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 1                  UNITED STATES DISTRICT COURT

 2                NORTHERN DISTRICT OF CALIFORNIA

 3                      SAN JOSE DIVISION

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 5    _____
                                       )
 6    IO GROUP, INC., a California     )
      corporation,                     )
 7                                     )
                      Plaintiff,       )
 8         vs.                         )  Case No. C-06-03926 (HRL)
                                       )
 9    VEOH NETWORKS, INC., a           )
      California Corporation,          )
10                                     )
                      Defendants.      )
11    _____)

12

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14                  DEPOSITION OF TED DUNNING

15                    SAN DIEGO, CALIFORNIA

16                      MARCH 16, 2007

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21    REPORTED BY RITA BURGESS, CSR NO. 8374

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 1                    UNITED STATES DISTRICT COURT

 2                   NORTHERN DISTRICT OF CALIFORNIA

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                                      )
 6    IO GROUP, INC., a California    )
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                      Plaintiff,      )
 8         vs.                        )   Case No. C-06-03926 (HRL)
                                      )
 9    VEOH NETWORKS, INC., a          )
      California Corporation,         )
10                                    )
                      Defendants.     )
11    _____ )

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14                   DEPOSITION OF TED DUNNING,

15    taken by the Plaintiff, commencing at the hour of 9:00 a.m.

16    on Friday, March 16, 2007, at 530 "B" Street, Suite 350,

17    San Diego, California, before Rita Burgess, Certified

18    Shorthand Reporter, in and for the State of California.

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 1   APPEARANCES:

 2        For the Plaintiff:

 3             THE LAW OFFICES OF GILL SPERLEIN
               BY:  GILL SPERLEIN
 4             584 Castro Street, Suite 849
               San Francisco, California  94114
 5

 6        For the Defendants:

 7             WINSTON & STRAWN, LLP
               BY:  JENNIFER A. GOLINVEZUX
 8             101 California Street
               San Francisco, California  94111-5894
 9
          Also Present:
10
               Keith Webb
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 1                       I N D E X

 2
     WITNESS:  TED DUNNING
 3

 4   EXAMINATION                                      PAGE

 5   By Mr. Sperlein                                    6

 6

 7                   E X H I B I T S

 8
     FOR PLAINTIFFS                                  MARKED
 9

10       1     Copy of a four-page document entitled     79
               VeohBeta - Military men
11
         2     Copy of a one-page document entitled     117
12             Online Video Stewe Vs Emnem and 50 cent
               with a sub headline Flag it!
13
         3     Copy of a four-page containing e-mails    120
14             bate stamped 00058, 64,64, 74

15       4     Copy of a one-page e-mail from John Papa  146
               to Brad Seraphin, Engineering
16
         5     Copy of a one-page document bate stamped  174
17             200198 entitled Press Release:  All
               Consumers Wanted for Christmas Was
18             Portable Video Content

19       6     Copy of a one-page document bate stamped  176
               200199 from Veoh entitled Press Releases
20             Veoh Lineup Rapidly Grows to more than
               10,000 episodes
21
         7     Copy of a one-page document bate stamped  177
22             200195 from Veoh entitled Press Release
               Veoh Makes Sony PSP a True Video Platform
23
         8     Copy of a one-page document from Veoh     178
24             entitled Press Release, Veoh Networks
               Receives Series A funding to Support First
25             Internet Television Peercasting Network
               Launch
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 1                     E X H I B I T S (Cont)

 2
     FOR PLAINTIFFS                                    MARKED
 3

 4
         9      Copy of a one-page document bate stamped    182
 5              200200 entitled Veoh Reviews

 6      10      Copy of an e-mail consisting of one-page    200
                bate stamped VEOH 00120 from Joseph Papa
 7
        11      Copy of a one-page document bate stamped    203
 8              200166 from Veoh with the name
                brandon17carter
 9

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 1                        TED DUNNING,

 2       having been first duly sworn, testified as follows:

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 4                         EXAMINATION

 5   BY MR. SPERLEIN:

 6        Q.    Would you state your name for the record, please?

 7        A.    Ted Emerson Dunning.

 8        Q.    Okay.  Dr. Dunning, have you ever had your

 9   deposition taken before?

10        A.    (Witness nods head).

11        Q.    You have?

12        A.    Yes, I have.

13        Q.    Okay.  Well, you just covered one of the first

14   things that I want to talk to you about.  As you know, the

15   court reporter is going to be taking down everything we say,

16   verbatim.  During regular human conversation, it's common to

17   nod or communicate with non-verbal signals, but unfortunately

18   the court reporter can't interpret those for the record.  So

19   when you respond, I ask that you do so verbally with a yes or

20   no and avoid shaking your head.  And also, often when we're

21   having normal conversation you might anticipate the end of my

22   question, or I might do so with yours, but I ask that you let

23   me complete my question before you respond, and I'll do my

24   best to do the same.  Can we try to make sure we do that

25   today?
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 1    for the company?

 2         A.    No.

 3         Q.    Did you interface with anybody as the software

 4    was developed?

 5         A.    I talked to several people during the time that

 6    that software was developed.

 7         Q.    Who were those people?

 8         A.    Well, that software was developed over many

 9    months.  I talked to many people during those months.

10         Q.    Who was in charge of developing that software?

11         A.    Joe Papa.

12               MS. GOLINVEAUX:  Let him finish his question

13    completely, please.

14               THE WITNESS:  I'm sorry.  Thank you.

15    BY MR. SPERLEIN:

16         Q.    Joe Papa?

17         A.    Yes.

18         Q.    And going back to the group of developers that

19    you worked directly with, what soft -- or what systems have

20    they developed and what have they worked on with regard to

21    the Veoh service?

22         A.    The search engine.

23         Q.    Can you describe how the search engine operates?

24         A.    Videos and users have meta data associated with

25    them for videos that's typically a title and a description,
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1   among other things.

2   Q.   Is each video file assigned a unique group of

3   numbers or letters that identifies that particular video

4   file?

5   A.   Yes.

6   Q.   And when are those -- does that group of letters

7   or numbers have a name?

8   MS. GOLINVEAUX: Object to the form of the

9   question. It's not clear whether you're talking about

10   internal numbers or external numbers to the files.

11   THE WITNESS: Are you referring to an internal

12   designator?

13   BY MR. SPERLEIN:

14   Q.   I'm -- a few moments ago, you said that videos

15   are assigned a unique group of letters and numbers to

16   identify that video; is that correct?

17   A.   Yes, sir, I did.

18   Q.   What were you talking about when you said that

19   they were assigned that group of numbers?

20   A.   They have an internal video identifier.

21   Q.   And what is that number called? Is it referred

22   to as the internal video identification number?

23   A.   Usually video I.D.

24   Q.   Video I.D.

25   And when were -- at what point in the upload

1   process is the video file assigned that number?

2   A.   I'm not sure of the exact point it's assigned.

3   Q.   Generally at what point is it assigned?

4   A.   Somewhere after the upload process has begun and

5   before it becomes available to other parts of the system.

6   Q.   Is that an automated process? In other words,

7   does a computer generate that number or does an individual

8   sit down and create and assign that unique number?

9   A.   The generation of the video I.D. is completely

10   automated.

11   Q.   Okay. You described two different processes.

12   Before you said that videos, smaller videos can be uploaded

13   using a browser to the Veoh.com web site, and that larger

14   videos can be uploaded through the Veoh client after an

15   individual has downloaded the client to their computer; is

16   that correct?

17   A.   Yes, I did say that.

18   Q.   Are both types of videos assigned this unique

19   identification number in the same manner?

20   MS. GOLINVEAUX: Object to the form of the

21   question.

22   BY MR. SPERLEIN:

23   Q.   Do you understand my question?

24   A.   What do you mean by both forms of videos?

25   Q.   Well, the two that we just described, the shorter

1   videos that are uploaded through a browser or the longer

2   videos that are uploaded through the Veoh client. Those are

3   the two different types of videos we're talking about at this

4   point.

5   Do you understand that, sir?

6   A.   I don't make the distinction between those two

7   types normally.

8   Q.   Well, they're uploaded in different ways, though;

9   is that correct?

10   A.   That's correct.

11   Q.   Regardless of how they're uploaded, are they

12   assigned a unique number using the same automated process?

13   A.   Yes.

14   Q.   Thank you, sir.

15   And your team developed the search engine; is

16   that correct?

17   A.   That's correct.

18   Q.   What is the general purpose for the search

19   engine?

20   A.   To allow users to frame queries in terms of meta

21   data and then to find videos.

22   Q.   What types of searches could a user perform if

23   they wanted to locate a video they are interested in seeing?

24   A.   They can type words that might be in the title.

25   Q.   All right. Is -- in the interface where the

1   person would be entering these words, is there just one field

2   that says, for example, search, and then a block for them to

3   enter text, is that how it looks?

4   A.   In one form of the interface, that's how it

5   looks.

6   Q.   What form of the interface?

7   A.   On most web pages at Veoh, there is a search

8   block such as you described.

9   Q.   If someone typed a word in that search block, the

10   search engine would then try to locate videos that were

11   associated with that word in their meta data; is that

12   correct?

13   A.   It would find videos that contain that word in

14   meta data.

15   Q.   And when we're talking about meta data, one

16   example that you gave so far is the title of the video; is

17   that correct?

18   A.   That's correct.

19   Q.   What other types of data would be searched as

20   well when someone enters words into the search field?

21   A.   There is also a description.

22   Q.   And is there any other meta data that it would

23   search?

24   A.   There are also tags.

25   Q.   Tags? Could you explain what a tag is?

1   Q.   When a user performs a search using the search

2   function, where would the meta data reside that your search

3   engine -- when someone enters a phrase, where is -- where is

4   the data residing that it would actually go through and look

5   at?

6   A.   It's stored in an index.

7   Q.   And where is that index?

8   A.   In San Diego. I think your question's ambiguous.

9   What do you mean by where?

10   Q.   We're getting close. We know it's in San Diego.

11   Is it a Veoh controlled server?

12   A.   Yes.

13   Q.   Does that server reside at Veoh's offices?

14   A.   No.

15   Q.   Is it in a co-location facility?

16   A.   Yes.

17   Q.   Does that particular server have a name?

18   A.   There is no single server.

19   Q.   Okay. It's a group of servers?

20   A.   That's correct.

21   Q.   Can you give me an estimate of how many

22   servers?

23   A.   Four, for such purposes.

24   Q.   Just to summarize, there's four servers which are

25   where data is stored for the index?

1   A.   That's correct.

2   Q.   Do you call those group of servers by a

3   particular name?

4   A.   Yes.

5   Q.   What is that name?

6   A.   The REC servers.

7   Q.   The REC servers, is that R-E-C?

8   A.   That's correct.

9   Q.   Is that short for something?

10   A.   Recommendation.

11   Q.   Are they then assigned a number? Is there REC

12   server 1, REC server 2, or do they have -- I know some places

13   give their servers cute little cartoon names. Are these

14   particular servers referred to specifically individually?

15   A.   REC 1, REC 2, REC 3, REC 4.

16   Q.   Does anything else reside on those servers other

17   than the index?

18   A.   Yes.

19   Q.   What else resides on those servers?

20   A.   The operating system.

21   Q.   What operating system is that?

22   A.   Linux, L-i-n-u-x.

23   Q.   And when you say the operating system, the

24   operating system specifically being Linux, every computer

25   requires an operating system in order to operate; is that

1   correct?

2   A.   That's correct.

3   Q.   So the Linux operating system wouldn't have

4   anything that's unique to Veoh; is that correct?

5   A.   That's correct.

6   Q.   So other than the operating system and the index,

7   anything else on the REC servers 1 through 4?

8   A.   The java virtual machine.

9   Q.   What is a java virtual machine?

10   A.   It has software which facilitates the execution

11   of java programs. Java being a computer language.

12   Q.   And does that -- does that assist in the process

13   of searching the index?

14   A.   It allows the execution of software.

15   Q.   What types of software?

16   A.   Software that was written in java and then

17   compiled for execution on those machines.

18   Q.   And on these specific machines, what sort of java

19   software has been written?

20   A.   The so-called REC engine.

21   Q.   And is the REC engine a tool that helps people

22   use the indexes, the index for the purposes that we have

23   described, that is, helping them locate a video file?

24   A.   Yes.

25   Q.   The main purpose of those four servers is to

1   operate the index which helps people locate video files; is

2   that correct?

3   A.   Yes.

4   Q.   Now once a user has performed their search, do

5   search -- are the results of that search shown to them on

6   their computer screen?

7   A.   Normally.

8   Q.   When you say normally, is that normally if things

9   are operating correctly, that's what will happen?

10   A.   Yes.

11   Q.   And --

12   A.   Sorry. And also assuming there is something

13   found.

14   Q.   Okay. So if there's nothing under the particular

15   search term, tell me what the screen would say?

16   A.   It might say any number of things. It might be a

17   blank screen. It may say, you didn't find anything -- or we

18   didn't find anything for you. Or it might show some default

19   list, popular or featured videos.

20   Q.   In some way or another, it will let the user know

21   it was unable to find any videos that specifically had that

22   search term in the meta data?

23   A.   It will try to let them know. They may not

24   notice.

25   Q.   Okay. And what you're suggesting there is people

1   don't always read everything that comes up on the computer

2   screen; is that correct?

3   A.   Yes.

4   Q.   Okay. You mentioned that if the search engine

5   doesn't come up with a result that actually has one of the

6   words in the meta data, one of the things that might happen

7   is that there may be a list of suggested other videos for the

8   person to view; is that a correct statement of what you said?

9   A.   No, I said featured or popular.

10   Q.   Featured or popular. I'm sorry.

11   We'll come back, and I want to ask you some more

12   questions about the feature or popular videos later. But

13   before I do that, I want to continue with the idea of this

14   search function.

15   If the search is successful, that is if the index

16   does locate video files that contain the words that the user

17   searched for within the index, what would appear on the

18   user's screen in that situation?

19   A.   A listing containing video titles.

20   Q.   Is there a limit to the number? Does it only

21   show a certain number of suggestions?

22   A.   It shows you a limited number, but allows you in

23   many cases to go to another page of subsequent results.

24   Q.   So it provides a list on the first page, and then

25   offers you the opportunity to see more videos that also have

1   that word in the meta data?

2   A.   If there are more that match.

3   Q.   Okay. Is the list that comes back simply a list

4   of titles or is there more information as well?

5   A.   That depends on the specific version of the

6   system. It may show more or less data.

7   Q.   Okay. Let's talk about the current version of

8   the system for the purposes of this next question, where I'm

9   going to repeat the question, actually. On the current

10   version, how would the search result appear? And when I say

11   how does it appear, I mean, is there a title listed?

12   A.   I believe there's a title listed.

13   Q.   And what, in addition to the title appears on the

14   screen?

15   A.   I think part of the description appears.

16   Q.   And anything else?

17   A.   I think that there's a very small thumbnail

18   image.

19   Q.   Can you describe what a thumbnail is, please?

20   A.   It's a still image that the publisher has the

21   option of uploading at the -- during the upload process.

22   Q.   Is it an individual frame from the video file

23   that is responsive to the search?

24   A.   The publisher has the option of uploading any

25   imagine they like to describe that video.

1   Q.   If the publisher doesn't upload an image at the

2   time that he or she puts the video file in the system, is

3   there something that would appear in place of that thumbnail

4   image on the list when it comes back after a search?

5   A.   There can be.

6   Q.   And what would that be?

7   A.   If no image is available for a video, then

8   there's a default image that can be shown.

9   Q.   And the default image, is that something that's

10   taken from one of the frames of the video file?

11   A.   The default image is a fixed image that shows a

12   Veoh logo or something.

13   Q.   I'm a little bit confused because I have done

14   searches and it seems to me whenever I get a search back

15   there's always some sort of image next to the title. So are

16   you suggesting that if that's the case for me, that all of

17   the videos, all of the searches that I returned, were put on

18   by publishers that chose to put an imagine in that section,

19   or is there some other explanation?

20   A.   There's another explanation.

21   Q.   Could you tell me what the other explanation

22   is?

23   A.   In addition to the two cases that we described, a

24   frame can be selected from the video to try to display

25   something that's in the video.

1   normal for videos.

2   Q.   During those times, were those screen captures

3   withdrawn using the same process theory?

4   A.   Yes.

5   MR. SPERLEIN: I think that's all I have on that

6   particular area so I'm going to ask Mr. Webb to come back in,

7   but before I do that, and while this is all fresh in your

8   mind, I'm going to ask Ms. Golinveaux, do you feel that that

9   needs to be earmarked as highly confidential or would a

10   confidential classification be suitable for that purpose?

11   THE WITNESS: Usually perceptual entropy is.

12   MS. GOLINVEAUX: For present purposes, let's mark

13   that entire portion highly confidential, and I'll take the

14   opportunity after we receive the transcript, and I'll let you

15   know if we could lower the designation.

16   MR. SPERLEIN: Okay. Thank you very much.

17   (Mr. Webb enters the room).

18   BY MR. SPERLEIN:

19   Q.   Once a search has been performed by a user and

20   there's now a list of responsive video files that contain

21   those search terms in their meta data, if the user now wishes

22   to view that video file, how does the -- how does the user do

23   that?

24   A.   The user can download the video file using the

25   Veoh client.

1   Q.   Now when you say download the video, do they

2   actually obtain that file and it goes on to the hard drive of

3   the user's computer?

4   A.   Yes.

5   Q.   I think that we're probably going to get back in

6   to a pretty technical area here. But does that -- do they

7   download that video file directly from a Veoh server?

8   A.   Yes.

9   Q.   Does the entire video file reside on a Veoh

10   server?

11   A.   It does reside on a Veoh server.

12   Q.   And has this -- has this always been the method

13   for downloading a video file using the Veoh client?

14   A.   The Veoh client has, as long as it has been

15   available, been used for downloads as long as it had that

16   capability. Initially it only had upload capability during a

17   testing phase.

18   Q.   Just to be clear, the entire video file resides

19   on a Veoh server that the user then downloads on to their

20   hard drive; is that correct?

21   A.   That's correct.

22   Q.   Does Veoh use any methods for increasing the

23   download speed for the video file?

24   A.   There's a number of techniques used which are all

25   very conventional. The actual disk itself is a network

1   Q.   So the file that an individual downloads from the

2   Veoh server is exactly the same as a file -- the file that

3   was uploaded by the publisher?

4   A.   It is bit for bit equivalent, and to say that it

5   is the same file raises philosophical issues of what the same

6   means, but bit for bit equivalent is the standard term of

7   art.

8   Q.   Going back to my first question in this line,

9   what -- is the file format then exactly the same as when the

10   video publisher put it on to the Veoh network?

11   A.   Yes.

12   Q.   And can you give me some examples of file

13   formats, and when I say file formats, what that would -- can

14   you give me some examples of video file formats?

15   A.   MPEG-2 is a file format.

16   Q.   Can users upload any files that aren't a video

17   file format?

18   A.   They can upload the file, but the servers will

19   not complete the publish process.

20   Q.   And what happens in a situation where someone

21   tries to upload a file that's not a video file and the

22   servers don't complete the publishing process, what happens

23   to that type of file?

24   A.   An automated process will record the meta data,

25   assign the video ID and mark the file -- or mark the entry in

1   A.   No reason, but no reason to believe it wouldn't

2   be either.

3   Q.   How -- if a video that an individual user wants

4   to watch, and they don't have the client -- strike that.

5   How does a video get from the format that it's

6   submitted in by the publisher into Flash format?

7   A.   There's a completely automated formatting

8   exercised to maintain consistent sizing and presentation of

9   videos on the web site.

10   Q.   Where does that transformation occur? Does it

11   occur on a particular server?

12   A.   One or more servers.

13   Q.   And can you tell me where those servers reside?

14   Are they at the same co-location facility as the

15   indexing servers?

16   A.   No.

17   Q.   Did you tell me the specific physical location of

18   those servers?

19   A.   Not entirely specific. It's in Los Angeles.

20   Q.   The user uploads a video file, and there's an

21   automated process for taking that file and putting it in to

22   Flash format. What are the limitations on that? Do they --

23   does that happen with every file that's submitted by a

24   publisher?

25   A.   The thumbnail extraction and Flash formatting for

1   presentation are both done automatically for every video.

2   Q.   Does this transformation copy the entire video in

3   to Flash regardless of size?

4   MS. GOLINVEAUX: Object to the form of the

5   question.

6   BY MR. SPERLEIN:

7   Q.   Go ahead and answer.

8   A.   Repeat the question.

9   Q.   When a publisher submits a file, a video file,

10   you said that the Veoh system automatically transcodes each

11   file into Flash format and extracts screen captures; is that

12   correct?

13   A.   Uh-huh.

14   Q.   My question is, when it transcodes the file into

15   Flash format, does it transcode the entire file regardless of

16   the size of the file?

17   A.   Just a moment. When he said, is that correct, I

18   said, uh-huh. I should have said yes. And I apologize.

19   Q.   Thank you for keeping those things in mind.

20   A.   It examines the entire file, whether or not the

21   Flash file contains the entire file or not, is the technical

22   setting purely for business reasons that I can't comment

23   on.

24   MR. SPERLEIN: Could you read that last response

25   back to me, please.

 1   single number is a range as well mathematically speaking, so

 2   they decide what the limits are, and we live with the limits.

 3   Q.   All right. We're going to come back to this a

 4   little bit later after I get some help from my tech expert to

 5   understand this a little bit better, because I'm not that

 6   conversing in this.

 7   Is there any advantage to having videos in Flash

 8   format as opposed to the original file format?

 9   A.   Yes.

10   Q.   What are those advantages?

11   A.   The file maybe smaller so it's possible to

12   actually show it. And is also supported by most browsers, so

13   again, it's possible to show it.

14   Q.   Why is the file possibly smaller?

15   A.   It may be at a reduced resolution. It may be

16   compressed more effectively.

17   Q.   And is that -- do those changes transpire during

18   the transcoding from the original format into Flash format?

19   A.   Yes.

20   Q.   And how is it determined at what the compression

21   rate of the new Flash file is going to be?

22   A.   The encoder used to copy the file to the Flash

23   format has a setting which determines the bit rate of the

24   output its allowed to make whatever encoding decisions it

25   needs to do to most faithfully represent the video within the

1   have changed at that time or is there something that

2   specifically lead you to believe that there was a change in

3   policy regarding registration at that time?

4   A.   No, it may have changed. I do not know the

5   specific change. I do not know the specific stability

6   either.

7   Q.   Did you ever have any conversations with anybody

8   at Veoh about requiring individual user to register before

9   they uploaded the contents to see on Veoh's system?

10   A.   I have no idea if I ever talked about that.

11   Q.   You have no recollection that you have or have

12   not?

13   A.   I haven't. I have no recollection.

14   Q.   Do you know if an individual user's PI address is

15   somehow noted when -- at the time that they upload a file

16   onto the Veoh network?

17   A.   It may be. It's common to record IP addresses.

18   Q.   Do you know -- do you have any information about

19   Veoh's policies with regard to retaining information about IP

20   addresses?

21   A.   Are you asking about information that's

22   associated with this litigation or in general?

23   Q.   I'm asking in general, but let me ask a

24   background question first.

25   Is that information that would usually reside on

1   what's called server logs or web logs?

2   A.   That's a common place for IP addresses --

3   Q.   I'm sorry. Didn't mean to cut you off. Did you

4   want to repeat the end of your sentence.

5   A.   -- to be noted.

6   Q.   Okay. Do you know if Veoh follows that kind of a

7   practice of maintaining something that's called web log that

8   records IP addresses?

9   MS. GOLINVEAUX: Object to the form of the

10   question; misstates the former testimony.

11   THE WITNESS: Could you repeat the question?

12   BY MR. SPERLEIN:

13   Q.   Do you know whether Veoh records IP addresses at

14   all of its users?

15   A.   I know that in some cases we have recorded some

16   IP addresses. Again, those are part of the system that I do

17   not have detailed knowledge of.

18   Q.   On a routine basis, though, and not with regard

19   to this litigation, do you know if Veoh routinely records

20   information about the IP address of users on its system?

21   A.   I'm sure that some IP addresses have been

22   recorded routinely. I do not know about current systems.

23   Q.   Going back to the time frame when Veoh required

24   users to register before they uploaded a video file, do you

25   know if that registration process involved the users

1   it called user name?

2   A.   User name would not be the person's name.

3   Q.   That's what I thought you were trying to get the

4   point across when -- so let me ask again. Was there a place

5   for them to enter a user name?

6   A.   Yes.

7   Q.   Was there a separate place for them to identify

8   their given name?

9   A.   They had the opportunity to type in a given name.

10   Q.   If you know, if that information was -- if

11   nothing was entered in that field, could their registration

12   be completed?

13   A.   I believe so.

14   Q.   Was there a place for them to enter an e-mail

15   address?

16   A.   Yes.

17   Q.   And did Veoh verify that e-mail address by

18   sending a confirming e-mail prior to allowing the video to

19   upload any video files to the Veoh system?

20   A.   At least at one time we did, but we discontinued

21   that.

22   Q.   Do you know why you discontinued it?

23   A.   It was an error-prone process.

24   Q.   And when you say error-prone, does that mean that

25   you -- were there concerns that you would lose a certain

1   level.

2   Q.   That's fine. Regardless, I'm going to ask you a

3   specific question. If you don't know it, just tell me. Do

4   you know if users are required to grant Veoh permission to

5   broadcast their video files through the Veoh system before

6   they upload a video file on to the Veoh Network?

7   A.   I don't know that they are required to grant that

8   right.

9   Q.   All right. Okay.

10   When a user uploads a video file onto the Veoh

11   system, we talked earlier that they are allowed to enter a

12   title and description and possibly some tags if they chose to

13   do so. It's my understanding that they are also given the

14   option of selecting from a group of categories; is that

15   correct?

16   A.   I believe so.

17   Q.   Do you -- are you familiar with that option?

18   A.   Not in detail.

19   Q.   This is not something that you're involved with

20   the programming of?

21   A.   No, it's not.

22   Q.   Is that another question that's best left for

23   Mr. Papa?

24   A.   I couldn't speculate if it's better left to him,

25   but it's not --

1   A.   In fact it's the same as the previous page.

2   Makes it more confusing.

3   Q.   Then there's a section that says tags colon, and

4   then a list of words.

5   We were talking about tags earlier today. Is

6   that the same tags that we were talking about earlier today,

7   that is words that publishers can add to the meta data for a

8   particular video file to help people search for it?

9   A.   That appears to be those tags.

10   Q.   And then moving in to the center of the page

11   there. There's a header that says, length colon, and then

12   08:06. To the best of your knowledge, is that the length of

13   time that it takes for the video that appears on Page 1 to

14   play through the system?

15   A.   Subject to a significant error rate.

16   Q.   There may be some variation how fast the video

17   plays. It may stop and start, things like that, depending on

18   the quality of the person's computer or bandwidth or other

19   items like that?

20   A.   Also it can be difficult to extract a play length

21   from a video file.

22   Q.   Directly beneath that it says, views colon, and

23   then 8958. Do you know if that represents the number of

24   times that individuals have viewed the video file that's

25   playing in the Flash player?

1   A.   No, I do not.

2   Q.   Do you know if -- do you know what that number

3   signifies at all?

4   A.   That's an integer that comes out of the database

5   of the record associated with this video.

6   Q.   And do you know, it's some sort of -- in some

7   way -- strike that.

8   We talked earlier about some videos are played

9   through the Flash player directly from Veoh.com, and other

10   times users download videos onto their computer using the

11   Veoh client.

12   Do you know if that number would represent either

13   one of the number of times that someone downloaded this video

14   file through the client or the number of times someone

15   watched it through the Flash viewer or something else? Is

16   there any way that you can help me better understand what

17   that number represents?

18   A.   It's very difficult to actually discern what

19   actions a user is taking on their computer. This is a number

20   from a server, which has only a hazy knowledge of what the

21   user does.

22   Q.   This number is from which server, the indexing

23   service?

24   A.   No.

25   Q.   Which server?

1   A.   From the web servers.

2   Q.   The web server. And is that separate and

3   distinct from the Flash servers that are in Los Angeles that

4   we identified before?

5   A.   We did not identify Flash servers before.

6   Q.   Earlier we talked about some servers that are in

7   Los Angeles that -- I acknowledge your correction. Those

8   servers in Los Angeles is where the files are transferred

9   into Flash format; is that correct?

10   A.   Where they're copied into Flash format; that's

11   correct, the servers in Los Angeles.

12   Q.   And that's different from where the Flash files

13   actually reside?

14   A.   It may be.

15   Q.   All right. This number here, though, you said

16   comes from which server or group of servers?

17   A.   The actual web server itself.

18   Q.   And where is the web server?

19   A.   I believe that they are in San Diego.

20   Q.   Do you know if they are at the same co-location

21   facility as the index servers?

22   A.   That's correct.

23   Q.   Do you know how many web servers there are?

24   A.   No.

25   Q.   So this number is generated by the web server,

1   but do you have reason to believe that that number may not be

2   an accurate number of anything at all?

3   A.   It's notoriously difficult to produce accurate

4   counts of user behaviors.

5   Q.   Can you tell me what the goal is to count here,

6   what information Veoh is trying to convey through this number

7   of use?

8   A.   I think this intent is to allow users to have a

9   rough estimate of what might be more or less popular.

10   Q.   Okay. And to do that it shows the -- it attempts

11   to show users how many times a particular video file has been

12   viewed; is that correct?

13   A.   It attempts to do so, but it may or may not be

14   accurate. Generally not.

15   Q.   And once more, I want to make the distinction of,

16   to the extent that it is trying to count something, do you

17   know if it's counting the number of times or attempting to

18   count the number of times that individuals have viewed the

19   Flash file through the Flash player on the web site? I know

20   the Flash player is not on the web site. They're trying to

21   view it at home on a Flash player that resides on their

22   computer. But they are trying to look at the Flash file as

23   opposed to a downloaded file. Is that what Veoh is

24   attempting to count and project here?

25   A.   Not really.

1   Q.   Is it attempting to count the number of times

2   that users have downloaded the file using the Veoh client?

3   A.   No.

4   Q.   It's not attempting to count that at all?

5   A.   I don't think so.

6   Q.   Okay. Going back to my other question about

7   whether it's attempting to count the number of times that

8   individuals have viewed the Flash version of the file through

9   a Flash player, you said not really. Could you clarify your

10   answer?

11   A.   I think it's attempting to count the number of

12   times that downloads of the video detail page itself, the

13   container for those graphics was initiated.

14   Q.   Okay.

15   A.   But it's often initiated and not completed, and

16   there may be phantom initiations that don't correspond to

17   user interaction at all.

18   Q.   If I wound up on this page that we are looking at

19   here, would the Flash file automatically begin to play or

20   would I have to take another step and select a button that

21   says play or select on the picture, or some other method of

22   making it start?

23   A.   If you viewed this video detail page and things

24   operated correctly, then the Flash player would start the

25   video playing.

1   in order to make room for additional video -- Veoh video

2   files?

3   A.   Who are they in your question?

4   Q.   I'll rephrase the question for you.

5   Can Veoh, using the technology that it has

6   available to it, remove a video file from a user's hard

7   drive?

8   A.   If somebody downloaded it using the Veoh client,

9   then we can send a signal to that client to remove that

10   product.

11   Q.   When you use that system and remove the file from

12   the Veoh client, would that -- would it immediately delete

13   that file, or does it move it into a trash can or in a

14   wastebasket, like some operating systems call for? What

15   happens to that file?

16   A.   I don't know details whether it goes instantly or

17   not. I do know that we don't take NSA level precautions to

18   overwrite the file or any special things, but I don't know

19   the details.

20   Q.   Okay. If the -- would the user be able to take

21   the video file after he downloads it using the Veoh client,

22   could it then take the video file and put it in some area of

23   his hard drive where that ability would be thwarted, the

24   ability for Veoh to go in and delete the file?

25   A.   I'm sure they could obscure the existence of the

1   Media digital rights management has ever been hacked or -- if

2   I use that terminology, will you understand what I'm asking?

3   Has anyone ever been able to break that system and copy

4   videos that were protected with it to your knowledge?

5   A.   I know that at least one version of Windows Media

6   audio has been hacked. I don't know if other versions have

7   been hacked, and I don't know if video has been hacked.

8   Generally, I know it's a fairly secure system.

9   Q.   If a publisher elects to have his video

10   protected, then Veoh attaches the Windows DRM protection; is

11   that correct?

12   A.   Yes.

13   Q.   And when that occurs, then, if other users

14   download that video to their system, they, in theory, are not

15   able to make a copy of that video file; is that correct?

16   No, it's not. Let me rephrase the question.

17   There are limitations on how and when a video

18   file would be copied; is that correct?

19   A.   No. It's generally incorrect as well. Copying

20   itself is not constrained. It's usually playing, which is

21   constrained.

22   Q.   A little bit later we're going to get in to some

23   questions about how Veoh has handled video files that contain

24   sexually explicit material, but for right now I just want to

25   ask you a couple of questions relating to that.

1   an intermediate and a sexually explicit?

2   A.   The number of active levels has varied. It's an

3   integer, so there's a very large number of potential levels.

4   Currently there are two levels and neither of them is

5   explicit, because we do not allow explicit material.

6   Q.   Okay. So currently when a producer is going

7   through the data entry process, you said there are two levels

8   that they are allowed to choose from; is that correct?

9   A.   I believe so.

10   Q.   Do you know what those are?

11   A.   I think that they are suitable for all audiences,

12 or contains -- and I don't know what the language is, but

13 some material that would not be suitable for all audiences.

14   Q.   Contains nudity or --

15   A.   I don't know what the details are, but there are

16 presumably non-sexually explicit things that are not

17 appropriate for all audiences. I don't know how to say that

18 well. It's a difficult thing to say.

19   Q.   That's okay. I think we got the idea.

20   If a user currently selects the second one that

21 you described, it may have material that's not suitable for

22 all ages, does Veoh then review the video clip to make sure

23 there's no explicit, sexually explicit material on it?

24   A.   No.

25   Q.   Does Veoh or somebody else, do they engage some

1   higher chance that it's not an identifiable video. But if it

2   comes through the flagging system, then there is included a

3   link to the thing, which is essentially guaranteed to be

4   resolved to a video owner. And there I will look, if I get

5   that e-mail or if somebody else forwards it to me, I will

6   follow that link and look at it, and see what -- what I

7   think. It's sometimes a difficult judgement. Sometimes it's

8   an easy judgement. There have been cases where people were

9   feuding with each other so they said, everything they are

10   doing is copyright infringement. They sent it back. Those

11   are child, you know, school yard taunts more than anything.

12   In other cases, it's very very clear that it's,

13   say, a movie or something. There's a copyright notice on the

14   front. The user's name does not match or there's an apparent

15   effort to obscure what that is, and there's an immediate take

16   down in that case.

17   Q.   What other types of things would help you

18   identify something that was clearly a case of copyright

19   infringement? Let me try to recap the things that you

20   mentioned in your last answer. You said something about it

21   being a movie. By that, do you mean a -- you mean, a long

22   play, a Hollywood type movie, not -- as opposed to an amateur

23   production. Is that what you intended when you said movie?

24   A.   Yes. Movie is, as you pointed out, ambiguous.

25   And I was referring to the extreme case where it's an hour

1   and a half long, and it starts out with a Paramount logo and

2   it has a copyright by some Paramount, and has a movie title

3   that I have heard of. So something I have never heard of,

4   but the extreme cases, I know that movie, and we just had

5   take down notices from that studio. There's no way somebody

6   named, I am 13 in Toledo owns the copyrights to that. Those

7   are extreme cases and very clear.

8   Q.   Okay. But those extreme cases do happen; is that

9   correct?

10   A.   Absolutely. And we respond to them very quickly.

11   Q.   And you said one of the other things that you

12   note is whether or not there's a copyright mark on the file

13   that you have been asked to look at?

14   A.   That just makes it easier for me. It's not

15   necessarily there. But if somebody says it's copyrighted to

16   somebody, it says it's copyrighted on the material, and the

17   user does not appear to be that person, then it's pretty

18   easy.

19   Q.   Okay. So if someone brings something to your

20   attention. You take a look at it, and you make a judgement

21   call as to whether you think it infringes or not, and if you

22   believe it is infringing, you take it down.

23   What about the case where there's -- where you're

24   not absolutely sure, where it looks like maybe it's what you

25   described before, as a schoolhouse -- I mean school yard

1   publication, we don't have the videos. We couldn't review it

2   then.

3   BY MR. SPERLEIN:

4   Q.   What is your understanding of when the

5   publication process occurs?

6   A.   When the publisher, user, producer person starts

7   entering meta data about the video.

8   Q.   So the person enters the meta data, and then they

9   upload a video file to the Veoh system, is that the way it

10 progresses? That's -- the uploading is after they enter the

11 meta data?

12   A.   That's correct.

13   Q.   When that person updates or submits the material,

14 is it available through the Veoh system instantaneously at

15 that very moment?

16   A.   Not instantaneously.

17   Q.   Does it first go to Veoh servers to have -- for

18 example, to have the Flash files made and whatnot?

19   A.   There's a large number of steps involved in

20 positioning and providing links to a video before it can be

21 presented on the web, so it's a very complex process.

22   Q.   Well, unfortunately I'm going to ask you to go

23 through that complex process with me. So let's break it down

24 and try to get through it as quickly as possible.

25   First the user enters meta data which is the

1   title and a description, and they can select tags. That's

2   what we talked about before. Is that -- the things that I

3   just covered, is that entirely of what the entering the meta

4   data is involved?

5   A.   I couldn't say that's all of it, but that's some

6   very important parts of it.

7   Q.   Okay. And from there, they select the video file

8   from wherever it resides on their computer and they somehow

9   deliver it electronically to the Veoh system; is that

10   correct?

11   A.   That's correct.

12   Q.   And can you tell me from there what happens once

13   that file in the meta data that the user inputed is delivered

14   to Veoh, what happens there?

15   A.   Meta data has to be stored in the database, the

16   meta data must be indexed. The technical particulars of the

17   video have to be examined.

18   Q.   Let me stop you right there. What does that

19   mean, the technical particulars of the video have to be

20   examined?

21   A.   Which Kodak is used, which envelope format is

22   used. How many seconds is it. What the frame rate is. What

23   the audio Kodak that are used are. It's like 30 or 40

24   separate pieces of information that need to be extracted from

25   the file and verified for usability.

1   Q.   Is that done entirely by an electronic process

2   with no human input?

3   A.   Entirely, automatically.

4   Q.   And after that information is extracted, what is

5   the next step in the process?

6   A.   I don't remember if I said indexes of meta data,

7   that occurs contemporaneously with the extraction of

8   technical information about the video. Then frames are

9   extracted for use as thumbnails. One of those, the most

10   seemingly interesting is selected as the single thumbnail to

11   be represented for search results. The Flash preview is

12   copied from the original video file. These various pieces of

13   data are positioned on the correct servers, not just for

14   internal access, but for external access.

15   Q.   Let me stop you there for just a second. I want

16   to clarify something.

17   With regard to both the meta data and the

18   original video file, is there a key entry point where they

19   come to Veoh and then get distributed to different places for

20   these processes, or does that happen instantaneously as the

21   user submits them? And if you would like, I can give you an

22   example of what I mean. You said that the meta data has to

23   go to the indexing system, which we know resides in four

24   servers here in San Diego. Does that information go directly

25   there, or does it go to a kind of central processing area

1   the video?

2   A.   They wouldn't look at the content, they would

3   look more along the lines of how many files are there, what

4   phase of the automated process did they get stuck in.

5   There's at least a dozen steps on two dozen different

6   computers or more where this -- this process is happening.

7   And so any one of those -- not any one of them, but many

8   steps can cause a hang up.

9   Q.   I understand.

10   Once the video publishing process is complete and

11   the video is now on the Veoh servers and available to other

12   users, does Veoh currently review any of those videos by

13   physically looking at the videos prior to some sort of flag

14   or ownercation from a user that it should be looked at?

15   A.   We look at prominent pieces of our site, the

16   front page, the featured videos, things like that to make

17   sure that we're not as an introductory experience, showing

18   something that's lude by very strict standards, you know.

19   Kind of the lowest common denominator community standards.

20   But that primarily involves a quick glance at a screen full

21   of thumbnails.

22   Q.   If you see something that is appearing on the

23   front page of Veoh as part of this automated process that you

24   think is not something that you want the public, or the first

25   glance of Veoh to be some nudity or you mentioned ludness, is

1   there some way that you can prevent those video files from

2   appearing on the front page without removing it entirely from

3   the Veoh system?

4   A.   We can rate them mature content.

5   Q.   And if something is -- if a video file is rated

6   as mature content, it will not appear on the front page of

7   the web site; is that correct?

8   A.   That's correct.

9   Q.   And there are other places on the web site where

10   it will not appear; is that correct?

11   A.   Presumably. Web site is a very fluid thing

12   because the viewer filters and things like that influence the

13   way it looks.

14   Q.   Okay. Earlier you mentioned that if a viewer

15   indicates they think of video is infringing, that you'll take

16   a look at it and possibly remove it. If during this review

17   of what is currently appearing on the front page, you saw a

18   Twentieth Century Fox logo that you believe might be

19   infringing, would you move that to another part of the web

20   site or take it down completely?

21   MS. GOLINVEAUX: Object; calls for speculation.

22   THE WITNESS: Simply seeing a logo or parity of a

23   logo could mean many things. I wouldn't comment on whether

24   or not that's infringing, but if I think that there's any

25   credible claim of infringement, I take it down. I don't move

 1   correct?

 2   A.   That would be true very shortly after my action.

 3   Q.   Okay.

 4   A.   Sooner than some of these other things.

 5   Q.   Okay. I think we'll take a 10 minute break at

 6   this point. Is that okay?

 7   MS. GOLINVEAUX: Sounds good.

 8   BY MR. SPERLEIN:

 9   Q.   At the time that Veoh permitted sexually explicit

10   video files on the Veoh system, did Veoh have some way of

11   verifying the age of the user who uploaded the contents?

12   A.   Verifying is a strong word and has many degrees

13   of meaning. We could not know absolute truth. We did take

14   some effort to verify.

15   Q.   And what measures did you take?

16   A.   I'm not sure what the details were.

17   Q.   Do you know any measures at all that you took?

18   A.   I'm sure that the users were required to avare

19   that they were over 18. I don't know what efforts beyond

20   that were taken.

21   Q.   Earlier we talked about the registration process,

22   and would users -- would that likely have been part of a

23   registration process to put your date of birth or other

24   information?

25   A.   I don't know if that's how that was done or not.

1   Q.   Can you say whether Veoh at least asked a user

2   his or her age before allowing him or her to publish adult

3   video files through the Veoh system?

4   A.   I don't know if we asked before we allowed them

5   to publish. I think we asked before we allowed to view.

6   Q.   If a user wanted to view contents that was

7   categorized as adult or containing adult material, are you

8   suggesting that that user had to provide information that

9   said that they were over 18 years of age?

10   A.   I believe so.

11   Q.   And with regard to actually publishing the

12   material, uploading the material on the web site, is it your

13   testimony that you don't know whether Veoh required the

14   person to indicate that they were over 18?

15   A.   Yes.

16   Q.   You don't know one way or the other?

17   A.   No.

18   Q.   Do you know why Veoh made the decision to

19   discontinue allowing sexually explicit video files to be

20   published through the Veoh system?

21   A.   No.

22   Q.   Did you ever discuss that with anyone at Veoh?

23   A.   I'm sure there were discussions at Veoh.

24   Q.   I'm asking you about your discussions. Did you

25   ever discuss with anyone at Veoh, outside of the presence of

1   your counsel or counsel for Veoh, why was it that Veoh

2   decided to remove adult material from the Veoh system?

3   A.   I'm sure that it was discussed. I don't know

4   specifically.

5   Q.   Let me ask one more time. I'm not asking --

6   A.   No. No. I'm saying with me, I was involved in

7   discussions.

8   Q.   I just want to make sure.

9   Do you recall who you may have had those

10   discussions with?

11   A.   I may have had the discussions with many people.

12   I do not recall specifically who I would have discussed it

13   with.

14   Q.   Do you recall what was said during any of those

15   discussions?

16   A.   Not specifically.

17   Q.   How about generally?

18   A.   Some things I recall.

19   Q.   And what would those be?

20   A.   I would -- we noticed that we had a large number

21   of complaints about prominent placement of adult material.

22   Q.   Anything else?

23   A.   We also had a fair number of complaints about

24   potentially copyright infringement.

25   Q.   Okay. Anything else?

1   A.   There were comments to us that we didn't seem to

2   understand proper handling of adult material.

3   Q.   Okay. Do you remember where any of those

4   comments came from?

5   A.   Not specifically.

6   Q.   And do you remember the nature of those comments?

7   A.   That --

8   MS. GOLINVEAUX: Again, Mr. Sperlein's not asking

9   for you to disclose the contents of any attorney-client

10   information. So if it is, I'll instruct you not to answer.

11   THE WITNESS: Right. People from outside Veoh in

12   the adult industry, I can't remember who, said that we were,

13   to put it mildly, clueless about how to deal with that.

14   BY MR. SPERLEIN:

15   Q.   Do you recall if these people were users that had

16   brought these issues to Veoh's attention through the Veoh

17   flagging function or some other function of the web site?

18   A.   I not only don't remember who the users were, I

19   don't remember how their comments came in.

20   Q.   Did you have any direct conversations with the

21   people that you just described?

22   A.   I do remember one time a person called, which is

23   very unusual since we only had one conference phone, and he

24   told us that we didn't understand this whole area.

25   Q.   And Veoh took those criticisms to light and

1   Q.   Have you ever made that decision to include, to

2   put something in to the featured section?

3   A.   I don't think so.

4   Q.   Do you have any understanding of whether --

5   A.   I'm sorry. I have flagged videos as being worthy

6   of feature and presumably somebody would notice it's me.

7   Q.   How is it that you would come to flag a video?

8   Is that just when you were browsing through the system

9   looking at what's been recently posted or for some other

10   reason?

11   A.   The only one I can remember specifically flagging

12   for that was one of our very early videos, and of course,

13   back then, if there's 10 or 100 videos on the site, everybody

14   would have seen all of them.

15   I don't remember flagging one in a very long

16   time, so I don't know.

17   Q.   Okay. But some individual or group of

18   individuals who are employees of Veoh make a final selection

19   as to what videos are going to go into the featured video

20   section; is that correct?

21   A.   That's correct.

22   Q.   And it's your understanding that possibilities to

23   be included in the featured section come to that group of

24   individuals by a number of different ways; is that correct?

25   A.   I believe so.

1   site?

2   A.   Often.

3   Q.   And we're talking about -- for the purposes of

4   this conversation, we're taking about currently. In what --

5   in what situations would a video not automatically appear

6   when a user came to the site?

7   MS. GOLINVEAUX: Objection; calls for

8   speculation.

9   THE WITNESS: When the database is down for

10   maintenance, for instance, there is no videos made, I

11   believe.

12   BY MR. SPERLEIN:

13   Q.   The way the system is intended to work when it's

14   operating properly would include a video appearing on the

15   front page when someone comes to the Veoh.com web site; is

16   that correct?

17   A.   It happens typically when I go there. I don't

18   know, you know, the case of all users.

19   Q.   Do you know how it's determined which video would

20   play?

21   A.   I believe there's a variety of methods.

22   Q.   Could you describe some of those methods?

23   A.   I don't think I could describe them all.

24   Q.   Did you describe a couple of them?

25   A.   One is featured videos. If it's a featured

1   video, it might be played when a person gets there.

2   Q.   Okay. And if it were a featured video, would any

3   information about the particular user that's been gathered by

4   Veoh determined that this particular video is something that

5   that user might want to see? Now we're talking about a

6   featured video.

7   A.   No.

8   Q.   Are there other times when Veoh uses some sort of

9   data collection which allows them to say, based on your past

10   usage, for example, this video might appeal to you, so when

11   that user goes to the web site, a video that is determined to

12   be something they might be interested in appears?

13   A.   Yes.

14   Q.   At the time that Veoh allowed adult content to be

15   publish through the system, we mentioned earlier that there

16   was an adult category; is that correct?

17   A.   I believe so.

18   Q.   Was the adult category further divided in to

19   adult videos that might appeal to a gay audience as opposed

20   to a straight audience?

21   A.   I think the division was more along the lines of

22   videos that might offend a gay audience or offend a straight

23   audience. It was based mostly on complaints.

24   Q.   So did customers complain that when they did a

25   search that they were getting results that they didn't want

1   I, RITA BURGESS, Certified Shorthand Reporter for the State

2   of California do hereby state under penalty of perjury:

3

4

5   That the witness in the foregoing deposition was by me first

6   duly sworn to testify to the truth, the whole truth and

7   nothing but the truth in the foregoing cause; that the

8   deposition was taken by me in machine shorthand and that the

9   foregoing contains a true record of the testimony of the

10   witness.

11

12

13   Dated this ___31st___ day of ___March___, 2007, at

14   San Diego, California.

15   _Rita Burgas_____
                                            RITA BURGESS

16   C.S.R. No. 8374

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