EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

DANIEL M. MILLER

       Plaintiff,

       vs.

FACEBOOK, INC. and YAO WEI
YEO,

       Defendants.

CIVIL ACTION FILE

NO. 10-00264 (WHA)

HIGHLY CONFIDENTIAL

VIDEO DEPOSITION OF DANIEL MILLER

Monday, February 7, 2011

10:05 a.m.

Heninger, Garrison & Davis

1 Glenlake Parkway, Suite 700

Atlanta, Georgia

Reported by:
Robyn Bosworth
RPR, CRR, CCR-B-2138

JOB NO. 155202

1   APPEARANCES OF COUNSEL:

2   On behalf of the Plaintiff:

3   BRIAN D. HANCOCK (when noted)

4   DOUGLAS L. BRIDGES (when noted)

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11   On behalf of the Defendant Facebook, Inc.:

12   I. NEEL CHATTERJEE

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14   Attorneys at Law

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19

20   Also Present: Terry Wetz, Videographer

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concept?

    A   I don't know. I just am -- I -- I can't recall exactly how specifically I know certain things.

    Q   Okay. What aspects of this complaint were you involved in?

    A   I don't -- I don't recall exactly.

    Q   Just some aspects of it?

    MR. HANCOCK: Same objection as to attorney-client privileged communications, but you can answer outside of those, Mr. Miller.

BY MR. CHATTERJEE:

    Q   So with respect -- I'm going to read paragraph 20. The allegation in the complaint is, "Defendant Yeo unlawfully copied Boomshine by improperly accessing and decompiling the Boomshine source code with a decompiling program or by viewing the Boomshine application via the K2xL.com website."

    You see that?

  A   Yes.

    Q   Are you aware of any facts that Yeo copied Boomshine by improperly accessing and decompiling the Boomshine source code with a decompiling program?

    A   No.

10:29:23 1   Q   Are you aware of any facts that Yeo

10:29:25 2   unlawfully copied Boomshine by viewing the Boomshine

10:29:30 3   application via the K2xL.com website?

10:29:36 4   MR. HANCOCK: Object to the form. You can

10:29:38 5   answer, Mr. Miller.

10:29:38 6   A   I'm not sure.

10:29:39 7   BY MR. CHATTERJEE:

10:29:39 8   Q   Why are you not sure?

10:29:40 9   A   I don't know what would constitute as a

10:29:42 10   fact in that matter.

10:29:43 11   Q   Okay. So what do you know about whether

10:29:45 12   Yeo unlawfully copied Boomshine by viewing the

10:29:49 13   Boomshine application via the K2xL.com website?

10:30:01 14   A   I just know what the out -- what the --

10:30:03 15   what the game was. I don't -- I don't know -- I

10:30:07 16   don't -- I -- it's impossible for me to know, what,

10:30:10 17   you know, he was doing.

10:30:12 18   Q   Do you know if Defendant Yeo ever viewed

10:30:16 19   the Boomshine application via the K2xL.com website?

10:30:21 20   A   No.

10:30:22 21   Q   And then the next -- did you keep any

10:30:26 22   records of who accessed your website that would

10:30:28 23   allow you to know that?

10:30:31 24   A   No.

10:30:32 25   MR. HANCOCK: Object -- I'll object to the

10:49:36	1		application?
10:49:36	2	A	Yes.
10:49:37	3	Q	When?
10:49:39	4	A	I don't recall.
10:49:40	5	Q	It was on Facebook?
10:49:43	6	A	My game Boomshine was on Facebook.
10:49:46	7	Q	Okay. And is it still on Facebook?
10:49:48	8	A	I don't know.
10:49:49	9	Q	How do -- how is it that you don't know?
10:49:52	10	A	I didn't put it there.
10:49:53	11	Q	Who put it there?
10:49:55	12	A	I don't know.
10:49:57	13	Q	Someone who licensed -- so did you ever

put Boomshine on Facebook?

10:50:01	15	A	No.
10:50:02	16	Q	Did the people who put Boomshine on

Facebook, were they licensed users?

10:50:08	18	A	I'm not sure I understand your question.
10:50:11	19	Q	Well, you've given licenses to people to

use Boomshine, right?

10:50:15	21	A	Yes.
10:50:16	22	Q	Was it one of those people?
10:50:18	23	A	Not that I can recall.
10:50:19	24	Q	Okay. When you found Boomshine on

Facebook, what did you do about it, if anything?

13:12:20	1	wouldn't have sent a letter to the hosting company.
13:12:23	2	Now I'm asking the opposite of that: Is there any
13:12:25	3	particular reason why you would have sent the
13:12:27	4	letter?
13:12:30	5	A Yes.
13:12:31	6	Q Okay. And what would that be?
13:12:34	7	A I could see I requested to send a letter
13:12:38	8	to having it removed.
13:12:39	9	Q And that would have been in your
13:12:40	10	production had you sent such a letter, correct?
13:12:43	11	A I would assume so.
13:12:44	12	Q Okay. So I'll represent to you I accessed
13:12:48	13	ChainRxn, ChainRxn.zwigglers.com yesterday, and
13:12:54	14	there has been no document in your production to any
13:12:58	15	hosting company to take it down. Is there any
13:13:00	16	reason why you haven't asked for that to be taken
13:13:03	17	down?
13:13:03	18	A Not that I can think of.
13:13:05	19	Q Is there any reason that you think
13:13:07	20	Facebook should be liable for it more than the
13:13:09	21	company that's actually hosting the content that you
13:13:12	22	find so troubling?
13:13:14	23	MR. BRIDGES: Object as to form.
13:13:16	24	A Can you repeat the question, please?
13:13:17	25	MR. CHATTERJEE: Could you read it back,

14:47:01 1   to me, a general member of the public, on the web if

14:47:06 2   it's not released?

14:47:07 3   A   It's on, like, a private URL.

14:47:10 4   Q   So I'd have to know what the private URL

14:47:12 5   is?

14:47:13 6   A   Correct.

14:47:13 7   Q   Do you ever develop code for games prior

14:47:17 8   to it actually being available on a private URL?

14:47:23 9   A   Can you repeat the question, please?

14:47:25 10   Q   Sure. Do you ever write code like

14:47:27 11   natively on your computer and not put it up on the

14:47:30 12   web at all until it's closer to release?

14:47:32 13   A   Yes.

14:47:34 14   Q   And is there any way to know the date of

14:47:35 15   that -- of that code?

14:47:44 16   A   Not that I'm aware of.

14:47:46 17   Q   And then I had one other follow-up

14:47:47 18   question from this morning. We were talking about

14:47:49 19   this obfuscation program. I hate to go back to it,

14:47:52 20   but one question about that.

14:47:53 21   So if I were to find that the code that I

14:47:59 22   gave you in I think it was 2007, document 2007, that

14:48:08 23   exact code was in your copyright registration, it

14:48:11 24   would be your testimony that you didn't write that

14:48:13 25   code; is that right?

16:04:40 1   larger, then it would possibly change game play.

16:04:43 2   Q   What about the size of the explosions,

16:04:45 3   would that matter?

16:04:46 4   A   It depends again on the size of

16:04:48 5   explosions, but specifically for -- for this type of

16:04:52 6   game I think the -- the fact that it has chain

16:04:55 7   reactions would -- I would have issues with.

16:05:09 8   Q   What if the -- what if the movement in a

16:05:11 9   linear fashion didn't bounce the balls off the walls

16:05:15 10   but instead would just come out of the other side,

16:05:18 11   would that change -- would that change the game

16:05:21 12   play?

16:05:21 13   A   I'm not --

16:05:22 14   Q   So, for example, I could bounce a -- I

16:05:24 15   could -- I could send a ball across the screen, it

16:05:26 16   gets to one edge and then it just comes across on

16:05:29 17   the other side back in so it didn't actually bounce,

16:05:32 18   would that -- would that change substantial

16:05:35 19   similarity if everything else were the same?

16:05:37 20   A   No. Or -- well, hold on. Let me -- let

16:05:41 21   me think about it because -- if you're saying

16:05:43 22   there's no boundaries?

16:05:45 23   Q   Correct.

16:05:46 24   A   If there was no boundaries, then I feel

16:05:48 25   that it would still be substantially different if

16:05:50 1   all the rest were -- or substantially similar if all

16:05:53 2   the rest were the same.

16:06:32 3   Q   Is the scoring system between ChainRxn

16:06:37 4   and -- and Boomshine the same?

16:06:40 5   A   No.

16:06:40 6   Q   Is the music or sounds the same?

16:06:47 7   A   The sounds, I don't recall specifically

16:06:51 8   what happens when -- when something explodes, but I

16:06:54 9   don't think they're very similar.

16:07:02 10   Q   Are the title screens the same?

16:07:07 11   A   I think we had this discussion before,

16:07:09 12   didn't we?

16:07:10 13   Q   We discussed it, but you weren't -- you

16:07:12 14   got a little confused when I was using page. We

16:07:15 15   didn't say title screens.

16:07:17 16   A   Uh-huh. I don't recall if the title

16:07:21 17   screens were substantially similar. I was more

16:07:25 18   looking toward what happens after you hit start.

16:07:27 19   Q   And is there -- are the -- are the ball

16:07:31 20   colors always the same between the two games?

16:07:34 21   A   Not -- I'm not sure. I don't recall.

16:07:37 22   Q   In fact, if I were to play Boomshine two

16:07:39 23   times in a row, would the ball colors on the screen

16:07:42 24   always be the same?

16:07:45 25   A   I think they would be different.

16:07:46	1	Q Because you have a random color generator,
16:07:49	2	right?
16:07:50	3	A Correct.
16:07:54	4	Q Are the intermediate screens the same?
16:07:57	5	A Can you define intermediate screens?
16:08:00	6	Q Sure. When I finish one level and I go to
16:08:02	7	the next level there's a screen that shows up in
16:08:05	8	between. Are those intermediate screens the same?
16:08:08	9	A The same in what context?
16:08:11	10	Q So I finish level 1 of the Boomshine game,
16:08:15	11	I finish level 1 on the ChainRxn game, the screen
16:08:18	12	comes up telling me what to do next. Are those two
16:08:21	13	screens the same?
16:08:22	14	A I think they're very similar.
16:08:24	15	Q Okay.
16:08:49	16	MR. CHATTERJEE: Let's mark this the next
16:08:50	17	exhibit. We'll do this one with it.
16:08:53	18	(Documents marked for identification as
16:08:53	19	Defendant's Exhibit 2030 & Exhibit 2031.)
16:08:55	20	BY MR. CHATTERJEE:
16:08:56	21	Q So I put two documents in front of you.
16:08:59	22	One's 2030 marked ChainRxn, and then the other is
16:09:05	23	2031. Is it 2029 or 20 --
16:09:10	24	A 2031.
16:09:10	25	Q 2031, which is Boomshine. These are just

17:05:54   1   Q   Do you play games on Facebook?

17:06:01   2   A   Not currently.

17:06:02   3   Q   Okay. Do you do it every once in a while?

17:06:07   4   A   Once in a while I might.

17:06:08   5   Q   Are you active on Facebook?

17:06:10   6   A   I consider myself active on Facebook.

17:06:13   7   Q   And what are you generally doing when

17:06:15   8   you're on Facebook?

17:06:17   9   A   I'm chatting with friends or looking at

17:06:23 10   what my friends are up to.

17:06:24 11   Q   Do you go to Facebook for the games?

17:06:27 12   A   No.

17:06:29 13   Q   Why did you decide to launch Obechi on

17:06:32 14   Facebook?

17:06:33 15   A   I wanted to explore how developing on

17:06:36 16   Facebook would be.

17:06:37 17   Q   Now, Facebook does not host the Obechi

17:06:42 18   game, right?

17:06:46 19   A   What do you mean doesn't host the Obechi

17:06:49 20   game?

17:06:49 21   Q   Where does the Obechi game operate from?

17:06:51 22   MR. BRIDGES: Object as to form.

17:06:52 23   A   The Obechi SWF file operates on my server.

17:06:55 24   BY MR. CHATTERJEE:

17:06:55 25   Q   Okay. And it's transmitted -- and there's

17:09:26   1   A   Not that I -- it does not modify the

17:09:28   2   Obechi SWF based on the way Obechi is designed.

17:09:33   3   Q   Are you aware of whether or not ChainRxn

17:09:39   4   is designed in that same basic way as the Obechi

17:09:42   5   website?

17:09:43   6   A   What do you mean basic way?

17:09:45   7   Q   Well, with this -- a user makes -- decides

17:09:49   8   that they want to give Obechi access, and then

17:09:53   9   there's a call made from the user to, for example,

17:09:57 10   your website, and then data in the game is provided

17:10:02 11   back to the user through the Facebook website.   Is

17:10:04 12   that -- is that basically how this iFraming

17:10:07 13   technology works on Facebook?

17:10:10 14   A   The iFrame contains a -- a reference to a

17:10:16 15   page that can exist on another server, and that

17:10:20 16   external server can host the -- can host content

17:10:23 17   from the game and also connect to the Facebook API

17:10:27 18   to provide different features.

17:10:29 19   Q   Well, in your complaint do you say that

17:10:31 20   Facebook doesn't host the chain reaction website,

17:10:35 21   and instead it's provided through this iFrame, is

17:10:38 22   the way you just described the way basically that

17:10:41 23   you understand ChainRxn to work?

17:10:44 24   A   Yes, that's based on how I believe

17:10:46 25   ChainRxn works.

CERTIFICATE

17:48:43 2

17:48:43 3   STATE OF GEORGIA:

17:48:43 4   COUNTY OF FULTON:
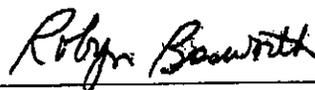
17:48:43 5

17:48:43 6   I hereby certify that the foregoing

17:48:43 7   transcript was taken down, as stated in the caption,

17:48:43 8   and the colloquies, questions, and answers were

17:48:43 9   reduced to typewriting under my direction; that the

17:48:43 10   transcript is a true and correct record of the

17:48:43 11   evidence given upon said proceeding.

17:48:43 12   I further certify that I am not a relative

17:48:43 13   or employee or attorney of any party, nor am I

17:48:43 14   financially interested in the outcome of this

17:48:43 15   action.

17:48:43 16   This the 10th day of February, 2011.

17:48:43 17

17:48:43 18   _____

17:48:43 19   ROBYN BOSWORTH, RPR, CRR, CCR-B-2138

17:48:43 20

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