41
3	A	Yes.	03:43:45
4	Q	Over 2 million?	03:43:46
5	A	I don't know.	03:43:47
6	Q	Do you think it's probably somewhere in the	03:43:47
7		range of 1 1/2 to 2 million sales?	03:43:51
8	A	I think that's likely.	03:43:53
9	Q	And there are columns for 2017 and 2018.	03:43:59
10		Do you see those?	03:44:07
11	A	For -- yes.	03:44:07
12	Q	And, again, it was your purpose in	03:44:10
13		preparing this slide with these projections to	03:44:14
14		extrapolate out based on your assumptions what you	03:44:20
15		thought the growth might be by the year-end 2017 and	03:44:25
16		year-end 2018? Is that your purpose in this?	03:44:28
17		MR. MARQUART: Objection; vague and	03:44:31
18		ambiguous.	03:44:33
19		THE WITNESS: The purpose was to	03:44:34
20		communicate given a given set of assumptions what	03:44:38
21		would happen.	03:44:41
22		BY MR. KLAUS:	03:44:44
23	Q	Under "Marketing Costs," it says you had	03:44:44
24		about around just under a half million dollars in	03:44:48
25		marketing costs through the end of 2015.	03:44:53

1	THE WITNESS: It's a reference to a	04:51:47
2	potential video script.	04:51:54
3	BY MR. KLAUS:	04:51:55
4	Q And at this point, have you created such a	04:51:55
5	video?	04:51:58
6	A No.	04:51:58
7	Q There's a reference to "October timing,	04:51:58
8	prehearing or posthearing if we raise now."	04:52:04
9	Do you see that?	04:52:06
10	A Yes.	04:52:06
11	Q What is that a reference to?	04:52:15
12	A Exactly what we said in the board meeting.	04:52:16
13	Q Which is what?	04:52:19
14	A "October timing, prehearing or posthearing,	04:52:20
15	if we raise money now."	04:52:26
16	Q Are you referring to the hearing on the	04:52:30
17	motion for preliminary injunction in this case?	04:52:32
18	A Yes.	04:52:36
19	Q Let me switch to another topic, Mr. Harmon.	04:52:36
20	A Okay.	04:52:51
21	Q I'd like to talk to you about your buy and	04:52:59
22	sellback feature. One element of the buy and	04:53:02
23	sellback feature is that if a customer who has	04:53:15
24	bought a DVD actually wants their disc shipped to	04:53:17
25	them, you'll ship it to them; is that right?	04:53:20

1 A Yes. 04:53:25

2 Q How many people have requested to have 04:53:27

3 their discs shipped to them? 04:53:32

4 A Eight. 04:53:35

5 Q Eight total? 04:53:36

6 A To my knowledge. 04:53:38

7 Q How many discs have you actually shipped to 04:53:46

8 those people? 04:53:49

9 MR. MARQUART: Objection; vague and 04:53:54

10 ambiguous as to "those people." 04:53:55

11 THE WITNESS: We have shipped, to my 04:54:02

12 knowledge, four. 04:54:03

13 BY MR. KLAUS: 04:54:04

14 Q Do you know why the -- you did not ship 04:54:04

15 this to the other four people? 04:54:13

16 A To my understanding, it's because the other 04:54:14

17 people mistakenly requested that their discs be 04:54:16

18 shipped to them. 04:54:20

19 Q The discs -- the four discs that you 04:54:36

20 shipped -- or provided back to people who requested 04:54:37

21 them, did you provide them the disc in its original 04:54:40

22 DVD or DVD/Blu-ray case? 04:54:49

23 A I don't know. 04:54:51

24 Q Do you know whether you provided them the 04:54:55

25 disc in any form that had their bar code on the 04:54:57

1 a physical copy of a movie sent to them is someone 05:01:37
2 who's paid the full purchase price; in other words, 05:01:41
3 they've paid the 20 bucks and there's nothing to 05:01:44
4 credit them, correct? 05:01:46

5 A Correct. 05:01:54

6 Q And it's the case that even after VidAngel 05:01:54
7 returns the physical disc to that person, the person 05:01:57
8 is still able to view the movie through VidAngel; 05:02:03
9 is that correct? 05:02:10

10 MR. MARQUART: Objection; vague and 05:02:11
11 ambiguous, vague as to time, mischaracterizes prior 05:02:12
12 testimony if it's intending to. 05:02:14

13 THE WITNESS: They will still be able to 05:02:19
14 view the filtered version of the movie. 05:02:20

15 BY MR. KLAUS: 05:02:23

16 Q On VidAngel? 05:02:23

17 A On VidAngel. 05:02:24

18 Q Even though they have physical possession 05:02:25
19 of the disc, they'll still be -- 05:02:29

20 A Yes, as long as they've agreed to this 05:02:29
21 affidavit. 05:02:32

22 Q And can the person who does that, can they 05:02:33
23 change their filter settings for the movie on 05:02:39
24 VidAngel? 05:02:43

25 A Yes. 05:02:44

1 Mr. Klaus.

05:17:57

2 MR. MARQUART: Have you -- have you made a
3 decision one way or the other, yes or no? And then
4 please don't disclose any communications.

05:17:57

05:17:58

05:18:00

5 BY MR. KLAUS:

05:18:01

6 Q Have you made a decision one way or another
7 about whether it's possible it will be turned back
8 on?

05:18:01

05:18:04

05:18:06

9 A I don't think we've made a decision.

05:18:07

10 Q Has VidAngel also, since the lawsuit was
11 filed, disabled the filtering option that would
12 allow users to filter content -- filter either the
13 opening or closing credits only and still be able to
14 watch a movie on VidAngel?

05:18:37

05:18:41

05:18:49

05:18:56

05:18:59

15 MR. MARQUART: Objection; vague as to time,
16 speculation.

05:19:01

05:19:03

17 THE WITNESS: Could you please reread the
18 question.

05:19:04

05:19:06

19 (The record was read as follows:

20 "Q Has VidAngel also, since the
21 lawsuit was filed, disabled the
22 filtering option that would allow
23 users to filter content -- filter
24 either the opening or closing
25 credits only and still be able to

1 watch a movie on VidAngel?") 05:19:32

2 THE WITNESS: As background, we -- having 05:19:32

3 created this service for the purpose of filtering, 05:19:37

4 have taken measures throughout our history to ensure 05:19:44

5 that that's what the service is used for, and among 05:19:48

6 those is writing the letters to the studios later 05:19:56

7 requiring filters. And after seeing the complaint 05:20:04

8 and realizing that the movies could be watched in 05:20:14

9 their entirety with -- with only opening and closing 05:20:22

10 credits, we removed the opening and closing credits. 05:20:27

11 We got a few complaints about that because 05:20:30

12 there are certain films where the opening and 05:20:36

13 closing credits have content in them that are 05:20:39

14 objectionable. We'd like to add the feature back, 05:20:41

15 but we need to alter our systems so that when you 05:20:45

16 select the opening and closing credits filters, you 05:20:49

17 also need to select an additional filter. 05:20:56

18 So, yes, it occurred post the filing of the 05:21:01

19 litigation, but it is a continuation of a history of 05:21:06

20 ensuring that our service is used for the purpose it 05:21:11

21 was designed, which is to filter movies and TV 05:21:14

22 shows. 05:21:20

23 BY MR. KLAUS: 05:21:20

24 Q Were you aware before the lawsuit was filed 05:21:20

25 that various persons had publicly discussed the 05:21:33

1 ability to watch essentially an entire movie on 05:21:39
2 VidAngel for only a dollar by disabling either the 05:21:44
3 opening or closing credits? 05:21:52

4 MR. MARQUART: Objection; vague and 05:21:54
5 ambiguous as to "various persons," vague as to time. 05:21:58

6 THE WITNESS: I may have been aware of that 05:22:02
7 fact. I don't remember at this time. It's become a 05:22:04
8 topic of focus recently. So it's hard to sort out 05:22:09
9 timing. 05:22:14

10 MR. KLAUS: Mark as Exhibit 35. 05:22:19

11 (The document referred to was marked by the
12 Reporter as Plaintiffs' Exhibit 35 for
13 identification and is attached hereto.)

14 THE WITNESS: Oh, you know what, I just 05:22:31
15 remembered an article that mentioned only the 05:22:33
16 opening credits. It was a USA Today article. 05:22:40

17 BY MR. KLAUS: 05:22:47

18 Q Do you recall when that was? 05:22:47

19 A January. 05:22:50

20 Q Did you see it at that time? 05:22:51

21 A Yes. 05:22:52

22 Q And why didn't VidAngel disable the opening 05:22:53
23 or closing credit feature at that time when you saw 05:22:58
24 the USA Today article? 05:23:02

25 A Because we -- the person who was 05:23:04

1 STATE OF CALIFORNIA)
2) ss
3 COUNTY OF ORANGE)

4 I, LINDA NICKERSON, CSR #8746, in and for
5 the State of California do hereby certify:

6 That, prior to being examined, the witness
7 named in the foregoing deposition was by me duly
8 sworn to testify the truth, the whole truth, and
9 nothing but the truth;

10 That said deposition was taken down by me in
11 shorthand at the time and place therein named, and
12 thereafter reduced to typewritten form at my
13 direction, and the same is a true, correct, and
14 complete transcript of the testimony at said
15 proceedings.

16 Before completion of the deposition, review
17 of transcript [X] was [] was not requested. If
18 requested, any changes made by the deponent (and
19 provided to the reporter) during the period allowed
20 are appended hereto.

21 I further certify that I am not interested
22 in the event of the action.

23 WITNESS MY HAND this 15th day of August, 2016.

24



25

LINDA NICKERSON, CSR No. 8746