

1                                    IN THE UNITED STATES DISTRICT COURT  
2                                    FOR THE NORTHERN DISTRICT OF CALIFORNIA  
3                                    SAN JOSE DIVISION

4  
5            LOUIS VUITTON                                    )    C-07-03952-JW  
6            MALLETIER, S.A.,                                )  
7                                    PLAINTIFF,    )    AUGUST 20, 2009  
8    V.    )    VOLUME 3  
9            AKANOC SOLUTIONS, INC.,                    )    PAGES 1 - 267  
10           ET AL.,    )  
11                                    DEFENDANTS.    )  
12            -----    )

13                                    THE PROCEEDINGS WERE HELD BEFORE  
14                                    THE HONORABLE UNITED STATES DISTRICT  
15                                    JUDGE JAMES WARE

16            A P P E A R A N C E S:

17            FOR THE PLAINTIFF:    J. ANDREW COOMBS  
18    BY:    J. ANDREW COOMBS  
19    ANNIE S. WANG  
20    517 E. WILSON AVENUE  
21    SUITE 202  
22    GLENDALE, CALIFORNIA 91206

23            FOR THE DEFENDANTS: GAUNTLETT & ASSOCIATES  
24    BY:    JAMES A. LOWE  
25    CHRISTOPHER G. LAI  
26    18400 VON KARMAN  
27    IRVINE, CALIFORNIA 92612

28                                    (APPEARANCES CONTINUED ON THE NEXT PAGE.)

29            OFFICIAL COURT REPORTER: IRENE RODRIGUEZ, CSR, CRR  
30    CERTIFICATE NUMBER 8074

1           A P P E A R A N C E S: (CONT'D)

2           ALSO PRESENT:

3                               LAW OFFICES OF J. ANDREW  
4                               COOMBS  
5                               BY: RUTH ADLER, PARALEGAL  
6                               517 E. WILSON AVENUE  
7                               SUITE 202  
8                               GLENDALE, CALIFORNIA 91206

9                               LVMH FASHION GROUP  
10                              BY: NIKOLAY LIVADKIN  
11                              2 RUE DU PONT-NEUF 75001  
12                              PARIS, FRANCE

13                             AKANOC SOLUTIONS, INC.  
14                             BY: STEVE CHEN, PRESIDENT  
15                             45535 NORTH PORT LOOP EAST  
16                             FREMONT, CALIFORNIA 94538

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2 P R O C E E D I N G S

3  
4 (WHEREUPON, THE FOLLOWING PROCEEDINGS WERE  
5 HELD OUT OF THE PRESENCE OF THE JURY:)

6 THE COURT: GOOD MORNING. PLEASE BE  
7 SEATED. WHERE ARE WE?

8 MS. WANG: GOOD MORNING, YOUR HONOR.  
9 WE'RE ABOUT TO CALL MR. ROB HOLMES. BEFORE WE  
10 START IF THERE'S ONE THING WE CAN DISCUSS WITH THE  
11 COURT?

12 THE COURT: CERTAINLY.

13 MS. WANG: THE PARTIES DISCUSSED  
14 STIPULATING TO MOST OF THE PHYSICAL EVIDENCE AS  
15 WELL AS MOST OF THE DOCUMENTARY EVIDENCE THAT  
16 MR. HOLMES WILL BE AUTHENTICATING AND WHATNOT.

17 BUT THERE WAS ONE ISSUE THAT WE WANTED TO  
18 ADDRESS WITH THE COURT, AND IF WE CAN GET IT  
19 ADDRESSED THIS MORNING I THINK IT WOULD SPEED  
20 THINGS ALONG QUITE A BIT.

21 THE COURT: MAYBE YOU DID ALERT  
22 MS. GARCIA, BUT WHAT IS IT?

23 MR. LOWE: THEY HAVE A NUMBER OF  
24 DOCUMENTS THAT MR. HOLMES HAS COLLECTED. MOST OF  
25 THEM WE DON'T HAVE OBJECTIONS TO, BUT THERE WERE

1 SEVERAL PAGES OF DOMAIN TOOLS REPORT THAT HE  
2 COLLECTED AND OBVIOUSLY HE HAS NO WAY OF PREPARING  
3 OR AUTHENTICATING.

4 WE OBJECTED TO THOSE PARTICULAR THINGS.  
5 I THINK THERE ARE LIKE 14 GROUPS OF DOCUMENTS, AND  
6 THERE ARE MAYBE 3 PAGES OUT OF THOSE DOCUMENTS WE  
7 OBJECT TO ON THE SAME GROUNDS WE DID YESTERDAY WITH  
8 MR. LIVADKIN.

9 SO WE WOULD LIKE TO HAVE THOSE PORTIONS  
10 TAKEN OUT.

11 THE COURT: WELL, LET ME SAY MY  
12 UNDERSTANDING IS THAT THERE IS A CONCERN WITH  
13 RESPECT TO THE DOMAIN TOOLS REPORT AS I SUGGESTED  
14 BEFORE.

15 SO FAR AS THE COURT IS CONCERNED YOU MAY  
16 USE ANY OF THOSE REPORTS TO EXPLAIN THE CONDUCT AND  
17 WHAT HAPPENED.

18 WHETHER THEY GO INTO THE JURY ROOM IS THE  
19 ISSUE I WANTED TO CONSIDER.

20 I HAVE GIVEN THE JURY A LIMITING  
21 INSTRUCTION. IF THEY ARE NOT HEARSAY, TECHNICALLY  
22 THEY CAN COME INTO EVIDENCE IF THEY'RE USED FOR  
23 THAT LIMITED PURPOSE.

24 THE LIMITED PURPOSE I HAVE HERE HAS TO DO  
25 WITH WHY DID YOU GO TO THIS PLACE? WHY DID YOU

1 TAKE THIS STEP? SO IT'S EXPLAINING THE CONTENT.

2 THE PREJUDICE THAT I SEE THE DEFENSE  
3 CONCERNED ABOUT IS THAT THAT REPORT SHOWS A  
4 RELATIONSHIP BETWEEN VARIOUS COMPANIES AND THE  
5 DEFENDANTS.

6 NOW, IF I'M SATISFIED THAT THAT  
7 RELATIONSHIP IS PROVED BY OTHER EVIDENCE, THEN I'M  
8 NOT AS CONCERNED ABOUT THE AUTHENTICITY ABOUT THAT  
9 RELATIONSHIP AS SHOWN IN DOMAIN TOOLS. IF SOMEHOW  
10 THEY PRESENTED EVIDENCE AS TO HOW THEY ACQUIRED  
11 THAT INFORMATION AND WHY THE REPORT SHOWS THAT  
12 BECAUSE THEN IT'S NOT SOMEONE'S ASSERTION THAT  
13 THERE IS THE ASSOCIATION. IT'S SOMEONE'S REPORT  
14 ABOUT SOMETHING THAT IS IN THE PUBLIC DOMAIN.

15 NOW, IT DOES SEEM TO ME AS I HAVE HEARD  
16 IN THIS CASE THERE ARE A NUMBER OF IP ADDRESSES  
17 THAT ARE ASSIGNED TO THE DEFENDANTS.

18 AND SO IF SOMEONE IS USING THAT ADDRESS,  
19 IT SEEMS TO ME THE ONLY WAY THEY CAN USE IT IS IF  
20 THE DEFENDANT GIVES THEM PERMISSION TO USE IT  
21 UNLESS I'M TOLD THAT THERE IS EVIDENCE THAT SOMEONE  
22 CAN USE AN IP ADDRESS WITHOUT HAVING PERMISSION AND  
23 MAYBE THESE PEOPLE DID.

24 SO I DO HEAR YOU WITH RESPECT TO THIS,  
25 AND I'M RESERVING WITH RESPECT TO WHETHER THESE

1 THINGS COME IN, BUT I'M LEARNING THIS CASE FOR THE  
2 FIRST TIME AS YOU'RE PRESENTING THIS EVIDENCE AND  
3 IT DOES SEEM TO ME THAT I HAVE HEARD ENOUGH THAT  
4 I'M LIKELY TO ALLOW THESE DOMAIN TOOLS REPORTS TO  
5 COME IN AS LONG AS I'M SATISFIED BASED UPON THE  
6 EVIDENCE THAT THEY ARE AUTHENTIC, THAT THE  
7 ASSOCIATION THAT THEY'RE REPORTING ON IS NOT  
8 SOMEONE'S ASSERTION BUT ONE THAT WAS ESTABLISHED AS  
9 A RESULT OF BUSINESS RELATIONSHIPS BETWEEN THE  
10 DEFENDANTS AND THOSE COMPANIES.

11 MR. LOWE: OKAY.

12 THE COURT: SUMMON THE JURY.

13 MR. LOWE: YOUR HONOR, BEFORE YOU DO,  
14 THERE IS ONE OTHER MATTER I WOULD LIKE TO RAISE  
15 VERY QUICKLY.

16 IN THE COURT'S RULING PREVIOUSLY ON JULY  
17 9 ON THE DEFENDANTS' MOTION IN LIMINE NUMBER 9, THE  
18 COURT DENIED THE MOTION IN LIMINE TO BAR TESTIMONY  
19 BY MR. LIVADKIN CONCERNING TESTIMONY OF THE  
20 GENUINENESS OF VARIOUS BAGS OR LACK OF GENUINENESS,  
21 AND WE WANTED TO RENEW OUR OBJECTION TO HIS  
22 TESTIMONY AND ASK THE COURT TO STRIKE THE TESTIMONY  
23 CONCERNING THE NONGENUINENESS OF THIS BECAUSE HE  
24 ADMITTED ON THE STAND THAT IT REQUIRES EXPERTISE IN  
25 ORDER TO DETERMINE WHETHER THESE BAGS ARE GENUINE

1 OR NOT AND THAT IT TAKES TRAINING OR TIME EVEN  
2 WITHIN THE COMPANY. AND HE CHARACTERIZED HIMSELF  
3 AS BEING AN EXPERT ON THIS.

4 SO HE HAS NOT BEEN DESIGNATED AS AN  
5 EXPERT, NEVER BEEN PROVIDED A REPORT AS AN EXPERT,  
6 AND I DON'T THINK HE'S PERMITTED TO TESTIFY ABOUT  
7 THOSE EXPERT MATTERS UNDER RULE 702 WHEN HE'S NOT  
8 QUALIFIED UNDER 701.

9 SO WE WOULD ASK THE COURT AT THIS TIME,  
10 AS THE COURT'S ORDER INDICATED THAT WHEN IT DENIED  
11 OUR MOTION IN LIMINE NUMBER 9, IT SAID IT WAS  
12 WITHOUT PREJUDICE TO BE RENEWED -- LET ME RESTATE  
13 IT.

14 "THIS IS WITHOUT PREJUDICE TO BEING  
15 RENEWED SHOULD THE EVIDENCE AT ISSUE PROVE TO BE  
16 WITHIN THE SCOPE OF EXPERT TESTIMONY RATHER THAN  
17 RECIPIENT WITNESSES."

18 THE COURT: WELL, THIS IS A TRADEMARK  
19 COPYRIGHT CASE. AND IT SEEMS TO ME THAT THE  
20 WITNESS WHO TESTIFIED, TESTIFIES AS THE OWNER OF  
21 THE TRADEMARK AND THE COPYRIGHT.

22 AN OWNER OF A TRADEMARK OR COPYRIGHT  
23 DOESN'T HAVE TO BE AN EXPERT TO SAY THAT THIS IS MY  
24 TRADEMARK, THIS IS MY COPYRIGHT. THIS IS MY  
25 PROPERTY.



1           AND IN THE SAME SENSE IT SEEMS TO ME THAT  
2 THE WITNESS CAN SAY THAT'S NOT MY PROPERTY. IT  
3 DOESN'T REQUIRE EXPERTISE BECAUSE THEY'RE THE OWNER  
4 OF THE PROPERTY.

5           AND SO I UNDERSTAND THAT THE NATURE OF  
6 THE PROBLEM IS THAT IF SOMEONE MAKES A DUPLICATE OF  
7 YOUR PROPERTY AND DOES IT SO WELL THAT IT MIGHT  
8 REQUIRE YOUR CLOSE EXAMINATION BEFORE YOU'RE ABLE  
9 TO DISCERN THE DIFFERENCES, BUT THAT'S NOT  
10 EXPERTISE.

11           YOU DON'T GO TO ANYTHING OTHER THAN  
12 KNOWING YOUR OWN PROPERTY AND HIS TRAINING IS WHAT  
13 IS HIS PROPERTY, AND IT SEEMS TO ME THAT SOMEONE  
14 CAN ALWAYS TESTIFY AS TO WHETHER THE PROPERTY IS  
15 GENUINE OR NOT, WHO IS THE OWNER, WHO IS THE  
16 LITIGANT.

17           IF THIS WERE NOT THE LITIGANT, IF THIS  
18 WAS NOT LOUIS VUITTON WHO WAS NOT TESTIFYING, I  
19 THINK YOUR MOTION MIGHT BE WELL MADE.

20           SO TO THE EXTENT THAT IT IS BASED UPON --  
21 THAT HE MUST BE AN EXPERT IN ORDER TO IDENTIFY HIS  
22 PROPERTY AND SAY SOMETHING IS NOT MY PROPERTY, THAT  
23 IS DENIED.

24           IT DOES SEEM TO ME THAT THE INDICIA OF  
25 AUTHENTICITY THAT HE'S IDENTIFIED HAVING TO DO WITH

1 THE NATURE OF THE MARK, THE CONSTRUCTION, WHETHER  
2 OR NOT PARTICULAR MODELS ARE MADE OR NOT, THE  
3 WRAPPING ARE MATTERS THAT ARE VISIBLE, DIDN'T  
4 REQUIRE REFERENCE TO ANY STANDARD IN AN INDUSTRY.  
5 IT DOESN'T REQUIRE ANY RESEARCH. IT IS SOMETHING  
6 THAT IS DISCERNED FROM THE OBJECT ITSELF.

7 AND TO THE EXTENT THAT YOU SATISFY ME  
8 THAT THERE IS CONTROVERSY ABOUT THIS, IN OTHER  
9 WORDS, YOU WOULD PUT ON A WITNESS OR TENDER TO THE  
10 COURT YOU HAVE A WITNESS WHO WILL SAY THAT THAT IS  
11 A GENUINE BAG, THEN I WILL TAKE SERIOUSLY YOUR  
12 MOTION.

13 OTHERWISE THE MOTION IS DENIED.

14 MR. LOWE: THANK YOU, YOUR HONOR.

15 THE COURT: SUMMON THE JURY.

16 (WHEREUPON, THE FOLLOWING PROCEEDINGS  
17 WERE HELD IN THE PRESENCE OF THE JURY:)

18 THE COURT: GOOD MORNING. WE DELAYED A  
19 LITTLE BIT BECAUSE WE HAD LEGAL ISSUES WE HAD TO SORT  
20 OUT, BUT WE'RE READY TO RESUME.

21 CALL YOUR NEXT WITNESS

22 MS. WANG: YOUR HONOR, THE PLAINTIFF  
23 CALLS MR. ROB HOLMES.

24 THE COURT: GOOD MORNING, MR. HOLMES.  
25 COME ALL OF THE WAY FORWARD HERE AND BE SWORN BY

1 THE CLERK OF COURT.

2 THE WITNESS: YES.

3 THE CLERK: PLEASE BE SEATED. WOULD YOU  
4 PLEASE STATE YOUR NAME AND SPELL YOUR LAST NAME FOR  
5 THE RECORD.

6 THE WITNESS: ROBERT HOLMES.  
7 H-O-L-M-E-S.

8 THE COURT: YOU MAY INQUIRE.

9 **DIRECT EXAMINATION**

10 BY MS. WANG:

11 Q MR. HOLMES, ARE YOU CURRENTLY EMPLOYED?

12 A YES.

13 Q BY WHOM?

14 A BY MYSELF. I'M A SELF-EMPLOYED PRIVATE  
15 INVESTIGATOR.

16 Q IS THIS THE FIRST TIME THAT YOU HAVE EVER  
17 TESTIFIED IN FRONT OF A JURY?

18 A YES.

19 Q IS THIS THE FIRST TIME THAT YOU HAVE EVER  
20 TESTIFIED IN COURT?

21 A YES.

22 Q AND YOU'RE HERE BECAUSE YOU WERE SERVED A  
23 SUBPOENA?

24 A YES.

25 Q WHAT ARE YOU AND YOUR COMPANY IN THE BUSINESS

1 OF DOING?

2 A INVESTIGATING INTELLECTUAL PROPERTY CRIMES,  
3 SPECIFICALLY ON-LINE.

4 Q AND WHEN WERE YOU FIRST EXPOSED TO THIS LINE  
5 OF WORK?

6 A ORIGINALLY IN 1982 WHEN MY FATHER BEGAN DOING  
7 THIS KIND OF WORK. I WAS WORKING FOR MY FATHER'S  
8 BUSINESS UNTIL I WENT AWAY TO COLLEGE. AFTER  
9 COLLEGE I MOVED TO CALIFORNIA, AND I BEGAN WORKING  
10 FULL-TIME AT THAT TIME IN 1995.

11 Q AND WHEN DID YOU OPEN YOUR OWN BUSINESS?

12 A IN 2001.

13 Q IS YOUR COMPANY INCORPORATED?

14 A YES.

15 Q IS IT INSURED?

16 A YES.

17 Q DO YOU PERSONALLY HOLD ANY LICENSES?

18 A YES.

19 Q AND WHAT ARE THOSE?

20 A PRIVATE INVESTIGATOR LICENSES IN THE STATES OF  
21 CALIFORNIA AND TEXAS.

22 Q AND WHAT IS INVOLVED IN OBTAINING YOUR PRIVATE  
23 INVESTIGATOR LICENSES IN CALIFORNIA?

24 A THREE YEARS FULL-TIME INVESTIGATIVE WORK,  
25 POSITIVE RECOMMENDATIONS FROM YOUR EMPLOYERS, AN

1 EXAM AND FBI CHECKS AND STATE CHECKS.

2 Q AND WHAT ARE THE REQUIREMENTS FOR THE LICENSE  
3 IN TEXAS?

4 A THE SAME.

5 Q HOW LONG HAVE YOU HELD THOSE LICENSES?

6 A IN CALIFORNIA SINCE 2000 AND MY TEXAS LICENSE  
7 SINCE 2007.

8 Q DOES YOUR COMPANY CURRENTLY HAVE ANY  
9 EMPLOYEES?

10 A YES.

11 Q HOW MANY?

12 A MYSELF AND ONE OTHER.

13 Q AND WHO IS THE OTHER EMPLOYEE?

14 A JASON HOLMES.

15 Q AND WHO IS HE?

16 A HE'S MY BROTHER.

17 Q IS HE A LICENSED INVESTIGATOR?

18 A YES.

19 Q AND WHAT IS HIS INVESTIGATIVE BACKGROUND?

20 A HE ALSO HAS THE SAME INVESTIGATIVE BACKGROUND  
21 AS I. HE WORKED FOR MY FATHER'S FIRM IN NEW YORK  
22 WHILE I WAS WORKING FOR A FIRM IN CALIFORNIA.

23 Q DO YOU REVIEW HIS WORK?

24 A YES, WE BOTH REVIEW EACH OTHER'S WORK.

25 Q AND WHY DO YOU DO THAT?

1 A TO ENSURE THE ACCURACY OF THE WORK.

2 Q HAVE YOU EVER HAD ANY OTHER EMPLOYEES?

3 A YES.

4 Q DO YOU PERSONALLY INTERVIEW THE EMPLOYEES?

5 A YES.

6 Q DO YOU PERSONALLY --

7 MR. LOWE: YOUR HONOR, I OBJECT. I'M NOT  
8 SURE THAT HIS EMPLOYMENT PRACTICES ARE AT ISSUE  
9 HERE. I DON'T THINK THIS IS RELEVANT.

10 THE COURT: IT MIGHT TURN OUT TO BE, AND  
11 I'LL ALLOW YOU TO GO INTO IT, BUT I'LL SUSTAIN THE  
12 OBJECTION TO AT LEAST THIS LEVEL OF DETAIL.

13 MOVE ON TO OTHER CASES.

14 BY MS. WANG:

15 Q HOW MANY CASES A YEAR DOES YOUR FIRM TYPICALLY  
16 HANDLE?

17 A BETWEEN 500 AND 1,000.

18 Q AND WHAT DO YOU DO TO ENSURE THE ACCURACY OF  
19 THE INFORMATION THAT IS PROVIDED TO YOUR CLIENTS?

20 A WE DATABASE ALL OF OUR INFORMATION IN AN  
21 ELECTRONIC DATABASE FORMAT. WE ALSO CREATE MANILA  
22 FILE FOLDERS, HARD PAPER FILES OF EVERY ASSIGNMENT  
23 AS WELL.

24 WE HAVE AN INTAKE PROCESS THAT WE -- WHAT  
25 WE DO WHEN WE RECEIVE AN ASSIGNMENT IS TYPICALLY

1 IT'S AN E-MAIL FORM. WE'LL PRINT THE E-MAIL, AND  
2 WE'LL TAKE THE INFORMATION IN THE E-MAIL AND PUT IT  
3 INTO OUR DATABASE. AND THEN WE WILL TAKE THAT  
4 E-MAIL AND PUT IT INTO A MANILA FILE WITH THE NAME  
5 AND THE CASE NUMBER.

6 ONCE -- OH, I'M SORRY.

7 Q NO, GO AHEAD.

8 A ONCE THAT IS DONE, WE WILL GO THROUGH AND DO  
9 WHAT WE CALL WEB SITE ANALYSIS WHICH IS BASICALLY  
10 THE INSPECTION OF THE CRIME SCENE. WE'LL LOOK AT  
11 THE WEB SITE. WE WILL TAKE SCREEN SHOTS OF THE WEB  
12 SITE. WE'LL CONDUCT A WHOIS SEARCH. WE'LL TAKE  
13 THE HOST INFORMATION, THE NAME SERVER INFORMATION,  
14 THE IP ADDRESS AND ANY PERTINENT INFORMATION THAT  
15 WE FIND ON A SITE. THAT'S OUR BASIC INTAKE PROCESS  
16 FOR THE BEGINNING AND THAT'S ON PAPER PDF AND ALSO  
17 ELECTRONICALLY PASTED INTO OUR DATABASE.

18 Q AND WHO DO YOU TYPICALLY WORK FOR?

19 A BRAND OWNERS.

20 Q ANY PARTICULAR INDUSTRIES?

21 A YES, I PRIMARILY WORK FOR LUXURY BRAND  
22 INDUSTRY.

23 Q AND WHAT DO YOUR CLIENTS ASK YOU TO DO?

24 A THEY ASK ME TO INVESTIGATE SUSPECTED  
25 COUNTERFEIT PRODUCT ON-LINE.

1 Q AND WHAT WERE YOU ASKED TO DO BY LOUIS VUITTON  
2 IN THIS CASE?

3 A IN THIS CASE I WAS ASKED TO INVESTIGATE THE  
4 SALE AND FACILITATION OF COUNTERFEIT PRODUCT  
5 ON-LINE BEING SOLD.

6 Q WERE YOU ASKED TO MAKE ANY BUYS?

7 A YES.

8 Q CAN YOU GO THROUGH THE BUY PROCEDURE FOR ME?

9 A SURE.

10 THE COURT: WELL, MAYBE SEPARATE THAT  
11 FROM THE ACTUAL BUYS. WE'LL HEAR THE STORY TWICE.  
12 LET'S GO TO THE BUYS.

13 BY MS. WANG:

14 Q ALL RIGHT. CAN YOU EXPLAIN TO ME THE BUY  
15 PROCESS AFTER YOU SETUP THE PAPERWORK IN YOUR  
16 DATABASE AND MANILA FOLDER FILES?

17 A ONCE INVESTIGATOR RECEIVES THE MANILA FILE  
18 FOLDER HE WILL TAKE THE -- HE WILL PULL THE  
19 INFORMATION UP INTO THE DATABASE.

20 AND ONCE THEY DO THAT THEY PROCEED TO THE  
21 WEB SITE IN THE BROWSER ON THEIR COMPUTER AND THEY  
22 WILL FOLLOW THE INSTRUCTIONS ON THE WEB SITE IN  
23 ORDER TO PLACE THE ORDER FOR THE MERCHANDISE.

24 THE COURT: AGAIN, WE'RE STILL TALKING IN  
25 GENERALITIES. WHAT I WOULD WISH HIM TO DO IS TO



1 TELL US WHAT HE DID IN THIS CASE.

2 SO GO TO THE -- BECAUSE RIGHT NOW WE'RE  
3 JUST HEARING HIS GENERAL PRACTICE.

4 MS. WANG: SURE.

5 Q MR. HOLMES, COULD YOU PLEASE FLIP TO EXHIBIT  
6 65. CAN YOU REVIEW EXHIBIT 65 AND TELL ME WHAT  
7 THAT IS?

8 A THIS IS A LITPAK PREPARED BY MY OFFICE  
9 REGARDING A PURCHASE FROM WENDY929.NET AND IT WAS  
10 RECEIVED IN OUR OFFICE ON 6-26-07.

11 Q AND WHAT IS A LITPAK?

12 A A LITPAK IS A PDF DOCUMENT THAT WE CREATE IN  
13 OUR OFFICE THAT DOCUMENTS IMPORTANT INFORMATION  
14 DURING THE BUY PROCESS.

15 Q AND WHEN YOU SAY, "BUY PROCESS," IS THAT THE  
16 SAME THING AS AN INVESTIGATION OR IS THAT SOMETHING  
17 DIFFERENT?

18 A WELL, BUY PROCESS IS MORE SPECIFIC TO THE  
19 INVESTIGATION. IT'S PART OF THE INVESTIGATION.

20 Q AND LET ME SEE THE FIRST PAGE OF EXHIBIT 65.  
21 CAN YOU TELL ME WHAT THAT IS?

22 A YES. THIS IS OUR BUY REPORT. IT'S ENTITLED  
23 INTERNET BUY SUMMARY, AND WE CALL IT A BUY REPORT  
24 IN THE OFFICE.

25 Q AND CAN YOU BRIEFLY GO THROUGH THE FIELDS

1 LISTED AND TELL ME WHAT EACH FIELD MEANS?

2 A SURE. THE FIRST FIELD IS EVIDENCE NUMBER.  
3 THAT'S THE NUMBER TO WHICH THIS PARTICULAR  
4 TRANSACTION PURCHASE WAS ASSIGNED IN OUR OFFICE,  
5 CASE NAME, CONTACTED, PHONE NUMBER, E-MAIL, WEB  
6 SITE, ITEM NUMBER, USER NAME ALIAS, WHICH IS  
7 TYPICALLY USED IN AUCTION SITES LIKE EBAY, CONTACT  
8 METHOD, OUR CASE NUMBER, THE DATE IT WAS RECEIVED  
9 IN OUR OFFICE, INVESTIGATOR'S INITIALS, AMOUNT OF  
10 ITEMS ORDERED, DESCRIPTION OF PRODUCT ORDERED, THE  
11 AMOUNT PER UNIT, THE TOTAL FOR THE PRODUCT, TAX AND  
12 WIRE FEE TOTAL, METHOD OF PAYMENT, EVIDENCE  
13 RECEIVED VIA WHICH IS THE METHOD USED TO SEND TO  
14 US, TRACKING INFORMATION, PAYEE INFORMATION.

15 THE COURT: WE CAN READ THESE TITLES SO  
16 THAT'S NOT PRODUCTIVE. LET'S GO ON.

17 BY MS. WANG:

18 Q AT THE TOP OF THE PAGE THERE'S AN EVIDENCE  
19 NUMBER. CAN YOU TELL ME HOW YOU CREATE THE  
20 EVIDENCE NUMBER?

21 A YES, THE EVIDENCE NUMBER IS SEQUENTIALLY  
22 ASSIGNED IN OUR OFFICE. ONCE IT'S RECEIVED IN OUR  
23 OFFICE IT'S GIVEN A NUMBER SEQUENTIAL IN THAT YEAR.

24 SO, FOR EXAMPLE, IN 2007 THE FIRST  
25 PURCHASE RECEIVED IN OUR OFFICE WOULD HAVE BEEN

1 2007, 001 AND SO FORTH.

2 Q AND CAN YOU PLEASE GO TO THE SECOND AND THIRD  
3 PAGES. CAN YOU TELL ME WHAT THOSE PAGES ARE?

4 A THIS IS A DOMAIN TOOLS PRINTOUT FOR  
5 WENDY929.NET.

6 Q AND WHAT IS DOMAIN TOOLS?

7 A DOMAIN TOOLS IS AN EASY TO READ REPORT  
8 GENERATED ON-LINE THAT BASICALLY IT SHOWS  
9 INFORMATION ALL IN ONE PLACE THAT CAN BE FOUND  
10 ON-LINE AS WELL.

11 Q HOW OFTEN DO YOU USE DOMAIN TOOLS?

12 A EVERY DAY. WE USUALLY USE FOR EVERY  
13 ASSIGNMENT AND OFTEN MORE THAN ONCE.

14 Q SPEAKING ABOUT THE SERVER DATA SPECIFICALLY,  
15 DO YOU VERIFY THAT INFORMATION?

16 A YES, WE DO.

17 Q AND HOW DO YOU VERIFY THAT INFORMATION?

18 A WE ALWAYS SECOND AND TRIPLE SOURCE ALL OF OUR  
19 SEARCHES. SO, FOR EXAMPLE, THIS IP ADDRESS THAT  
20 SHOWS SERVER DATA IT SHOWS 204.13.69.140, WHAT  
21 WE'LL DO IS GO TO THE ACTUAL DOS COMMAND PROMPT ON  
22 OUR PC AND TYPE IN THE WORD PING SPACE AND THEN  
23 WWW.WENDY929.NET.

24 AND ONCE WE HIT THE ENTER KEY ON OUR  
25 COMPUTER, RAW PACKETS OF DATA ARE SENT TO THE

1 SERVER, AND THAT INFORMATION IS RECEIVED BACK TO  
2 US. AND THE WAY THAT THE -- THIS PROCESS WORKS,  
3 THIS PINGING PROCESS WORKS IS THAT FOUR PIECES OF  
4 DATA ARE SENT AND RECEIVED.

5 SO WHAT YOU'LL ACTUALLY SEE IN THE DOS  
6 DEMAND PROMPT IS THE RESULT WHERE THE IP ADDRESS IS  
7 ASSIGNED TO THAT DOMAIN NAME, AND IT WAS VERIFIED  
8 BY OUR COMPUTER, JUST BY THE DOS COMMAND ALONE FOUR  
9 TIMES AND THAT'S THE RAWEST COMPUTER DATA FOR IP'S  
10 AND DOMAIN NAMES. WE'LL ALWAYS DO THAT AS WELL.

11 Q AND DO YOU KNOW IF DOMAIN TOOLS IS USED BY  
12 OTHERS IN YOUR INDUSTRY?

13 A YES, IT'S FAIRLY -- IT'S AN INDUSTRY STANDARD  
14 PRETTY MUCH FOR ANYBODY WHO USES -- WHO WORKS IN  
15 THE DOMAIN BUSINESS AND ALSO A LOT OF INVESTIGATORS  
16 WILL USE IT AS WELL BECAUSE WE DO A LOT OF DOMAIN  
17 INVESTIGATIONS.

18 Q AND CAN YOU QUICKLY GO THROUGH THE REST OF THE  
19 PAGES OF EXHIBIT 65 AND TELL ME WHAT THOSE PAGES  
20 ARE?

21 A SURE.

22 Q AND IF YOU COULD VERBALIZE WHAT PAGE YOU'RE  
23 ON?

24 A YES.

25 Q THAT WOULD BE HELPFUL.

1 A OKAY. PAGE 4 HERE IT'S A PRINTOUT THAT  
2 REPRESENTS THE STATUS OF WENDY929. IT'S A SCREEN  
3 SHOT OF WENDY929 THAT REPRESENTS WHAT IT LOOKED  
4 LIKE DURING OUR INVESTIGATION AND AS YOU CAN SEE  
5 HERE IT HAS LOUIS VUITTON MERCHANDISE BEING SOLD  
6 AND OFFERED ON THE SITE.

7 THE NEXT PAGE WOULD BE PAGE -- I'M SORRY.  
8 I'M LOSING MY PAGE NUMBERS -- PAGE 5 AND 6 IS  
9 E-MAIL COMMUNICATION BETWEEN OUR OFFICE AND THE  
10 E-MAIL ADDRESS THAT WAS OFFERED TO US ON  
11 WENDY929.NET.

12 THEN THE NEXT PAGE HERE IS OUR RECEIPT  
13 FROM WESTERN UNION.

14 THE NEXT PAGE IS THE -- THIS HERE IS THE  
15 PACKING LABEL, THE PACKAGE LABEL THAT ARRIVED IN  
16 OUR OFFICE ON THE PACKAGE ITSELF FOR THE EVIDENCE.

17 AS YOU CAN SEE THE FIRST LABEL ON THE TOP  
18 SHOWS, IT SHOWS THAT IT WAS SHIPPED FROM CHINA  
19 USING A PRODUCT, A SERVICE CALLED EMS WHICH IS A  
20 SHIPPING SERVICE THAT MANY PEOPLE OUTSIDE OF THE  
21 UNITED STATES USE.

22 ONCE IT'S ACCEPTED INTO THE UNITED  
23 STATES, EMS GENERALLY THEY WORK WITH THE U.S.  
24 POSTAL SERVICE. SO AS YOU CAN SEE THE SECOND HALF  
25 IS THE ACCEPTANCE LABEL THAT IS GIVEN TO THE

1 PACKAGE ITSELF, AND AS YOU CAN SEE THE TRACKING  
2 NUMBER IS THE SAME. WHEN IT WAS ACCEPTED INTO THE  
3 UNITED STATES IT WAS ENTERED INTO THE UNITED STATES  
4 POSTAL SERVICE DATABASE AS WELL.

5 THE NEXT THREE PAGES -- ACTUALLY THE NEXT  
6 PAGE IS AN OVERALL SHOT OF THE MERCHANDISE THAT WAS  
7 SENT TO OUR OFFICE AND PROCESSED BY MY OFFICE.

8 THE NEXT PAGE IS A CLOSE-UP OF LOUIS  
9 VUITTON MARK BEING USED ON DOCUMENTATION PROVIDED  
10 TO US BY THE SUBJECT.

11 AND THE LAST PAGE -- ACTUALLY THE NEXT  
12 PAGE IS OUR EVIDENCE TAG. AND THE EVIDENCE TAG IT  
13 SHOWS OUR EVIDENCE NUMBER COLLECTED FROM, WHICH IS  
14 TYPICALLY THE WEB SITE, THE CASE NUMBER, THE CASE  
15 NUMBER WHICH OFTEN IS THE SAME AS THE WEB SITE  
16 INFO, AND COLLECTED BY, AND YOU CAN SEE ALSO THAT  
17 YOU HAVE HANDWRITTEN INITIALS BY THE INVESTIGATOR,  
18 AND THE HANDWRITTEN DATE THAT IT WAS RECEIVED IN  
19 OUR OFFICE.

20 AND THE LAST PAGE IS OUR CHAIN OF CUSTODY  
21 FORM.

22 Q THANK YOU, MR. HOLMES. I'D LIKE TO SHOW YOU I  
23 BELIEVE THIS IS EXHIBIT 67.

24 THAT ITEM HAS ACTUALLY BEEN STIPULATED  
25 INTO EVIDENCE, BUT CAN YOU PLEASE OVERVIEW IT AND

1 TELL ME WHAT IT IS?

2 A YES. THIS IS THE PRODUCT THAT WE PURCHASED  
3 FROM WENDY929.NET.

4 Q AND WAS THIS PRODUCT SHIPPED DIRECTLY TO YOUR  
5 OFFICE?

6 A NO. IT WAS SHIPPED TO OUR UNDERCOVER MAILBOX  
7 SERVICE AND REPACKAGED AND RESENT TO OUR OFFICE AND  
8 RECEIVED IN OUR OFFICE ON THE DATE ON THE REPORT.

9 Q AND IF YOU WERE TO STORE EVIDENCE AT YOUR  
10 OFFICE, HOW WOULD YOU DO SO?

11 A WE STORE IT UNDER LOCK AND KEY AND ALSO UNDER  
12 24-HOUR CAMERA SURVEILLANCE.

13 Q AND DID YOU MAKE ANY OTHER BUYS IN CONNECTION  
14 WITH THIS CASE?

15 A YES.

16 Q I'M NOT SURE IF YOU CAN SEE, BUT THERE IS A  
17 TABLE WITH SOME ADDITIONAL BUYS THAT HAVE ALSO BEEN  
18 STIPULATED INTO EVIDENCE.

19 YOUR HONOR, DO WE NEED TO GO THROUGH EACH  
20 ONE?

21 THE COURT: I PRESUME HE HAS EXAMINED  
22 THOSE, AND SO YOU CAN TREAT THOSE AS A GROUP.

23 BY MS. WANG:

24 Q MR. HOLMES, I KNOW YOU MAY HAVE HAD SOME  
25 OPPORTUNITY TO REVIEW THOSE. WERE THOSE FROM THE

1 BUYS THAT YOU MADE IN CONNECTION WITH THIS CASE?

2 A YES, MA'AM.

3 Q AND DOES EACH BUY HAVE A PACK SIMILAR TO  
4 EXHIBIT 65 THAT YOU WENT THROUGH?

5 A YES.

6 Q AND DOES EACH PACK GENERALLY CONTAIN THE SAME  
7 KIND OF INFORMATION?

8 A YES.

9 MS. WANG: YOUR HONOR, CAN WE MOVE INTO  
10 EVIDENCE THOSE LITPAKS THAT CORRESPOND TO THOSE  
11 BUYS?

12 THE COURT: DO WE HAVE NUMBERS FOR THEM?  
13 I PRESUME THE ITEMS THEMSELVES HAVE BEEN OFFERED  
14 INTO EVIDENCE. I'M NOT SURE WHAT NUMBERS YOU'RE  
15 OFFERING AS LITPAKS. WHAT NUMBERS DO THEY HAVE?

16 MS. WANG: EXHIBIT 65, EXHIBIT 81,  
17 EXHIBIT 116, EXHIBIT 128, EXHIBIT 141, EXHIBIT 173,  
18 EXHIBIT 185, EXHIBIT 195, EXHIBIT 210, EXHIBIT 584,  
19 EXHIBIT 586.

20 THE COURT: JUST A MOMENT.

21 YOU MAY PROCEED.

22 MS. WANG: EXHIBIT 586.

23 THE COURT: YOU SAID IT.

24 MS. WANG: EXHIBIT 588 AND 590.

25 THE COURT: WHERE ARE THEY?



1 MS. WANG: THEY'RE BY THE WITNESS.

2 THE COURT: VERY WELL. AS LONG AS  
3 THEY'RE ACCESSIBLE TO BOTH SIDES IN THE CASE,  
4 THEY'RE IN EVIDENCE.

5 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBERS 65,  
6 81, 116, 128, 141, 173, 185, 195, 210, 584,  
7 586, 588, AND 590, HAVING BEEN PREVIOUSLY  
8 MARKED FOR IDENTIFICATION, WERE ADMITTED  
9 INTO EVIDENCE.)

10 BY MS. WANG:

11 Q MR. HOLMES, WERE YOU ASKED TO DO ANY  
12 INVESTIGATIONS THAT DID NOT REQUIRE A BUY?

13 A YES.

14 Q AND WHAT WERE THOSE?

15 A WEB HOST ANALYSIS.

16 Q WELL, FIRST LET ME ASK WITH REGARD TO THE BUY  
17 THAT YOU DID MAKE, DID YOU INVESTIGATE WHO DID HOST  
18 THE WEB SITE DURING THE BUY PROCESS?

19 A YES.

20 Q AND WHO HOSTED THOSE WEB SITES? I BELIEVE  
21 THERE WERE 14 BUYS. AND WHO HOSTED THE WEB SITES  
22 FOR THOSE 14 BUYS AT THE TIME OF YOUR  
23 INVESTIGATION?

24 A THE DEFENDANTS.

25 Q CAN I PLEASE HAVE YOU REFER TO EXHIBIT 94.

1 DID YOU OR YOUR OFFICE PRINT THIS OUT?

2 A YES.

3 Q AND WHAT IS IT?

4 A IT'S A PRINTOUT OF THE WEB SITE CN-NIKE.US.  
5 IT REVIEWS LOUIS VUITTON MERCHANDISE BEING OFFERED  
6 FOR SALE.

7 Q AND WHAT IS THE DATE REFLECTED ON THAT  
8 PRINTOUT?

9 A MAY OF 2008.

10 Q COULD YOU PLEASE LOOK AT 95.3. CAN YOU PLEASE  
11 TELL ME WHAT THAT IS?

12 A YEAH. THE FIRST PAGE HERE IS THE DOS COMMAND  
13 PROMPT I MENTIONED TO YOU EARLIER. THIS IS THE  
14 SCREEN SHOT OF THAT WHERE YOU CAN SEE IT SAYS REPLY  
15 FROM AND IT SHOWS THE IP ADDRESS. THOSE ARE  
16 ACTUALLY DATA PACKETS SENT TO THE DOMAIN AND  
17 RECEIVED.

18 YOU CAN SEE THE FOUR PIECES OF  
19 INFORMATION WAS RECEIVED, AND IT'S THE SAME  
20 INFORMATION AT THE END IT SHOWS A RESULT.

21 AND THIS IS ALL THROUGH BASIC DOS PING  
22 STATISTICS, AND IT WILL SHOW THE STATISTICS.  
23 OBVIOUSLY THAT'S THE RESULT, AND IT SAYS ROUND TRIP  
24 AND TIMES 70 MILLISECONDS, BUT THIS IS THE RAW DATA  
25 THAT OTHER SERVICES WOULD USE TYPICALLY.

1                   AND YOU KNOW SOME ON THE NEXT PAGE HERE  
2                   DOMAIN TOOLS IS A LOT BETTER PACKAGE OF THAT DATA.

3                   Q        AND PAGE 2?

4                   A        YES, I'M SORRY.   PAGE 2 IS THE DOMAIN TOOLS  
5                   PRINTOUT FOR CN-NIKE.US REVEALING ALSO THAT THE IP  
6                   ADDRESS IS THE SAME ENDING IN .65, THE SAME AS THE  
7                   PREVIOUS PAGE.

8                                AND THIS NEXT PAGE IS AN IP WHOIS.

9                   Q        ARE YOU ON PAGE 3 OR 4?

10                  A        I'M SORRY.   I'M BAD WITH PAGES.   PAGE 4.

11                                THE NEXT PAGE IS -- PAGE 4 IS AN IP WHOIS  
12                   AND THIS IS A SEARCH WHERE YOU WOULD ACTUALLY PUT  
13                   AN IP ADDRESS IN, INSTEAD OF A DOMAIN NAME IN YOU  
14                   WOULD ACTUALLY PUT AN IP ADDRESS AND IT WOULD  
15                   REVEAL TO YOU THE ENTITY TO WHOM THAT IP ADDRESS IS  
16                   ASSIGNED AND AS YOU CAN SEE HERE IT'S THE  
17                   DEFENDANT.

18                  Q        AND, MR. HOLMES, TOWARD THE BOTTOM OF THAT --

19                                THE COURT:   AS WE CAN SEE HERE, THE  
20                   MACHINE IS HAVING TROUBLE KEEPING UP WITH YOUR  
21                   TESTIMONY.   IS YOUR SCREEN ACTIVE?

22                                THE WITNESS:   YES, I'M SORRY.

23                                THE COURT:   SO YOU WOULD BE SEEING WHAT  
24                   WE ARE SEEING.   SO WHEN YOU SAY "WHAT WE SEE HERE,"  
25                   YOU NEED TO SPECIFY WHAT IT IS YOU'RE DRAWING OUR

1 ATTENTION TO.

2 THE WITNESS: YES.

3 THE COURT: I DIDN'T MEAN TO STOP THE  
4 PROCESS. PLEASE GO AHEAD. I'M JUST TRYING TO MAKE  
5 SURE THE JURY AND I ARE LOOKING AT WHEN YOU SAY  
6 "HERE" WE'RE NOT SURE WHAT YOU'RE POINTING TO.

7 THE WITNESS: YES, SIR. IF YOU WOULD  
8 JUST MOVE THAT PAGE UP A LITTLE BIT. YES. OKAY.  
9 HERE YOU GO.

10 THE FIRST LINE YOU SEE IT SAYS IP  
11 INFORMATION FOR IP ADDRESS THAT ENDS IN 65. THEN  
12 YOU SEE IP LOCATION AND IT SHOWS UNITED STATES,  
13 FREMONT, MANAGED SOLUTIONS GROUP, INC.

14 THAT'S TYPICALLY WHERE THEIR SERVER WOULD  
15 BE REGISTERED, AND THE IP ADDRESS HERE WHICH WE  
16 HAVE JUST SEEN EARLIER.

17 AND THE OTHER INFORMATION HERE REVERSE IP  
18 SHOWS A CERTAIN AMOUNT OF OTHER DOMAINS THAT ARE  
19 HOSTED ON THIS SERVER OR IP ADDRESS AS WELL.

20 AND THEN THE WHOIS RECORD, YOU CAN SEE  
21 THE BEGINNING PART, BUT THAT'S ENOUGH BECAUSE THE  
22 REST IS FAIRLY REDUNDANT, BUT IT SHOWS MANAGED  
23 SOLUTIONS GROUP, INC., TO BE THE ENTITY TO WHOM  
24 THIS IP ADDRESS IS ASSIGNED.

25 BY MS. WANG:

1 Q AND COULD YOU LOOK TO 95.4. PLEASE TELL US  
2 WHAT THAT IS?

3 A THIS IS AND ALSO THIS IS AN IP WHOIS SEARCH  
4 THROUGH ARIN, WHICH IS THE AMERICAN REGISTRY OF  
5 INTERNET NUMBERS. AND THIS IS THE ORGANIZATION  
6 THAT ACTUALLY DOES THE ASSIGNING OF INTERNET  
7 NUMBERS TO SERVERS IN AMERICA.

8 AND THIS ALSO SHOWS THE RESULT OF MANAGED  
9 SOLUTIONS, INC., BEING THE ENTITY TO WHOM THIS  
10 ADDRESS WAS ASSIGNED.

11 Q AND IS THERE A SECOND PAGE?

12 A YES. AND THE SECOND PAGE IT'S ANOTHER SEARCH,  
13 ANOTHER BASICALLY IT'S A TRACE ROUTE OR AN IP  
14 WHOIS. IT SHOWS IT IN RAWER FORM, BUT IT DOES SHOW  
15 AGAIN A SIMILAR PING USING THE SIMILAR ADDRESS  
16 205.209.165.65 AND AGAIN YOU CAN SEE THE DOMAIN  
17 CN-NIKE.US COMING BACK AS A RESULT FOR THAT IP  
18 ADDRESS.

19 Q MR. HOLMES, IS THIS AN EXAMPLE OF THE SECOND  
20 AND TRIPLE SEARCHING YOU MENTIONED EARLIER?

21 A YES.

22 Q AND DID YOU DO THIS SORT OF HOSTING  
23 INVESTIGATION ON ANY OTHER WEB SITES CONCERNING  
24 THIS CASE?

25 A YES.

1 MS. WANG: YOUR HONOR, WE WOULD LIKE TO  
2 MOVE IN THE OTHER HOSTING INVESTIGATIVE COMPILATION  
3 REPORTS SIMILAR TO EXHIBITS 94, 95.3, AND 95.4, AND  
4 95.5 THAT THE WITNESS JUST REFERRED.

5 THE COURT: SIMILAR TO OR ARE YOU  
6 OFFERING -- I DIDN'T CATCH THAT.

7 MS. WANG: EXHIBITS 98.3, 99.3, 99.4,  
8 99.5. AND THOSE RELATE TO EASTARBIZ.COM,  
9 E-A-S-T-A-R-B-I-Z, DOT COM, AND EXHIBIT 169, 160,  
10 160.1, 160.2 REGARDING NIKEBROTHER.COM.

11 MR. LOWE: EXCUSE ME. COULD COUNSEL SLOW  
12 DOWN A LITTLE BIT. I'M HAVING A HARD TIME.

13 THE COURT: YOU DON'T HAVE A LIST OF  
14 THESE I TAKE IT, BUT WHAT YOU'RE TRYING TO DO IS  
15 CAPTURE AS YOU'RE GOING THROUGH IT.

16 SO WE DID 160.2 FOR NIKE SOMETHING.

17 MS. WANG: NIKEBROTHER.COM. EXHIBITS  
18 161, 162, 162.1, 162.2 REGARDING  
19 LKKFASHION2006.COM; EXHIBITS 163, 164, 164.1, 164.2  
20 FOR THE WEB SITE LV-HANDBAG.COM; EXHIBIT 165, 166,  
21 166.1, 166.2 REGARDING AT88.COM.

22 MR. LOWE: I'M SORRY, A-T?

23 MS. WANG: A-T AND THEN THE NUMBER  
24 88.COM.

25 EXHIBIT 212, 213.2, 213.3, AND 213.4

1 REGARDING WHEREONLINE.NET; EXHIBIT 286, 287, 287.1  
2 AND 287.2 REGARDING EQUALDEAL.COM; EXHIBITS 353,  
3 353.1, 353.2 REGARDING NIKEXP.COM; EXHIBITS 356,  
4 357, 357.1 REGARDING POPULARKICKS8.COM; EXHIBITS  
5 360, 361, 361.1, 361.2 REGARDING REPLICAEC.COM;  
6 EXHIBITS 402, 403, 403.1, 403.2 REGARDING  
7 TRADEKEYLEAD.COM; EXHIBITS 404, 405, 405.1, 405.2  
8 REGARDING TOP-HANDBAG.COM; AND EXHIBITS 406, 406.1,  
9 AND 406.2 REGARDING TRADEKEYSTAR.COM.

10 THE COURT: VERY WELL. THE ENUMERATED  
11 EXHIBITS ARE IN EVIDENCE.

12 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBERS 94,  
13 95.3, 95.4, 95.5, 98.3, 99.3, 99.4, 99.5,  
14 169, 160, 160.1, 161.2, 161, 162, 162.1,  
15 162.2, 163, 164, 164.1, 164.2, 165, 166,  
16 166.1, 166.2, 212, 213.2, 213.3, 213.4,  
17 286, 287, 287.1., 287.2, 353, 353.1, 353.2,  
18 356, 357, 357.1, 360, 361, 361.1, 361.2,  
19 402, 403, 403.1, 403.2, 404, 405, 405.1,  
20 405.2, 406, 406.1, AND 406.2, HAVING BEEN  
21 PREVIOUSLY MARKED FOR IDENTIFICATION, WERE  
22 ADMITTED INTO EVIDENCE.)

23 BY MS. WANG:

24 Q AND, MR. HOLMES, OF THE WEB SITES THAT I JUST  
25 MENTIONED, WHEN WERE THESE INVESTIGATIONS DONE

1 DURING THIS BATCH OF WEB SITES?

2 A THIS BATCH OF WEB SITES WAS DONE IN APRIL AND  
3 MAY OF 2008, I BELIEVE.

4 Q AND WHO HOSTED ALL OF THESE WEB SITES BASED ON  
5 YOUR INVESTIGATIONS?

6 A THE DEFENDANTS.

7 Q I'LL HAVE THE WITNESS PLEASE REVIEW EXHIBIT  
8 85.2. AND PLEASE TELL US WHAT THAT IS?

9 A PAGE 1 IS THE DOS COMMAND PROMPT PING SEARCH  
10 THAT I DESCRIBED EARLIER FOR BIGWORLDSHOES.COM  
11 REVEALING THE ADDRESS TO BE 205.209.161.43.

12 PAGE 2 IS A PING THROUGH DOMAIN TOOLS  
13 REVEALING THAT INFORMATION.

14 PAGE 4 IS THE DOMAIN TOOLS REPORT  
15 ACTUALLY 4, 5, AND 6 IS THE DOMAIN TOOLS REPORT FOR  
16 BIGWORLDSHOES.COM ALSO REVEALING THE DEFENDANTS AS  
17 THE HOST OF THIS DOMAIN AT THAT SAME IP ADDRESS.

18 PAGE 7 -- OH, I'M SORRY.

19 Q PAGE 6?

20 A PAGE 6. I APOLOGIZE. PAGE 6 IS A REVERSE IP  
21 SEARCH AND IT'S BASICALLY JUST THE FIRST PAGE, A  
22 REPRESENTATIVE OF THE REVERSE IP SEARCH THAT WE  
23 WOULD RUN ROUTINELY AND DURING SOME INVESTIGATIONS  
24 JUST TO GET AN IDEA OF WHAT OTHER DOMAINS ARE  
25 HOSTED ON THE SAME IP ADDRESS.



1 AS YOU CAN SEE THE SEARCH WAS DONE ON THE  
2 SAME IP ADDRESS ENDING .43. AND IT REVEALS THE  
3 FIRST PAGE 25 DOMAINS OUT OF 115 RESULTS SHOWING  
4 ALL DIFFERENT NAMES FROM BEST TOP SHOES, BIG WORLD  
5 SHOES, WHICH IS THE ORIGINAL DOMAIN BEGAN ON THIS  
6 SEARCH, CHINA NIKE 123, BRANDS TRADE, BRAND AREA,  
7 BRAND REGION, BRAND 0086, THOSE TYPE OF DOMAINS ALL  
8 BE HOSTED ON THIS ADDRESS.

9 Q WELL, MR. HOLMES, LOOKING ON PAGE 6, SOME OF  
10 THESE I NOTICE HAVE LIKE YOU MENTIONED THERE WAS  
11 ONE WITH NIKE IN IT. DOES THAT MEAN ANYTHING TO  
12 YOU IN YOUR INVESTIGATIVE BACKGROUND?

13 A YES. THERE ARE CERTAIN KEY WORDS THAT WE  
14 OFTEN --

15 MR. LOWE: YOUR HONOR, EXCUSE ME. I  
16 WOULD OBJECT TO ANY SPECULATION BASED UPON  
17 BACKGROUND IF HE HAS ACTUALLY INVESTIGATED  
18 SOMETHING AND TESTIFIED ON THAT.

19 THE COURT: OVERRULED.

20 THE WITNESS: THERE ARE CERTAIN KEY WORDS  
21 THAT ARE TYPICALLY USED IN ANY SPECIFIC BUSINESS  
22 AND WHEN PEOPLE ADVERTISE COUNTERFEIT GOODS THEY  
23 WOULD TYPICALLY USE WORDS -- BRAND NAMES AND WORDS  
24 LIKE BRAND AND THINGS LIKE THAT.

25 AND WHEN WE SEE THE WORD NIKE APPEARING

1 OR THE WORD LV OR VUITTON OR GUCCI, WORDS LIKE  
2 THAT, WHEN YOU SEE BRAND REGIONS, BRAND AREA,  
3 BRANDS TRADE, THOSE ARE ALL KEY WORDS THAT PEOPLE  
4 USE WHEN SEARCHING FOR BRAND PRODUCT, AND THAT'S  
5 WHY OFTEN THEY'RE USED IN THIS TYPE OF  
6 INVESTIGATION -- THIS TYPE OF DOMAIN REGISTRATION.  
7 BY MS. WANG:

8 Q DID YOU EVER REVIEW ANY OF THESE WEB SITES  
9 LISTED IN THIS WEB SITE IP?

10 A I HAVE SAMPLED A NUMBER OF THEM.

11 Q AND WHAT DID YOU FIND ON THOSE WEB SITES?

12 A COUNTERFEIT PRODUCT.

13 Q WOULD YOU PLEASE GO TO PAGE 7.

14 A PAGE 7 IS AN IP WHOIS FOR THE SAME DOMAIN  
15 WHICH ENDS IN .43 REVEALING THE DEFENDANTS AS THE  
16 ENTITY TO WHOM THIS IP ADDRESS WAS ASSIGNED, AND  
17 PAGE 8 IS JUST THE REMAINDER OF THAT SEARCH.

18 PAGE 9 IS A SEARCH ON ANOTHER SEARCH  
19 ENGINE, ANOTHER DATABASE THAT WE USE THAT I HAVE  
20 SHOWN YOU GUYS PREVIOUSLY AGAIN REVEALING THIS IP  
21 ADDRESS 205.209.161.43.

22 PAGE 10 AGAIN IS THE ARIN WHOIS DATABASE  
23 SEARCH SHOWING THE DEFENDANTS AS BEING THE ENTITY  
24 TO WHOM THIS IP WAS ASSIGNED.

25 Q AND CAN YOU TELL ABOUT WHEN YOU CONDUCTED THIS

1 INVESTIGATION?

2 A YES. THIS WOULD BE JANUARY 2009.

3 Q DID YOU CONDUCT ANY OTHER INVESTIGATIONS  
4 SIMILAR TO THIS AROUND THAT SAME TIME?

5 A YES.

6 MS. WANG: YOUR HONOR, BASED ON THE  
7 WITNESS'S TESTIMONY WE WOULD LIKE TO MOVE IN THE  
8 OTHER EXHIBITS.

9 THE COURT: WHICH ARE THEY?

10 MS. WANG: IT WOULD BE 97.2 REGARDING  
11 DREAMYSHOES.COM, D-R-E-A-M-Y-S-H-O-E-S, DOT COM,  
12 EXHIBIT 109 REGARDING ESHOES99.NET; AND EXHIBIT 491  
13 REGARDING BAPESKY.COM.

14 MR. LOWE: I'M SORRY, I DIDN'T HEAR THAT.

15 MS. WANG: BAPESKY, B-A-P-E-S-K-Y, DOT  
16 COM.

17 THE COURT: THEY'RE IN EVIDENCE.

18 (WHEREUPON, PLAINTIFF'S EXHIBIT NUMBERS  
19 97.2, 109, AND 491, HAVING BEEN PREVIOUSLY  
20 MARKED FOR IDENTIFICATION, WERE ADMITTED  
21 INTO EVIDENCE.)

22 BY MS. WANG:

23 Q MR. HOLMES, AT OR ABOUT THESE INVESTIGATIONS  
24 IN JANUARY OF 2009, WHO HOSTED ALL OF THESE WEB  
25 SITES?

1 A THE DEFENDANTS.

2 Q THERE WAS ONE THING I WANTED TO ASK YOU  
3 REGARDING EXHIBIT 210. COULD YOU PLEASE REFER TO  
4 THAT EXHIBIT.

5 A YES.

6 Q ON THE FIRST PAGE THE CONTACT METHOD THERE WEB  
7 SITE, CAN YOU EXPLAIN TO ME WHAT THAT MEANS?

8 A WELL, AS I MENTIONED BEFORE, WE FOLLOWED THE  
9 INSTRUCTIONS ON THE WEB SITE, ON THE SUBJECT WEB  
10 SITE IN ORDER TO PLACE OUR PURCHASE OR OUR ORDER  
11 AND IN THIS CASE THE CONTACT METHOD WAS A SHOPPING  
12 CART AND TYPICALLY WHEN IT'S USED ON OUR REPORT IT  
13 TYPICALLY MEANS IT'S A SHOPPING CART.

14 Q SO YOU USED A SHOPPING CART ON THE PURCHASE,  
15 NOT AN E-MAIL?

16 A YES.

17 Q AND, MR. HOLMES, WHERE DO YOU UNDERSTAND THE  
18 DEFENDANTS' BUSINESS TO BE?

19 A THEIR WEB HOST.

20 Q AND HAVE YOU HEARD OF THE DEFENDANTS OTHER  
21 THAN THROUGH YOUR WORK AT LOUIS VUITTON?

22 A YES.

23 Q AND IN WHAT CAPACITY?

24 A THEY HAD A REPUTATION OF BEING A BULLETPROOF  
25 HOST FOR SPAMMERS.

1 MR. LOWE: EXCUSE ME, YOUR HONOR. I  
2 OBJECT TO ANY TESTIMONY ABOUT REPUTATION.

3 THE COURT: I'LL SUSTAIN THE OBJECTION  
4 JUST BECAUSE THE TERM "REPUTATION" SUGGESTS THAT  
5 THIS WAS NOT INFORMATION THAT WAS DETERMINED AS A  
6 PART OF THE INVESTIGATION BUT MIGHT HAVE BEEN AS A  
7 RESULT OF SOMEONE'S RUMOR OR HEARSAY OR SPECULATION  
8 AND SO YOU SHOULD DISREGARD THE ANSWER.

9 THAT'S NOT TO SAY THAT YOU CAN'T INQUIRE  
10 AS TO WHAT HE FOUND DURING HIS INVESTIGATION, BUT  
11 YOU ARE CAUTIONED THAT AS AN INVESTIGATOR HE MIGHT  
12 HAVE USED INFORMATION TO START THE INVESTIGATION,  
13 BUT IT'S THE RESULT OF HIS INVESTIGATION AS OPPOSED  
14 TO SOMETHING THAT SOME THIRD PERSON MIGHT HAVE  
15 SAID, UNLESS YOU SATISFY ME THAT THIS IS  
16 INFORMATION ABOUT ONE DOCTOR TALKING TO ANOTHER AND  
17 RELYING UPON THAT INFORMATION REGULARLY IN THE  
18 COURSE OF THE PROFESSION THAT IS BEING USED.

19 YOU MAY PROCEED.

20 BY MS. WANG:

21 Q MR. HOLMES, HAD YOU EVER COME ACROSS  
22 DEFENDANTS IN YOUR WORK FOR OTHER CLIENTS?

23 A YES.

24 Q AND IN WHAT CAPACITY?

25 A ALSO HOSTS OF OTHER COUNTERFEIT WEB SITES.

1 Q IN THE COURSE OF THE INVESTIGATIONS THAT YOU  
2 DID FOR THIS CASE, HOW MANY WEB SITES DID YOU  
3 REVIEW?

4 A IN GENERAL?

5 Q FOR THIS CASE?

6 A FOR THIS CASE PROBABLY HUNDREDS.

7 Q DID YOU EVER REVIEW A WEB SITE THAT WASN'T  
8 SELLING COUNTERFEIT OR PRODUCT HOSTED BY THE  
9 DEFENDANTS?

10 A I DID NOT, NO.

11 THE COURT: NO FURTHER QUESTIONS?

12 MS. WANG: NO FURTHER QUESTIONS, YOUR  
13 HONOR.

14 THE COURT: ALL RIGHT. YOU MAY  
15 CROSS-EXAMINE.

16 **CROSS-EXAMINATION**

17 BY MR. LOWE:

18 Q MR. HOLMES, I NEED TO ASK YOU A FEW QUESTIONS  
19 ABOUT SOME OF THESE EXHIBITS THAT HAVE BEEN MOVED  
20 INTO EVIDENCE AND PARTICULARLY TALK ABOUT YOUR  
21 METHOD OF MAKING PURCHASES.

22 IS IT CORRECT TO SAY THAT IN ALL OF THE  
23 CASES THAT COUNSEL WAS ASKING YOU ABOUT WHERE YOU  
24 MADE PURCHASES ON BEHALF OF LOUIS VUITTON THAT YOU  
25 DID THAT ON BEHALF OF LOUIS VUITTON AT THEIR

1 EXPRESSED REQUEST?

2 A YES.

3 Q DID, IN FACT, LOUIS VUITTON DIRECT YOU TO  
4 PARTICULAR WEB SITES FOR YOU TO LOOK AT?

5 A YES.

6 Q SO THEY TOLD YOU WHERE TO GO AND WHAT TO LOOK  
7 AT, WHICH WEB SITES?

8 A THEY DIDN'T TELL ME WHAT TO LOOK AT.

9 Q THEY TOLD YOU WHAT TO LOOK AT OR NOT?

10 A PARTICULARLY THOSE WEB SITES?

11 Q YES.

12 A THEY TOLD ME WHICH WEB SITES.

13 Q SO LOUIS VUITTON AUTHORIZED YOU TO VIEW  
14 WHATEVER YOU SAW ON THOSE WEB SITES?

15 A YES, SIR.

16 Q YOU DID NOT INITIATE AN INVESTIGATION OF ANY  
17 WEB SITE THAT WAS NOT DIRECTED TO YOU BY LOUIS  
18 VUITTON; IS THAT CORRECT?

19 A THAT'S NOT CORRECT.

20 Q YOU DID SOME ON YOUR OWN?

21 A I DO MANY INVESTIGATIONS ON MY OWN AND  
22 SPECULATION FOR OTHER CLIENTS AS WELL AND  
23 SPECULATION FOR MY CURRENT CLIENTS.

24 Q ALL RIGHT. JUST GENERAL CURIOSITY SO TO  
25 SPEAK?

1 A NOT GENERAL -- GENERAL CURIOSITY. MY BUSINESS  
2 IS TO LOOK FOR PEOPLE WHO FACILITATE THAT SORT OF  
3 BUSINESS ON-LINE SO I DO LOOK FOR THE ACT OF THE  
4 SALE OF COUNTERFEIT GOODS ON-LINE AND DRUM UP WORK  
5 SO TO SPEAK.

6 Q DO YOU EVER DRUM UP WORK SO TO SPEAK FOR LOUIS  
7 VUITTON?

8 A YES.

9 Q DID YOU DO THAT IN ANY CASE, IN OTHER WORDS,  
10 IN ANY OF THE INVESTIGATIONS THAT YOU TESTIFIED  
11 ABOUT, DID YOU INITIATE THAT PROCESS?

12 A THAT HASN'T COME UP IN THE STUDY OF THIS.

13 Q ALL RIGHT.

14 A BUT WE OFTEN DO PROVIDE LISTS TO OUR CLIENTS  
15 AND SUGGEST ASSIGNMENTS ON A REGULAR BASIS.

16 Q SO YOU OFFER THAT SERVICE TO YOUR CLIENTS SO  
17 TO SPEAK?

18 A YES.

19 Q YOU DID, IF I COUNTED CORRECTLY, 14  
20 INVESTIGATIONS WHERE YOU MADE BUYS?

21 A YES, SIR.

22 Q AND YOU CHARGE FOR THAT SERVICE?

23 A YES.

24 Q AND HOW MUCH DO YOU CHARGE LOUIS VUITTON FOR  
25 EACH ONE?



1 A ROUGHLY WE CHARGE ANYWHERE BETWEEN \$150 TO  
2 \$600.

3 Q PER BUY?

4 A YES, FOR THE SERVICE.

5 Q FOR SORT OF THE LITPAK THAT YOU PROVIDE THEM?

6 A YES. FOR THE LITPAK PER SE. IF WE WERE JUST  
7 ASSIGNED TO CONDUCT A PURCHASE, WE WOULD CHARGE  
8 ABOUT \$250, THAT WOULD BE OUR FEES PLUS EXPENSES.

9 Q NOW, ISN'T IT TRUE THAT OF ALL OF THE SITES  
10 THAT YOU TESTIFY FOR ABOUT MAKING BUYS FOR YOU,  
11 THAT YOU DIDN'T -- LET ME REPHRASE THIS.

12 AS TO EACH OF THE SITES THAT YOU DID BUYS  
13 FOR LOUIS VUITTON, DID THEY DIRECT YOU TO ORDER  
14 MERCHANDISE TO BE DELIVERED TO YOU IN THE UNITED  
15 STATES?

16 A THAT IS WHERE I'M LOCATED.

17 Q DID LOUIS VUITTON DIRECT YOU TO HAVE  
18 MERCHANDISE DELIVERED TO YOU IN THE UNITED STATES?

19 A THEY NEVER SPECIFICALLY ASKED ME TO DELIVER IT  
20 INTO THE UNITED STATES.

21 Q DID YOU EVER TALK TO THEM ABOUT WHERE IT WAS  
22 GOING TO BE DELIVERED?

23 A I DON'T RECALL SO.

24 Q WHY WAS IT DELIVERED INTO THE UNITED STATES?

25 A BECAUSE THAT'S WHERE I'M LOCATED.

1 Q AND YOU WERE DOING THIS AS PART OF YOUR WORK  
2 FOR LOUIS VUITTON?

3 A YES.

4 Q OKAY. YOU DIDN'T -- THEY DIDN'T ASK YOU TO  
5 HAVE IT DELIVERED TO FRANCE, FOR EXAMPLE?

6 A THEY DIDN'T ASK ME TO DO THAT.

7 Q IN FACT, THEY ASKED YOU TO HAVE IT DELIVERED  
8 TO SOMEPLACE HERE AND THEN YOU SENT IT OFF TO LOUIS  
9 VUITTON?

10 A YES, SIR.

11 Q EVERY PURCHASE YOU MADE WAS WITH THE EXPRESS  
12 AUTHORIZATION OF LOUIS VUITTON; IS THAT CORRECT?

13 A IN THIS CASE?

14 Q YES.

15 A YES, SIR.

16 Q HOW DID YOU PAY FOR THE PURCHASES THAT YOU  
17 MADE IN THESE CASES FOR LOUIS VUITTON?

18 A I WOULD HAVE TO LOOK AT EACH OF THESE TO  
19 RECOLLECT, BUT I WOULD SAY ON A REGULAR BASIS WHEN  
20 THESE WEB SITES, FOR EXAMPLE, THIS TYPE OF WEB SITE  
21 WE WOULD TYPICALLY PAY BY WESTERN UNION OR CREDIT  
22 CARD.

23 Q WELL, WHY DO YOU PAY BY WESTERN UNION?

24 A BECAUSE WE FOLLOW THE INSTRUCTIONS ON THE  
25 SUBJECT'S WEB SITE.

1 Q SO THE WEB SITE SAYS YOU HAVE TO USE WESTERN  
2 UNION?

3 A IT WILL TYPICALLY SAY HOW TO PAY. IT WILL  
4 SUGGEST HOW TO PAY AND WE WOULD USE -- MORE THAN  
5 NOT WE WOULD USE THE SIMPLEST AND EASIEST WAY TO  
6 PAY.

7 Q WELL, TYPICALLY IF YOU BUY SOMETHING ON-LINE,  
8 DON'T YOU JUST ENTER A CREDIT CARD NUMBER AND THAT  
9 GETS PROCESSED BY THE SELLER AND THEY SHIP YOU THE  
10 MERCHANDISE?

11 A IF THAT PROCESS IS AVAILABLE, YES.

12 Q BUT THAT PROCESS WASN'T AVAILABLE FOR ANY OF  
13 THE ITEMS YOU PURCHASED IN THIS CASE FOR LOUIS  
14 VUITTON, WAS IT?

15 A ACTUALLY IT WAS FROM LVBAGZ.COM.

16 Q DID YOU MAKE A PURCHASE FROM LVBAGZ.COM?

17 A YES, IT WAS THE CASE. IT WAS THE FINAL  
18 EXHIBIT THAT I REVIEWED IN THE DIRECT EXAMINATION.

19 Q WHAT EXHIBIT NUMBER WAS THAT, SIR?

20 A 210.

21 Q ACCORDING TO MY NOTES EXHIBIT 210 HAS TO DO  
22 WITH WATCHNREPLICA.NET; IS THAT RIGHT?

23 A YES. DO YOU HAVE THAT IN FRONT OF YOU, SIR?  
24 I'LL EXPLAIN THE NOTES ON THAT PURCHASE. IF  
25 SOMEONE WANTS TO BRING IT UP I CAN TELL YOU IT'S

1 EXHIBIT 210 ON THE FIRST PAGE.

2 Q I'VE ASKED PLAINTIFF'S COUNSEL TO BRING UP 210  
3 SO WE CAN SEE IT.

4 THE COURT: CERTAINLY.

5 THE WITNESS: OKAY. YOU'LL SEE IN THE  
6 VERY BOTTOM OF THE PAGE IF YOU'LL ZOOM IN ON THAT A  
7 TINY BIT I CAN SHOW YOU THE ADDITIONAL INFO SECTION  
8 WHICH IF SOMETHING --

9 THE COURT: BRING IT UP.

10 THE WITNESS: OH, YES. THERE YOU GO. AS  
11 YOU SEE IN THE VERY BOTTOM WHERE IT SAYS ADDITIONAL  
12 INFO.

13 AND THIS IS WHERE IF THERE WAS ANYTHING  
14 DIFFERENT THAT WAS NOT OF THE ORDINARY THAT  
15 HAPPENED DURING OUR PURCHASE THAT WOULD FIT INTO  
16 ONE OF OUR OTHER DATABASE FIELDS, WE WOULD PUT THAT  
17 INFORMATION IN ADDITIONAL INFO AND EVERY ONCE IN A  
18 WHILE THAT HAPPENS.

19 AND HERE IT SAYS THAT "ALTHOUGH THE  
20 INITIAL PURCHASE DID NOT GO THROUGH, WE LOCATED A  
21 SECOND WEB SITE OWNED BY THIS SUBJECT AT  
22 WATCHNREPLICA.NET WHERE WE PLACED THIS ORDER."

23 SO UP AT THE TOP WHERE IT SAYS THE CASE  
24 NAME -- I'M SORRY -- IF YOU WANT TO GO TO THE TOP.  
25 SOMETIMES IT DOES DIFFER, THE INFORMATION, AND

1 THAT'S WHY WE DO HAVE DIFFERENT FIELDS.

2 IN THIS CASE IT'S NOT REDUNDANT. YOU'LL  
3 SEE THE NAME LVBAGZ.COM AND THEN WATCHNREPLICA.NET  
4 AND ALSO WHERE WE MADE THE WATCH WAS  
5 WATCHNREPLICA.NET.

6 BY MR. LOWE:

7 Q SO THE FACT IS THAT YOU WERE NOT ABLE TO MAKE  
8 A PURCHASE FROM LVBAGZ.NET; IS THAT TRUE?

9 A WELL, HERE DO YOU SEE LVBAGZ@GMAIL.COM.

10 Q OF THIS FIRST PAGE?

11 A THE TOP SECTION. YES, SIR. ABOUT FOUR LINES  
12 DOWN. THE E-MAIL THAT WAS USED TO INSTRUCT US TO  
13 MAKE THE PURCHASE ON WATCHNREPLICA.NET WAS, IN  
14 FACT, LVBAGZ, WITH A Z, @GMAIL.COM WAS THE E-MAIL  
15 ADDRESS THAT APPEARED ON LVBAGZ, WITH A Z, DOT COM.

16 Q ALL RIGHT.

17 A SO THAT INDIVIDUAL, WHAT WE DO, BECAUSE EVERY  
18 PROCESS IS THE SAME, WE WILL GO ON THE WEB SITE AND  
19 FOLLOW THE INSTRUCTIONS WHICH IS TO E-MAIL LVBAGZ,  
20 WITH A Z, @GMAIL.COM AND THAT INDIVIDUAL INSTRUCTED  
21 US TO PLACE AN ORDER ON WATCHNREPLICA.NET.

22 SO FOR ALL INTENTS AND PURPOSES WE DID  
23 NOT PLACE AN ORDER THAT BUT FINALIZED IT ON  
24 WATCHNREPLICA.NET.

25 Q DOESN'T IT SAY ON THE BOTTOM OF THE PAGE

1           ALTHOUGH THE INITIAL PURCHASE DID NOT GO THROUGH?

2           A       YES.

3           Q       AND MEANING YOU DID NOT MAKE A PURCHASE FROM  
4           LVBAGZ, YOU COULDN'T DO THAT?

5           A       THE INITIAL PURCHASE, THE INITIAL ATTEMPT DID  
6           NOT GO THROUGH.

7           Q       AND THE INITIAL ATTEMPT WAS THROUGH  
8           LVBAGZ.COM?

9           A       YES, SIR.

10          Q       THAT DID NOT WORK?

11          A       NO, IT SAYS --

12          Q       DID IT WORK OR NOT, SIR?

13          A       DID WHAT?

14          Q       DID YOU MAKE A PURCHASE FROM LVBAGZ.COM?

15          A       YES. YOU'RE MISSING THE WORD INITIAL.

16          Q       WHERE DID YOU MAKE A PURCHASE FROM LVBAGZ.COM  
17          AS OPPOSED TO WATCHNREPLICA.NET?

18          A       SEE, WHAT HAPPENED HERE WAS THE SHOPPING CART  
19          WAS NOT APPARENTLY WORKING ON LVBAGZ.COM.

20          Q       IN FACT, THE SHOPPING CART DID NOT WORK ON ANY  
21          OF THESE, DID IT, OTHER THAN TO COLLECT  
22          INFORMATION?

23          A       I'M NOT AWARE OF WHICH ONES HAD SHOPPING CARTS  
24          AND WHICH ONES DID NOT, SIR.

25          Q       OKAY. IN THIS CASE THE SHOPPING CART DIDN'T

1 WORK?

2 A YES.

3 Q OKAY.

4 A SO THEN WE FILED THE SECONDARY INSTRUCTIONS  
5 WERE TO E-MAIL THE INDIVIDUAL AT LVBAGZ.

6 Q AT GMAIL?

7 A AT GMAIL.COM AND FOLLOWED THE INSTRUCTIONS  
8 GIVEN TO US ON THE OTHER SIDE OF THE E-MAIL THAT  
9 WAS PROVIDED ON LVBAGZ.COM.

10 Q DO THE DEFENDANTS HOST GMAIL.COM?

11 A THE DEFENDANTS DO NOT.

12 Q WHAT IS GMAIL.COM?

13 A IT'S AN E-MAIL SERVICE.

14 Q THAT SOMEBODY CAN USE?

15 A GMAIL IS A SERVICE THAT ANYBODY CAN USE.

16 Q AND IT'S RUN BY GOOGLE, ISN'T IT?

17 A YES, IT IS.

18 Q SO, IN FACT, YOU CONTACTED THE LVBAGZ THROUGH  
19 GMAIL, NOT THROUGH LVBAGZ.COM HOSTED FOR THE  
20 DEFENDANTS; IS THAT RIGHT?

21 A WELL, WE CONTACTED THE PERSON WHO OWNS THE  
22 E-MAIL ACCOUNT AT LVBAGZ.COM. WE DIDN'T CONTACT  
23 THEM THROUGH.

24 Q BUT YOU CONTACTED THEM THROUGH GOOGLE?

25 A WE CONTACTED THEM THROUGH E-MAIL CONTACTS

1 WHICH IS HOW YOU CONTACT PEOPLE BY E-MAIL.

2 Q YOU USED THE GOOGLE COMPUTERS TO CONTACT THE  
3 PEOPLE AT LVBAGZ.COM THROUGH LVBAGZ@GMAIL.COM; IS  
4 THAT RIGHT?

5 A I USED MY COMPUTER.

6 Q DID YOUR COMPUTER CONNECT WITH A GOOGLE  
7 COMPUTER TO DELIVER THAT E-MAIL OR NOT, SIR?

8 A LIKELY, YES, IN THAT PROCESS. LIKELY IT DID  
9 HIT A GOOGLE COMPUTER.

10 Q ALL RIGHT. AND YOU DIDN'T SUGGEST THAT LOUIS  
11 VUITTON SUE GOOGLE ABOUT THAT, DID YOU?

12 A NO, SIR.

13 Q THANK YOU. NOW, YOU COULDN'T MAKE THE BUY  
14 THROUGH THE COMPUTERS OPERATED BY THE DEFENDANTS  
15 BECAUSE THE SHOPPING CART DIDN'T WORK, ACCORDING TO  
16 YOUR TESTIMONY, AND INSTEAD YOU WENT TO AN E-MAIL,  
17 YOU WENT THROUGH AN E-MAIL PROCESS. AND WHAT WERE  
18 YOU TOLD WHEN YOU GOT YOUR E-MAIL BACK? WHAT  
19 INSTRUCTIONS DID YOU GET FROM THE SELLER?

20 A TO MAKE A PURCHASE ON WATCHNREPLICA.NET.

21 Q SO THEY REFERRED YOU TO SOMEBODY ELSE?

22 A THEY TOLD US TO MAKE A PURCHASE ON THEIR OTHER  
23 SITE.

24 Q OKAY.

25 A YOU SEE DOWN ON THE BOTTOM OUR INSTRUCTIONS



1 WERE TO MAKE A PURCHASE ON THEIR OTHER -- SO WHAT  
2 THEY'RE SAYING IS A WEB SITE OWNED BY THE SUBJECT,  
3 NOT SOMEONE ELSE. I DON'T KNOW WHERE YOU GOT THAT.

4 Q WELL, HOW DID YOU KNOW IT WAS OWNED BY THEM?

5 A THAT'S WHAT THEY TOLD US.

6 Q WELL, THEY TOLD YOU WHAT EXACTLY?

7 A I HAVE AN E-MAIL.

8 Q DO YOU HAVE AN E-MAIL?

9 A NOT IN THIS EXHIBIT.

10 Q SO YOUR CONCLUSION WAS THAT THEY REFERRED YOU  
11 TO THIS OTHER SITE?

12 A BECAUSE THEY TOLD US IT WAS THEIR OTHER SITE.

13 Q BUT YOU DON'T HAVE ANY DOCUMENTATION FOR THAT?

14 A NOT IN THIS EXHIBIT.

15 Q AND YOU TRIED TO MAINTAIN ALL OF YOUR  
16 DOCUMENTS IN THESE LITIGATION REPORTS, DON'T YOU?

17 A NO, NOT ALL OF OUR DOCUMENTS ARE IN A  
18 LITIGATION -- A LIT PACKET.

19 Q OKAY. IN ANY CASE, LET'S FOLLOW THIS PROCESS  
20 A LITTLE FURTHER.

21 A SURE.

22 Q HOW DID YOU MAKE THE PURCHASE FROM  
23 WATCHNREPLICA.NET?

24 A WE USED THE SHOPPING CART SYSTEM ON THE WEB  
25 SITE.

1 Q AND TELL ME HOW THAT WORKED?

2 A WE PROCEEDED TO THE WEB SITE USING OUR  
3 BROWSER, AND WE FOLLOWED THE INSTRUCTIONS ON THAT  
4 WEB SITE.

5 Q AND WHAT DID YOU DO EXACTLY?

6 A WE CLICKED ON AN ITEM, AND IT WENT TO OUR  
7 SHOPPING CART. AND ONCE WE DID THAT WE CLICKED A  
8 BUTTON THAT MOST LIKELY WOULD REFLECT A WORD  
9 CHECKOUT OR SOMETHING.

10 Q AND THEN WHAT HAPPENED?

11 A WE WOULD TYPE OUT OUR INFORMATION, OUR NAME,  
12 ADDRESS, PHONE NUMBER, CREDIT CARD INFORMATION AND  
13 THEN PROCEED TO WHATEVER THE FOLLOWING INSTRUCTIONS  
14 WERE, WHICH IT PROBABLY WOULD BE COMPLETE PURCHASE  
15 OR SOMETHING LIKE THAT.

16 Q ISN'T IT TRUE IN THIS PARTICULAR CASE YOU MADE  
17 THE PURCHASE THROUGH A SERVICE CALLED PAY DOLLAR?

18 A WHERE IS THAT? WHAT PAGE ARE YOU ON?

19 Q LET'S SEE IF I CAN GET IT. LET ME DIRECT YOU  
20 TO PAGE 5 OF THIS EXHIBIT 210.

21 A YES, I SEE IT.

22 Q COULD YOU GO TO THAT PAGE, PLEASE?

23 A YES, I SEE IT HERE.

24 Q SO --

25 THE COURT: EXPAND IT SO WE CAN READ IT.

1 BY MR. LOWE:

2 Q SO THIS SHOWS THAT YOU MADE A PAYMENT THROUGH  
3 PAY DOLLAR. DO YOU KNOW WHAT PAY DOLLAR IS?

4 A YES.

5 Q AND WHAT IS PAY DOLLAR?

6 A PAY DOLLAR IS SIMILAR TO PAY PAL. BASICALLY  
7 IT'S AN ALL ENCOMPASSING SHOPPING CART SYSTEM. FOR  
8 EXAMPLE, ON PAY PAL IF YOU DON'T WANT TO SET UP A  
9 SHOPPING CART SYSTEM THROUGH YOUR BANK AND BANK  
10 PROCESS AND HAVE YOUR BANK PROCESS YOUR CREDIT  
11 CARDS, YOU CAN HAVE PAY PAL DO IT, CHECKOUT THROUGH  
12 PAY PAL AND IT WOULD LEAVE YOU TO THE WEB SITE TO  
13 THE SHOPPING CART AND IT WOULD SEND TO YOU PAY PAL,  
14 BUT IN THIS CASE PAY DOLLAR, WHICH IS A PAYMENT  
15 SERVICE.

16 Q SO, IN FACT, YOU HAD TO ESTABLISH AN ACCOUNT  
17 AND MAKE AN ACCOUNT TO THE PAY DOLLAR BANK, DIDN'T  
18 YOU?

19 A I DON'T RECALL IF WE HAD TO ESTABLISH AN  
20 ACCOUNT, BUT THAT IS THE WEB SITE THAT FACILITATED  
21 THE FINALITY OF THIS PURCHASE.

22 Q AND THIS WAS DONE, IF YOU CAN MOVE THE SCREEN  
23 DOWN, THIS IS DONE THROUGH THE WING HANG BANK?

24 A THAT'S WHAT THE PAGE SAYS.

25 Q AND THE MERCHANT IS HK NEWENDER E-BUSINESS

1 COMPANY?

2 A YES.

3 Q AND SO YOU HAD TO MAKE THE PAYMENT THROUGH A  
4 THIRD PARTY IN ORDER TO GET THIS PURCHASE; IS THAT  
5 RIGHT?

6 A YES, JUST AS WE PAID THE SUBJECTS THROUGH  
7 WESTERN UNION THE OTHER WAY.

8 Q SO THIS IS LIKE WESTERN UNION IN A SENSE?

9 A IT'S A PAYMENT CONDUIT.

10 Q OKAY. AND FOR THAT PARTICULAR ONE -- I  
11 BELIEVE YOU TALKED ABOUT YOUR PROCESS IN EXHIBIT  
12 785. DID YOU RECEIVE THE PRODUCT SHIPPED FROM  
13 CHINA? WOULD YOU TELL US HOW IT WAS RECEIVED IN  
14 THIS PARTICULAR CASE FOLLOWING THIS EXHIBIT 210?

15 A I'M SORRY. I'M ON THAT PAGE NOW. WHAT DID  
16 YOU ASK ME AGAIN?

17 THE COURT: HOW DID YOU RECEIVE IT?

18 BY MR. LOWE:

19 Q HOW DID YOU RECEIVE THE MERCHANDISE? WAS IT  
20 SHIPPED TO YOU FROM CHINA.

21 A IT WAS SHIPPED TO OUR UNDERCOVER MAILBOX.

22 Q WHAT IS THE UNDERCOVER MAILBOX?

23 A WHAT I HAVE BEEN DOING SINCE THE MID-90'S, WE  
24 HAVE ALWAYS ESTABLISHED UNDERCOVER MAILBOX SERVICES  
25 THROUGHOUT THE UNITED STATES FOR THE PURPOSE OF US

1 NOT BEING DETECTED AS AN INVESTIGATIVE AGENCY.

2 AND ONE OF THESE MAILBOX SERVICES HERE  
3 APPEARS, LET ME SEE THE BEGINNING OF THE EXHIBIT,  
4 OUR LOS ANGELES MAILBOX SERVICE.

5 AND WHAT WE DO IS INSTRUCT THESE MAILBOX  
6 SERVICES TO PLACE THE MERCHANDISE UNTOUCHED,  
7 UNOPENED INTO A NEW BOX AND FORWARD IT TO OUR  
8 OFFICE SO THE CHAIN OF CUSTODY IS MAINTAINED, THE  
9 INTEGRITY IS MAINTAINED OF THAT EVIDENCE.

10 AND ONCE IT'S RECEIVED BY OUR OFFICE AND  
11 TOUCHED BY THE INVESTIGATOR, THEN ONCE IT'S OPENED  
12 AND THAT'S THE DATE THAT IS REFLECTED ON THE FRONT  
13 WHICH IS ACTUALLY THE DATE THAT THE MERCHANDISE  
14 TOUCHES THE HANDS OF THE INVESTIGATOR IN OUR OFFICE  
15 WHICH IS IN THIS CASE 6-26-07.

16 Q SO IN THIS PARTICULAR CASE YOU CHOSE TO HAVE  
17 THE MERCHANDISE DELIVERED TO A LOS ANGELES MAIL  
18 DROP ESSENTIALLY?

19 A YES, SIR.

20 Q AND YOU COULD HAVE HAD IT DELIVERED TO YOU IN  
21 TEXAS IF YOU WANTED?

22 A I COULD HAVE IF I WANTED.

23 Q OR SOMEPLACE ELSE?

24 A YES.

25 Q OKAY.

1 A BUT HAVING IT DELIVERED TO MY OFFICE WOULD  
2 HAVE BEEN KIND OF FUNNY.

3 Q BUT WHERE IT WAS DELIVERED WAS A CHOICE THAT  
4 YOU MADE?

5 A YES, SIR.

6 Q HAD YOU DISCUSSED THAT PROCESS WITH LOUIS  
7 VUITTON AND HAD THEM APPROVE THE FACT THAT YOU WERE  
8 GOING TO HAVE MERCHANDISE DELIVERED TO CERTAIN  
9 PLACES WITHIN THE UNITED STATES?

10 A WELL, THEY ALWAYS KNOW WE HAVE PRODUCTS  
11 SHIPPED INTO THE UNITED STATES BECAUSE THAT'S WHERE  
12 WE'RE LOCATED.

13 THE COURT: NO. THE QUESTION WAS HAD YOU  
14 DISCUSSED?

15 BY MR. LOWE:

16 Q HAD YOU DISCUSSED THE PROCESS OF HAVING THE  
17 MERCHANDISE DELIVERED TO THE LOCATION IN THE UNITED  
18 STATES WITH LOUIS VUITTON?

19 A I DON'T RECALL SPECIFICALLY.

20 Q DID THEY INSTRUCT YOU TO DO THAT TO HAVE IT  
21 DELIVERED SOMEWHERE IN THE UNITED STATES?

22 A I DON'T RECALL SPECIFICALLY.

23 Q DID THEY KNOW SO FAR AS YOU ARE AWARE THAT YOU  
24 WERE GOING TO HAVE THIS MERCHANDISE DELIVERED  
25 WITHIN THE UNITED STATES?

1 A YES.

2 Q IS THAT PERHAPS ONE OF THE REASONS THAT THEY  
3 HIRED YOU BECAUSE YOU'RE IN THE UNITED STATES?

4 A I DON'T KNOW. I HAVE NEVER ASKED THEM.

5 Q ALL RIGHT. BUT YOU DO BUSINESS WITH THEM  
6 REGULARLY, I TAKE IT?

7 A WITH?

8 Q LOUIS VUITTON?

9 A YES, SIR.

10 Q NOW, IF WE CAN GO TO THE FINAL PAGE OF EXHIBIT  
11 210. THIS IS YOUR CHAIN OF CUSTODY FORM? IF YOU  
12 CAN MOVE IT UP, PLEASE, SO WE CAN SEE THE TRANSFER  
13 HISTORY, PLEASE. THE FIRST LINE SAYS RECEIVED BY  
14 HICKS. WHO IS HICKS?

15 A HE'S AN EMPLOYEE OF MINE.

16 Q AND THEN IT INDICATES THERE WAS A TRANSFER TO  
17 K. KLUG. WHO IS K. KLUG?

18 A K. KLUG IS AN EMPLOYEE OF LOUIS VUITTON.

19 Q AND WHERE IS HE LOCATED?

20 A NEW YORK.

21 Q DO YOU DEAL WITH HIM GENERALLY IN THESE  
22 MATTERS?

23 A I GENERALLY SHIPPED HIM MERCHANDISE.

24 Q SO YOU WERE DIRECTED BY LOUIS VUITTON TO SHIP  
25 IT TO HIM AFTER YOU GET THE THING AND IN HAND?

1 A YES.

2 Q THAT'S TRUE TYPICALLY?

3 A YES.

4 Q OKAY. NOW, AS TO EXHIBIT 81, THIS IS YOUR BUY  
5 REPORT I BELIEVE CONCERNING A BAG YOU BOUGHT OR  
6 SOME MERCHANDISE THAT YOU BOUGHT FROM BAG4SELL.COM;  
7 IS THAT RIGHT?

8 A YES, SIR.

9 Q AND THAT WAS PAID FOR THROUGH WESTERN UNION;  
10 IS THAT RIGHT?

11 A YES, SIR.

12 Q HOW DO YOU GO THROUGH THAT PAYING FOR IT  
13 THROUGH WESTERN UNION?

14 A WELL, WE FOLLOW IT THROUGH THE WEB SITE AND  
15 ASK THEM HOW THEY WOULD LIKE TO BE PAID, AND THEY  
16 WOULD TELL US AND GIVE US INSTRUCTIONS AND THEY  
17 WOULD GIVE US THE NAME OF SOMEONE AND THEN LOCATION  
18 OF SOMEONE, AND THEN WE PROCEED TO A PHYSICAL  
19 WESTERN UNION LOCATION. WESTERN UNION IS TYPICALLY  
20 DONE AT CONVENIENT STORES AND PLACES LIKE THAT. WE  
21 WILL GO THROUGH WITH CASH AND PAY THE WESTERN UNION  
22 LOCATION.

23 ONCE WE RECEIVE THE RECEIPT, YOU'LL SEE  
24 AT PAGE 1, 2, 3, 4, 5, 6, 7 -- I DON'T SEE THE  
25 RECEIPT HERE, BUT ONCE WE RECEIVE THE RECEIPT WE'RE



1 GIVEN BY WESTERN UNION AN MTC NUMBER, A CONTROLLING  
2 NUMBER, AND THEN WHAT WE DO IS GIVE THAT MTC NUMBER  
3 TO THE INDIVIDUAL WHO E-MAILED US WITH THOSE  
4 INSTRUCTIONS.

5 THEN WITH THAT MTC NUMBER THEY'RE ABLE TO  
6 GO TO A WESTERN UNION LOCATION IN THEIR AREA AND  
7 PICK UP THAT MONEY AND THAT NUMBER.

8 Q SO YOU'RE USING A MONEY TRANSFER PROCESS LET'S  
9 SAY THE SAME WAY SOMEONE HERE IN CALIFORNIA WOULD  
10 MAYBE TRANSFER MONEY TO MEXICO?

11 A IF THEY CHOSE WESTERN UNION THEY COULD.

12 Q WESTERN UNION PROVIDES THAT SORT OF SERVICE  
13 AROUND THE WORLD AS FAR AS YOU KNOW?

14 A YES, SIR.

15 Q BUT IN ALL CASES THAT YOU HAVE DEALT WITH HERE  
16 IN THIS LAWSUIT YOUR WESTERN UNION PAYMENTS WERE  
17 DELIVERED TO A LOCATION IN CHINA; IS THAT RIGHT?

18 A THE ONES THAT I HAVE LOOKED AT SO FAR, YES,  
19 SIR.

20 Q WELL, I WANT YOU TO LOOK AT THIS AND CONFIRM  
21 THIS FACT, PLEASE. EXHIBIT 65 DEALING WITH  
22 WENDY929.NET WAS PAID THROUGH WESTERN UNION, WAS IT  
23 NOT?

24 A YES, SIR.

25 Q AND YOU CONFIRMED THAT YOUR BAG4SELL.COM WAS

1 PAID THROUGH WESTERN UNION?

2 A YES.

3 Q AND WOULD YOU LOOK AT EXHIBIT 16 YOUR BUY FROM  
4 GUCCIFENDI.COM?

5 A I'M SORRY, 116.

6 Q 116. WAS THAT ALSO PAID THROUGH WESTERN  
7 UNION?

8 A YES, SIR.

9 Q AND LOOK AT EXHIBIT 128, YOUR BUY FROM  
10 NNIKE.COM. WAS THAT ALSO PAID THROUGH WESTERN  
11 UNION?

12 A YES.

13 Q AND YOUR EXHIBIT 141 CONCERNING YOUR BUY FROM  
14 LUXURY2US.COM, WAS THAT PAID THROUGH WESTERN UNION?

15 A YES, AND YOU CAN SEE WE WERE GIVEN A PERSON'S  
16 BANK ACCOUNT NUMBER AS WELL AS AN ALTERNATIVE.

17 Q BUT YOU USED WESTERN UNION?

18 A YES, WE DID BECAUSE IT WAS THE EASIEST OF THE  
19 CHOICES.

20 Q AS OPPOSED TO MAKING A WIRE TRANSFER OR  
21 SOMETHING?

22 A YES, OFTEN THAT IS GIVEN AS AN OPTION. IT'S  
23 AN EXPENSIVE OPTION AND MORE TIME-CONSUMING.

24 Q SO TYPICALLY IN THESE CASES YOU'RE GOING TO  
25 SEND THEM THROUGH WESTERN UNION OR A WIRE TRANSFER

1 FROM YOUR BANK TO THE SELLER'S BANK?

2 A IN MANY CASES, YES.

3 Q OKAY. PLEASE LOOK AT EXHIBIT 173, YOUR  
4 LITIGATION REPORT CONCERNING THE BUY FROM  
5 PICKYOURGOODS.COM. WAS THAT ALSO PAID THROUGH  
6 WESTERN UNION?

7 A YES.

8 Q AND LOOK AT EXHIBIT 155, CONCERNING YOUR  
9 BUYFROMLLG.COM. WAS THAT ALSO PAID FOR THROUGH  
10 WESTERN UNION?

11 A YES, SIR.

12 Q PLEASE LOOK AT EXHIBIT 191, YOUR BUY REPORT OR  
13 THE BUY FROM SOAPPAREL.COM. WAS THAT ALSO PAID  
14 THROUGH WESTERN UNION?

15 A YES, SIR.

16 Q LOOK AT YOUR EXHIBIT 195, YOUR PURCHASE FROM  
17 SUNNY7SHOES.COM. WAS THAT PAID THROUGH WESTERN  
18 UNION?

19 A YES, SIR.

20 Q AND PLEASE LOOK AT YOUR REPORT 854, YOUR BUY  
21 REPORT FROM SUNNY7SHOES.COM ON A DIFFERENT DATE,  
22 WAS THAT ALSO PAID THROUGH WESTERN UNION?

23 A YES, SIR.

24 Q AND LOOK AT EXHIBIT 586, YOUR BUY REPORT  
25 CONCERNING A PURCHASE FROM ESHOES99.NET. WAS THAT

1 ALSO PAID THROUGH WESTERN UNION?

2 A YES.

3 Q AND YOUR REPORT EXHIBIT 588 CONCERNING YOUR  
4 BUY FROM BIGWORLDSHOES.COM, WAS THAT PURCHASED  
5 THROUGH WESTERN UNION?

6 A YES, SIR.

7 Q AND FINALLY 590, YOUR REPORT FROM BAPESKY.COM,  
8 WAS THAT ALSO PAID THROUGH FROM WESTERN UNION?

9 A YES, SIR.

10 Q NOW, DO YOU UNDERSTAND THAT IN ORDER TO HAVE  
11 AN E-COMMERCE SITE THAT IT'S NECESSARY FOR A  
12 MERCHANT ON THE INTERNET TO HAVE A SECURE WEB SITE,  
13 A SECURE -- A CERTIFICATE OF SECURITY SO THAT YOU  
14 DON'T JUST GO TO HTTP, IT HAS TO BE AN HTTPS WEB  
15 SITE. ARE YOU FAMILIAR WITH THAT?

16 A I'M FAMILIAR WITH THAT, BUT I DON'T AGREE WITH  
17 YOU.

18 Q YOU DON'T THINK IT'S IMPORTANT TO HAVE A  
19 CERTIFICATE TO HAVE A SAFE SITE THAT TRANSFERS  
20 INFORMATION OVER THE INTERNET?

21 A IF I OPENED A WEB SITE I WOULD TELL YOU TO DO  
22 THAT, I WOULD SUGGEST TO DO THAT, BUT IT'S NOT  
23 NECESSARY IN ORDER TO HAVE AN E-COMMERCE SITE, NO,  
24 SIR.

25 Q ALL RIGHT.

1 A IT JUST MAKES IT SAFER.

2 Q SAFER FOR THE BUYER; RIGHT?

3 A SAFER FOR THE BUYER IF YOU WERE TO USE CREDIT  
4 CARDS AS AN OPTION.

5 Q AND, IN FACT, MOST BUYERS WANT THAT SECURE --

6 MS. WANG: OBJECTION, YOUR HONOR.

7 THE COURT: SUSTAINED.

8 BY MR. LOWE:

9 Q NOW, WHEN YOU RECEIVED THESE BAGS, THEY WERE  
10 ALL SHIPPED TO YOU FROM CHINA OR SHOES OR WHATEVER  
11 YOU BOUGHT?

12 A THE ONES I LOOKED AT.

13 Q WELL, HAVE YOU LOOKED AT ALL OF THE ONES WE  
14 TALKED ABOUT TODAY?

15 A YES, SIR.

16 Q AND ALL OF THE ONES WE'RE TALKING ABOUT IN  
17 THIS LAWSUIT, THEY WERE ALL SHIPPED FROM CHINA?

18 A YES, SIR.

19 Q AND WERE YOU ABLE TO IDENTIFY THE PERSON WHO  
20 SHIPPED THEM TO YOU?

21 A IN SOME CASES PERHAPS.

22 Q JUST PERHAPS?

23 A WELL, I DON'T HAVE THOSE REPORTS IN FRONT OF  
24 ME.

25 Q WELL, WHAT WAS YOUR GENERAL ABILITY ABOUT

1           THESE PARTICULAR PURCHASES?   WERE YOU ABLE TO TELL  
2           WHO YOU BOUGHT THEM FROM?

3           A        I WOULD HAVE TO SEE MY REPORTS FOR THOSE  
4           PARTICULAR PURCHASES .

5           Q        WELL, WOULD IT HELP TO LOOK AT SOME OF YOUR  
6           REPORTS?

7           A        NO.   THE REPORTS OF THE INVESTIGATION?   I'M  
8           SORRY.

9           Q        OKAY.

10          A        A PURCHASE IS THE FIRST PORTION OF AN  
11          INVESTIGATION, AND WE WOULD CONDUCT A PURCHASE AND  
12          THEN WE WOULD GATHER ALL OF THE INFORMATION FROM  
13          THE CRIME SEEN WHICH IS WHAT I CALL THE VIRTUAL  
14          CRIME SCENE IS BASICALLY SOME OF THIS INFORMATION  
15          THAT YOU SEE HERE.

16                    AND BASED ON THE DATA THAT YOU COLLECT  
17          THROUGHOUT THIS SCENE WILL IDENTIFY SOME OF THE  
18          INDIVIDUALS, IF THE CLIENT DOESN'T REQUEST IT, TO  
19          INVESTIGATE THE SPECIFIC SELLER.

20                    OFTEN WITH THE CHINESE SELLERS, THE  
21          SITUATION IS THAT THERE TURNS OUT THE PERSON IS  
22          JUST LIVING IN AN APARTMENT AND WORKING FOR SOMEONE  
23          ELSE.   SO THAT'S NOT OFTEN ALWAYS THE CASE.

24          Q        HAVE YOU OFTEN HAD THE EXPERIENCE IN THESE  
25          CASES TO RECEIVING FALSE INFORMATION IN CASES OF

1 PEOPLE YOU DEAL WITH IN CHINA?

2 A OFTEN SHADY CHARACTERS GIVE FALSE INFORMATION.

3 Q CAN YOU ANSWER MY QUESTION. IN THESE CASES  
4 DID YOU OFTEN FIND THAT PEOPLE WERE GIVING FALSE  
5 INFORMATION ABOUT THEIR IDENTITY?

6 A I DON'T RECALL, BUT IT'S LIKELY THAT SOME OF  
7 THESE PEOPLE DID GIVE ME FALSE INFORMATION.

8 Q NOW, YOU'VE INDICATED THAT YOU -- LET ME BACK  
9 UP HERE.

10 THE INSTRUCTIONS THAT YOU GOT TO USE  
11 WESTERN UNION TO DO OR WHATEVER, THE INFORMATION  
12 WAS TRANSFERRED TO YOU OVER E-MAIL, WAS IT NOT?

13 A YES, SIR.

14 Q SO YOU GOT AN E-MAIL FROM A SELLER SAYING SEND  
15 US MONEY VIA WESTERN YOUNG, FOR EXAMPLE, TO SOME  
16 PERSON OR ADDRESS. IS THAT THE WAY IT WORKED?

17 A YES.

18 Q OKAY. WHEN YOU GOT THE MERCHANDISE FROM  
19 CHINA, DID IT COME FROM THAT PERSON IN ALL CASES?

20 A IN ALL CASES IT WAS INSTRUCTED TO US. WHAT WE  
21 DO TO VERIFY THE ACCURACY OF THE GOODS IS THAT WE  
22 ALWAYS DEMAND -- AND TYPICALLY THESE SELLERS, AND  
23 PEOPLE WHO SELL FROM CHINA TYPICALLY ARE VERY  
24 ORGANIZED AND THEY WOULD SEND THE TRACKING NUMBER,  
25 AS THE PRODUCT SHIPS OUT THEY WOULD E-MAIL US THE

1 TRACKING NUMBER.

2 SO THE INDIVIDUAL WHO GAVE US JUST SAY  
3 THE E-MAIL FROM BAPESKY.COM.

4 THE COURT: WHICH EXHIBIT ARE YOU LOOKING  
5 AT?

6 THE WITNESS: BASICALLY --

7 THE COURT: WHICH EXHIBIT ARE YOU LOOKING  
8 AT?

9 THE WITNESS: 590. I'M SORRY.

10 THE INDIVIDUAL WOULD HAVE INSTRUCTED ME  
11 TO AWAIT A PACKAGE WITH A PARTICULAR TRACKING  
12 NUMBER. AND THE REASON IS IT'S VERY EASY TO TIE  
13 THESE TO A PARTICULAR WEB SITE IS THE FACT THAT THE  
14 E-MAIL ADDRESS WAS LOCATED ON THE WEB SITE. WE  
15 FOLLOWED THE INSTRUCTIONS FOR THE PURCHASE AND THEN  
16 THE SAME E-MAIL ADDRESS ALSO PROVIDED US WITH THE  
17 TRACKING NUMBER.

18 AND TRACKING NUMBERS ARE UNIQUE.

19 BY MR. LOWE:

20 Q WELL, YOU'RE TALKING ABOUT E-MAILS, BUT I'M  
21 TALKING ABOUT PHYSICAL DELIVERY OF MONEY AND  
22 PHYSICAL SHIPMENT OF MERCHANDISE. DID THE MONEY GO  
23 TO THE SAME ADDRESS THAT THE MERCHANDISE WAS  
24 SHIPPED FROM?

25 A THE MONEY WENT TO A WESTERN UNION LOCATION



1 WHERE SOMEONE PICKED IT UP.

2 Q SO YOU DIDN'T KNOW WHERE IT WAS GOING FRANKLY;  
3 IS THAT RIGHT?

4 A IN SOME CASES I MAY HAVE. I WOULD HAVE TO  
5 LOOK AT MY FINAL REPORT ON SOME OF THESE.

6 Q BUT TYPICALLY IF YOU'RE SENDING IT BY WESTERN  
7 UNION, THEY HAVE TO GO TO SOME WESTERN UNION SITE  
8 IN CHINA AND PICK UP THE CASH AND GO ON FROM THERE;  
9 IS THAT RIGHT?

10 A THE INDIVIDUAL WHO RECEIVES OUR E-MAIL AT THE  
11 MONEY CONTROL TRANSFER NUMBER, THE MCT NUMBER,  
12 WHICH IS WHAT WESTERN UNION CALLS IT, THAT PERSON  
13 IS GIVEN A UNIQUE CODE WHICH IS GIVEN TO THEM BY US  
14 UNDER SECRECY, AND THAT PERSON HAS TO PRESENT THAT  
15 NUMBER TO A WESTERN UNION LOCATION MOST LIKELY OF  
16 THEIR CHOICE.

17 BUT IT WAS DELIVERED TO AN E-MAIL  
18 ADDRESS. SO WHEN YOU SAY "ADDRESS," WE DID DELIVER  
19 THE MONEY PER SE, THE WIRED MONEY TO AN E-MAIL  
20 ADDRESS. IN THIS WORLD THAT'S HOW MONEY TRANSFERS  
21 HAPPEN.

22 Q ALL RIGHT. IF YOU LOOK AT EXHIBIT 65, THE  
23 FIRST ONE THAT YOU WERE TESTIFYING ABOUT EARLIER?

24 THE COURT: CAN WE USE THIS CHANGE TO  
25 EXHIBIT 65 AS OUR OPPORTUNITY FOR A MIDMORNING

1 BREAK. IT'S ABOUT 10:30. WE'LL COME BACK AT 20 OR  
2 SO TO THE HOUR.

3 (WHEREUPON, A RECESS WAS TAKEN.)

4 THE COURT: YOU MAY RESUME YOUR  
5 EXAMINATION.

6 BY MR. LOWE:

7 Q IF IT PLEASE THE COURT, MR. HOLMES, AS TO THE  
8 14 BUYS THAT YOU HAVE TESTIFIED TO IN THIS CASE, IT  
9 IS TRUE, IS IT NOT, THAT YOU CONSUMMATED ALL OF THE  
10 PURCHASES USING E-MAIL AND THEN WESTERN UNION OR  
11 THE OTHER CHINESE PAY METHOD THAT YOU TESTIFIED  
12 ABOUT; IS THAT RIGHT?

13 A WHICH CHINESE PAYMENT METHOD?

14 Q PAY DOLLAR.

15 A CAN YOU REPEAT THAT QUESTION? IT'S A LITTLE  
16 BROKEN UP.

17 Q CERTAINLY. ISN'T IT TRUE THAT AS TO ALL OF  
18 THE 14 BUYS THAT YOU HAVE TESTIFIED ABOUT HERE  
19 TODAY, YOU CONSUMMATED THOSE PURCHASES USING E-MAIL  
20 USING EITHER WESTERN UNION OR PAY DOLLAR?

21 A YES, SIR.

22 Q NOW, I WANTED TO ASK YOU A FEW QUESTIONS ABOUT  
23 THE E-MAIL ACCOUNTS THAT YOU USED.

24 IN EXHIBIT 65 DEALING WITH WENDY929.NET,  
25 YOU DIDN'T SEND AN E-MAIL TO WENDY929.NET, DID YOU?

1 A THAT'S A DOMAIN NAME, NOT AN E-MAIL ADDRESS.

2 Q RIGHT. THE E-MAIL ADDRESS IS ACTUALLY AT  
3 126.COM; IS THAT RIGHT?

4 A THE E-MAIL ADDRESS THAT APPEARED ON THE  
5 SUBJECT'S WEB SITE WAS BAG929@126.COM, YES.

6 Q BUT THE E-MAIL HOST SO TO SPEAK IS 126.COM?

7 A THE E-MAIL PROVIDER WAS 126.COM, YES.

8 Q AND THE DEFENDANTS ARE NOT THAT E-MAIL  
9 PROVIDER, ARE THEY?

10 A I DON'T KNOW.

11 Q YOU HAVE NO INFORMATION THAT THEY ARE?

12 A I HAVE NO INFORMATION THAT THEY ARE.

13 Q THANK YOU. AS TO EXHIBIT 81 HAVING TO DO WITH  
14 YOUR PURCHASE FROM BAG4SELL.COM, ISN'T IT TRUE THAT  
15 THE E-MAIL ADDRESS THERE WAS PROVIDED THROUGH  
16 GMAIL.COM?

17 A THERE ARE TWO. ONE WAS NINABAG4SELL.COM AND  
18 THE OTHER E-MAIL ADDRESS APPARENTLY WE CORRESPONDED  
19 IN THIS CASE AND THE OTHER BAG4SELL@GMAIL.COM.

20 Q AND WE ESTABLISHED EARLIER THAT GMAIL IS A  
21 GOOGLE E-MAIL SERVICE?

22 A GMAIL IS A GOOGLE E-MAIL SERVICE.

23 Q LOOKING AT EXHIBIT 116 CONCERNING YOUR REPORT  
24 FROM YOUR BUY FROM GUCCIFENDI.COM, ISN'T IT TRUE  
25 THAT THE E-MAIL WAS SENT TO -- HOSTED BY

1 VIP.163.COM?

2 A NO.

3 Q NO, IT WASN'T?

4 A IT WASN'T SENT TO 163.COM.

5 Q THE E-MAIL WAS HOSTED BY, IN OTHER WORDS,  
6 THERE'S AN ADDRESS GUCCI FENDI AND THE HOST E-MAIL  
7 IS 163.COM?

8 A THE E-MAIL SERVICE PROVIDER IS 163.COM.

9 Q OKAY. AND ONCE AGAIN YOU HAVE NO INFORMATION  
10 THAT THAT E-MAIL SERVICE WAS PROVIDED BY THE  
11 DEFENDANTS?

12 A NOT SO FAR.

13 Q AS TO EXHIBIT 128 YOUR PURCHASE FROM NNIKE.COM  
14 THERE WERE APPARENTLY TWO E-MAIL ADDRESSES USED  
15 THERE. IS IT TRUE THAT YAHOO.COM.CN IS ONE OF  
16 THEM?

17 A YES, SIR.

18 Q AND THE CN ON THERE INDICATES THAT THAT IS A  
19 SITE IN MAINLAND, CHINA; IS THAT RIGHT?

20 A NO.

21 Q NO, IT DOESN'T MEAN THAT?

22 A NO.

23 Q WHAT DOES IT MEAN?

24 A YOU'RE ASKING ME ABOUT THE E-MAIL ADDRESS AND  
25 THE FACT THAT IT HAS CN AT THE END.

1 Q YES. WHAT DOES THE CN MEAN IN YOUR MIND, AS  
2 FAR AS YOU KNOW?

3 A YAHOO.COM@CN IS PEOPLE WHO CLAIM THAT THEY'RE  
4 IN CHINA.

5 Q IS IT OPERATED OUT OF CHINA?

6 A YAHOO?

7 Q YAHOO.COM@CN?

8 A YAHOO IS SUNNYVALE IN CALIFORNIA.

9 Q DO THEY ALSO OPERATE OUTSIDE OF THE UNITED  
10 STATES IN CHINA?

11 A I BELIEVE YAHOO OPERATES OUTSIDE OF THE UNITED  
12 STATES AS WELL.

13 Q SO A NORMAL ADDRESS WOULD BE -- YAHOO.COM IS A  
14 SITE, AN E-MAIL SERVICE OR OTHER SITE THAT IS  
15 MAINTAINED BY YAHOO IN THE UNITED STATES; IS THAT  
16 RIGHT?

17 MS. WANG: OBJECTION, YOUR HONOR.

18 THE COURT: WHAT IS YOUR OBJECTION?

19 MS. WANG: I'M NOT SURE THE WITNESS HAS  
20 PERSONAL KNOWLEDGE AS TO THE BUSINESS PRACTICES OF  
21 YAHOO.

22 MR. LOWE: WELL, HE'S TESTIFIED THAT HE  
23 HAS KNOWLEDGE ABOUT THESE THINGS.

24 THE COURT: YEAH, HE HAS DONE VARIOUS  
25 INVESTIGATIONS HERE AND HE HAS ALSO TESTIFIED AS TO

1 HIS KNOWLEDGE OF VARIOUS DOMAIN NAMES. THIS IS NOW  
2 INTO THE WORLD OF E-MAIL ACCOUNTS WHICH HAS NOT  
3 BEEN THE FORMAL SUBJECT OF THE INVESTIGATION.

4 AND SO IF YOUR OBJECTION IS THAT THIS IS  
5 BEYOND THE SCOPE OF THE EXPERTISE AND BEYOND WHAT  
6 HE WAS TENDERED, I'LL LISTEN TO THAT OBJECTION, BUT  
7 IT DOES SEEM TO ME THAT THE WITNESS HAS IN PREVIOUS  
8 QUESTIONS ANSWERED IN A WAY THAT SUGGESTED THAT HE  
9 HAS KNOWLEDGE WITH RESPECT TO HOW THE NAME ITSELF  
10 MIGHT RELATE TO WHERE THE COMPUTER ON WHICH THAT  
11 E-MAIL IS OR USED OR WHERE IT'S LOCATED  
12 GEOGRAPHICALLY, WHICH IS WHAT I UNDERSTAND YOUR  
13 QUESTION TO BE, "WHERE IS THAT COMPUTER LOCATED?"

14 MR. LOWE: THAT'S CORRECT, YOUR HONOR.

15 MS. WANG: YOUR HONOR, WE ALSO OBJECT  
16 BECAUSE THIS IS BEYOND THE SCOPE OF DIRECT  
17 TESTIMONY.

18 THE COURT: NO, IT'S NOT BEYOND THE SCOPE  
19 OF DIRECT. AND SINCE THE NAME DOES APPEAR ON THE  
20 REPORT, I'LL OVERRULE THE OBJECTION AND PERMIT THE  
21 WITNESS TO TESTIFY AS TO THE EXTENT OF HIS  
22 KNOWLEDGE.

23 DON'T SPECULATE FOR US, SIR. TELL US IF  
24 YOU KNOW. GO AHEAD.

25 BY MR. LOWE:

1 Q LET ME REPEAT A QUESTION SO WE'RE BACK ON  
2 TRACK HERE. DO YOU KNOW WHETHER YAHOO.COM.CN IS AN  
3 E-MAIL SERVICE OPERATED OUT OF CHINA?

4 THE COURT: YOU NEED TO BE CLEAR AS TO  
5 WHETHER OR NOT WHAT YOU MEAN IS. IS THIS A COMPANY  
6 WITH A COMPUTER IN CHINA? WHETHER OR NOT IT'S A  
7 COMPANY IN THE UNITED STATES WHICH ALLOWS PEOPLE IN  
8 CHINA TO USE THE COMPUTER IN THE UNITED STATES, OR  
9 WHAT IS THE POINT OF YOUR QUESTION?

10 CLARIFICATION.

11 BY MR. LOWE:

12 Q LET ME TRY TO CLARIFY.

13 WOULD YOU AGREE THAT YAHOO.COM.CN  
14 INDICATES THAT THE E-MAIL SERVICE THAT YOU WERE  
15 DEALING WITH IS OPERATED FROM A COMPUTER OR SERVER  
16 IN CHINA?

17 A NO, SIR.

18 Q WHY NOT?

19 A WHAT I HAD SAID EARLIER IS, FOR EXAMPLE,  
20 YAHOO.COM.CN, THAT IS MARKETED THAT PEOPLE CLAIM TO  
21 BE IN CHINA. ALL I CAN TESTIFY IS THAT PEOPLE WENT  
22 TO YAHOO.COM.CN, WHICH AS FAR AS I CAN TELL YAHOO  
23 IS IN SUNNYVALE, BUT THEY WENT TO THAT NAME WHICH  
24 IS GEARED TOWARD CHINESE CUSTOMERS AND WENT TO THAT  
25 E-MAIL. THAT'S ALL I CAN SAY FOR SURE.

1 Q ALL RIGHT.

2 A WHERE THE SERVICE IS I DON'T KNOW.

3 Q AND YOU ALSO DEALT WITH ANOTHER E-MAIL ADDRESS  
4 REFLECTED IN THIS PARTICULAR REPORT OF HOTMAIL.COM;  
5 IS THAT RIGHT?

6 A YES, SIR.

7 Q AND HOTMAIL.COM IS OPERATED BY MICROSOFT; IS  
8 THAT RIGHT?

9 A YES.

10 Q GOING TO YOUR REPORT OF EXHIBIT 41 CONCERNING  
11 YOUR PROCESS OF LUXURY.COM?

12 A YES.

13 Q AND YOU DEALT WITH AN ACCOUNT OF YAHOO.COM.CN;  
14 IS THAT RIGHT?

15 A YES.

16 Q AND AS TO EXHIBIT 173 CONCERNING YOUR REPORTED  
17 PURCHASE FROM PICKYOURGOODS.COM YOU DEALT WITH AN  
18 E-MAIL ACCOUNT ONCE AGAIN MAINTAINED FROM  
19 YAHOO.COM.CN?

20 A YES.

21 Q CONCERNING EXHIBIT 185 CONCERNING YOUR REPORT  
22 REFLECTING YOUR PURCHASE OF MERCHANDISE FROM  
23 RRGNL.COM, THAT E-MAIL WAS TRANSMITTED THROUGH  
24 HOTMAIL.COM AGAIN; IS THAT RIGHT?

25 A YES, SIR.



1 Q BY THE WAY, YOU TESTIFIED EARLIER THAT SOME OF  
2 THESE SOMETIMES E-MAIL ADDRESSES -- I'M SORRY --  
3 DOMAIN NAMES HAVE INFORMATION IN THEM THAT SUGGEST  
4 IN YOUR MIND THAT THEY MAY BE SELLING COUNTERFEIT  
5 GOODS. DO YOU RECALL THAT?

6 A YES, SIR.

7 Q OKAY. IS THERE ANYTHING ABOUT RRGNL THAT  
8 SUGGESTS ANYTHING?

9 A NO, SIR.

10 Q IN FACT, IN YOUR EXPERIENCE YOU SEE ALL KINDS  
11 OF NAMES AND NUMBERS USED AS DOMAIN NAMES; IS THAT  
12 RIGHT?

13 A YES, SIR.

14 Q AND A COMBINATION OF ALL KINDS OF LETTERS THAT  
15 DON'T EVEN HAVE TO MAKE SENSE?

16 A YES, SIR.

17 Q OKAY. DO YOU KNOW HOW MANY WEB SITES THERE  
18 ARE IN THE WORLD?

19 A NO.

20 Q A LOT? MILLIONS PERHAPS?

21 A I THINK YOU'RE CORRECT.

22 Q YOU'RE CERTAINLY NOT FAMILIAR WITH ALL OF  
23 THEM?

24 A YOU'RE CORRECT AGAIN.

25 Q GOING TO EXHIBIT 191, YOUR REPORT CONCERNING

1 YOUR PURCHASE OF GOODS FROM SOAPPAREL.COM, DOES  
2 THIS ALSO REFLECT THAT YOU DEALT AND MADE A  
3 PURCHASE THROUGH AN E-MAIL ACCOUNT THROUGH  
4 YAHOO.COM.CN?

5 A YES.

6 Q AND LOOKING AT EXHIBIT 195 DEALING WITH YOUR  
7 PURCHASE OF IT LOOKS LIKE A WALLET FROM  
8 SUNNY7SHOES.COM, THIS WAS ALSO -- YOU DID YOUR  
9 DEALING THROUGH AN E-MAIL ACCOUNT MAINTAINED BY  
10 GMAIL.COM; IS THAT RIGHT?

11 A YES, SIR.

12 Q AND EXHIBIT 210, WE TALKED ABOUT THESE LVBAGZ  
13 AND WATCHNREPLICA, THIS IS ALSO -- YOU DID YOUR  
14 COMMUNICATION THROUGH AN ACCOUNT AT GMAIL.COM;  
15 RIGHT?

16 A YES, SIR.

17 Q NOW, YOU TESTIFIED A MOMENT AGO THAT YOU TREAT  
18 SOME OF YOUR INVESTIGATIONS AS IF YOU'RE LOOKING AT  
19 I THINK THE WORD YOU USED WAS A VIRTUAL CRIME  
20 SCENE. IS THAT YOUR PHRASE?

21 A NOT AS IF. IT IS A VIRTUAL CRIME SCENE.

22 Q ALL RIGHT. AND TO WHAT POLICE AGENCY DID YOU  
23 REPORT THIS CRIME?

24 A WHICH PARTICULAR CRIME?

25 Q ANY OF THEM? DID YOU EVER REPORT ANY TO ANY

1 POLICE AGENCY?

2 A CRIMES IN GENERAL?

3 Q THE ONES THAT YOU HAVE TESTIFIED ABOUT HERE IN  
4 THIS COURT THAT YOU HAVE NOW CHARACTERIZED AS  
5 "CRIME SCENES," DID YOU REPORT ANY INFORMATION  
6 ABOUT THESE ALLEGED CRIME SCENES TO ANY POLICE  
7 AGENCY?

8 A IN THESE EXHIBITS?

9 Q IN THE INVESTIGATIONS THAT YOU HAVE TESTIFIED  
10 ABOUT HERE IN THIS CASE?

11 A NO, SIR.

12 Q WHY NOT?

13 A BECAUSE TYPICALLY INTELLECTUAL PROPERTY CASES  
14 ARE HANDLED CIVILLY FIRST.

15 Q SO THEY'RE NOT CRIMES?

16 A OH, THEY ARE CRIMES. ACTUALLY IN THE STATE OF  
17 CALIFORNIA THERE ARE TWO PENAL CODES.

18 Q DID --

19 THE COURT: WELL, I CAN UNDERSTAND THE  
20 TERM -- THE USE OF THE TERM BY THE WITNESS "CRIME  
21 SCENES" IN HIS REFERENCE TO THE FACT THAT A  
22 VIOLATION OF A CRIMINAL LAW COULD BE INVOLVED IN  
23 THE CONDUCT THAT IS INVOLVED IN THIS CASE, BUT I'M  
24 HESITANT TO ALLOW COUNSEL TO START TO EXAMINE THE  
25 CRIMINAL LAWS AND THERE APPEARS THAT THERE IS SOME

1 CONFUSION THAT THE PLAINTIFF BEARS THE BURDEN TO  
2 PROVE THAT A CRIME WAS COMMITTED.

3 AND SO THERE IS NO OBJECTION THAT IS  
4 BEFORE THE COURT, BUT I DO HAVE SOME CONCERN THAT  
5 IT WOULD NOT BE AN ISSUE FOR THIS JURY TO DECIDE  
6 WHETHER A CRIME WAS COMMITTED, WHERE THAT CRIME WAS  
7 COMMITTED OR WHY THE PLAINTIFF DID NOT OR ITS  
8 INVESTIGATOR DID NOT PURSUE THE MATTER BY ASKING A  
9 DISTRICT ATTORNEY OR A U.S. ATTORNEY TO PROSECUTE A  
10 CRIME.

11 I'LL INVITE YOU TO GO INTO OTHER AREAS.  
12 YOU MIGHT WANT TO CLARIFY WITH THE WITNESS WHERE HE  
13 USES THAT WORD, BUT OTHERWISE I WILL NOT ALLOW YOU  
14 TO QUESTION ABOUT THE CRIMINAL LAWS.

15 MR. LOWE: THAT WAS NOT MY INTENTION,  
16 YOUR HONOR. THANK YOU.

17 Q I WOULD LIKE YOU TO LOOK AT EXHIBIT 95.3. IF  
18 COUNSEL COULD PUT THAT ON THE SCREEN. DO YOU HAVE  
19 THAT IN FRONT OF YOU? I DON'T YET?

20 A YES.

21 Q THE FIRST PAGE OF THIS I BELIEVE SHOWS A  
22 PINGING.

23 WHAT PAGE IS THE -- I BELIEVE YOU  
24 TESTIFIED REVERSE IP REPORT? IS THERE A REVERSE IP  
25 REPORT IN THAT EXHIBIT?

1 A NO, SIR.

2 Q DID YOU TESTIFY AS TO REVERSE IP REPORTS THAT  
3 YOU HAVE DONE IN THIS CASE?

4 A YES.

5 Q AND CAN YOU IDENTIFY ANY OF THE EXHIBITS WHERE  
6 YOU HAVE ACTUALLY SHOWN ONE OF THOSE?

7 A THE NUMBERS ARE STARTING TO RUN TOGETHER. SO  
8 I CANNOT IDENTIFY AN EXHIBIT OFF THE TOP OF MY  
9 HEAD, BUT I KNOW THERE WAS AN EXHIBIT EARLIER TODAY  
10 THAT I DID TESTIFY TO. IF YOU COULD REFRESH ME,  
11 THAT WOULD BE GREAT.

12 Q LET'S TRY EXHIBIT 85.2. IS THERE A REVERSE IP  
13 REPORT IN THIS EXHIBIT?

14 A YES.

15 Q AND COULD YOU DIRECT US TO THE PAGE SO WE CAN  
16 SHOW IT ON THE SCREEN?

17 A SURE. 6.

18 Q THANK YOU.

19 NOW, WHAT BRIEFLY IS A REVERSE IP REPORT  
20 AS WE SEE HERE AS YOU UNDERSTAND IT?

21 A THIS IS JUST A REVELATION OF OTHER DOMAINS  
22 THAT ARE HOSTED ON THE SAME IP ADDRESS.

23 Q SO IT'S TRUE THAT MORE THAN ONE DOMAIN CAN BE  
24 USING A SINGLE IP ADDRESS?

25 A YES, SIR.

1 Q AND IT'S COMMON IN YOUR EXPERIENCE?

2 A IT HAPPENS REGULARLY.

3 Q AND IN THIS PARTICULAR CASE I BELIEVE YOU  
4 TESTIFIED PREVIOUSLY THAT THIS REPORT INDICATED 115  
5 DOMAINS USING A SINGLE IP ADDRESS?

6 A YES, SIR.

7 Q DO YOU KNOW HOW MANY IP ADDRESSES ARE ASSIGNED  
8 TO THE DEFENDANTS?

9 A NOT OFF THE TOP OF MY HEAD, SIR.

10 Q ALL RIGHT. IF I SUGGESTED APPROXIMATELY  
11 40,000, WOULD THAT SOUND APPROXIMATELY RIGHT  
12 ACCORDING TO YOUR INVESTIGATION?

13 A YES, SIR.

14 Q WOULD YOU AGREE THAT IF YOU HAD 115 DOMAINS  
15 USING 40,000 IP ADDRESSES, THAT THAT WOULD GET YOU  
16 MORE THAN 4 AND A HALF MILLION POTENTIAL WEB SITES  
17 USING THOSE IP ADDRESSES?

18 A YES, SIR.

19 Q AND YOU HAVE TESTIFIED HERE THAT YOU HAVE MADE  
20 SOME BUYS FROM 14 SITES THAT YOU HAVE ASSOCIATED  
21 WITH WEB SITES THAT ARE HOSTED AS YOU CALL IT ON  
22 SERVERS OF THE DEFENDANTS?

23 A FOURTEEN SITES THAT ARE EXHIBITS, YES.

24 Q WOULD YOU SHOW THE WITNESS EXHIBIT 95.4.

25 WAS THERE A TRACE REPORT THAT YOU

1 TESTIFIED ABOUT IN THIS EXHIBIT?

2 A TO WHAT ARE YOU REFERRING A TRACE REPORT?

3 Q I BELIEVE YOU USED THAT WORD "TRACE REPORT"?

4 A TRACE ROUTE.

5 Q TRACE ROUTE.

6 A YES, SIR.

7 Q IS THAT IN WHICH EXHIBIT?

8 A LET ME SEE. THERE'S ANOTHER PING IN THIS  
9 EXHIBIT.

10 Q WHAT ABOUT THE TRACE ROUTE, DOES IT SHOW THAT?

11 A I BELIEVE -- NO, SIR, NOT IN THIS EXHIBIT.

12 Q AND WHAT IS A TRACE ROUTE IN YOUR  
13 UNDERSTANDING?

14 A A TRACE ROUTE PINGS NOT ONLY THE DESTINATION  
15 IP ADDRESS SUCH AS YOUR CLIENT'S SERVERS BUT WHAT  
16 IT WILL ALSO DO IS PING THE SERVERS ALONG THE WAY  
17 BECAUSE AS YOU GUYS KNOW THERE ARE MANY COMPUTERS  
18 THAT ARE INVOLVED IN SENDING AN E-MAIL OR HOSTING A  
19 DOMAIN.

20 SO, FOR EXAMPLE, A TRACE ROUTE MAY SHOW A  
21 COMPUTER LOCATED IN SAN JOSE BECAUSE THAT'S WHERE  
22 THE BROWSER WAS, WHERE THE VIEWER WAS AND THEN  
23 EVERY STOP ALONG THE WAY. IT'S LIKE A BUS SHOWING  
24 ALL OF THE BUS STOPS.

25 Q SO THE INFORMATION IS PASSED FROM ONE COMPUTER

1 TO ANOTHER TO ANOTHER TO ANOTHER OVER THE INTERNET?

2 IS THAT RIGHT?

3 A THAT'S HOW THE INTERNET WORKS.

4 Q ALL RIGHT. SO ALL OF THOSE COMPUTERS OR  
5 SERVERS ALONG THE INTERNET ROUTE ARE INVOLVED IN  
6 SENDING THAT COMMUNICATION TO THE USER?

7 THE COURT: IS THAT A QUESTION?

8 MR. LOWE: YES.

9 Q WOULD YOU AGREE WITH THAT?

10 A NO.

11 Q THEY'RE NOT INVOLVED? DOESN'T ONE COMPUTER  
12 PASS IT ALONG TO ANOTHER, TO ANOTHER, IN ORDER TO  
13 MAKE THE CONNECTION BETWEEN SOMEONE WITH, LET'S  
14 SAY, WITH A WEB SITE AND ULTIMATE USER?

15 A I DON'T THINK I TESTIFIED TO THEIR  
16 INVOLVEMENT.

17 Q ARE THEY USED TO TRANSMIT THE INFORMATION?  
18 ARE THERE MULTIPLE COMPUTERS USED TO TRANSMIT THE  
19 INFORMATION?

20 A YES, SIR.

21 Q AND THAT'S WHAT YOU HAVE SEEN WHEN YOU OBTAIN  
22 TRACE ROUTE RECORDS IN YOUR INVESTIGATION?

23 A YES, SIR.

24 Q TYPICALLY HOW MANY COMPUTERS OR HOPS ARE THERE  
25 FOR THAT PURPOSE IN YOUR EXPERIENCE IN THIS CASE?



1 A IT CAN VARY BUT USUALLY UP TO FIVE.

2 Q SO IT'S NOT LIKE THERE'S A DIRECT CONNECTION  
3 LET'S SAY BELONGING TO THE SERVER HERE IN SAN JOSE  
4 AND SOME USER IN KANSAS?

5 A THAT DIRECT CONNECTION DOES NOT EXIST. THAT'S  
6 WHAT THE INTERNET IS A NETWORK OF COMPUTERS.

7 Q OKAY. MR. HOLMES, ISN'T IT TRUE THAT YOU WERE  
8 UNABLE TO AUTHENTICATE WITH CERTAINTY LOUIS VUITTON  
9 PRODUCTS --

10 A NO.

11 Q -- TO TELL THAT IF THEY'RE GENUINE OR NOT?  
12 YOU ARE ABLE TO?

13 A SURE.

14 Q DO YOU RECALL BEING DEPOSED IN THIS CASE BY ME  
15 ON APRIL 1ST, 2008?

16 A YES.

17 Q WOULD YOU PROVIDE THE WITNESS WITH HIS  
18 DEPOSITION TRANSCRIPT, PLEASE. WOULD YOU DIRECT  
19 YOUR ATTENTION TO PAGE 113 OF THIS TRANSCRIPT AND  
20 PARTICULARLY LINES 10 THROUGH 23. AND LET ME ASK  
21 YOU IF THESE QUESTIONS WERE ASKED AND THOSE ANSWERS  
22 GIVEN IN YOUR TESTIMONY AT THAT TIME.

23 "QUESTION: I'M ASKING YOU TO TELL ME IF  
24 YOU COULD AUTHENTICATE THIS BAG OR ONE LIKE IT?

25 "ANSWER: I MAY OR MAY NOT HAVE BEEN ABLE

1 TO.

2 "QUESTION: AND IF YOU HAD BEEN ABLE TO,  
3 WOULD YOU DO THAT?

4 "ANSWER: HONESTLY, SIR, THAT'S NOT MY  
5 JOB, AND I DON'T DO THAT ON A REGULAR BASIS. IT'S  
6 NOT MY JOB. YOU'RE ASKING ME TO DO SOMETHING  
7 THAT'S NOT MY JOB FOR SOME WHIMSY. IT'S NOT MY  
8 JOB.

9 "QUESTION: SO IT'S NOT YOUR JOB TO  
10 DETERMINE WHETHER A PRODUCT THAT YOU PURCHASE IS  
11 AUTHENTIC OR COUNTERFEIT?

12 "ANSWER: I LEAVE THAT TO LOUIS VUITTON."

13 WERE THOSE QUESTIONS ASKED AND THOSE  
14 ANSWERS GIVEN?

15 A YES, SIR.

16 MS. WANG: OBJECTION, YOUR HONOR, IT'S  
17 NOT IMPEACHING.

18 THE COURT: OVERRULED.

19 BY MR. LOWE:

20 Q MR. HOLMES, ISN'T IT TRUE THAT YOU HAVE NO  
21 EVIDENCE THAT ANY OF THE ALLEGED INFRINGING WEB  
22 SITES THAT ARE AT ISSUE IN THIS CASE WERE SET UP BY  
23 ANY OF THE THREE DEFENDANTS IN THIS LAWSUIT?

24 A COULD YOU DEFINE "SET UP"?

25 Q WERE THEY ESTABLISHED? WERE THEY CREATED?

1 A COULD YOU GO INTO DETAIL. THERE ARE MANY  
2 STEPS IN SETTING UP A WEB SITE.

3 Q WELL, DO YOU HAVE ANY EVIDENCE THAT ANY OF THE  
4 DEFENDANTS DID ANYTHING TO SET UP A WEB SITE THAT  
5 IS AT ISSUE IN THIS CASE?

6 A SETTING UP THE DESIGN OF THE WEB SITE? I DO  
7 NOT HAVE EVIDENCE.

8 Q DO YOU HAVE ANY EVIDENCE THAT THEY HAVE DONE  
9 ANYTHING TO SET UP ANY OF THE WEB SITES THAT ARE AT  
10 ISSUE IN THIS CASE THAT ARE ACCUSED OF SELLING  
11 COUNTERFEIT PRODUCTS?

12 A I HAVE EVIDENCE THAT THEY FACILITATED IT.

13 Q IS THAT SETTING UP A WEB SITE?

14 A WELL, AGAIN, YOU'RE USING SETTING UP. I'M  
15 ASSUMING YOU'RE USING SETTING UP THE SAME WAY I  
16 WOULD USE DESIGN A WEB SITE. THOSE JOBS ARE  
17 DIFFERENT TO DIFFERENT PEOPLE.

18 Q WELL, LET'S SAY CREATE A WEB SITE. DID ANY OF  
19 THE DEFENDANTS, ACCORDING TO YOUR INVESTIGATION,  
20 CREATE ANY WEB SITE TO SET UP THAT WEB SITE?

21 A I DON'T KNOW.

22 Q YOU HAVE NO INFORMATION ABOUT THAT?

23 A NO, SIR, NOT THE WEB SITE'S CREATOR.

24 Q ISN'T IT TRUE THAT YOU HAVE NO EVIDENCE THAT  
25 ANY OF THE THREE DEFENDANTS INSTRUCTED ANY WEB SITE

1 OPERATOR TO ENGAGE IN INFRINGING USE OF SERVERS OR  
2 TO SELL INFRINGING PRODUCTS?

3 A COULD YOU REPEAT THE QUESTION. I DIDN'T KNOW  
4 IF I SHOULD ANSWER YES OR NO TO THAT.

5 Q ISN'T IT TRUE THAT YOU HAVE NO EVIDENCE THAT  
6 ANY OF THE THREE DEFENDANTS INSTRUCTED WEB SITE  
7 OPERATORS TO ENGAGE IN INFRINGING USE OF SERVERS OR  
8 TO SELL INFRINGING PRODUCTS?

9 A IT IS TRUE.

10 Q THAT YOU HAVE NO EVIDENCE?

11 A THAT THEY INSTRUCTED SOMEONE TO DO.

12 Q NO EVIDENCE THAT THEY INSTRUCTED?

13 A YES, SIR.

14 Q THANK YOU.

15 I HAVE NO FURTHER EVIDENCE?

16 THE COURT: ANY REDIRECT?

17 MS. WANG: BRIEFLY.

18 **REDIRECT EXAMINATION**

19 BY MS. WANG:

20 Q MR. HOLMES, EARLIER YOU TALKED ABOUT  
21 LVBAGZ.NET AND WHO HOSTED LVBAGZ DURING YOUR  
22 INVESTIGATION?

23 A THE DEFENDANTS.

24 Q AND WHO HOSTED WATCHNREPLICA?

25 A THE DEFENDANTS.

1 Q AND WITH RESPECT TO THE BUYS THAT YOU MADE,  
2 DID YOU ACTUALLY REVIEW A PRODUCT THAT YOU VIEWED  
3 ON THE WEB SITE, THE CORRESPONDING WEB SITES LISTED  
4 ON THE TEXT?

5 A YES, IN ALL OF THOSE CASES.

6 Q AND BRIEFLY, COULD WE BRING UP EXHIBIT 109 AND  
7 CAN YOU PLEASE REFER TO PAGE 6. CAN YOU TELL ME  
8 WHO THAT IS?

9 A THIS IS AN IP WHO IS REVEALING THE IP ADDRESS  
10 204.16.192.77 SHOWING THE DEFENDANTS AS TO WHOM  
11 THIS IP ADDRESS WAS ASSIGNED.

12 Q AND HOW MANY ADDRESSES ARE ON THAT IP ADDRESS?

13 A ONE -- ACTUALLY TWO TOTAL. ONE OTHER SITE IT  
14 SAYS HERE.

15 MS. WANG: NO OTHER QUESTIONS.

16 THE COURT: I MISSED TO WHERE THE  
17 REFERENCE IS TO THE DEFENDANT IS ON THAT PAGE.

18 THE WITNESS: AKANOC SOLUTIONS, INC.

19 THE COURT: I'M JUST MISSING WHERE THAT  
20 WORD -- WHERE THOSE WORDS SHOW UP AS TO WHERE I'M  
21 LOOKING.

22 THE WITNESS: OH, THE PAGE IS WRONG.

23 BY MS. WANG:

24 Q WHAT PAGE ARE YOU LOOKING AT?

25 A SHE HAS THE REVERSE IPO.

1 Q NO, I WAS ASKING FOR THE IP.

2 A OH, THERE'S MY COUNTING AGAIN IS WRONG.

3 Q OKAY. LET'S LOOK AT PAGE 6.

4 A OKAY.

5 Q AND CAN YOU TELL ME WHAT THAT IS?

6 A YES. THIS IS A REVERSE IP SEARCH REVEALING  
7 TWO DOMAINS HOSTED ON THE IP ADDRESS THAT ENDS IN  
8 DOT 77.

9 Q SO IN THIS INSTANCE THERE WERE ONLY TWO  
10 DOMAINS ON THIS PARTICULAR IP ADDRESS?

11 A YES, MA'AM.

12 MS. WANG: NO FURTHER QUESTIONS, YOUR  
13 HONOR.

14 THE COURT: ANY RECROSS?

15 MR. LOWE: NO, YOUR HONOR.

16 THE COURT: VERY WELL. YOU MAY BE  
17 EXCUSED.

18 CALL YOUR NEXT WITNESS.

19 MR. COOMBS: YOUR HONOR, WE'RE GOING TO  
20 READ FROM THE TRANSCRIPT OF MR. STEVEN CHEN.

21 THE COURT: VERY WELL. MR. CHEN IS A  
22 DEFENDANT IN THE CASE.

23 AS ANY OTHER WITNESS HE CAN BE DEPOSED  
24 AND HIS DEPOSITION TRANSCRIPT CAN BE READ.

25 HOW LONG DO YOU ANTICIPATE THIS READING

1 WILL TAKE.

2 MR. COOMBS: IT'S ABOUT AN HOUR.

3 THE COURT: WELL, THAT WILL GET YOU READY  
4 FOR LUNCH BY LISTENING TO THIS.

5 WE'RE GOING TO ALSO HAVE THIS DONE  
6 RESPONSIVELY. IT'S PERFECTLY PERMISSIBLE EVEN  
7 THOUGH MR. CHEN IS HERE TO READ FROM HIS TRANSCRIPT  
8 BECAUSE THIS IS PRIOR TESTIMONY AND COUNSEL IS ABLE  
9 TO USE THAT DEPOSITION FOR THIS PURPOSE SO WE'RE  
10 GOING TO HAVE HIS DEPOSITION READ.

11 AND AGAIN YOU WANT THIS ON THE RECORD SO  
12 YOU NEED TO MODERATE YOUR SPEED.

13 MR. COOMBS: I WILL DO SO, THANK YOU.  
14 AND I WILL COUNT ON THE REPORTER TO LET ME KNOW.

15 MR. CHEN'S DEPOSITION WAS TAKEN OVER TWO  
16 DAYS. HIS FIRST DAY AS A REPRESENTATIVE OF AKANOC  
17 SOLUTIONS, INC., AND THE SECOND DAY AS A  
18 REPRESENTATIVE OF MANAGED SOLUTIONS GROUP, INC.  
19 THE FIRST DAY WAS APRIL 8, 2008 AND THE SECOND DAY  
20 WAS APRIL 9, 2008.

21 Q WOULD YOU STATE AND SPELL YOUR NAME NOR THE  
22 RECORD, PLEASE?

23 A STEVE CHEN. S-T-E-V-E-N, C-H-E-N.

24 Q AND, MR. CHEN, YOU UNDERSTAND THAT TODAY  
25 YOU'RE HERE AS A WITNESS FOR DEFENDANT AKANOC

1 SOLUTIONS, INC.?

2 A YES.

3 Q AND DO YOU HAVE A ROLE IN CONNECTION WITH  
4 AKANOC SOLUTIONS, INC.?

5 A I'M THE GENERAL MANAGER.

6 Q GENERAL MANAGER. AND HOW LONG HAVE YOU BEEN  
7 GENERAL MANAGER?

8 A SINCE THE FIRST DAY. PROBABLY SEPTEMBER,  
9 OCTOBER OF 2004.

10 Q AND CAN YOU BRIEFLY DESCRIBE FOR ME YOUR  
11 RESPONSIBILITIES, WHAT FUNCTIONS YOU PERFORM AS  
12 GENERAL MANAGER OF AKANOC SOLUTIONS?

13 A I OVERSEE THE WHOLE OPERATION. SO IN OUR  
14 BUSINESS BASICALLY YOU RUN THE NETWORK, THE SALES  
15 DEPARTMENT DEALING WITH THE CUSTOMER, AND THAT'S  
16 PRETTY MUCH IT.

17 Q DO YOU HAVE AN OWNERSHIP INTEREST IN AKANOC?

18 A YES.

19 Q AND WHAT IS THAT OWNERSHIP INTEREST?

20 A I'M THE SOLE OWNER OF AKANOC.

21 Q AND WHAT IS THE RELATIONSHIP OF AKANOC  
22 SOLUTIONS TO A WEB SITE INDICATED UNDER THE NAME  
23 DEDIWEBHOST.COM?

24 A DEDIWEBHOST.COM IS A BRAND NAME OF AKANOC.

25 Q SO IT DOES BUSINESS THROUGH THAT WEB SITE?



1 A YES, THAT'S CORRECT.

2 Q AND WHAT IS THE RELATIONSHIP BETWEEN AKANOC  
3 AND THE WEB SITE OPERATED AS COLOALACARTE.COM?

4 A IT'S THE SAME THING. IT'S A BRAND NAME OF  
5 AKANOC.

6 Q AND DO YOU SERVE AS AN EMPLOYEE FOR ANY OTHER  
7 COMPANY?

8 A RACKLOGIC, R-A-C-K, L-O-G-I-C.

9 Q ANY OTHERS?

10 A NO.

11 Q AND WHAT IS YOUR POSITION WITH RACKLOGIC?

12 A GENERAL MANAGER.

13 Q AND THE RESPONSIBILITIES AS GENERAL MANAGER OF  
14 RACKLOGIC ARE SIMILAR TO THOSE THAT YOU ALREADY  
15 DESCRIBED FOR AKANOC?

16 A THEY'RE IN TWO DIFFERENT TYPE OF BUSINESS.  
17 RACKLOGIC IS A HARDWARE -- INTEGRATE, YOU KNOW, PC  
18 INTEGRATION BUSINESS.

19 Q CAN YOU EXPLAIN TO ME WHAT YOU MEAN BY THAT  
20 TERM?

21 A IT'S WHEN CUSTOMER WANTS TO BUY A COMPUTER WE  
22 BUILD IT.

23 Q IT'S NOT AN ISP?

24 A NOT AN ISP, YES.

25 Q AND DOES RACKLOGIC BUILD SERVERS FOR ISP AS

1 WELL?

2 A YES.

3 Q AND DOES IT BUILD SERVERS FOR AKANOC?

4 A YES.

5 Q AND HOW MANY OF THE SERVERS OPERATED BY AKANOC  
6 WERE BUILT BY RACKLOGIC?

7 A PROBABLY 95 PERCENT.

8 Q AND DO YOU HAVE AN OWNERSHIP INTEREST IN  
9 RACKLOGIC?

10 A YES.

11 Q AND WHAT IS THAT OWNERSHIP?

12 A I'M THE SOLE OWNER.

13 Q AKANOC HAS OFFICERS, PRESIDENT, TREASURER,  
14 SECRETARY?

15 A YES.

16 Q AND WHO ARE THEY?

17 A AT THIS POINT ONLY MYSELF.

18 Q SINCE ITS INCORPORATION HAS IT HAD ANY  
19 OFFICERS OTHER THAN YOURSELF?

20 A AKANOC? I DON'T RECALL. I DON'T RECALL.

21 Q ARE YOU A DIRECTOR OF AKANOC?

22 A YES.

23 Q AND ARE THERE ANY OTHER DIRECTORS OF AKANOC?

24 A I DON'T THINK SO.

25 Q HAVE THERE BEEN ANY OTHER DIRECTORS AT ANY

1 OTHER TIME SINCE ITS INCORPORATION?

2 A I DON'T THINK SO.

3 Q HAVE YOU BEEN THE 100 PERCENT OWNER OF AKANOC  
4 SINCE ITS INCORPORATION?

5 A YES.

6 Q AND YOU SAID YOU HAVE ONE PART-TIME EMPLOYEE  
7 FOR SECURITY AND ABUSE ISSUES?

8 A CORRECT.

9 Q AND WHO IS THAT?

10 A JULIANA, JULIANA LUK.

11 Q L-U-K?

12 A L-U-K.

13 Q AND HOW LONG HAS MS. LUK HAD THAT  
14 RESPONSIBILITY?

15 A PROBABLY A GOOD TWO, THREE YEARS.

16 Q AND SHE'S BASED IN THE SAN JOSE DATA CENTER?

17 A NO, SHE'S IN LOS ANGELES.

18 Q AND WHEN YOU SAY THAT SHE IS PART-TIME, DOES  
19 SHE HAVE A SORT OF STANDARD SCHEDULE THAT SHE  
20 WORKS?

21 A NOT REALLY.

22 Q IS THERE AN APPROXIMATE NUMBER OF HOURS PER  
23 WEEK THAT SHE WORKS?

24 A YEAH, IT PROBABLY LIKE -- IT DEPENDS ON HOW  
25 HEAVY THE DAILY SCHEDULE IS. IF WE HAVE A LOT OF

1 COMPLAINTS, YOU KNOW, FOR THE DAY THEN SHE WILL  
2 NEED TO WORK LONGER, AND IF IT'S NOT TOO MANY  
3 COMPLAINTS THEN IT'S VERY SHORT.

4 Q DOES SHE WORK FROM HOME THEN?

5 A YEAH.

6 Q AND SHE'S AN EMPLOYEE OR INDEPENDENT  
7 CONTRACTOR?

8 A 1099 INDEPENDENT CONTRACTOR.

9 Q AND WHO IS THE ONE SALESPERSON BASED IN  
10 FREMONT?

11 A WILL LONE, W-I-L-L, L-O-N-E.

12 Q AND MR. LONE IS A FULL-TIME EMPLOYEE?

13 A YES.

14 Q AND HOW LONG HAS HE BEEN EMPLOYED BY AKANOC?

15 A PROBABLY TWO YEARS.

16 Q AND CAN YOU BRIEFLY DESCRIBE FOR ME -- EXCUSE  
17 ME -- HIS JOB DESCRIPTION, JOB FUNCTION?

18 A HE'S FROM CHINA AND SO HIS MAIN ROLE IS TO  
19 DEVELOP THE CHINESE -- I MEAN, CHINA, CUSTOMERS IN  
20 CHINA.

21 Q AND DOES HE TRAVEL BACK REGULARLY TO CHINA TO  
22 MARKET AKANOC?

23 A FROM WHAT I REMEMBER THREE TIMES.

24 Q IN THE TWO YEARS THAT HE'S WORKED FOR AKANOC?

25 A YEAH.

1 Q AND CAN YOU TELL ME HOW MR. LONE MARKETS  
2 AKANOC SERVICES IN CHINA OTHER THAN THE OCCASIONAL  
3 TRIP THAT YOU MENTIONED EARLIER?

4 A FROM THE BEGINNING I BELIEVE THAT HE WENT  
5 THROUGH AN -- ISP IN CHINA, THEY CALL IT ICP, YOU  
6 KNOW, INTERNET CONTENT PROVIDER. HE RESEARCHED A  
7 LIST OF THOSE PEOPLE AND THEN START CONTACTING  
8 EVERYBODY.

9 Q AND HOW DOES HE CONTACT THEM?

10 A JUST THROUGH E-MAIL. AND FROM THERE PROBABLY  
11 WE ESTABLISH LIKE 10, 15 RESELLERS. AND FROM THERE  
12 THE RESELLERS START DEVELOPING BUSINESS LOCALLY AND  
13 THEY ARE ADVERTISING THAT IF YOU WANT U.S.  
14 DEDICATED SERVERS, THEN THEY REPRESENT COMPANIES IN  
15 THE U.S., NOT SPECIFICALLY FOR AKANOC.

16 Q DOES MS. LUK REPORT TO YOU OR SOMEONE ELSE IN  
17 AKANOC?

18 A IT'S TO ME, TO ME.

19 Q TO YOU. INCLUDED IN THE PRODUCTION OF  
20 DOCUMENTS BY WAS A MAILBOX ENTITLED SECURITY?

21 A YES.

22 Q AND THAT WOULD BE E-MAILS GENERATED BY  
23 MS. LUK?

24 A YEAH, IT'S EITHER HIM OR MYSELF.

25 Q I'M SORRY?

1 A EITHER SHE OR MYSELF, YES. I'M SORRY

2 Q SO BEING PART-TIME, SOMETIMES YOU FULFILL  
3 THAT --

4 A YEAH.

5 Q -- SECURITY FUNCTION?

6 A YES. YEAH. I ALWAYS CHECK THE E-MAIL. IF  
7 IT'S SOMETHING TOTALLY OUT OF HER CAPACITY TO  
8 HANDLE, THEN I'LL STEP IN.

9 Q WHAT KIND OF BACKGROUND DOES MS. LUK HAVE IN  
10 TERMS OF DEALING WITH SECURITY AND ABUSE ISSUES?

11 A NOT A LOT. I MEAN, THAT FOR HER -- MY  
12 INSTRUCTION TO HER IS BASICALLY FORWARDING ALL OF  
13 THE COMPLAINTS TO THE CUSTOMER.

14 Q AND DOES SHE HAVE ANY OTHER RESPONSIBILITY IN  
15 CONNECTION WITH SECURITY?

16 A NO.

17 Q SO SHE DOESN'T CONDUCT ANY FORMAL MONITORING,  
18 FOR EXAMPLE?

19 A MONITORING FOR?

20 Q MONITORING FOR ABUSE ISSUES?

21 A THE ONLY MONITORING THAT WE WILL SEE IS THE  
22 THAT COMPLAINTS -- THE SAME TYPE OF COMPLAINTS  
23 HAPPEN TO A PARTICULAR SERVER OR A PARTICULAR IP IN  
24 A VERY SHORT PERIOD OF TIME THEN WE WOULD -- WE  
25 WOULD DO SOMETHING SPECIAL ABOUT IT, TAKE SPECIAL

1 NOTICE TO THE CUSTOMER TO THE POINT THAT WE NEED TO  
2 UNPLUG IT.

3 Q AND THAT IS SOMETHING THAT MS. LUK WOULD DO OR  
4 SOMETHING YOU WOULD DO?

5 A WE BOTH WOULD DO IT.

6 Q AND YOU MENTIONED THAT SHE WOULD BE  
7 RESPONSIBLE FOR FORWARDING COMPLAINTS. DOES SHE  
8 EVALUATE THE COMPLAINTS BEFORE SHE FORWARDS THEM?

9 A IF IT'S BASICALLY SPAM COMPLAINTS THERE'S  
10 NOTHING WE CAN EVALUATE. IF IT'S A, LET'S SAY, A  
11 COPYRIGHT INFRINGEMENT, WE CANNOT EVALUATE. WE  
12 JUST FORWARD IT OUT.

13 OTHER THAN FINDING WHERE THAT SPECIFIC  
14 ISSUE LINKED TO A PARTICULAR IP VIRTUALLY NOTHING  
15 THAT WE WILL VERIFY.

16 Q WHAT DO YOU UNDERSTAND MS. LUK TO DO WHEN SHE  
17 RECEIVES AN IP COMPLAINT? NOW, LET'S JUST TALK  
18 ABOUT COPYRIGHT AND TRADEMARK COMPLAINTS.

19 A OKAY.

20 Q SHE RECEIVES AN E-MAIL SAYING DIRECTED TO  
21 ABUSE --

22 A RIGHT.

23 Q -- AND AT AKANOC.COM; CORRECT?

24 A YES.

25 Q AND WHAT DOES SHE DO ONCE SHE RECEIVES THAT

1 E-MAIL?

2 A WELL, IF IT COMES IN WITH AN IP ADDRESS  
3 BASICALLY WE JUST, YOU KNOW, LOCATE WHO OWNS IT.  
4 WE FORWARD THE WHOLE THING TO OUR CUSTOMER AND IF  
5 THERE IS NO IP ADDRESS, JUST SAY DOMAIN, THEN WE  
6 TRY TO PING THAT DOMAIN AND SEE WHAT IT'S RESULTED  
7 TO. IF IT RESULTED TO OUR IP ADDRESS THEN WE WOULD  
8 FROM THERE FIND A PARTICULAR CUSTOMER RESPONSIBLE  
9 FOR THAT.

10 THEN WE FORWARD IT OUT.

11 Q HOW DO YOU IDENTIFY THE CUSTOMER WHO IS  
12 RESPONSIBLE FOR PARTICULAR IP ADDRESS WITHIN  
13 AKANOC'S RANGE?

14 A IF THERE IS IP, THEN WE CAN SEARCH OUR  
15 DATABASE WHOIS CURRENT USER.

16 Q I'VE SEEN SOMETHING IN THE DOCUMENTS CALLED  
17 CPRO, C-P-R-O, IS THAT THE DATABASE?

18 A YES, THAT'S CORRECT.

19 Q SO MS. LUK WHEN SHE RECEIVES A COMPLAINT SHE  
20 WILL SEARCH CPRO TO IDENTIFY THE CUSTOMER  
21 ASSOCIATED WITH A PARTICULAR DOMAIN?

22 A RIGHT.

23 Q AND THEN SHE FORWARDS THAT TO THE CUSTOMER?

24 A THAT'S RIGHT.

25 Q AND DOES CPRO MAINTAIN A RECORD OF THE



1           FORWARDED COMPLAINT?

2           A       NO.

3           Q       SO ABUSE COMPLAINTS ARE NOT PART OF THE  
4           RECORD?

5           A       NO, NO.

6           Q       NOW, EARLIER YOU MENTIONED THAT IF THERE'S A  
7           PROBLEM, FOR EXAMPLE, YOU CAN UNPLUG A SERVER;  
8           CORRECT?

9           A       THAT'S CORRECT.

10          Q       AND IS UNPLUGGING THE SERVER THE KIND OF  
11          TOUCHING THE HARDWARE THAT WOULD BE REFLECTED IN  
12          THE CPRO?

13          A       YES.

14          Q       ALL RIGHT.  AFTER MS. LUK FORWARDS THE  
15          COMPLAINT TO THE CUSTOMER, DOES SHE HAVE ANY  
16          FURTHER RESPONSIBILITY IN CONNECTION WITH THE ABUSE  
17          REPORT?

18          A       UNLESS IT'S REPRESENTATIVE OTHERWISE WE'LL  
19          ASSUME THAT THE CUSTOMER WILL TAKE CARE OF THE  
20          ISSUE.

21          Q       ARE THERE OCCASIONS WHERE THE ISSUES ARE SUCH  
22          THAT MS. LUK FORWARDS THEM ON TO YOU FOR HANDLING  
23          AS OPPOSED TO DEALING WITH THEM HERSELF?

24          A       IF SOMETHING IS, FOR EXAMPLE, LIKE CUSTOMER  
25          COME BACK WITH A COMMENT THAT, YOU KNOW, BEING

1 TECHNICAL, THAT THIS PROBLEM IS NOT FROM, NOT FROM  
2 MY SERVER, SOMETHING LIKE THAT EFFECT, AND I WOULD  
3 MORE OR LESS LIKE LOOK AT -- INTO THE ISSUE. IF I  
4 DON'T UNDERSTAND, THEN I WILL ASK, YOU KNOW, MAYBE  
5 ANDREW OR PATRICK OR SOMEBODY ELSE BEING THEY ARE  
6 MORE TECHNICAL THAN MYSELF.

7 Q IS IT FAIR FOR ME TO CONCLUDE THAT YOU WILL  
8 SOMETIMES HANDLE THE SECURITY DESK YOURSELF WHEN  
9 MS. LUK IS UNAVAILABLE --

10 A YES.

11 Q -- AND NOT WORKING?

12 MR. COOMBS: LINE 9.

13 THE WITNESS: THAT'S CORRECT.

14 BY MR. COOMBS:

15 Q DOES IT EVER DOES GET ASSIGNED TO PATRICK OR  
16 ANDREW AS WELL?

17 A NO.

18 Q AND HAS AKANOC EVER OPERATED OUT OF ANY  
19 LOCATIONS OTHER THAN THE TWO YOU'VE IDENTIFIED THE  
20 ONE IN FREMONT AND THE ONE IN SAN JOSE?

21 A NO.

22 Q DOES IT EVER LEASE SERVER CAPACITY FROM OTHER  
23 COMPANIES?

24 A NO.

25 Q CAN YOU GIVE ME THE ADDRESS OF THE LOCATION IN

1           FREMONT?

2           A       45535 NORTHPORT, ONE WORD, LOOP, SECOND WORD  
3           EAST, FROM TIME TO TIME.

4           Q       AND IS THAT THE ONLY ADDRESS IN FREMONT FROM  
5           WHICH AKANOC --

6           A       YES.

7           Q       -- HAS DONE BUSINESS? AND WHAT IS THE ADDRESS  
8           OF THE LOCATION IN SAN JOSE?

9           A       55 SOUTH MARKET STREET, SAN JOSE.

10          Q       AND IS THAT THE ONLY OTHER LOCATION THAT  
11          AKANOC HAS DONE BUSINESS SINCE IT HAS INCORPORATED  
12          IN 2004?

13          A       I DON'T RECALL. WE USED TO HAVE A SECOND  
14          LOCATION, SECOND DATA CENTER JUST ACROSS THE STREET  
15          WHICH IS 50 SOUTH SAN FERNANDO. WE RENT TWO DATA  
16          CENTER AT THE SAME TIME. PROBABLY WE MERGED THE  
17          TWO IN 2006, END OF 2006 WE MERGE THE TWO. SO I  
18          DON'T RECALL WHEN AKANOC ACTUALLY STEPPED IN AND  
19          THEN STAY IN WHICH SIDE.

20          Q       CAN YOU ESTIMATE FOR ME HOW THE AMOUNT OF  
21          ABUSE COMPLAINTS HAVE GROWN FOR AKANOC SINCE IT  
22          STARTED IN 2004?

23          A       WHAT DO YOU MEAN BY GROWN?

24          Q       WELL, YOU SAID WHEN YOU STARTED YOU DIDN'T  
25          HAVE THAT MANY, YOU DIDN'T REALLY NEED A

1 FULL-TIME --

2 A RIGHT.

3 Q -- PERSON DEDICATED TO IT; IS THAT CORRECT?

4 A WELL, LET'S PUT IT THIS WAY, THE AKANOC IP'S  
5 NOWADAYS, WE PROBABLY SEE FIVE OR TEN COMPLAINTS A  
6 DAY. RELATIVE TO MANAGE MANAGED SOLUTIONS GROUP,  
7 WE WILL SEE A GOOD 30, 50 A DAY.

8 Q AND YOU MENTIONED MANAGED SOLUTIONS GROUP.  
9 WHAT IS THE RELATION BETWEEN MANAGED SOLUTIONS  
10 GROUP AND AKANOC?

11 A WE STARTED -- WE START THE HOSTING WITH  
12 MANAGED SOLUTIONS GROUP AND THAT WAS THE END OF  
13 2003. AND AT THAT TIME I HAD A PARTNER JACQUES,  
14 J-A-C-Q-U-E-S, P-H-A-M, AND SO -- AND BEFORE THAT  
15 HE WAS MY RACKLOGIC CUSTOMERS. HE BUYS HARDWARE  
16 FROM US AND SERVERS FROM US AND HE GREW THE  
17 BUSINESS FROM LIKE 800, 900 SERVERS. AND THEN HE  
18 SOLD THE BUSINESS. AND HE CAME TO ME ONE DAY AND  
19 SAYS, HEY, IF WE CAN WORK TOGETHER, MAYBE THERE'S  
20 OPPORTUNITY, YOU KNOW, THAT WE CAN START ANOTHER  
21 ONE.

22 AND SINCE I WAS SELLING, YOU KNOW  
23 RACKLOGIC IS SELLING A LOT OF HARDWARES TO  
24 DIFFERENT HOSTING COMPANIES SO AT THAT TIME I  
25 THINK, WELL, THERE MIGHT BE SOMETHING IN IT. AND

1 SINCE JACQUES IS WILLING TO PUT HIS EFFORT TO START  
2 A BUSINESS, PUSH THE BUSINESS AND MANAGE THE  
3 BUSINESS AND IN ESSENCE I JUST NEED TO DO THE  
4 OPERATIONS SUPPORT.

5 THAT LAST FOR LESS THAN A YEAR. I START  
6 FINDING THAT IT'S NOT A REALLY GOOD MATCH BETWEEN  
7 MYSELF AND JACQUES PHAM, ALTHOUGH THE BUSINESS IS  
8 RUNNING WELL. BUT WE HAD TWO DIFFERENT -- WE HAD  
9 TOTALLY DIFFERENT OBJECTIVES AS TO HOW WE WERE  
10 GOING TO GROW THE BUSINESS ITSELF. SO AT THAT TIME  
11 I TRIED TO SEPARATE THE RELATIONSHIP WITH HIM.

12 AND SO BEFORE I STARTED TALKING AND  
13 DISCUSSING THE WAY OF SEPARATION AND I START -- I  
14 SET UP AKANOC BEING THE BACKUP, JUST IN CASE IF THE  
15 MOVE IS NOT GOING WELL, MAYBE WE JUST CLOSE DOWN  
16 MSG COMPLETELY AND NOBODY HURT. THAT WAS MY  
17 INTENTION OF SETTING UP AKANOC AND THAT WAS PRETTY  
18 MUCH IT.

19 Q AND HOW DOES MANAGED SOLUTIONS BUSINESS DIFFER  
20 FROM AKANOC AT ALL?

21 A YEAH. FROM THE BEGINNING IT'S THE SAME MODEL.  
22 IT'S OFFERING THE SAME THING OF UNMANAGED DEDICATED  
23 SERVERS. WE STARTED AKANOC -- THAT'S WHY AKANOC  
24 HAS COLOALACARTE. THAT'S ONE YEAR, MORE OR LESS  
25 THAT ONE YEAR PRIOR TO THAT DEDIWEBHOST. BECAUSE

1 WHEN WE HAVE AKANOC.COM AND WE ACTUALLY DECIDE TO  
2 TO SEPARATE IN A PEACEFUL WAY HE CAN STILL RUN HIS  
3 OWN BUSINESS AND WE CAN THE BACK UP, THE BACK END  
4 SUPPORT.

5 SO COLOALACARTE CAME FROM A TOTALLY  
6 DIFFERENT TYPE OF BUSINESS MODEL WHICH IS NOT  
7 OFFERING A COMPLETE PACKAGE. THAT'S WHY  
8 COLOALACARTE CAME FIRST SO WE DON'T HAVE THE  
9 CONFLICT OF INTEREST BETWEEN MSG AND AKANOC.

10 Q ARE YOU ALSO A GENERAL MANAGER OF MANAGED  
11 SOLUTIONS?

12 A YES, THAT'S CORRECT.

13 Q AND DO YOU OWN 100 PERCENT OF THE SHARES IN  
14 MANAGED SOLUTIONS?

15 A AT THIS POINT, YES.

16 Q DOES AKANOC HAVE A WRITTEN AGREEMENT WITH  
17 ARIN?

18 A I DON'T KNOW. I MEAN, BASICALLY IT'S -- WE  
19 APPLY IP'S, THEY ASSIGN IP'S.

20 I DON'T EVEN KNOW IF THERE'S ANY TYPE OF  
21 AGREEMENTS.

22 Q AKANOC FIRST OBTAINED IP -- WHEN YOU SAY IP  
23 YOU MEAN NUMERIC IP ADDRESSES; CORRECT?

24 A THAT'S CORRECT.

25 Q SO WHEN WE USE THAT TERM, THAT'S WHAT WE'LL

1 UNDERSTAND?

2 A YES.

3 Q AKANOC RECEIVED IP ADDRESS ALLOCATIONS FROM  
4 ARIN?

5 A ARIN, YES.

6 Q AND LET'S MARK AT EXHIBIT 20 A ONE-PAGE  
7 PRINTOUT FROM ARIN WHOIS DATABASE FOR AKANOC  
8 SOLUTIONS AND ASK YOU TO TAKE A LOOK AT THAT. AND  
9 HAVE YOU SEEN A PRINTOUT LIKE THAT BEFORE,  
10 MR. CHEN?

11 A NO.

12 Q AT YOU SEE AT THE BOTTOM OF THE PAGE IT  
13 INDICATES IT'S A PRINTOUT FROM ARIN WHOIS DATABASE.  
14 DO YOU SEE THAT?

15 A YES.

16 Q AND IT INDICATES THAT IT'S A SEARCH FOR  
17 AKANOC?

18 A YES.

19 Q AND YOU'LL SEE SORT OF HALFWAY DOWN THE PAGE  
20 THREE ASSIGNMENTS OF IP ADDRESSES?

21 A YES.

22 Q DO YOU SEE THAT?

23 A YES.

24 Q AND DO YOU HAVE ANY REASON TO DOUBT THAT THOSE  
25 ARE THE IP ADDRESSES THAT ARIN HAS ASSIGNED TO

1           AKANOC SOLUTIONS?

2           A        YES, THESE WILL BE IP ADDRESSES ASSIGNED TO  
3           US.

4           Q        AND ARIN -- I'M SORRY.  AKANOC STILL OWNS  
5           AWFUL THE NAMES OR ALL OF THE IP ADDRESSES FIRST  
6           ASSIGNED TO IT?

7           A        YES, THAT'S CORRECT.

8           Q        HAS IT REASSIGNED OR SUBDELEGATED ANY OF THOSE  
9           IP ADDRESSES?

10          A        REASSIGNED BEING -- BEING WHAT?

11          Q        ASSIGNED IT TO THE CUSTOMERS, RESELLERS,  
12          ANYONE ELSE?

13          A        YES, THAT'S WHAT WE DO EVERY DAY.

14          Q        YOU DO -- I'M SORRY?

15          A        THAT'S WHAT WE DO EVERY DAY.

16          Q        AND ARE THOSE REFLECTED IN THE CPRO DATABASE  
17          THAT WE TALKED WITH EARLIER?

18          A        IT'S NOT ONLY CPRO, BUT ALSO PUBLIC.  YOU CAN  
19          SEARCH THAT IN THE PUBLIC RECORDS.

20          Q        LET'S BACK UP FOR A MOMENT.  THE CPRO DATABASE  
21          WILL REFLECT AN ASSIGNMENT BY AKANOC TO ONE OF ITS  
22          CUSTOMERS OF AN IP ADDRESS THAT WAS ASSIGNED TO IT;  
23          IS THAT CORRECT?

24          A        IF IT'S A LIVE IP, WE CAN SEARCH IT.  IF IT'S  
25          A DEAD IP THEN IT'S -- ONCE IT'S TAKEN OUT FROM



1 THAT, THEN CPRO WILL NOT SHOW IT.

2 Q SO IT DOESN'T SHOW HISTORICAL DATA?

3 A YES.

4 Q IT'S DELETED?

5 A YES.

6 Q WHO HANDLES THE ASSIGNMENT OF IP ADDRESSES?

7 A AGAIN, IT'S PRETTY MUCH AUTOMATION. LET'S SAY  
8 THE CUSTOMER NEEDS FOUR EXTRA IP'S, EITHER MYSELF,  
9 WILL LONE, PATRICK, WE CAN ALL GO INTO A SPECIFIC  
10 INTERFACE AND WE TAKE OUT FROM THE AVAILABLE POOL  
11 AND ATTACH IT TO SPECIFIC MAIN IP'S AND WE SUBMIT  
12 TO THE PROCESS.

13 AND THEN WE UPDATE THAT INFORMATION INTO  
14 THE ROUTER TO MAKE THAT ROUTING. AND WHEN CUSTOMER  
15 CANCEL THE SERVICE, OR FOR WHATEVER REASON WE NEED  
16 TO TAKE IT OUT FROM THAT PARTICULAR ROUTE, AND THEN  
17 WE CAN USE THE SAME INTERFACE. WE CAN GO IN AND  
18 SUBMIT THE REQUEST AND THEN THE TECHNICIAN WILL GO  
19 TO THAT ROUTER AND THEN REROUTE IT.

20 Q THAT ROUTER IS OWNED AND CONTROLLED BY AKANOC?

21 A THAT'S CORRECT.

22 Q WHAT PERCENTAGE OF THE SERVER CAPACITY THAT  
23 YOU HAVE BEEN TALKING ABOUT IS DEDICATED TO WEB  
24 SITE HOSTING?

25 A I HAVE NO IDEA. I DON'T KNOW THE PERCENTAGE

1 OF WEB SITE POSTING APPLICATION. WE DON'T RUN ANY  
2 CONTENTS FOR THE CUSTOMER.

3 Q TELL ME HOW AKANOC SELLS ITS SERVICES TO ITS  
4 CUSTOMERS. YOU MENTIONED PACKAGES. DESCRIBE FOR  
5 ME WHAT THOSE PACKAGES CONSIST OF?

6 A OKAY. SO IF YOU GO TO THE WEB SITE THEY ARE  
7 BASIC CARDBOARD SPECS TO BEGIN WITH.

8 SO IF IT'S A CELERON 2.4, 1 GIG MEMORY,  
9 80 GIG HARD DRIVE, AND LET'S SAY 600 GIGABYTE FOR  
10 THE BANDWIDTH, THAT'S ONE PACKAGE. AND IT HAS A  
11 SPECIFIC DOLLAR AMOUNT.

12 AND IF YOU'RE INTERESTED IN IT, CLICK ON  
13 THAT. YOU GO INTO THE ORDER PAGE AND THERE ARE  
14 MORE SELECTIONS OF WHAT TYPE OF OPERATION SYSTEMS  
15 AND ANY SPECIAL INSTRUCTIONS, AND EVENTUALLY YOU  
16 FILL IN YOUR PAYMENT INFORMATION AND WHATNOT. YOU  
17 CLICK ON ORDER. YOU CONFIRM THE ORDER. THERE'S  
18 ONE SPECIFIC NOTE THAT WE DO THIS.

19 IN ORDER TO PLACE THE ORDER, YOU NEED TO  
20 AGREE THE SALES AGREEMENT AND SO YOU CLICK ON THAT.  
21 AND THAT COMES TO AN ORDER.

22 AND WHEN WE SEE THE ORDER COMES IN, WE  
23 VERIFY WHETHER THE ORDER IS LEGITIMATE OR NOT.

24 BASICALLY IT'S THE PAYMENT ISSUE MOST OF  
25 THE TIME, BECAUSE WE MAY RECEIVE FRAUDULENT

1 PAYMENTS. FOR SOMEBODY THAT WE KNOW, IT'S OKAY.  
2 FOR SOMEBODY THAT WE DON'T KNOW, WE DO DOUBLE  
3 VERIFICATIONS.

4 AND SO ONCE THAT -- WE CONFIRM THAT  
5 ORDER, THEN IT GETS INTO THE TECHNICAL GROUP WILL  
6 RECEIVE ANOTHER INTERFACE. BASICALLY IT'S DEPLOYED  
7 THIS PARTICULAR ORDER WHICH THEY BUILD THE HARDWARE  
8 WITH THE PROPER OPERATION SYSTEM, STICK IT INTO ANY  
9 PARTICULAR SPACE, NAME THE IP ADDRESS, AND PUT IN  
10 THE RACK NUMBERS. AND THEN PRETTY MUCH, THEY  
11 COMPLETE THAT PART. THEY CLICK ON ACTIVATION.  
12 THERE WILL BE AN AUTO E-MAIL SENT TO THE CUSTOMER.  
13 YOUR ORDER IS, IT'S ACTIVATED WITH LOG-IN  
14 INFORMATION AND SO THE CUSTOMER CAN HAVE IT.  
15 THAT'S PRETTY MUCH IT.

16 Q DOES AKANOC EMPLOY ANY KIND OF BACK-UP SYSTEM  
17 FOR DATA, EITHER THE CPRO DATABASE OR THE E-MAIL  
18 MESSAGES?

19 A ANDREW MIGHT HAVE SOMETHING, BUT OVER THE  
20 WEEKEND WE HAD A MAIL SERVER WENT DOWN AND THEN I  
21 WAS CHECKING WITH PATRICK AND SPECIFICALLY ASKED  
22 HIM, YOU KNOW, DID WE MAKE ANY BACKUP THIS TIME?  
23 HE STILL SAYS, NO. SO I'M NOT TOO SURE ABOUT THAT  
24 PART.

25 Q OKAY. HOW ABOUT THE CPRO DATABASE, THERE'S NO

1 BACKUP FOR THAT EITHER?

2 A SHOULD HAVE SOMETHING. YOU KNOW, I'M NOT IN  
3 THE POSITION TO KNOW THAT DATA -- I MEAN, THE  
4 DETAIL.

5 Q EARLIER IN YOUR TESTIMONY YOU MENTIONED THERE  
6 WERE 10 TO 15 RESELLERS WHO AKANOC DOES BUSINESS.  
7 WHAT PERCENTAGE OF AKANOC'S OVERALL BUSINESS IS  
8 DONE WITH THOSE 10 TO 15 RESELLERS?

9 A IF I -- DON'T HOLD ME ON THE EXACT NUMBER BUT  
10 GIVE AND TAKE SOMEWHERE AROUND, AKANOC PROBABLY HAS  
11 AROUND 30 TO 50 CUSTOMERS ANY GIVEN TIME. THAT'S  
12 PRETTY MUCH THE WHOLE BUSINESS.

13 Q ARE ANY OF THOSE 30 OR 50 CUSTOMERS LOCATED IN  
14 THE UNITED STATES?

15 A AKANOC-WISE?

16 Q YES.

17 A I CAN REMEMBER ONE IN NEW YORK, BUT I THINK  
18 THAT HE LATER DROPPED OUT, TOO.

19 Q WE WILL MARK AS 21 A SIX-PAGE DOCUMENT, THE  
20 FIRST WORDS WHICH SAY "THIS SERVICE AGREEMENT" AND  
21 THEN ASK THE WITNESS TO TAKE A LOOK AT IT.

22 DO YOU RECOGNIZE THAT DOCUMENT?

23 A THIS SHOULD BE -- IS THIS FOR AKANOC OR --

24 Q THE FIRST PARAGRAPH, THE SECOND AND THIRD  
25 LINES DOWN DO REFER TO AKANOC SOLUTIONS. ON THE

1 FIRST PAGE?

2 A ON THE FIRST PAGE, YES. SO THIS SHOULD BE THE  
3 -- AKANOC -- IS THIS -- YEAH, OKAY. SERVICE  
4 AGREEMENT, OKAY.

5 Q IS THIS THE SERVICE AGREEMENT THAT IS  
6 CURRENTLY IN EFFECT FOR AKANOC?

7 A IT SHOULD BE.

8 Q HAS THE SERVICE AGREEMENT CHANGED AT ANY TIME  
9 SINCE 2004?

10 A I DON'T BELIEVE SO. MAYBE CHANGED BY  
11 SOMETHING LIKE CHANGING LIKE THE SERVICE FEE \$10,  
12 \$25, THINGS LIKE THAT.

13 OTHER THAN THAT, I DON'T RECALL THAT WE  
14 CHANGED ANYTHING MAJOR.

15 Q THE AGREEMENT HAS BEEN SUBSTANTIALLY THE SAME  
16 THROUGHOUT THE TIME THAT AKANOC --

17 A YES.

18 Q -- HAS BEEN PROVIDING THESE SERVICES?

19 A YES.

20 Q EARLIER IN YOUR TESTIMONY YOU INDICATED THAT  
21 WHEN A CLIENT WAS SIGNED UP, THEY WOULD CLICK  
22 THROUGH AN AGREEMENT ON THE AKANOC WEB SITE. IS  
23 THIS THE AGREEMENT THAT YOU WERE REFERRING TO?

24 A IN THE ORDER PAGE THERE'S JUST A LITTLE CLICK  
25 BOX THAT IT SAYS THAT YOU AGREE TO THE SALES

1           AGREEMENT.

2           Q       AND THIS IS THAT AGREEMENT?

3           A       YES.

4           Q       AND DOES AKANOC TAKE THIS POSITION THAT THESE  
5           TERMS GOVERN ITS RELATIONSHIP WITH ITS CUSTOMERS?

6           A       YES, WHEN WE HAVE ANY DISPUTES, WE WOULD GO  
7           BACK TO THE SALES AGREEMENT.

8           Q       OKAY.  DRAW YOUR ATTENTION TO PARAGRAPH 7 ON  
9           THE FIRST PAGE WHERE IT READS BANDWIDTH UTILIZATION  
10          WILL BE MARKED MRTG AND CALCULATED.  DO YOU SEE  
11          THAT?

12          A       YES.

13          Q       AND DOES AKANOC MONITOR BANDWIDTH UTILIZATION?

14          A       YES, WHEN CUSTOMER -- I MEAN, NOT REALLY  
15          MONITOR IN THE SENSE THAT EVERY DAY THAT WE LOOK AT  
16          IT BUT WHEN WE HAVE EXCESSIVE USAGE THEN WE WILL  
17          BASE ON THIS AND DISCUSS IT WITH THE CUSTOMER.

18          Q       HOW DOES THE CUSTOMER KNOW WHEN EXCESSIVE  
19          USAGE?

20          A       EVERY CUSTOMER HAS AN MRTG GRAPH ASSOCIATED  
21          WITH IT.

22          Q       AND THAT IS STORED IN THE CPRO DATABASE?

23          A       IT'S NOT STORE; IT'S CONSTANT.

24          Q       SO HOW DO YOU SEE THAT GRAPH?

25          A       MANUALLY.

1 Q OKAY. SO USING THE AKANOC NETWORK YOU CAN  
2 PULL UP THE DATA ON ANY PARTICULAR SERVER, THIS  
3 GRAPH THAT YOU'RE REFERRING TO?

4 A YES.

5 Q WHAT IS THE CURRENT PENALTY FEE?

6 A I DON'T EVEN KNOW BECAUSE VERY, VERY SELDOM  
7 THAT WE ACTUALLY GET INTO SO-CALLED PENALTY. I  
8 DON'T WANT TO CALL IT PENALTY MYSELF BECAUSE A LOT  
9 OF TIMES -- WELL, LET'S SAY A CUSTOMER SAYS, OH,  
10 YEAH, YOU JUST UNPLUG IT AND I RESPOND BACK TO YOU  
11 AND THEN YOU NEED TO REPLUG IT.

12 IN THAT CASE, YOU KNOW, YOU WANT TO  
13 PENALIZE ME FOR \$25 OR SOMETHING. YOU KNOW, I  
14 ALWAYS EXPLAIN TO THEM THAT IT TAKES PEOPLE TO GO  
15 INTO THE CAGE TO DO THE PHYSICAL WORK, DOCUMENT  
16 EVERYTHING, IT'S JUST PROCESS FEE SO.

17 Q I DON'T MEAN TO HOLD -- I DON'T MEAN TO HOLD  
18 YOU TO THE TERM PARTICULARLY?

19 A RIGHT.

20 Q BUT WHATEVER THAT FEE IS, IT'S NOT \$25?

21 A I DON'T RECALL. I DON'T KNOW. BECAUSE I  
22 VERY, VERY, VERY SELDOM THAT I RUN -- I  
23 PERSONALLY -- I NEVER, I NEVER CHARGE ANYBODY  
24 ANYTHING. I PERSONALLY DON'T. I HAVE SEEN JULIANA  
25 FIGHTING WITH CUSTOMERS THAT YOU NEED TO GIVE ME

1           \$25 OTHERWISE I WON'T REPLUG YOU SIMPLY BECAUSE  
2           THAT CUSTOMER IS JUST BAD.

3           Q       THIS MORNING YOU MENTIONED THAT -- EARLIER  
4           THIS MORNING YOU MENTIONED HTAT YOU WOULD FORWARD  
5           ABUSE COMPLAINTS TO THE CUSTOMER AND THAT GENERALLY  
6           THAT WOULD BE THE END OF IT UNLESS THERE WAS SOME  
7           REPETITION?

8           A       RIGHT.

9           Q       WOULD IT BE YOUR PRACTICE TO IMPOSE A PENALTY  
10          IF YOU DID HAVE THAT KIND OF REPETITION?

11          A       EVEN IF WE UNPLUG VERY, VERY, VERY SELDOM DO  
12          WE CHARGE CUSTOMER.

13          Q       ARE THERE SPECIFIC PROCEDURES WHERE YOU WILL  
14          IMPOSE THE PENALTY?

15          A       NOT REALLY.  VERY, VERY DISCRETIONARY.

16          Q       LET ME TRY IT AGAIN.  OTHER THAN FORWARDING  
17          ABUSE COMPLAINTS OR SOMETIMES ASSESSING THAT FEE,  
18          ARE THERE ANY OTHER ACTIONS THAT AKANOC HAS TAKEN  
19          AGAINST ITS CUSTOMERS FOR BREACH OF THE AUP?

20          A       TERMINATING THE CUSTOMER.

21          Q       AND WHAT DOES THAT ENTAIL?  HOW DO YOU  
22          TERMINATE A CUSTOMER?

23          A       UNPLUG.  JUST TELL CUSTOMER WE DON'T WANT YOU  
24          AS A CUSTOMER.

25          Q       YOU SAID UNPLUG.  WHAT DOES THAT MEAN?



1 A UNPLUG MEANING THE FIRST STEP THAT WE DO IS  
2 UNPLUG THE NETWORK CONNECTIONS SO THE SERVER IS NO  
3 LONGER AVAILABLE TO THE NETWORK.

4 Q DO YOU REDIRECT THE IP ADDRESS AT ALL?

5 A NO.

6 Q CAN YOU DO THAT ALSO?

7 A IF WE UNPLUG THE SERVER, THEN IT'S DONE.

8 Q AND THAT CAN BE DONE BY ANY OF THE FIVE CAGE  
9 TECHNICIANS?

10 A YES.

11 Q AND HOW LONG DOES IT TAKE?

12 A WITHIN 30 MINUTES.

13 Q AND TURN YOUR ATTENTION TO THE LAST PAGE  
14 AGREEMENT II VIOLATIONS. DO YOU SEE THAT?

15 A OKAY.

16 Q HAS THAT BEEN A PROVISION IN THE AGREEMENT  
17 SINCE 2004?

18 A SURE.

19 Q AND WHERE IS THE SERVER AGREEMENT PUBLISHED?

20 A ON THE WEB SITE, OUR WEB SITE.

21 Q AND WHICH WEB SITE IS THAT?

22 A AKANOC.COM.

23 Q AND WHEN WAS IT FIRST PUBLISHED ON THAT WEB  
24 SITE?

25 A WE FIRST HAVE COLOALACARTE EARLIER THAN

1           AKANOC.COM, AND IF YOU CLICK ON AKANOC.COM, MOST  
2           LIKELY YOU WILL HIT CHINESE PAGE FIRST AND THEN  
3           WITH THE SELECTION THAT YOU CAN SWITCH IT TO  
4           ENGLISH.

5                        SO AKANOC.COM IS MORE FOR CHINESE  
6           SPEAKING CUSTOMERS. I WOULD SAY THAT AKANOC.COM  
7           PROBABLY SOMEWHERE AROUND 2005, LATER, MIDDLE --  
8           LATER PART OF 2005.

9           Q        AND IT WAS PUBLISHED AT THAT TIME IN BOTH  
10          CHINESE AND ENGLISH?

11         A        YES.

12         Q        AND HAS ARIN EVER MONITORED THE DATA THAT  
13          AKANOC HAS PRESERVED TO ENSURE --

14         A        THEY --

15         Q        -- COMPLIANCE?

16         A        THEY WILL IF WE NEED MORE IP, IF WE APPLY FOR  
17          MORE IP, FOR INSTANCE, LIKE OUR LAST APPLICATION  
18          FOR MORE IP'S WAS TURNED DOWN BECAUSE THEY CANNOT  
19          VERIFY A LOT OF THE CURRENT USAGE.

20         Q        LET ME MARK AS 23 A ONE-PAGE PRINTOUT FROM THE  
21          DEDIWEBHOST.COM WEB SITE AND ASK THE WITNESS TO  
22          TAKE A LOOK AT IT. DO YOU RECOGNIZE THAT?

23         A        YES.

24         Q        AND WHAT IS IT?

25         A        IT SHOULD BE A WEB SITE FROM OUT WEB SITE,

1 DEDIWEBHOST WEB SITE.

2 Q AND WHICH IS CONTROLLED BY AKANOC?

3 A YES.

4 Q AND IN THE FIRST SENTENCE IT SAYS THAT  
5 DEDIWEBHOST.COM IS A LEADING PROVIDER OF WORLD  
6 CLASS DEDICATED HOSTING, COMPLEX MANAGED SOLUTION  
7 IS, ET CETERA?

8 A YES.

9 Q CAN YOU EXPLAIN ME WHAT THE TERM WORLD CLASS  
10 DEDICATED HOSTING COMPLEX MANAGED SOLUTIONS MEAN?

11 A I CAN'T EVEN EXPLAIN IT. I THINK IT'S JUST  
12 ADVERTISEMENT LANGUAGE.

13 Q A LITTLE FURTHER DOWN IN THE SAME IT REFERS TO  
14 NETWORK INFRASTRUCTURE MANAGEMENT. DO YOU SEE  
15 THAT?

16 A YES.

17 Q AND COULD YOU DESCRIBE TO ME WHAT THAT MEANS?

18 A IT'S THE SAME THING. TO US, IT'S JUST WE HAVE  
19 LARGE NETWORK, THAT'S WHAT I CAN SAY. BUT, YOU  
20 KNOW, HOW TO PICK THOSE WORDS TO ADVERTISE THAT, I  
21 DIDN'T MAKE ALL OF THIS STATEMENT MYSELF.

22 Q I'M GOING TO MARK TWO E-MAILS WHICH WERE  
23 RECEIVED YESTERDAY, ONE DATED MARCH 3 AS EXHIBIT 26  
24 AND ONE DATED APRIL 1 AND EXHIBIT 27?

25 A THIS IS 26, RIGHT?

1 Q I'LL ASK YOU FIRST IF YOU YOU'VE EVER SEEN  
2 EITHER OF THOSE E-MAILS BEFORE?

3 A HAVE I SEEN IT?

4 Q YES.

5 A YES.

6 Q DID YOU WRITE THEM?

7 A I THINK SO.

8 Q YOU WROTE BOTH?

9 A I WROTE BOTH OF THESE.

10 Q AND IT HAS SECURITY SS AND?

11 A YES.

12 Q AND WHEN IT SAYS SS IT'S REFERRING TO?

13 A YES.

14 Q AND DOES JULIANA LUK HAVE A DIFFERENT  
15 SIGNATURE LINE?

16 A I THINK MOST OF THE TIME SHE JUST USES  
17 SECURITY. AND SOMETIMES I WOULD JUST USE SECURITY  
18 BUT FOR SOMETHING THAT I WANT TO IDENTIFY, THIS IS  
19 FROM MYSELF I WOULD PUT IN SS.

20 Q AND EARLIER YOU INDICATED THAT IN ADDITION TO  
21 FORWARDING ABUSE REPORTS TO YOUR CUSTOMER YOU COULD  
22 UNPLUG THE SERVER. IS THAT WHAT THESE E-MAILS ARE  
23 REFERRING TO?

24 A YES.

25 Q AND THE TWO E-MAILS ONE SAYS YOUR SERVER HAS

1 BEEN UNPLUGGED AND THE OTHER SAYS IT HAS BEEN  
2 DISABLED.

3 A YES.

4 Q AND DO THEY MEAN DIFFERENT THINGS?

5 A YES.

6 Q OKAY. PLEASE EXPLAIN TO ME WHAT THE  
7 DIFFERENCE IS?

8 A THE SERVER UNPLUGGED IS DISCONNECTING IT  
9 COMPLETELY REGARDLESS OF HOW MANY DIFFERENT IP'S IN  
10 IT. DISABLING AN IP IS MAYBE THIS PARTICULAR  
11 SERVER HAS 20 DIFFERENT IP'S AND I AM ONLY TAKING  
12 DOWN THAT PARTICULAR IP.

13 Q BUT BOTH OF THEM WILL RESULT IN REMOVING  
14 ACCESS TO THE ABUSIVE WEB SITE OR CONTENT OR  
15 WHATEVER?

16 A THAT'S CORRECT.

17 Q THE COMPLAINT IS ABOUT?

18 A THAT'S CORRECT.

19 Q AND HOW LONG ASKING IT TAKE? I THINK EARLIER  
20 YOU SAID YOU COULD UNPLUG THE SERVER IN ABOUT 30  
21 MINUTES; IS THAT RIGHT?

22 A RIGHT.

23 Q HOW LONG DOES IT TAKE YOU TO DISABLE IP?

24 A ABOUT 30 MINUTES. IT DEPENDS ON HOW FAST WE  
25 CAN PROCESS THE INSTRUCTION.

1 Q AND DESCRIBE FOR ME WHAT IS INVOLVED IN  
2 DISABLING THE IP?

3 A SAME THING TO DO THE -- ASSIGNING THE EXTRA IP  
4 AS I WAS EXPLAINING EARLIER. THERE'S ANOTHER  
5 PROCEDURE WE CAN DISABLE OR DE-ASSIGNING THE IP'S  
6 SO THAT'S THE PROCESS.

7 Q SO BASICALLY YOU GO INTO THE INTERFACE AND  
8 MAKE INSTRUCTIONS TO THE ROUTER?

9 A THAT'S CORRECT.

10 Q BUT, FOR EXAMPLE, YOU HAVE DISABLED THE IP.  
11 IF YOU WANT TO REENABLE THE IP, YOU JUST REVERSE  
12 THE SEQUENCE; CORRECT?

13 A THAT MIGHT NOT BE TRUE BECAUSE IF WE RELEASE  
14 AN IP FROM A SERVER, THAT GOES INTO A GENERAL  
15 AVAILABLE POT THAT STORES ALL OF THE IP'S. AND IF  
16 FOR WHATEVER REASON THAT THE IP GETS ASSIGNED TO A  
17 DIFFERENT PLACE, THEN NO LONGER AVAILABLE.

18 Q ASSUMING THE IP IS AVAILABLE?

19 A YES.

20 Q YOU WOULD GO IN AGAIN TO THE INTERFACE AND  
21 MAKE INSTRUCTIONS TO THE ROUTER TO REESTABLISH?

22 A THAT IS CORRECT.

23 Q AND IT WOULD TAKE ABOUT THE SAME AMOUNT OF  
24 TIME AS DISABLING THE IP TOOK?

25 A THAT IS CORRECT.

1 Q NOW, IN CONNECTION WITH THE EXHIBIT 26 REPORT,  
2 WHAT HAPPENED AFTER YOU SENT THIS E-MAIL?

3 A IT'S UNPLUGGED. SO IF IT'S UNPLUGGED, WE WAKE  
4 HIM UP. I MEAN, HE WILL COME BACK TO US. I  
5 REMEMBER THAT HE CAME BACK TO US.

6 Q AND HE CAME BACK TO YOU BY E-MAIL?

7 A YEAH.

8 Q AND WHAT DID HE SAY?

9 A I FORGOT.

10 Q TO YOUR KNOWLEDGE HAS THE SERVER BEEN  
11 UNPLUGGED?

12 A I FORGOT, BUT AT LEAST WE MUST HAVE DONE  
13 SOMETHING TO IT BECAUSE WHEN I PERSONALLY STEP IN  
14 IT NEEDS TO BE RESOLVED.

15 Q IT'S MY UNDERSTANDING THAT THERE WAS A POINT  
16 ON WHICH E-MAIL TRAFFIC STORED ON THE SERVER WAS  
17 LOST; IS THAT CORRECT?

18 A YES.

19 Q AND WHEN DID THAT OCCUR?

20 A SOMEWHERE LATE IN 2006 TO MID -- I REMEMBER,  
21 JUNE, JUNE 15TH WE STARTED A NEW SERVER SO JUNE  
22 15TH OF 2007.

23 Q WHEN YOU SAY YOU STARTED A NEW SERVER, YOU  
24 OPENED UP A NEW BOX ESSENTIALLY?

25 A YES, THAT'S CORRECT.

1 Q AND WAS THERE ANY BACKUP OR OTHER PLACE IN  
2 WHICH E-MAILS CAN WERE LOCATED ON THAT SERVER WERE  
3 STORED AND WERE THERE ANY DUPLICATE COPIES, FOR  
4 EXAMPLE?

5 A NO.

6 Q AND WHEN I RECEIVED AN E-MAIL TYPICALLY  
7 DOWNLOADED FROM A SERVER. THEY MAY BE KEPT ON THE  
8 SERVER BUT ALSO ON THE WORK STATION. DOES IT WORK  
9 THAT WAY AT AKANOC?

10 A NO. YOU'RE ON THE SO-CALLED POP3 SO  
11 EVERYTHING DOWNLOADED TO YOUR WORK STATION. WE'RE  
12 ON IMAP SO THAT'S EVERYTHING KEPT ON THE SERVER  
13 SIDE.

14 Q AND THAT APPLIES WOULD BOTH INCOMING AND  
15 OUTGOING E-MAILS?

16 A YES.

17 Q AND IN BOX AND OUT BOX?

18 A YES.

19 Q AND IS THERE ANY WAY IN WHICH E-MAILS THAT  
20 WERE LOCATED ON THE SERVER CAN BE RESTORED OR  
21 RECOVERED?

22 A I BELIEVE SO. WE DON'T EVEN HAVE THE HARDWARE  
23 ANYMORE.

24 Q WAS THERE AN EFFORT MADE AT THE TIME TO  
25 RECOVER E-MAILS THAT WERE STORED ON THAT SERVER?



1 A PROBABLY SO BUT TO US WE, I MEAN, IT'S NOT  
2 THAT IMPORTANT. I MEAN, WE JUST WANT TO KEEP  
3 THINGS GOING. SO TO A CERTAIN POINT THE TECHNICIAN  
4 JUST DECIDED LET'S MAKE A NEW ONE.

5 Q I WANT TO MARK AS EXHIBIT 1 A SEVEN-PAGE  
6 E-MAIL WHICH INCLUDES AN E-MAIL AN ATTACHMENT, I  
7 BELIEVE, DATED OCTOBER 30TH, 2006. LET ME KNOW IF  
8 YOU HAVE SEEN IT BEFORE?

9 A I HAVE NO --

10 Q NO RECOLLECTION?

11 A YEAH, NO IMPRESSIONS WHATSOEVER.

12 Q AT THE TOP OF THE PAGE YOU'LL SEE AN E-MAIL  
13 ADDRESS THAT SAYS ABUSE@AKANOC.COM. DO YOU SEE  
14 THAT?

15 A YES.

16 Q AND IS THAT THE ABUSE MAILBOX AT AKANOC?

17 A YES, IT SHOULD BE.

18 Q AND YOU HAVE NO REASON TO QUESTION ONE WAY OR  
19 THE OTHER WHETHER OR NOT THIS E-MAIL WAS RECEIVED  
20 ON OR ABOUT THE DATE IT BEARS?

21 A YEAH.

22 Q I STAND CORRECTED. IT'S ACTUALLY DATED  
23 JANUARY 17TH, 2007 AND IT HAS THE WORD REMINDER.  
24 DO YOU SEE THAT?

25 A YES.

1 Q AND BENEATH THAT THE SAME E-MAIL ADDRESS AND  
2 THEN THE OCTOBER 30TH, 2006. DO YOU SEE THAT?

3 A YES.

4 Q AND IT APPEARS TO BE A FOLLOW-UP ON THE  
5 EARLIER E-MAIL, IS THAT THE WAY YOU READ IT?

6 A YES.

7 Q AND DO YOU HAVE ANY REASON TO DOUBT THAT THESE  
8 E-MAILS WERE RECEIVED ON OR ABOUT THESE TWO DATES?

9 A I HAVE NO RECOLLECTION WHATSOEVER.

10 Q ASSUMING FOR THE MOMENT THAT YOU GOT THE  
11 FOLLOW UP ON JANUARY 17 REFERRING TO THE EARLIER  
12 REPORT DATED OCTOBER 30TH, HOW WOULD IT BE HANDLED?

13 A IF IT'S THAT TYPE OF GAP BETWEEN -- WE  
14 PROBABLY JUST DEAL WITH IT AS A NEW ABUSE  
15 COMPLAINT.

16 Q DO YOU LOOK TO SEE WHETHER OR NOT IT WAS  
17 HOSTED AT THE SAME IP AS THE ORIGINAL COMPLAINT?

18 A WE -- I DON'T SEE ANY POSSIBILITY THAT WE  
19 REMEMBER THAT IT'S OCTOBER ABUSE AND THEN COME INTO  
20 JANUARY AND WE STILL DEAL WITH IT AS AN OLD CASE  
21 THAT WE NEED TO -- WE DEAL WITH IT AS FOLLOW-UP  
22 RATHER THAN A NEW ABUSE ISSUE.

23 Q OH, YOU DO DEAL WITH IT AS A FOLLOW-UP?

24 A NO. IN THIS TYPE OF TIME SPAN, I MEAN, I  
25 DON'T THINK THAT EITHER MYSELF, OR JULIANA WOULD

1 REMEMBER THAT THIS IS AN ONGOING CASE.

2 Q EVEN THOUGH IT'S ATTACHED TO YOUR EARLIER  
3 CORRESPONDENCE?

4 A THERE'S NO WAY THAT WE WOULD READ EVERY SINGLE  
5 E-MAIL COMING IN LIKE THIS.

6 THERE ARE WAY TOO MUCH TO READ.

7 Q SO IS THERE A PARTICULAR TIMEFRAME DURING  
8 WHICH YOU WOULD TREAT IT AS A FOLLOW-UP INSTEAD OF  
9 A NEW COMPLAINT?

10 A PROBABLY WITHIN, I THINK, FIVE DAYS.

11 Q SO ANYTHING MORE THAN ABOUT A WEEK ROUGHLY YOU  
12 TREAT AS A NEW COMPLAINT?

13 A YEAH.

14 Q AND YOU WOULD SIMPLY FORWARD IT ON TO THE  
15 CUSTOMER AS YOU DID THE ORIGINAL COMPLAINT?

16 A YES.

17 Q WERE YOU AWARE OR FAMILIAR WITH LOUIS VUITTON  
18 BEFORE OCTOBER OF 2006? HAD YOU EVER HEARD OF IT?

19 A JUST A FASHION BRAND?

20 Q MARK EXHIBIT 2. DO YOU RECOGNIZE THAT  
21 DOCUMENT THAT I HAVE HANDED YOU AS EXHIBIT 2 DATED  
22 FEBRUARY 9, 2007?

23 A YES.

24 Q AND WHEN DID YOU FIRST SEE IT?

25 A OH, I MEAN, WHEN DID I FIRST SEE IT? I HAVE

1 NO RECOLLECTION.

2 Q OKAY. AGAIN, THE ABUSE@AKANOC.COM IS THE LINK  
3 TO THE E-MAIL TO WHICH ABUSE COMPLAINTS WERE  
4 DIRECTED AT AKANOC?

5 A YES.

6 Q AND THAT WAS A MAILBOX HANDLED EITHER BY YOU  
7 OR JULIANA LUK --

8 A YES.

9 Q -- AT THAT TIME.

10 AND THE ADDRESS AT THE TOP OF THE PAGE  
11 THE 45535 NORTHPORT LOOP. IS THAT THE ADDRESS FOR  
12 AKANOC SOLUTIONS?

13 A THAT IS CORRECT.

14 Q AND DOES AKANOC SOLUTIONS RECEIVE INFRINGEMENT  
15 NOTICES BY POST AS OPPOSED TO E-MAIL?

16 A VERY SELDOM.

17 Q AND ARE THOSE MAINTAINED BY AKANOC? ARE THOSE  
18 KEPT?

19 A WE HAD A PERIOD OF TIME I WOULD SAY STARTING  
20 JULY 2006 WE WERE MERGING TWO DATA CENTERS TOGETHER  
21 BECAUSE THE OTHER DATA CENTER LEASE IS UP AND WE  
22 DECIDED TO MERGE IT TOGETHER. AND AT THE SAME TIME  
23 WE ARE GRADUALLY LOSING BUSINESS TO MANAGED.COM ALL  
24 OF THE WAY TO FEBRUARY TO APRIL, SOMEWHERE AROUND  
25 THERE, THAT MANAGED.COM WAS SOLD TO WEBHOSTPLUS AND

1           THEY MADE A PHYSICAL MOVE FROM EVERYTHING OUT FROM  
2           US.

3                         SO WE -- DURING THE WHOLE PERIOD OF TIME  
4           THE COMPANY IS MORE OR LESS IN TURMOIL BECAUSE  
5           WE'RE LOSING BUSINESS. WE'RE HAVING A LOT OF  
6           OVERHEAD EXPENSE AND THINGS LIKE THAT.

7                         AT THE TIME WE WERE LOSING -- WE WERE  
8           ALSO LOSING STAFFS, INTERNAL STAFFS WHO I THINK AT  
9           THE TIME THERE WERE JOE, THERE WAS CHI, AND THERE  
10          WAS SOME OTHER PERSON THAT WAS ACTUALLY HANDLING  
11          MAILS.

12                        SO FOR THAT PERIOD OF TIME THERE WERE  
13          MAILS THAT GETS IN, RECEIVED BY -- YOU KNOW, WE HAD  
14          THE SECOND FLOOR. SO THE FIRST FLOOR HAS A GENERAL  
15          RECEPTIONIST.

16                        SHE MAY HAVE RECEIVED A LETTER AND SIGNED  
17          UP FOR THAT. AND THEN EVENTUALLY IT'S DELIVERED TO  
18          UPSTAIRS AND THEN IT MIGHT SIT ON A DESK AND  
19          WHATNOT.

20                        SO I THINK THAT WAS THE TIME THAT A LOT  
21          OF MAIL WAS NOT EVEN BEING OPENED, NOBODY REALLY  
22          PAID ATTENTION TO IT.

23          Q         THAT'S NOT TRUE OF E-MAIL, THOUGH. THAT'S  
24          JUST HARD COPY MAIL?

25          A         YES, THAT'S CORRECT.

1 Q AND THE PERIOD YOU'RE TALKING ABOUT IS THE  
2 FALL OF 2006?

3 A TO THE MIDDLE OF, I WOULD SAY, ABOUT JULY,  
4 AUGUST TIMEFRAME BECAUSE I REMEMBER THAT AUGUST OF  
5 2006 THAT WAS THE LEASE UP, SO WE WERE MOVING -- AM  
6 I RIGHT? 2003, '4, '5, '6? YES, 2006. THAT WAS  
7 THE TIME THAT WE WERE MOVING AND EVERYTHING.

8 Q AND UNTIL WHEN?

9 A TO I THINK IT'S APRIL, MARCH, OR APRIL THAT  
10 WEBHOSTPLUS MOVED EVERYTHING OUT.

11 Q AND THAT WAS MARCH OR APRIL OF 2007?

12 A THAT'S CORRECT.

13 Q AND THE HANDLING OF HARD COPY CORRESPONDENCE  
14 OF WHAT YOU DESCRIBED, THAT WOULD APPLY EVEN IF IT  
15 CAME BY SOME KIND OF COURIER LIKE FEDERAL EXPRESS  
16 OR DHL; IS THAT RIGHT?

17 A YES, AT THE TIME.

18 Q AND THE PROCEDURE FOR RESPONDING TO A NOTICE  
19 OF INFRINGEMENT LIKE THE ONE EVIDENCED BY EXHIBIT 2  
20 IS THE SAME AS YOU HAVE ALREADY DESCRIBED WITH  
21 RESPECT TO EXHIBIT 1?

22 A YES.

23 Q AND DO YOU EVER HAVE A PRACTICE OF APPLYING TO  
24 INDIVIDUALS OR COMPANIES THAT SEND ABUSE COMPLAINTS  
25 LIKE THOSE EVIDENCED BY EXHIBITS 1 OR 2?

1 A VERY SELDOM. VERY SELDOM.

2 Q I'LL MARK AS 3 A LETTER DATED FEBRUARY 19TH.  
3 HAVE YOU SEEN THAT BEFORE?

4 A NO, NOT -- I DON'T HAVE ANY RECOLLECTION.

5 Q IS THERE ANY WAY THAT YOU COULD DETERMINE  
6 WHETHER OR NOT AKANOC RECEIVED THAT CORRESPONDENCE  
7 ON OR ABOUT THE DATE IT BEARS?

8 A NO.

9 Q NOW, ON THIS PARTICULAR ONE IT SAYS UP IN THE  
10 TOP BY EXPRESS MAIL? DO YOU SEE THAT?

11 A YES.

12 Q BUT CONSISTENT WITH WHAT YOU SAID BEFORE, THIS  
13 WAS DURING A PERIOD OF TURMOIL AT THE COMPANY --

14 A YES.

15 Q -- AND SO THERE WAS NOBODY LOOKING AT THE  
16 MAIL; IS THAT RIGHT?

17 A THAT'S MOST LIKELY TRUE.

18 Q AND WHAT HAPPENED TO THE MAIL THAT WAS  
19 RECEIVED DURING THAT TIMEFRAME?

20 A THERE WAS A DESK THAT HAD ONE OF THE GIRLS  
21 USED TO SIT AND EVERYTHING JUST PILED UP THERE.

22 Q WAS IT EVER OPENED OR FILED AWAY? WHAT WAS  
23 DONE WITH IT?

24 A I DON'T RECALL. SOME COMES IN AS A LETTER  
25 FORM. IT MAY HAVE OPENED BY SOMEBODY THAT JUST

1 WANT TO, WANT TO KNOW WHERE TO PUT IT. BUT ONCE IT  
2 SITS ON THAT DESK, THEN IT'S VIRTUALLY NOBODY  
3 WATCHING IT.

4 Q MARK AS 4 A LETTER DATED FEBRUARY 21, 2007.

5 A SAME THING, I HAVE NO RECOLLECTION.

6 Q AND DOES AKANOC OPERATE AN E-MAIL ADDRESS  
7 INFO@AKANOC.COM?

8 A IT SHOULD.

9 Q AND WHO IS RESPONSIBLE FOR LOOKING AT THE  
10 CONTENTS OF THAT MAILBOX?

11 A INFO WOULD -- I THINK INFO WAS FORWARDED TO  
12 SALES@AKANOC.

13 Q THAT WOULD BE WILL LONE?

14 A WILL LONE.

15 Q AND AGAIN, THE DATE OF THIS LETTER IS AT A  
16 TIME WHEN THE COMPANY WAS IN SOME TURMOIL?

17 A YES.

18 Q AND CONCERNING THE RECEIPT OF HARD COPY  
19 CORRESPONDENCE?

20 A YES, THAT'S CORRECT.

21 Q AND DO YOU HAVE ANY UNDERSTANDING OF WHAT WILL  
22 LONE WOULD DO WITH SUCH CORRESPONDENCE, HAD HE  
23 RECEIVED, ON FEBRUARY 21, 2007?

24 A IF THE E-MAIL ISSUE -- IF IT'S A SECURITY OR  
25 ABUSE CONCERN, THEN HE WOULD JUST FORWARD IT.



1 Q WOULD HE FORWARD IT TO THE CUSTOMER OR TO  
2 JULIANA LUK FOR HANDLING?

3 A FORWARD IT TO SECURITY@AKANOC.

4 Q AND DO YOU HAVE ANY REASON TO DISPUTE THAT ANY  
5 OF THE LETTERS MARKED AS EXHIBITS 1, 2, 3, AND 4  
6 WERE AT ANY TIME RECEIVED BY AKANOC?

7 A I JUST NEVER SEEN IT.

8 Q BUT DO YOU HAVE ANY REASON TO DISPUTE IT THAT  
9 THEY WERE ACTUALLY RECEIVED?

10 A NO.

11 Q AND DO YOU HAVE ANY REASON TO DISPUTE THAT THE  
12 SITES REFERRED TO IN THOSE LETTERS WERE IN FACT  
13 HOSTED ON SERVERS AT AKANOC'S FACILITY?

14 A WE -- I DEFINITELY HAVE NO IDEA WHERE THOSE  
15 WEB SITES POINTED TO AT THAT TIME.

16 Q I'LL MARK AS 6 A LETTER DATED APRIL 20, 2007  
17 AND ASK THE WITNESS IF HE HAS SEEN THAT.

18 A I HAVE NO RECOLLECTION OF THIS.

19 Q AND WOULD YOU HAVE ANY WAY OF DETERMINING  
20 WHETHER OR NOT THIS LETTER WAS, IN FACT, RECEIVED  
21 BY YOU ON OR ABOUT THE DATED IT BEARS?

22 A I REMEMBER I RECEIVED ONE OF THIS FROM YOUR  
23 OFFICE AND I TOOK IT TO THE OFFICE AND SINCE IT'S  
24 CONCERNING AKANOC, SO I PRETTY MUCH JUST PUT IT IN  
25 THE PILE.

1 Q SO WHEN YOU SAY YOU TOOK IT TO THE OFFICE,  
2 THAT'S BECAUSE THE ONONDAGA DRIVE S IS YOUR HOME  
3 ADDRESS?

4 A THAT'S CORRECT.

5 Q AND SO DO YOU RECALL RECEIVING A LETTER AT  
6 YOUR HOME?

7 A YES.

8 Q CONCERNING LOUIS VUITTON?

9 A YES.

10 Q WHEN YOU SAY YOU TOOK IT TO YOUR OFFICE AND  
11 PUT IT ON A PILE, WHAT DOES THAT MEAN?

12 A I MEAN PUT IT ON THE DESK.

13 Q WHOSE DESK?

14 A THAT PARTICULAR -- THAT EMPTY DESK I WAS  
15 TALKING ABOUT BECAUSE THAT WAS, AT THE TIME THAT  
16 WAS THE PLACE THAT WE PUT ALL OF THIS TYPE OF  
17 LETTERS.

18 Q AND TO YOUR KNOWLEDGE WHAT HAPPENED WITH THE  
19 LETTER AFTER YOU PUT IT ON THE DESK?

20 A THERE WERE -- THERE WERE TOO MANY PEOPLE  
21 TRYING TO SHARE THE WORKLOAD OVER THERE SO I HAVE  
22 NO IDEA.

23 Q OKAY. TO THE EXTENT THAT I UNDERSTAND THAT  
24 YOU CAN'T SAY WHAT HAPPENED WITH THIS LETTER, BUT  
25 IN TERMS OF AKANOC'S POLICIES AND PROCEDURES, WHAT

1 SHOULD HAVE HAPPENED WITH THE LETTER AFTER IT WAS  
2 PUT ON THE DESK?

3 A WE -- VERY, VERY SELDOM THAT WE RECEIVE  
4 COMPLAINT THROUGH E-MAIL, I MEAN, THROUGH REGULAR  
5 MAILS. SO MOST OF THE ABUSE ISSUES WERE ALL  
6 REVOLVED IN THE E-MAIL FORMAT. SO THIS TYPE OF  
7 E-MAILS -- I MEAN, THROUGH REGULAR MAILS -- I MEAN,  
8 LETTERS ACTUALLY SOMETHING FROM, LIKE, THINGS LIKE  
9 SUBPOENA WE NEED TO RESPOND, OR SOMETHING LIKE COME  
10 IN FROM LEGAL AUTHORITY, WE NEED TO RESPOND. BUT  
11 GENERAL COMPLAINTS, WE JUST DON'T HAVE A LOT OF  
12 EXPERIENCE WITH IT AND WE DON'T HAVE ANY MECHANISM  
13 TO TAKE CARE OF LETTER COMPLAINTS.

14 Q SO THERE WAS NO REAL POLICY TO HANDLE --

15 THE COURT: LET ME INTERRUPT YOU. IT  
16 DIDN'T SOUND YOU WERE GOING TO FINISH IN A MINUTE  
17 OR TWO AND YOU PROMISED US AN HOUR AND WE'VE BEEN  
18 GOING FOR ABOUT 45 MINUTES.

19 LET'S TAKE A LUNCH BREAK, AND WE'LL COME  
20 BACK AT 1:00 O'CLOCK.

21 (WHEREUPON, THE LUNCH RECESS WAS TAKEN.)  
22  
23  
24  
25

1 **AFTERNOON SESSION**

2 (WHEREUPON, THE FOLLOWING PROCEEDINGS WERE  
3 HELD IN OPEN COURT OFF THE RECORD:)

4 THE COURT: READY TO RESUME?

5 MR. COOMBS: YES, YOUR HONOR.

6 THE COURT: HOW MUCH MORE?

7 MR. COOMBS: FIFTEEN TO TWENTY MINUTES.  
8 I'VE READ IT MORE TIMES.

9 THE COURT: I KNOW THAT YOU'RE EDITING,  
10 BUT YOU HAVE TO PAY ATTENTION THAT THERE ARE HUMAN  
11 BEINGS ON THE OTHER SIDE OF THIS PROCESS. SO  
12 SUMMON THE JURY.

13 (WHEREUPON, THE FOLLOWING PROCEEDINGS  
14 WERE HELD IN THE PRESENCE OF THE JURY:)

15 THE COURT: VERY WELL. YOU MAY RESUME --  
16 YOU MIGHT REMIND US ALL WHERE YOU ARE IN THIS  
17 PROCESS.

18 MR. COOMBS: I AM ALMOST FINISHED WITH  
19 THE FIRST PORTION OF MR. CHEN'S DEPOSITION AS A  
20 REPRESENTATIVE OF AKANOC SOLUTIONS WHICH WAS TAKEN  
21 ON APRIL 8, 2008, AND I THINK EVERYBODY WILL BE  
22 HAPPY TO KNOW THAT THE PORTION FROM THE FOLLOWING  
23 DAY WHERE HE WAS THE REPRESENTATIVE FOR MANAGEMENT  
24 SOLUTIONS WAS CONSIDERABLY SHORTER.

25 THE COURT: VERY WELL.

1 BY MR. COOMBS:

2 Q WHEN DID IT, AKANOC, HAVE A FIRST DESIGNATED  
3 AGENT WITH THE COPYRIGHT OFFICE? LOOKING AT PAGE  
4 111, LINE 11.

5 A END OF LAST YEAR.

6 Q WE'LL MARK NUMBER 7 ANOTHER LETTER DATED  
7 NOVEMBER 26TH, 2007. HAVE YOU SEEN THAT BEFORE?

8 A IT CAME IN THROUGH MY ATTORNEY'S E-MAIL SO  
9 THAT'S WHAT I GOT INSTEAD OF MAIL.

10 Q CAN YOU TELL ME WHAT, IF ANYTHING, AKANOC DID  
11 IN RESPONSE TO RECEIPT OF THIS LETTER FROM YOUR  
12 ATTORNEY?

13 A WE WENT THROUGH ALL OF THESE WEB SITES, AND WE  
14 SENT NOTICE TO THE CUSTOMER.

15 Q OKAY. AND DO YOU REMEMBER HOW MANY NOTICES  
16 YOU SENT OUT IN RESPONSE TO THIS LETTER?

17 A I DON'T RECALL. PROBABLY HALF OF IT. THERE  
18 WERE A BUNCH THAT'S NOT EVEN IN OUR IP RANGE, AND  
19 THERE WERE A FEW THAT IS NOT EVEN OPERATIONAL.

20 Q THE ONES THAT YOU WOULD SAY WERE NOT IN YOUR  
21 IP RANGE, DO YOU KNOW WHETHER THEY WERE WITHIN YOUR  
22 IP RANGE AT ANY TIME?

23 A NO.

24 Q DO YOU HAVE ANY WAY OF DETERMINING WHETHER  
25 THEY WERE WITHIN YOUR IP RANGE AT ANY TIME?

1 A NO.

2 Q DID YOU -- WITH RESPECT TO THE 50 PERCENT,  
3 ROUGHLY, THAT YOU DID SEND NOTICES, DID YOU SEND  
4 THE SAME KIND OF NOTICE YOU NORMALLY SEND IN  
5 RESPONSE TO INFRINGEMENT? DO YOU REMEMBER WHAT  
6 KIND OF NOTICE YOU SENT?

7 A I THINK IT'S, YEAH, JUST STANDARD FORMAT.

8 Q WHEN YOU SAY STANDARD FORMAT, THAT'S A  
9 "DEAR VALUED CUSTOMER, A COMPLAINT HAS BEEN  
10 RECEIVED, PLEASE HANDLE" NOTICE?

11 A NO. I THINK FOR THIS PARTICULAR BATCH WE  
12 START USING COUNTERFEIT PRODUCT WEB SITES, YOU  
13 KNOW, SPECIFICALLY DEAL WITH COUNTERFEIT PRODUCT  
14 WEB SITES BECAUSE THIS IS NOT LIKE STANDARD E-MAIL  
15 THAT COMES IN THAT WE CAN FORWARD IT OUT.

16 Q MARK AS 8 A ONE-PAGE E-MAIL FROM SECURITY TO  
17 NORAQ DATED NOVEMBER 29. IS THAT AN E-MAIL THAT  
18 YOU PREPARED?

19 A YES.

20 Q AND SENT ON OR ABOUT THE DATE IT BEARS?

21 A YES.

22 Q AND NORAQ I THINK YOU IDENTIFIED AS ONE OF THE  
23 RESELLERS THAT IS A CUSTOMER OF AKANOC; IS THAT  
24 CORRECT?

25 A THAT IS CORRECT.

1 Q AND THIS WAS THE FORM OR NOTIFICATION THAT WAS  
2 SENT OUT IN RESPONSE TO DOMAIN NAMES IN EXHIBIT 7?

3 A YES. ACTUALLY THIS IS THE FIRST GENERATION  
4 THAT I PRETTY MUCH JUST USE THE SAME FORMAT, FILL  
5 IN THE IP ADDRESS AND THE WEB SITE SO THEY CAN WORK  
6 ON IT. AND THEN THE SECOND GENERATION I WILL HAVE  
7 A DOMAIN NAME IN THE SUBJECT LINE ITSELF.

8 Q SO WHEN YOU SAY FIRST GENERATION, YOU HAVE PUT  
9 THE WEB SITE NAME IN THE BODY OF THE E-MAIL BUT IN  
10 THE SECOND GENERATION YOU ALSO PUT IT IN THE  
11 SUBJECT LINE?

12 A YES, THAT'S CORRECT.

13 Q AND THIS HAS THAT 12 HOURS FINALS NOTICE IN  
14 THE SUBJECT HEADER WE TALKED ABOUT EARLIER?

15 A YES. YES.

16 Q AND SO WHAT, IF ANYTHING, DID YOU DO WITH THE  
17 REPORT CONCERNING WATCHNREPLICA.COM AFTER SENDING  
18 OUT THE E-MAIL WE MARKED AS EXHIBIT A?

19 A I FORGOT ABOUT THIS PARTICULAR BATCH BECAUSE  
20 MORE OR LESS THIS IS A BIG GROUP, AND I DID IT IN A  
21 RUSH. I CHECKED, PINGED ALL OF THE ADDRESSES AND  
22 WHATEVER THAT NEED TO SENT, I SENT IT OUT AND  
23 WHENEVER THAT IS NOT WORKING, THEN I DON'T -- I  
24 JUST DON'T SEND.

25 AND AT THAT PARTICULAR TIME I WAS

1 PREPARING A LOT OF DOCUMENTS FOR MR. LOW AND HIS  
2 ASSOCIATE SO I DON'T QUITE RECALL HOW MUCH ACTUAL  
3 FOLLOW-UP WORK I HAD DONE TO THIS BATCH. BUT I DID  
4 RECALL THAT A FEW OF THE RESELLERS CAME BACK, RIGHT  
5 AWAY I WAS COMMUNICATING WITH THEM AND I THINK IT'S  
6 ALL IN THE E-MAIL LOG.

7 Q AND DO YOU NORMALLY PING THE DOMAIN NAME IN  
8 RESPONSE TO AN INFRINGEMENT NOTICE?

9 A YES. IF THE COMPLAINT COMES IN WITHOUT AN IP  
10 ADDRESS ASSOCIATED TO IT, THEN I NEED TO PING IT.

11 THE COURT: CAN I JUST INTERRUPT JUST  
12 BRIEFLY. THE WORDING GOES OFF OF OUR SCREEN. I  
13 DON'T KNOW IF YOU SEE THAT ON YOUR COMPUTERS, BUT  
14 IN ORDER TO REDUCE IT, YOU MIGHT REDUCE IT ONE STEP  
15 SO WE CAN SEE THE ENTIRE LANGUAGE.

16 THERE. SO IT'S EITHER THAT OR TOO MUCH.  
17 YOU CAN'T DO IT -- IT FILLS THE SCREEN BUT IT DOES  
18 NOT GO BEYOND IT. THAT'S AT 78 PERCENT. WHEN YOU  
19 PUT IT UP IT WAS LIKE 125. WHEN YOU PUT IT UP --

20 MS. WANG: YES, YOUR HONOR, I'VE BEEN  
21 LOOKING AT THE JURY AND THE PEOPLE IN THE BACK ARE  
22 LEANING FORWARD, BUT I'VE BEEN TRYING TO MAKE IT  
23 BIGGER.

24 THE COURT: BIG IS GOOD BUT IF THE WORDS  
25 ARE NOT CUT OFF, THAT'S WHY I WAS SUGGESTING 125



1 THE SENTENCE WAS GONE. TRY 120.

2 NOW, SLIDE IT OVER.

3 GO AHEAD, COUNSEL.

4 BY MR. COOMBS:

5 Q AND DO YOU DO THAT AS A FOLLOW-UP AS WELL?  
6 THIS APPEARS TO HAVE BEEN PICKED AFTER THE ORIGINAL  
7 NOTICE WAS SENT; CORRECT?

8 A I REMEMBER -- NO, I DON'T KNOW WHY I VERIFIED  
9 THIS BUT AT LEAST I KNOW THAT, THAT THE FIRST TIME  
10 -- OKAY, ON THE NOVEMBER 26 NOTICE, I DID HAVE A  
11 LOG TO ALL OF THE DOMAIN NAME AND IP ADDRESS AND  
12 THEN ALSO WHETHER THEY'RE FUNCTIONAL OR NOT.

13 SO THEN SOME TIME IN DECEMBER IF I NEED  
14 TO DOUBLE-CHECK, I KNOW WHETHER THEY'RE IN THE SAME  
15 IP ADDRESS OR NOT.

16 AND SO AT THAT TIME IF THE IP ADDRESS IS  
17 NOT IN THE SAME -- THE ORIGINAL IP ADDRESS BUT THEN  
18 MOVE TO A DIFFERENT IP ADDRESS BUT STILL ASSOCIATE  
19 TO THE SAME SERVER, THEN I KNOW THAT THEY ARE  
20 MOVING IP ADDRESS.

21 Q EARLIER YOU TESTIFIED THAT IF YOU RECEIVED A  
22 FOLLOW-UP MORE THAN APPROXIMATELY ONE WEEK AFTER  
23 THE ORIGINAL REPORT, YOU TREATED IT AS A NEW  
24 MATTER; IS THAT CORRECT?

25 A WELL, IT'S NOT A PROCEDURE PER SE. IT'S JUST

1 THAT IF IT COMES IN WITHIN A VERY SHORT PERIOD OF  
2 TIME, THREE TO FIVE DAYS, WE STILL CAN MEMORIZE  
3 THAT, HEY, YOU KNOW, IT'S THE SAME THING. IT'S NOT  
4 A SPECIFIC PROCEDURE THAT WE CREATE A LOG THAT WE  
5 ALWAYS LOOK AT IT.

6 Q WAS THERE A POINT AT WHICH THE PROCEDURE  
7 CHANGED AND YOU WERE -- YOU WOULD FOLLOW UP AS  
8 OPPOSED TO HANDLE IT AS A MATTER EVEN THOUGH THE  
9 REPORT CAME IN LATER THAN THE FIVE DAYS?

10 A NO.

11 Q DO YOU EVER DO ANYTHING OTHER THAN A  
12 DDOS-PROMPT PING TO CONFIRM WHETHER A WEB SITE IS  
13 HOSTED AT AN IP ADDRESS ASSIGNED TO ONE OF YOUR  
14 CUSTOMERS?

15 A NO.

16 Q IF YOUR PING RESULTS IN EITHER AN INACTIVE  
17 SITE OR A RESULT DIFFERENT FROM BEING HOSTED BY ONE  
18 OF YOUR CUSTOMER'S IP ADDRESSES OR THROUGH ONE OF  
19 YOUR CUSTOMER'S IP ADDRESSES, DO YOU EVER GO BACK  
20 LATER TO SEE WHETHER THAT INFORMATION IS CHANGED?

21 A NO.

22 Q DO YOU HAVE AN UNDERSTANDING WHY IN  
23 RESEARCHING A WEB SITE WHICH APPEARS TO BE HOSTED  
24 THROUGH AN IP ADDRESS ASSIGNED TO AKANOC, IT WOULD  
25 APPEAR THAT THE SERVER WAS LOCATED OTHER THAN

1 CALIFORNIA?

2 A I LOST YOUR QUESTION.

3 Q YOU UNDERSTAND THAT THERE ARE TOOLS WHERE YOU  
4 CAN TRY TO LOCATE THE SERVER WHERE A PARTICULAR WEB  
5 SITE IS HOSTED. DO YOU -- ARE YOU FAMILIAR WITH  
6 THAT PROCESS?

7 A OKAY. THE ONLY THING I NOTICE, PING IT. IF  
8 YOU PING IT, WHERE IT LANDS IS THERE. THERE MIGHT  
9 BE A SITUATION WHERE YOU PING A PARTICULAR ADDRESS  
10 BUT THEN ACTUALLY THAT ADDRESS IS BEING USED AS A  
11 PROXY. SO IT WILL SHOW PRESENCE HERE BUT ACTUALLY  
12 CONTENT IS HERE. BUT THAT'S NONE OF MY BUSINESS.

13 Q SO YOUR CUSTOMERS MAY SERVE AS PROXIES FOR  
14 OTHER LOCATIONS? AND IS THAT A POSSIBLE USE OF  
15 CAPACITY ASSIGNED BY AKANOC?

16 A TECHNICALLY IT'S POSSIBLE. WHETHER THEY ARE  
17 IN THAT TYPE OF BUSINESS OR NOT, I DON'T KNOW.

18 Q MARK AS 28 A TWO-PAGE DOCUMENT ACCEPTABLE USE  
19 POLICY.

20 TAKE A LOOK AT THAT. IS THAT AKANOC --

21 A IT LOOKS LIKE THIS IS FOR COLOALACARTE.

22 Q IS THAT ANY DIFFERENT FROM THE ACCEPTABLE USE  
23 POLICY FOR DEDIWEBHOST?

24 A PROBABLY NOT.

25 Q HAD AKANOC OR ITS BRANDS HAD A DIFFERENT

1 ACCEPTABLE USE POLICY AT ANY TIME?

2 A PROBABLY NOT.

3 Q DO YOU REMEMBER WHEN THE USE POLICY WAS FIRST  
4 PUBLISHED BY AKANOC OR DEDIWEBHOST OR COLOALACARTE?

5 A 2005.

6 Q AND IT WAS PUBLISHED ON THE WEB SITE?

7 A YES.

8 Q AND IT WAS PUBLISHED ON THE AKANOC WEB SITE?

9 A YES.

10 Q AND IN BOTH ENGLISH AND CHINESE?

11 A THAT'S CORRECT.

12 Q MARK AS EXHIBIT 30 A TWO-PAGE E-MAIL DATED  
13 NOVEMBER 29, 2007. SO THIS APPEARS TO BE AN E-MAIL  
14 EXCHANGE INVOLVING SECURITY@AKANOC.COM ON THE ONE  
15 PART; IS THAT CORRECT?

16 A I DON'T THINK THIS IS SECURITY. I THINK THIS  
17 IS WILL AND -- OH, OKAY. YES, THIS IS SECURITY.  
18 YES.

19 Q AND IS THAT ZHXIANGTNK@163.COM, THAT'S THE  
20 CUSTOMER?

21 A YES.

22 Q AND AT THE BEGINNING OF THE EXCHANGE THERE'S A  
23 REQUEST FOR LOGGING INFORMATION; IS THAT CORRECT?

24 A YES.

25 Q AND THIS IS A REQUEST THAT YOU MADE OR SOMEONE

1 ELSE MADE FROM THE SECURITY MAILBOX?

2 A MOST LIKELY MYSELF.

3 Q AND DOES THAT REFRESH YOUR RECOLLECTION AS TO  
4 WHETHER OR NOT AKANOC HAS ADOPTED A POLICY OF  
5 INSPECTING WEB SITES BEFORE REPLUGGING OR  
6 REACTIVATING SERVICE?

7 A YES, THIS IS A DIFFERENT TYPE OF ISSUE.

8 IF YOU GO DOWN, YOU KNOW, BEGINNING OF  
9 THE E-MAIL, BASICALLY IT SAYS THAT IT WAS A DDOS --  
10 WE HAD A POLICY THAT IF A PARTICULAR SERVER GETS  
11 DDOS, MEANING THAT HUGE INBOUND TRAFFIC JUST DID  
12 NOT TRY TO BLOCK THE WHOLE NETWORK, THERE'S  
13 CONTENTS ASSOCIATE TO THAT TYPE OF DDOS. OKAY?

14 Q WHEN YOU SAY DDOS IN THAT CONTEXT, YOU'RE  
15 TALKING ABOUT DENIAL OF SERVICE?

16 A YES, THAT'S CORRECT. AND BASICALLY WE FOUND  
17 THAT JUST CHINA POLICE, THAT THEY DON'T LIKE TO SEE  
18 ADULT WEB SITES, YOU KNOW, GOING -- SERVICING THE  
19 CHINESE CUSTOMER BASE.

20 SO IF THEY FIND ANYTHING THAT IS ADULT  
21 CONTENT BASED THEN THEY WOULD DDOS IT AND TO LET AN  
22 ISP LIKE OURSELVES FEEL THE PAIN PER SE AND  
23 EVENTUALLY KICK EVERYBODY OUT.

24 SO WE FIRST HAD A POLICY THAT IF CUSTOMER  
25 RENTED SERVICE GETS DDOS'D WE STOP IT FOR TEN DAYS.

1                   BUT THEN CUSTOMER SAYS, WELL, I MEAN, WE  
2 GET DDOS, WE DON'T KNOW WHY. YOU KNOW, IT'S NOT  
3 ADULT CONTENT.

4                   AND THEN SOMETIMES WHEN WE REPLUG IT AND  
5 THEN, YOU KNOW, DDOS AGAIN. SO WE HAVE THIS  
6 PARTICULAR POLICY THAT IF IT'S BEING DDOS'D, IF THE  
7 CUSTOMER CLAIM IS NOT ADULT SITE, WE WANT TO BE  
8 SURE.

9           Q       AND YOU'RE SURE BY OBTAINING LOG-IN  
10 INFORMATION TO ALLOW YOU TO ACCESS THE WEB SITE  
11 THAT HAS BEEN ACCUSED OF HOSTING THE CONTENT?

12           A       THAT IS CORRECT, IF THEY STILL WANT THE  
13 SERVER.

14           Q       HAVE YOU EVER HAD A CUSTOMER REFUSE TO GIVE  
15 YOU THAT LOG-IN INFORMATION --

16           A       YES.

17           Q       -- UPON REQUEST?

18           A       YES.

19           Q       AND WHAT HAPPENS IN THAT CASE?

20           A       THEN JUST WE DON'T REPLUG IT.

21           Q       AS I UNDERSTAND IT AKANOC RECEIVES A MONTHLY  
22 PAYMENT FROM FOR THE PACKAGES THAT IT SELLS TO ITS  
23 CUSTOMERS?

24           A       THAT'S CORRECT.

25           Q       AND IT RECEIVES A SETUP FEE OF SOME SORT WHEN

1 IT FIRST --

2 A NO.

3 Q NO?

4 A YEAH, IT ALL COMES IN ONE PACKAGE.

5 Q DOES THAT INCLUDE THE HARDWARE?

6 A THE HARDWARE IS A RENTAL BASIS.

7 Q AND THAT'S PART OF THE MONTHLY PAYMENT?

8 A THAT IS.

9 Q AND SO AKANOC BUYS THE HARDWARE FROM RACKLOGIC  
10 NORMALLY?

11 A YES.

12 Q AND THEN PROVIDES THE --

13 A HOSTING SERVICE --

14 Q -- LOCATION FOR THE SERVER AND THE IP ADDRESS  
15 AND IT CHARGES A MONTHLY FEE FOR THAT SERVICE?

16 A THAT IS CORRECT.

17 Q AND ENSURES ITS ACTIVITY WITH THE INTERNET AS  
18 A WHOLE THROUGH THE IP ADDRESS?

19 A THAT IS CORRECT.

20 Q NUMBER 31, A ONE-PAGE E-MAIL STRING, THE TOP  
21 OF WHICH IS DATED ACCEPT 12, 2007. THIS APPEARS TO  
22 BE AN E-MAIL EXCHANGE BETWEEN YOU AND SECURITY?

23 A THAT'S CORRECT.

24 Q AND WOULD BE JULIANA LUK?

25 A YES.

1 Q AND SO THE HEADER "PLEASE TAKE CARE OF THIS OR  
2 YOU SHALL HAVE ANOTHER LAWSUITS," IS SOMETHING THAT  
3 JULIANA LUK SENT?

4 A YES.

5 Q AND IT CONCERNS A NOTICE OF INFRINGEMENT  
6 RECEIVED FROM LACOSTE SHOES?

7 A LET ME READ THROUGH THIS.

8 Q OKAY. TAKE YOUR TIME.

9 A SO BASICALLY SHE FOUND ONE LACOSTE SHOES IN  
10 THE ABUSE MAIL, AND SHE'S ASKING ME WHAT IS BEST TO  
11 HANDLE THIS TYPE OF ISSUE. SO I'M SETTING UP A  
12 GENERAL RULE FOR THIS.

13 Q SO THIS IS THE FIRST TIME THIS RULE WAS  
14 ESTABLISHED FOR AKANOC?

15 A I DON'T BELIEVE THAT THIS IS A -- THE FIRST  
16 TIME BECAUSE IN GENERAL IT'S -- WELL, I THINK THAT  
17 WHAT SHE'S TRYING TO CLARIFY IS IN WHAT TYPE OF  
18 SITUATION THAT WE WILL CONSIDER, YOU KNOW, UNPLUG  
19 OR IT'S REALLY BAD FROM OUR END.

20 Q AS I READ THAT SIMPLY MOVING AN ABUSE SITE  
21 FROM ONE IP TO ANOTHER IP WITHIN THE SAME  
22 CUSTOMER'S CONTROL WOULD NOT ADEQUATELY RESPOND TO  
23 THE ORIGINAL ABUSE COMPLAINT; IS THAT CORRECT?

24 A I LOST THAT PART.

25 Q WELL, WHEN I SAY IF THEY JUST MOVE AROUND, YOU



1 SHOULD STILL UNPLUG, ISN'T THAT WHAT THE END RULE  
2 YOU'RE ESTABLISHING WITH MS. LUK?

3 A RIGHT, MORE OR LESS.

4 YEAH, I WILL CONSIDER THAT, THAT IF THE  
5 CUSTOMER ALREADY KNOWS THAT WE ARE WATCHING THEM ON  
6 ONE IP AND THEN THEY MOVE TO THE OTHER IP,  
7 PERSONALLY I WILL JUST UNPLUG IT.

8 Q AND WHILE YOU MAY HAVE DONE THAT BEFORE,  
9 YOU'RE DESCRIBING WHAT SHOULD BE A GENERAL POLICY  
10 GOING FORWARD?

11 A RIGHT.

12 Q OKAY. MARK AS 32, A ONE-PAGE E-MAIL DATED  
13 SEPTEMBER 11, 2007.

14 A YES.

15 Q DO YOU RECOGNIZE THAT E-MAIL?

16 A YEAH, APPARENTLY I WROTE IT.

17 Q AND IN THE FIRST -- THE LAST FULL PARAGRAPH OF  
18 THE PORTION THAT APPEARS TO HAVE BEEN WRITTEN BY  
19 YOU IT REFERS TO RKVM --

20 A YES.

21 Q -- TO MANAGE THE ABUSE ISSUE. DO YOU SEE  
22 THAT?

23 A YES.

24 Q AND WHAT IS RKVM?

25 A IT'S SHORT FOR REMOTE KVM. SO KVM STANDS FOR

1           KEYBOARD, VIDEO, AND MOUSE.   SO THERE'S A DEVICE  
2           THAT ACTUALLY, IF YOU PLUG INTO KEYBOARD, VIDEO AND  
3           MOUSE AND GOING THROUGH A DIFFERENT NETWORK ACCESS  
4           YOU CAN ACTUALLY SEE A SERVER THAT IT'S NOT  
5           ON-LINE.

6                        SO IT'S JUST LIKE SITTING IN FRONT OF A  
7           COMPUTER WITHOUT NETWORK CONNECTIONS.

8           Q        OKAY.   SO YOU -- AS I UNDERSTAND THIS, YOU'RE  
9           TELLING THE CUSTOMER THAT TO FIX THE PROBLEM THAT  
10          IS THE SUBJECT OF THIS E-MAIL EXCHANGE, THEY SHOULD  
11          USE THE REMOTE ACCESS TO MAKE SURE THE PROBLEM IS  
12          GONE BEFORE YOU'LL PLUG THE SERVER BACK IN?

13          A        THIS IS WHAT I CALL WHEN I SEE SOMETHING  
14          SERIOUS, OKAY.

15                       THIS SERVER HAS BEEN MOVED AROUND AND DO  
16          WHATEVER AND THEN STILL PLAY DUMB.

17                       AND I NEED TO TELL THEM THAT FIX IT  
18          BEFORE WE REPLUG IT.   AND THE REASON THAT YOU WANT  
19          US TO REPLUG IT, LAST TIME IT WAS REPLUGGED AND  
20          THEN YOU WERE NOT TAKING CARE OF THE PROBLEM.

21                       SO WE WANT TO BE SURE THAT YOU FIX IT  
22          BEFORE WE REPLUG IT.

23          Q        DO AKANOC EMPLOYEES EVER USE THE RKVM  
24          PROCEDURE TO INSPECT SERVERS BEFORE THEY'RE PLUGGED  
25          BACK IN?

1 A RKVM IS FOR CUSTOMERS, NOT FOR AKANOC  
2 EMPLOYEES. WE'RE ON SITE. WE DON'T NEED IT.

3 Q YOU SAID ONE CUSTOMER WHOM YOU HAVE REGULAR  
4 ACCESS TO EITHER BY E-MAIL IS IT5; IS THAT CORRECT?

5 A CORRECT.

6 Q AND WHY IS THAT? IS IT A BIGGER CUSTOMER OR  
7 SOMEBODY YOU KNOW FROM OTHER CIRCUMSTANCES?

8 A AT ONE TIME THEY WERE PROBABLY OUR BIGGEST  
9 RESELLERS. AT THE TIME, YOU KNOW, ALLEN CHEN WAS  
10 ACTUALLY HANDLING THE BUSINESS HERSELF AND LATER  
11 SHE HAS BABIES AND FAMILY ISSUES AND SO SHE QUIET  
12 DOWN.

13 AND NOW IF WE SEND A NOTICE THAT IF WE  
14 SENT E-MAIL TO IT5, WE ALWAYS SEND IT TO THIS  
15 ZHONGHH.IT8, THAT PARTICULAR ACCOUNT INSTEAD OF  
16 ALICE CHEN.

17 AND PROBABLY RIGHT NOW, SHE'S PROBABLY  
18 NUMBER 5. SOMEWHERE AROUND THERE. NOT TOP ONE  
19 ANYMORE.

20 Q AND WHERE IS IT5 LOCATED?

21 A IN CHINA, XIAMEN.

22 Q TURNING TO THE SECOND VOLUME OF MR. CHEN'S  
23 DEPOSITION TRANSCRIPT.

24 AND, MR. CHEN, YOU UNDERSTAND TODAY THAT  
25 YOU'RE HERE AS A WITNESS FOR MANAGED SOLUTIONS

1 GROUP, INC.?

2 A YES.

3 Q AND YESTERDAY I THINK YOU SAID YOU WERE  
4 GENERAL MANAGER OF MANAGED SOLUTIONS GROUP, INC.?

5 A YES.

6 Q AND THE SOLE OWNER?

7 A THAT'S CORRECT.

8 Q AND HOW LONG HAVE YOU BEEN THE GENERAL MANAGER  
9 OF MANAGED SOLUTIONS GROUP?

10 A STARTING FROM THE BEGINNING.

11 Q AND WHEN WAS THAT?

12 A END OF 2003.

13 Q AND HAVE YOU BEEN THE SOLE OWNER OF MANAGED  
14 SOLUTIONS GROUP SINCE THAT TIME?

15 A THERE WAS A PERIOD OF TIME THAT I DID HAVE A  
16 PARTNER.

17 Q AND WHO WAS THAT?

18 A JACQUES PHAM.

19 Q P-H-A-M?

20 A P-H-A-M, YES, THAT'S CORRECT.

21 Q AND IN WHICH TIME WAS MR. PHAM YOUR PARTNER?

22 A FOR ABOUT A YEAR. WE SEPARATED SEPTEMBER OF  
23 2004.

24 Q NOW, MY UNDERSTANDING FROM THE TESTIMONY  
25 YESTERDAY IS THAT MR. PHAM WAS THE OWNER OF A

1 COMPANY THAT ALSO DOES BUSINESS UNDER THE BRAND  
2 MANAGED.COM; IS THAT CORRECT?

3 A WHEN WE FIRST STARTED MANAGED SOLUTIONS GROUP,  
4 INC., MANAGED.COM IS UNDER MANAGED SOLUTIONS GROUP,  
5 INC.

6 Q AND WHEN MR. PHAM CEASE TO BE INVOLVED WITH  
7 MANAGED SOLUTIONS GROUP, INC., HE TOOK THE  
8 MANAGED.COM WITH HIM?

9 A YES, AND ALSO THE CUSTOMER BASE.

10 Q AND THAT WAS IN 2004?

11 A YES.

12 Q AND CAN YOU DESCRIBE FOR ME THE BUSINESS OF  
13 MANAGED SOLUTIONS GROUP, INC., SINCE MR. PHAM AND  
14 YOU SEPARATED WAYS AT THEN END OF 2004?

15 A AFTER THE SEPARATION?

16 Q THAT'S CORRECT?

17 A SINCE MR. PHAM TOOK THE BRAND NAME AND ALSO  
18 THE CUSTOMER BASE, AND WE KEPT THE HARD ASSET OF  
19 THE COMPANY AND ALSO THE GENERAL OPERATIONS  
20 MEANING, YOU KNOW, THE FACILITY, LEASING, THE  
21 BANDWIDTH CONTRACTS, AND THINGS LIKE THAT.

22 SO WE WERE MORE OR LESS LIKE A SERVICE  
23 BACKBONE FOR MANAGED.COM.

24 Q SO FROM THE END OF 2004 MANAGED SOLUTIONS  
25 GROUP CONTINUED TO PROVIDE OPERATIONAL SUPPORT FOR

1 THE CUSTOMER SERVICE GROUP THAT HAD BEEN -- OR  
2 CUSTOMER BASE THAT HAD BEEN TAKEN BY MR. PHAM?

3 A THAT IS CORRECT.

4 Q AND IS THAT STILL TRUE TODAY?

5 A NO.

6 Q AND WHEN DID THAT CHANGE?

7 A I DON'T KNOW EXACTLY -- I DON'T EXACTLY KNOW  
8 THE DETAIL OF HOW HE SOLD THE COMPANY.

9 YOU KNOW, ONE AFTER THE OTHER, BUT I DID  
10 NOTE THAT SOMEWHERE ALONG THE LINE HE SOLD IT TO  
11 JOHN MILLS, M-I-L-L-S, AND FROM THERE JOHN SOLD IT  
12 TO ANOTHER COMPANY CALLED WEB POST PLUS.

13 AND THEN SOMEWHERE AROUND FEBRUARY TO  
14 APRIL TIMEFRAME, THAT WEB HOST PLUS MOVED ALL OF  
15 THE CUSTOMERS OUT FROM OUR FACILITY.

16 Q SORRY TO INTERRUPT.

17 A YEAH, THAT WAS I REMEMBER 2006, APRIL, MARCH,  
18 SOMEWHERE AROUND THERE.

19 Q AND YESTERDAY YOU WERE TALKING ABOUT A PERIOD  
20 OF SOME OPERATIONAL DIFFICULTIES DURING THE END OF  
21 2006 UNTIL THE EARLY PART OF 2007. IS THAT  
22 GENERALLY CORRECT?

23 A OKAY. SO WEB HOST PLUS MOVE-OUT MUST BE 2007  
24 OR END OF 2006, WHICH IS AUGUST. I REMEMBER IT'S  
25 AUGUST THAT WE HAVE ANOTHER DATA CENTER LEASE

1 EXPIRE. SO WE MERGED TWO SIDES TOGETHER AND SO  
2 FROM THERE IT'S LIKE BIG MOVES OF A COUPLE OF  
3 THOUSAND SERVERS AND MOVING FROM ONE DATA CENTER TO  
4 THE OTHER DATA CENTER AND THEN LOSING CUSTOMERS AND  
5 ALL OF THAT STUFF.

6 Q BEGINNING THEN IN ABOUT APRIL OF 2007 THE  
7 BUSINESS OF MANAGED SOLUTIONS GROUP BECAME ONE OF  
8 PRINCIPALLY RENTING HARDWARE TO AKANOC SOLUTIONS;  
9 IS THAT CORRECT?

10 A YEAH, AS OF RIGHT NOW SINCE THAT MANAGED  
11 SOLUTIONS GROUP STILL HOLDING THOSE ASSETS AND ALSO  
12 HOLDING THOSE MAJOR CONTRACTS, SO MANAGED.COM  
13 BASICALLY IS LEASING THAT CAPACITY TO -- OR RENTING  
14 THAT CAPACITY TO AKANOC WHERE AKANOC ACTUALLY HAVE  
15 THE STAFF AND OPERATION CREW.

16 Q AND WHEN YOU SAY LEASING IN THAT CAPACITY,  
17 THAT'S THE SERVER CAPACITY?

18 A NO, JUST THE HARDWARE ITSELF.

19 Q THE HARDWARE ITSELF?

20 A YES.

21 Q AND WHAT DO YOU MEAN BY THE HARDWARE?

22 A SERVERS.

23 Q ARE THEY ALSO LEASING IP ADDRESS ASSIGNMENTS?

24 A YES, THAT'S CORRECT.

25 Q IS THERE A WRITTEN AGREEMENT THAT REFLECTS

1 THAT LEASING AGREEMENT?

2 A NO.

3 Q ARE THERE PAYMENTS MADE BY AKANOC TO MANAGED  
4 SOLUTIONS GROUP TO PAY FOR THAT LEASE?

5 A YES.

6 Q HOW MUCH DOES IT PAY?

7 A I DON'T RECALL. THE RENT THAT -- WELL,  
8 BASICALLY JUST THE MONTHLY BILLS: THE RENT, THE  
9 BANDWIDTH PROVIDER, THE INVOICES. IN A SENSE IT'S  
10 LIKE REIMBURSEMENT OF THE ALL EXPENSES.

11 Q DOES MANAGED SOLUTIONS GROUP HAVE ANY  
12 EMPLOYEES?

13 A NO.

14 Q DOES IT HAVE ANY OFFICERS?

15 A NO.

16 Q DOES IT HAVE ANY DIRECTORS?

17 A WELL, I MEAN, I'LL JUST CONSIDER JUST MYSELF.

18 Q AND SO IS IT REASONABLE TO CONCLUDE THAT THE  
19 IP ADDRESS IS ASSIGNED TO MANAGED SOLUTIONS GROUP  
20 WAS, IN FACT, MANAGED AND OPERATED BY MANAGE  
21 AKANOC?

22 A THAT IS CORRECT.

23 Q AND THAT ASSUMPTION WOULD NOT BE CORRECT FOR  
24 THE PERIOD OF APRIL 2007?

25 A BEFORE APRIL OF 2007 THEY WERE -- NOT ONLY



1 THAT THEY WERE PARTIALLY USED BY WEB HOST PLUS OR  
2 MANAGED.COM BUT ALSO FOR THAT PARTICULAR SEPARATION  
3 THERE WERE ABOUT 16,000 IP'S THAT ACTUALLY  
4 ORIGINALLY ASSIGNED TO MANAGED SOLUTIONS GROUP BY  
5 ARIN. WE TRANSFERRED THAT TO MANAGED.COM.

6 Q AND THAT WAS PART OF THE SEPARATION THAT  
7 OCCURRED IN EARLY 2007?

8 A THAT'S CORRECT, THAT WAS THE AGREEMENT AT THAT  
9 TIME THAT IF INDEED ONE DAY THEY WANT TO MOVE  
10 EVERYTHING OUT, THEN THEY'RE ENTITLED TO HAVE.

11 Q JUST SO WE'RE CLEAR AND CAN AVOID CONFUSION,  
12 WE'LL TALK ABOUT MR. PHAM'S BUSINESS AS MANAGED.COM  
13 AND YOUR BUSINESS AS MANAGED SOLUTIONS. DOES THAT  
14 WORK?

15 A YES, THAT IS CORRECT, THAT IS DEFINITELY  
16 CORRECT.

17 Q WE'LL MARK AS EXHIBIT 35 A ONE-PAGE ARIN WHOIS  
18 DATABASE SEARCH. MR. CHEN, HAVE YOU EVER SEEN A  
19 DOCUMENT LIKE THAT BEFORE?

20 A NO.

21 Q LOOKING AT THE LIST OF IP ALLOCATIONS LISTED  
22 ON THIS PAGE, CAN YOU IDENTIFY THOSE ASSIGNED TO  
23 MANAGED SOLUTIONS GROUP?

24 A THERE ARE TWO ITEMS THAT IS MANAGED SOLUTIONS  
25 GROUP, INC., THAT WILL BE THE ONE, TWO, THREE,

1 FOUR, FIVE, SIX, NUMBER SEVEN AND NUMBER EIGHT.

2 YEAH, NUMBER SIX -- NO, NUMBER SEVEN AND NUMBER  
3 EIGHT.

4 Q THE ONES THAT ARE INDICATED WITH THE HANDLE  
5 NET-MANAGED?

6 A YES.

7 Q AND THE FIRST ONE POINT 66.79.160.0 TO  
8 66.79.191.255.

9 A THAT IS CORRECT.

10 Q AND THE SECOND ONE BEING 205.209.128.0 TO  
11 205.209.191.255.

12 A THAT IS CORRECT.

13 Q AND THOSE ARE THE APPROXIMATELY 24,000 IP  
14 ADDRESSES THAT YOU REFERRED TO EARLIER THAT ARE  
15 STILL HELD BY MANAGED SOLUTIONS?

16 A YES, THAT'S CORRECT.

17 Q AND THOSE ARE HELD BY MANAGED SOLUTIONS BEFORE  
18 APRIL 2007 AS WELL; IS THAT CORRECT?

19 A THAT IS CORRECT.

20 Q BUT IN ADDITION TO THOSE, THERE WERE FURTHER  
21 ROUGHLY 16,000 IP ADDRESSES THAT WERE ASSIGNED TO  
22 MANAGED.COM?

23 A THAT IS CORRECT.

24 Q AND I'M GOING TO SHOW -- ACTUALLY WE'LL MARK  
25 AS EXHIBIT 35 THE TOP PORTION OF THE SPREADSHEET

1 THAT IS PRINTED OUT IN SORT OF A REDUCED FORMAT OF  
2 OVER 300 PAGES, AND I SORT OF HOPE THAT MAYBE WE  
3 CAN TALK A LITTLE BIT ABOUT WHAT THE DIFFERENT  
4 FIELDS MEAN, MAYBE AVOID HAVING TO MARK THE WHOLE  
5 EXHIBIT.

6 HAVE YOU SEEN A SPREADSHEET THAT APPEARS  
7 IN SUBSTANTIALLY THAT FORMAT WITH THESE KINDS OF  
8 DATA ENTRIES BEFORE?

9 A I CAN IMAGINE THAT THIS IS SOMETHING PULLED  
10 OUT FROM OUR CPRO DATABASE, BUT AS TO WHAT FORMAT,  
11 I HAVEN'T SEEN THIS ONE.

12 Q WHAT I'D LIKE TO DO IS TO JUST SORT OF RUN  
13 ACROSS THE TOP AND TO THE EXTENT THAT YOU'RE ABLE  
14 TO TELL ME WHAT EACH MEANS.

15 A OKAY.

16 Q AND I MAY HAVE FOLLOW-UPS. THE FIRST ONE IS  
17 CUSTOMER I.D. NUMBER?

18 A OKAY. SO FOR EVERY SINGLE ORDER THAT WE INDEX  
19 A CUSTOMER I.D. SO A CUSTOMER I.D. DOES NOT MEAN  
20 THAT A PARTICULAR CUSTOMER HAS AN I.D. BUT INSTEAD  
21 IT IS AN ORDER THAT HAS A CUSTOMER I.D. NUMBER  
22 BETTER ORDER BASIS.

23 Q SO ONE CUSTOMER MAY IN FACT HAVE MANY  
24 DIFFERENT CUSTOMER I.D.'S ASSOCIATED WITH THEM?

25 A THAT IS CORRECT. AND WHEN THE SERVER GETS

1 CANCELLED, THEN THAT CUSTOMER I.D. GETS WIPED OUT,  
2 MEANING THAT'S NO LONGER ACTIVE CUSTOMER I.D.

3 Q THAT INFORMATION IS RETAINED IN THE DATABASE  
4 BUT IT SHOWS CANCELLED, NONACTIVE?

5 A YES, THAT IS CORRECT.

6 Q BUT THE THIRD COLUMN SAYS STATUS AND BENEATH  
7 THIS PARTICULAR GROUP IT SAYS ACTIVE?

8 A THAT IS CORRECT.

9 Q BUT IF AN ORDER IS CANCELLED OR TERMINATED, IT  
10 WOULD STILL APPEAR, BUT THE STATUS WOULD REFLECT  
11 CANCELLED INSTEAD OF ACTIVE?

12 A THAT IS CORRECT.

13 Q WHEN YOU SAY IT REFLECTS EVERY SINGLE ORDER, I  
14 UNDERSTAND THAT TO MEAN EVERY PACKAGE, ESSENTIALLY  
15 THAT'S PURCHASED FROM AKANOC?

16 A THAT IS CORRECT.

17 Q AND DOES IT REFLECT ANY OTHER ORDERS?

18 A THERE'S INCIDENTS THAT CUSTOMERS JUST LET'S  
19 SAY JUST BUY SOFTWARE -- THERE'S A SOFTWARE CALLED  
20 CONTROL PANEL AND THEY BUY LICENSE FROM US.

21 THEY USE IT IN SOME WAY ELSE. SO IN THAT  
22 CASE THERE WILL BE THAT TYPE OF SITUATION.

23 Q SO WHEN YOU'RE USING THE WORD "ORDER" YOU'RE  
24 REFERRING TO A BILLABLE EVENT ESSENTIALLY?

25 A THAT'S CORRECT.

1 Q AND SO, FOR EXAMPLE, IF SOMEBODY CALLS UP AND  
2 ASKS TO HAVE A SERVER REBOOTED, WHICH IS PART OF  
3 THEIR PACKAGE PRICE, THAT WOULD NOT BE REFLECTED ON  
4 THIS?

5 A THAT IS CORRECT.

6 Q OR AT LEAST NOT BE REFLECTED AS A SEPARATE  
7 CUSTOMER I.D. NUMBER?

8 A THAT IS CORRECT.

9 Q AND IF SOMEONE'S SERVER IS UNPLUGGED FOR ANY  
10 KIND OF ABUSE COMPLAINT, THAT WOULD NOT BE  
11 REFLECTED BY A SEPARATE CUSTOMER NUMBER?

12 A I THINK MOST RECENTLY I WOULD SAY PROBABLY IN  
13 THE LAST MONTHS OR SO, I'M NOT 100 PERCENT SURE BUT  
14 I THINK THAT'S THE PROCESS, THAT EVEN THAT WE  
15 CREATE AN ADDITIONAL CHARGE AS LONG AS THERE'S AN  
16 INVOICE. I DON'T KNOW WHETHER THEY CREATE A  
17 CUSTOMER I.D. FOR IT OR NOT BUT THERE WOULD BE AN  
18 INVOICE FOR IT, THAT'S FOR SURE.

19 Q AND THERE WOULD BE AN ENTRY IN THE CPRO LOG  
20 REFLECTING THAT?

21 A THAT'S CORRECT.

22 Q EVEN IF IT DIDN'T ARE HAVE A SEPARATE CUSTOMER  
23 I.D. NUMBER ASSOCIATED WITH THE ENTRY?

24 A RIGHT. AND THEN IT WOULD BE RECORDED IN THAT  
25 PARTICULAR -- NO, THEN I NEED TO TAKE IT BACK. I

1 THINK THE CUSTOMER NUMBER WOULD NOT BE A NEW  
2 CUSTOMER NUMBER BUT A NEW INVOICE WOULD BE ATTACHED  
3 TO THAT PARTICULAR CUSTOMER I.D.

4 Q ALL RIGHT. THE SECOND COLUMN SAYS IP NUMBER,  
5 AND I ASSUME THAT'S THE IP ADDRESS ATTACHED TO THE  
6 PARTICULAR PACKAGE?

7 A YES, THAT'S THE MAIN IP ADDRESS.

8 Q AND THERE MAY BE ADDITIONAL IP ADDRESSES AS  
9 WELL AS ASSOCIATED WITH A PARTICULAR PACKAGE?

10 A YES.

11 Q AND ARE THOSE NUMBERS ALSO REFLECTED IN THE  
12 CPRO DATABASE SOMEWHERE?

13 A NO, THAT'S A SEPARATE DATABASE THAT WE KEPT  
14 MORE OR LESS LIKE THE ROUTER, ROUTER LOG THAT I WAS  
15 TALKING ABOUT. AND SO THAT IS -- THAT VARIES.  
16 THAT IS NOT A FIXED IP DATA PER SE. IT CHANGES  
17 EVERY DAY.

18 Q WELL, I'M A LITTLE UNCLEAR. LET'S ASSUME FOR  
19 THE MOMENT I'M ONE OF YOUR CUSTOMERS AND IN  
20 ADDITION TO THE PRIMARY IP ADDRESS I WANT A  
21 DIFFERENT ALLOCATION OF 8 MORE IP ADDRESSES?

22 A RIGHT.

23 Q ARE YOU SAYING THAT THOSE SECONDARY IP  
24 ADDRESSES COULD CHANGE ON A DAILY BASIS?

25 A YEAH, IF THE CUSTOMER -- ASSUMING THAT THEY

1 COME IN AND SAY WE WANT EIGHT IP'S AND SO WE ASSIGN  
2 EIGHT IP'S TO THIS PARTICULAR SERVER UNTIL ONE DAY  
3 THEY CANCEL IT.

4 BUT THEN IF WE HAVE 14, 1500 SERVERS  
5 MONTHLY, THAT EVERY DAY THE MASS, THE TOTAL MASS  
6 WOULD BE CHANGED.

7 Q THERE WILL BE CHANGES APPEARING IN THOSE IP  
8 ALLOCATIONS ON A DAILY BASIS?

9 A RIGHT.

10 Q BUT NOT AS IT RELATES TO ANY INDIVIDUAL  
11 CUSTOMER NECESSARILY?

12 A YES.

13 Q MARK AS 16. HAVE YOU EVER SEEN THAT LETTER  
14 BEFORE OR SOMETHING SUBSTANTIALLY SIMILAR TO IT?

15 A I DON'T, I DON'T RECALL THIS.

16 Q THAT 46750 FREMONT BOULEVARD ADDRESS, DOES  
17 THAT MEAN ANYTHING TO YOU?

18 A YES.

19 Q AND WHAT IS THAT?

20 A THAT WAS WHEN WE FIRST SET UP THE COMPANY AND  
21 AT THAT TIME BECAUSE OF MY PERSONAL FINANCIAL  
22 SITUATIONS I WAS ASKING, YOU KNOW, PHILIP CHENG  
23 WHETHER HE WANTS TO PARTICIPATE IN THE WHOLE THING  
24 WHERE JACQUES PHAM WAS ACTUALLY SETTING UP THE  
25 WHOLE THING SO WE'RE USING THAT ADDRESS.

1 Q IS IT A MAILBOX ADDRESS?

2 A NO, IT'S AN OFFICE.

3 Q DOES MANAGED SOLUTIONS GROUP HAVE ANY PHYSICAL  
4 LOCATIONS DIFFERENT FROM THE AKANOC LOCATIONS THAT  
5 YOU TESTIFIED TO YESTERDAY?

6 A NOT THE CURRENT DATE. I MEAN, IT'S ALL THE  
7 SAME.

8 Q ALL RIGHT. AND HISTORICALLY DID IT EVER  
9 OPERATE OUT OF A DIFFERENT LOCATION?

10 A NO.

11 Q APART FROM THE ONE THAT APPEARS ON THIS?

12 A BESIDES WHEN WE FIRST INCORPORATED THE COMPANY  
13 THAT WAS USING THAT PARTICULAR ADDRESS.

14 Q AND HOW LONG WAS MANAGED SOLUTIONS GROUP AT  
15 THE 46750 FREMONT BOULEVARD ADDRESS?

16 A I THINK THE -- WHEN I DID THE SEPARATION WITH  
17 JACQUES PHAM, PRETTY MUCH EVERYTHING WAS DISSOLVED  
18 AT THAT TIME.

19 Q SO AROUND THE END OF 2004?

20 A RIGHT.

21 Q AND THE E-MAIL ADDRESS TO WHICH THIS INDICATES  
22 SENT TO ABUSE@MANAGEDSG-INC.COM. DO YOU SEE THAT?

23 A YES.

24 YOU'RE READING A DIFFERENT PAGE?

25 I'M SORRY. I HAVE NO RECOLLECTION OF



1           SEEING THIS E-MAIL, BUT I ASSUME THAT IF IT GETS  
2           IN, IT'S JUST OUR STANDARD PROCESS. WE FORWARD IT  
3           OUT.

4           Q       IS IT FAIR TO SAY THAT THE PROCEDURES THROUGH  
5           WHICH MANAGED SOLUTIONS GROUP RESPONDED TO ABUSE  
6           COMPLAINTS IS THE SAME THAT YOU TESTIFIED TO  
7           YESTERDAY CONCERNING AKANOC?

8           A       YES, THAT'S CORRECT.

9           Q       AND AS OF TODAY AND AS OF FEBRUARY 2007, THESE  
10          WOULD BE HANDLED EITHER BY YOU OR MS. LUK?

11          A       THAT'S CORRECT.

12          Q       AND THE ABUSE@MANAGEDSG-INC.COM IS AN E-MAIL  
13          ADDRESS THAT MS. LUK WOULD BE PRIMARILY RESPONSIBLE  
14          FOR HANDLING?

15          A       I CAN'T SAY PRIMARY. WE COVERED IT TOGETHER.  
16          SO WHOEVER THAT HAD TIME TO GET IT DONE, WE  
17          REFERENCE IT TO EACH OTHER.

18          Q       AND THE STANDARD PROCEDURE WOULD BE TO REVIEW  
19          THIS KIND OF REPORT, PING THE DOMAIN NAME TO  
20          DETERMINE THAT IT WAS AN IP ADDRESS CONTROLLED BY  
21          MANAGED SOLUTIONS GROUP, AND FORWARD IT TO THE  
22          CUSTOMER, IF THAT WAS THE CASE?

23          A       THAT IS CORRECT.

24          Q       AND THAT WAS THE EXTENT OF THE PROCEDURE?

25          A       THAT IS CORRECT.

1 Q AND DO YOU HAVE ANY REASON TO DOUBT THAT THIS  
2 E-MAIL WAS, IN FACT, SENT AND RECEIVED AT THE  
3 ABUSE@MANAGEDSG-INC.COM E-MAIL ADDRESS?

4 A NO, I DON'T THINK THAT'S LEGIT.

5 Q CAN YOU REREAD?

6 A NO, I THINK THAT'S LEGIT.

7 Q YOU WOULD HAVE NO WAY OF GOING BACK AND  
8 DETERMINED WHETHER OR NOT THIS E-MAIL WAS RECEIVED?

9 A NO.

10 Q AND YOU WOULD HAVE NO WAY OF GOING BACK AND  
11 DETERMINING WHETHER A HARD COPY OF THIS LETTER WAS,  
12 IN FACT, RECEIVED?

13 A NO.

14 Q AND YOU HAVE ANY WAY OF GOING BACK AND  
15 DETERMINING WHETHER THE DOMAIN NAME ESHOES99.COM  
16 WAS HOSTED AT AN IP ADDRESS ALLOCATED TO MANAGED  
17 SOLUTIONS GROUP ON THAT DATE? I'M SORRY.

18 A ON THAT DATE? NO.

19 Q WE HAVE MARKED EXHIBIT 17 AS A LETTER DATED  
20 FEBRUARY 21, 2007. HAVE YOU SEEN THAT LETTER  
21 BEFORE?

22 A I WANT TO SAY I DON'T KNOW. I WANT TO SAY I  
23 HAVEN'T SEEN IT BEFORE. I REALLY DON'T KNOW.

24 Q WAS CORRESPONDENCE ADDRESSED TO THE 46750  
25 ADDRESS BEING RECEIVED BY YOU ON OR ABOUT FEBRUARY

1 2007?

2 A I DON'T RECALL BECAUSE AT THAT TIME MAYBE IT  
3 DEPENDS ON WHO IS THERE, IT'S AN OFFICE  
4 ENVIRONMENT. IF SOMEBODY KNOWS THAT THE HISTORY OF  
5 MANAGED SOLUTIONS, INC., THEY MAY HAVE RECEIVED IT.  
6 IF WHOEVER IS SITTING THERE THAT GOES -- NOT HAVE  
7 KNOWLEDGE ABOUT MANAGED SOLUTIONS GROUP, IT WILL  
8 JUST REJECT IT.

9 Q MARK AS 18 ANOTHER LETTER DATED FEBRUARY 23,  
10 2007. HAVE YOU EVER SEEN THAT LETTER BEFORE?

11 A I HAVE NO RECOLLECTION.

12 Q MARK AS 19 A LETTER DATED MARCH 30TH, 2007.  
13 HAVE YOU EVER SEEN THAT LETTER BEFORE?

14 A I HAVE NO RECOLLECTION, BUT IF THIS IS SENT TO  
15 OUR OFFICE, IT EITHER GETS PUT ON THE DESK UNTIL  
16 SOMEBODY OPENS IT, OR SOMETHING ELSE. I HAVE NO  
17 MEMORY ON PARTICULAR INCIDENTS.

18 Q AND AGAIN, THE SITUATION WITH RESPECT TO  
19 MANAGED SOLUTIONS GROUP, INC., CORRESPONDENCE  
20 RECEIVED IN OR ABOUT THAT TIME IS CONSISTENT WITH  
21 WHAT YOU DESCRIBED YESTERDAY AS IT RELATES TO  
22 AKANOC?

23 A THAT IS CORRECT.

24 Q AND I THINK THIS IS THE LAST ONE DATED MARCH  
25 30TH, 2007 MARKED 37.

1 A THIS IS THE SAME SITUATION LIKE THE LAST ONE.  
2 I DON'T HAVE THE DIRECT MEMORY TO THIS.

3 Q NO REASON TO DOUBT THAT IT WAS, IN FACT,  
4 RECEIVED ON OR ABOUT THE DATE IT BEARS AT THE  
5 ADDRESS TO WHICH IT WAS SENT?

6 A NO.

7 Q LET'S MARK AS 38 AN E-MAIL SPRING THE TOP OF  
8 WHICH IS DATED SEPTEMBER 14, 2007. IT'S EXHIBIT  
9 38. PRIMARILY THE FIRST PAGE. ARE YOU FINISHED  
10 LOOKING AT THAT?

11 DO YOU RECOGNIZE THAT E-MAIL EXCHANGE?

12 A I DON'T RECALL THE DETAIL, BUT I ASSUME THAT'S  
13 BETWEEN ME AND SECURITY.

14 Q IS THAT A QUESTION BEING POSED TO YOU POSSIBLY  
15 BY JULIANA LUK?

16 A THAT IS CORRECT.

17 Q AND IS SHE ASKING FOR POLICY GUIDANCE ON THIS  
18 KIND OF PROBLEM?

19 A THAT IS CORRECT.

20 Q AND YOUR RESPONSE IS TO GIVE 24 HOURS NOW TEN  
21 12 HOURS UNPLUGGED?

22 A THAT'S CORRECT.

23 Q AND THAT'S CONSISTENT AGAIN WITH WHAT YOU  
24 DESCRIBED YESTERDAY BECAUSE OF THE TIME CHANGE AND  
25 SO FORTH, YOU WOULD GO BACK THE NEXT DAY AND

1 DETERMINE IF THE ABUSE WAS CONTINUING AND IF IT WAS  
2 YOU WOULD TELL THEM TO UNPLUG?

3 A YES.

4 Q AND THE NEXT LINE SAYS NO CUSTOMER DATA IN  
5 CPRO SHOULD BE CANCELLED IP. DO YOU SEE THAT?

6 A YES.

7 Q AND IT LOOKS LIKE YOU RESPOND IT'S IN  
8 66.79.176.78, PING LVBAGZ, WITH A Z, DOT COM. CAN  
9 YOU EXPLAIN TO ME WHAT THAT EXCHANGE MEANS WITH  
10 YOUR RESPONSE?

11 A FOR WHATEVER REASON THAT SHE CANNOT LOCATE THE  
12 CUSTOMER AND I TOLD HER THAT IF YOU PING LVBAGZ.COM  
13 IT'S IN 66.79.176.78 THAT APPARENTLY SHE PROBABLY  
14 HAD DIFFICULTY READING THE ORIGINAL COMPLAINT  
15 BECAUSE IT'S QUITE LENGTHY.

16 Q NOW, IF THAT HAPPENS DO YOU DO ANYTHING  
17 YOURSELF OR DOES MANAGED SOLUTIONS DO ANYTHING TO  
18 VERIFY THAT THE OFFENDING SITE WAS IN FACT REMOVED  
19 BY THE CUSTOMER?

20 A THE NEWEST PROCEDURE THAT WE IMPOSE RIGHT NOW  
21 IS QUITE SIMPLE. WE WANT EVERYBODY TO MAKE SURE  
22 THE DOMAIN NAME DOES NOT RESULT TO OUR IP. WE JUST  
23 NEED TO PING. IF IT'S STILL WITHIN OUR IP, THEN WE  
24 WILL CONSIDER IT STILL THERE. IF IT IS NOT, THEN  
25 WE WOULD RECEIVE THE IP, REVIVE THE IP. THAT'S THE

1 NEWEST PROCEDURE THAT WE HAVE RIGHT NOW.

2 Q AND WHEN WAS THAT PROCEDURE IMPLEMENTED?

3 A PROBABLY FEBRUARY, MARCH.

4 Q OF 2008?

5 A 2008, THAT IS CORRECT.

6 MR. COOMBS: YOUR HONOR, THAT ENDS THE  
7 DEPOSITION TESTIMONY OF MR. CHEN.

8 THE COURT: I TAKE IT YOU HAVE NO  
9 COUNTER-DESIGNATIONS THAT YOU WOULD WISH TO READ?

10 MR. LOWE: NO, YOUR HONOR.

11 THE COURT: CALL YOUR NEXT WITNESS.

12 MS. WANG: WE WOULD LIKE TO CALL MICHAEL  
13 WILSON.

14 THE COURT: COME ALL OF THE WAY FORWARD,  
15 MR. WILSON, AND BE SWORN BY THE CLERK OF COURT,  
16 PLEASE.

17 THE WITNESS: OKAY.

18 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

19 **MICHAEL WILSON,**  
20 BEING CALLED AS A WITNESS ON BEHALF OF THE  
21 PLAINTIFF, HAVING BEEN FIRST DULY SWORN, WAS EXAMINED  
22 AND TESTIFIED AS FOLLOWS:

23 THE WITNESS: YES, I DO.

24 THE CLERK: WOULD YOU PLEASE STATE YOUR  
25 STATE YOUR NAME AND SPELL YOUR LAST NAME FOR THE

1 RECORD?

2 THE WITNESS: MICHAEL WILSON.

3 W-I-L-S-O-N.

4 THE COURT: YOU MAY PROCEED.

5 **DIRECT EXAMINATION**

6 BY MS. WANG:

7 Q MR. WILSON, ARE YOU CURRENTLY EMPLOYED?

8 A YES, I AM.

9 Q BY WHOM?

10 A I WORK FOR GUIDANCE SOFTWARE IN THE  
11 PROFESSIONAL SERVICES DIVISION.

12 Q AND WHAT IS GUIDANCE SOFTWARE IN THE BUSINESS  
13 OF DOING?

14 A GUIDANCE SOFTWARE MAKES THE ENCASE,  
15 E-N-C-A-S-E, PRODUCT LINE.

16 Q AND DOES GUIDANCE SOFTWARE ALSO PROVIDE  
17 SERVICES?

18 A YES, WE DO. THE PROFESSIONAL SERVICES GROUP  
19 PROVIDES IMPLEMENTATION AND TRAINING FOR THE ENCASE  
20 PRODUCT LINE AS WELL AS PROVIDES DIGITAL FORENSICS,  
21 INCIDENT RESPONSE TO DISCOVERY AND INCIDENT  
22 INSURANCE FOR ITS CLIENTS.

23 Q AND WHO ARE TYPICAL CLIENTS OF GUIDANCE?

24 A TYPICAL CLIENTS OF GUIDANCE RANGE ANYWHERE  
25 FROM LARGE CORPORATIONS LIKE WACHOVIA OR ITT,

1 THINGS LIKE THAT TO INDIVIDUAL PEOPLE WHO JUST NEED  
2 HELP WITH FORENSICS.

3 Q ARE CIVIL LITIGANTS EVER CLIENTS OF GUIDANCE?

4 A YES, THEY ARE.

5 Q DO YOU WORK BOTH FOR PLAINTIFFS AND  
6 DEFENDANTS?

7 A YES, I DO.

8 Q AND YOU'RE HERE TODAY BECAUSE YOU RECEIVED A  
9 SUBPOENA?

10 A YES, I DID.

11 Q CAN YOU TELL ME WHEN ENCASE SOFTWARE IS  
12 TYPICALLY USED?

13 A ENCASE SOFTWARE IS USED TO EXAMINE OR TO  
14 ACQUIRE FORENSIC IMAGES FOR DIGITAL MEDIA. SO  
15 COMPUTER HARD DRIVES OR PHONES, ANYTHING BASICALLY  
16 WITH DIGITAL INFORMATION ON IT YOU CAN USE ENCASE  
17 TO ACQUIRE THE INFORMATION AND THEN TO ANALYZE IT  
18 AFTERWARDS.

19 Q IS IT EVER USED BY LAW ENFORCEMENT?

20 A YES, IT IS.

21 Q IN WHAT CAPACITY?

22 A IN PRETTY MUCH ANY CASE THAT INVOLVES DIGITAL  
23 INFORMATION.

24 Q AND HAS ENCASE SOFTWARE BEEN USED TO SECURE  
25 CONVICTIONS?



1 A YES, IT HAS.

2 Q HOW LONG HAVE YOU BEEN EMPLOYED BY GUIDANCE?

3 A I HAVE WORKED AT GUIDANCE FOR ABOUT TWO YEARS.

4 Q I THINK EARLIER YOU MENTIONED YOU WERE PART OF  
5 THE PROFESSIONAL SERVICES GROUP?

6 A YES.

7 Q AND WHAT DOES THAT GROUP DO?

8 A THAT GROUP, LIKE I SAID BEFORE, WE ARE THE  
9 ONES WHO PROVIDE SERVICES FOR THE COMPANY SO WE  
10 HELP WITH IMPLEMENTATION AND WITH TRAINING FOR THE  
11 ENCASE PRODUCE LINE.

12 AND THEN WE ALSO DO DIGITAL FORENSICS,  
13 E-DISCOVERY, INCIDENT INSURANCE OR INCIDENT  
14 HANDLING, WHICH IS IF SOMEONE BREAKS INTO AN  
15 ENVIRONMENT OR HACKS INTO A COMPUTER ENVIRONMENT,  
16 WE INVESTIGATE THAT OR INFORMATION ASSURANCE WHICH  
17 IS MAKING SURE THAT DATA DOES OR DOESN'T EXIST ON  
18 SOMEBODY'S ENVIRONMENT.

19 Q AND THE SERVICES YOU MENTIONED, IS THAT  
20 CONSISTENT WITH YOUR RESPONSIBILITY?

21 A YES, I DO ALL OF THESE THINGS.

22 Q AND HOW LONG HAVE YOU HAD THESE  
23 RESPONSIBILITIES?

24 A FOR MY ENTIRE EMPLOYMENT AT GUIDANCE.

25 Q DO YOU HOLD ANY DEGREES?

1 A YES, I HAVE A BACHELOR OF SCIENCE IN  
2 MECHANICAL ENGINEERING FROM U.C. SANTA BARBARA.

3 Q DO YOU HAVE ANY CERTIFICATIONS FOR ENCASE  
4 SOFTWARE?

5 A YES, I'M AN ENCASE CERTIFIED EXAMINER.

6 Q AND WHAT WAS INVOLVED IN OBTAINING THAT  
7 CERTIFICATION?

8 A TO GET THAT CERTIFICATION I HAD TO TAKE ONE OR  
9 TWO TRAINING COURSES FROM GUIDANCE SOFTWARE AND  
10 THEN I HAD TO PASS A WRITTEN EXAM AND THEN I HAD TO  
11 PASS A PRACTICAL EXAM.

12 Q AND HOW LONG HAVE YOU HELD THAT LICENSE OR  
13 CERTIFICATION? I'M SORRY?

14 A FOR ABOUT THREE YEARS.

15 Q DO YOU HAVE ANY OTHER CERTIFICATIONS?

16 A YES. I'M ALSO A GIAC, CERTIFIED FORENSIC  
17 ANALYSIS, GCFA, AND THAT'S FROM SANS.

18 Q AND WHAT IS SANS?

19 A SANS IS A COMPUTER INFORMATION SECURITY  
20 TRAINING AND CERTIFICATION GROUP. THEY HOLD  
21 ON-LINE TRAINING AS WELL AS ON SITE AND THEY ALSO  
22 HAVE CONFERENCES ALL OVER THE WORLD.

23 Q WHAT WAS INVOLVED IN OBTAINING THE GCFA  
24 CERTIFICATION?

25 A IN ORDER TO GET THAT CERTIFICATION I HAD TO

1 TAKE A 40-HOUR TRAINING COURSE AND THEN I HAD TO  
2 PASS A RELATIVELY LENGTHY WRITTEN EXAM AND THEN I  
3 ALSO HAD TO WRITE AND PUBLISH A PAPER ON TWO  
4 DIFFERENT SUBJECTS HAVING TO DO WITH GUIDANCE.

5 Q AND HOW LONG HAVE YOU BEEN WORKING IN THE  
6 INFORMATION TECHNOLOGY?

7 A FOR ABOUT 12.

8 Q AND COULD YOU BRIEFLY DESCRIBE YOUR WORK  
9 EXPERIENCE?

10 A SURE.

11 THE COURT: LET'S GO TO MORE PERTINENT  
12 THINGS. I'M SATISFIED THAT BASED ON WHAT I HAVE  
13 HEARD HE'S EXPERIENCED IN THIS AREA OF COMPUTER  
14 FORENSICS.

15 MS. WANG: SURE.

16 Q WOULD YOU BRING UP EXHIBIT 596. TOWARDS THE  
17 TOP OF THE PAGE I SEE YOU WERE EMPLOYED BY WARNER  
18 MUSIC GROUP; IS THAT CORRECT?

19 A YES, IT IS.

20 Q AND HOW LONG DID YOU WORK FOR -- CAN I CALL IT  
21 WMG FOR SHORT?

22 A YES.

23 Q HOW LONG DID YOU WORK FOR WMG?

24 A I WORKED FOR WMG FOR ABOUT FOUR YEARS, AND I  
25 WORKED FOR -- IN THE CORPORATE SECURITY AREA AND IN

1 THE TIME BEFORE THAT I WORKED IN THE I-SERVICES  
2 ADMINISTRATIVE GROUP EITHER AS THE MANAGER OR THE  
3 TECHNICAL MANAGER.

4 Q AND WHAT IS THE I-SERVICES GROUP?

5 A THE I-SERVICES GROUP WAS RESPONSIBLE FOR ALL  
6 OF THE WEB SITES THAT WMG HOSTED FOR ALL OF THE  
7 ARTISTS. SO DURING THE TIME I WAS THERE, THERE  
8 WERE BETWEEN THREE AND FOUR WEB SITES THAT WE HOST.

9 Q SO WMG, WAS IT A WEB HOST?

10 A WELL, WMG THE COMPANY DOES A LOT MORE THAN  
11 THAT, BUT THE PART I WAS DEALING WITH WAS BASICALLY  
12 WEB HOSTING FOR ALL OF THE ARTISTS.

13 Q AND WERE THE WEB SITES YOU MENTIONED  
14 CONTROLLED BY WMG?

15 A AGAIN, THEY WERE CONTROLLED IN THE BROAD SENSE  
16 BY WMG, BUT THE WEB SITES WERE ACTUALLY CONTROLLED  
17 BY EITHER INDIVIDUAL ARTISTS, MANAGEMENT, LIKE  
18 METALLICA, OR THEY DID ALL OF THEIR STUFF OR FOR  
19 SMALLER GROUPS BLAKE SHELTON OR KIDNEY THIEVES, TWO  
20 I CAN THINK OF OFF THE TOP OF MY HEAD, FOR SMALLER  
21 GROUPS LIKE THAT THEY WERE ACTUALLY CONTROLLED BY  
22 THE ARTISTS THEMSELVES OR BY, YOU KNOW, COUSINS OF  
23 THE ARTISTS, THINGS LIKE THAT.

24 Q DID YOU HAVE ANY EXPOSURE TO RESPONDING TO  
25 THESE COMPLAINTS?

1 A YES, BUT MOST OF MY EXPOSURE WAS DEALING WITH  
2 THE TECHNICAL SIDE OF THINGS. SO IF THERE WAS A  
3 TAKEDOWN OR BUST OR IF THERE WAS A REASON TO GO DO  
4 SOMETHING TO A WEB SITE OR BLOCK TRAFFIC TO A WEB  
5 SITE OR WHATEVER, THAT'S WHERE I WOULD COME INTO  
6 PLAY.

7 Q ASIDE FROM YOUR EXPERIENCE, IS THERE ANYTHING  
8 ELSE THAT YOU REVIEWED THAT YOU WOULD BE BASING  
9 YOUR OPINIONS ON TODAY?

10 A YES, THERE IS. I BASE MY OPINIONS ON THE  
11 DEPOSITIONS OF STEVEN CHEN AND ANDREW CHENG, THE  
12 FORENSIC IMAGES TAKEN OF THE FIVE SYSTEMS DURING  
13 ACQUISITION AND THE PICTURES THAT WERE TAKEN IN THE  
14 CPRO DATABASE AND ALSO DURING THE ACQUISITION AND  
15 ALSO THE CPRO DATA ABSTRACT.

16 Q AND WHAT IS YOUR UNDERSTANDING OF THE  
17 DEFENDANTS' BUSINESS?

18 A THEY APPEAR TO BE A WEB HOSTING FACILITY.

19 Q CAN YOU THINK OF A PHYSICAL WORLD ANALOGY FOR  
20 A WEB HOSTING FACILITY?

21 A YEAH. I WOULD SAY PROBABLY THE BEST ONE WOULD  
22 BE THE APARTMENT BUILDING ANALOGY. SO BASICALLY  
23 THEY WOULD BE THE OWNERS OR LANDLORDS OF THE  
24 APARTMENT BUILDING, AND THEY RENT OUT INDIVIDUAL  
25 APARTMENTS TO INDIVIDUAL CLIENTS.

1 Q AND CAN YOU TELL US GENERALLY WHAT DOES A WEB  
2 SITE NEED TO BE ACCESSIBLE ON-LINE?

3 A AND IT'S VERY BASIC. ALL OF THE WEB SITE  
4 NEEDS IS A SERVER TO PUT THE DATA ON AND TO SERVE  
5 UP THE CONTENT, POWER TO RUN EVERYTHING, A ROUTER  
6 OF SOME SORT TO GET THE TRAFFIC TO THE NETWORK, AND  
7 A NETWORK CONNECTION. IT'S REALLY ALL IT NEEDS.

8 Q ARE THESE GOODS AND SERVICES WHAT YOU JUST  
9 DESCRIBED SUPPLIED BY THE DEFENDANTS TO THEIR  
10 CUSTOMERS?

11 A YES.

12 Q AND YOU MENTIONED SERVER. CAN YOU DESCRIBE IN  
13 MORE DETAIL WHAT A SERVER IS?

14 A SURE. I MEAN, A SERVER IS JUST A COMPUTER  
15 LIKE YOU WOULD SEE ON SOMEBODY'S DESK OR ANYWHERE  
16 ELSE. USUALLY THEY'LL BE SHAPED A LITTLE  
17 DIFFERENTLY AND THEY'LL HAVE DIFFERENT COMPONENTS.

18 GENERALLY SPEAKING A SERVER WILL HAVE  
19 REDUNDANT POWER SUPPLIES SO IF ONE BREAKS IT WILL  
20 KEEP GOING. IT WILL USUALLY HAVE A STRONGER CPU  
21 AND A GRAPHICS CARD BECAUSE YOU GENERALLY DON'T USE  
22 THEM FOR THINGS LIKE MY GAMES.

23 Q AND YOU ALSO MENTIONED ROUTER?

24 A YES.

25 Q CAN YOU DESCRIBE IN MORE DETAIL WHAT A ROUTER

1 IS?

2 A SURE. A ROUTER IS JUST A DEVICE THAT ROUTES  
3 DATA PACKETS FROM ONE LOCATION TO ANOTHER.

4 Q CAN YOU GIVE ME AN EXAMPLE OF A ROUTER?

5 A YEAH. THE BEST EXAMPLE FOR THAT ONE IS  
6 PROBABLY THE POST OFFICE EXAMPLE. BASICALLY THINK  
7 OF A ROUTER AS A LOCAL POST OFFICE.

8 SO WHEN YOU TRY AND SEND A LETTER TO YOUR  
9 FRIEND IN NEW YORK, FOR INSTANCE, YOU'LL SEND YOUR  
10 LETTER TO THE LOCAL POST OFFICE.

11 THE LOCAL POST OFFICE WILL THEN DECIDE  
12 WHAT THE BEST ROUTE TO GET TO NEW YORK IS. SO IT  
13 WILL SEND IT TO A MAIN HUB, AND IT WILL CONTINUE ON  
14 UNTIL IT GETS TO THE LOCAL AREA FOR YOUR FRIEND IN  
15 NEW YORK.

16 THAT LOCAL POST OFFICE WILL THEN SEND --  
17 GET THE ACTUAL LETTER TO YOUR FRIEND, AND THAT'S  
18 WHAT A ROUTER DOES, IT FIGURES OUT HOW TO ROUTE THE  
19 TRAFFIC FROM ONE PLACE TO ANOTHER.

20 Q AND DOES THE WEB HOST PROGRAM THEIR ROUTER?

21 A THEY WOULD HAVE TO IN ORDER FOR IT TO BE ABLE  
22 TO TELL WHAT PART OF THE NETWORK IS INSIDE AND WHAT  
23 PART IS OUTSIDE BASICALLY.

24 Q DOES IT PROGRAM THE ROUTER TO CONNECT TO A  
25 SOURCE?

1 A YES, EFFECTIVELY.

2 Q CAN IT ALSO PROGRAM IT NOT TO CONNECT TO A  
3 SOURCE?

4 A YES, IT CAN.

5 Q AND IS THIS THE ONLY POINT THAT TRAFFIC CAN BE  
6 REROUTED OR STOPPED?

7 A NO. THERE'S MANY OTHER WAYS THAT YOU COULD DO  
8 IT. IF THERE'S A FIREWALL IN BETWEEN, YOU CAN USE  
9 THE FIREWALL TO BLOCK TRAFFIC TO AN INDIVIDUAL PORT  
10 OR IP'S. YOU CAN STOP THE TRAFFIC AT THE SERVER  
11 ITSELF OR ANYWHERE IN BETWEEN. THAT SORT OF THING.

12 Q AND HOW EASY IS IT TO DO THESE THINGS THAT YOU  
13 MENTIONED?

14 A RELATIVELY EASY.

15 Q COULD AN INDIVIDUAL BE THEIR OWN WEB HOST?

16 A YES, THEY CAN.

17 Q AND SO WHAT ARE THE BENEFITS OF PAYING A HOST  
18 AS OPPOSED TO DOING IT YOURSELF?

19 A I IMAGINE THE BENEFITS WOULD BE SOMETHING  
20 ALONG THE LINES OF RELIABILITY AND NOT HAVING TO  
21 DEAL WITH THINGS LIKE HARDWARE ISSUES OR NETWORK  
22 DOWNTIME OR STUFF LIKE THAT.

23 SO THAT WAY, YOU KNOW, IF YOUR NETWORK  
24 GOES DOWN, YOU DON'T HAVE TO WORRY ABOUT WHO TO  
25 CALL TO MAKE THE NETWORK COME BACK UP AGAIN OR IF



1 THE SERVER BREAKS YOU DON'T HAVE TO WORRY ABOUT  
2 WHERE TO GET THE REPLACEMENT PARTS.

3 Q AND YOU ALSO MENTIONED CONNECTIVITY. HOW  
4 IMPORTANT IS THAT TO A WEB SITE?

5 A VERY IMPORTANT. I DON'T THINK IT WOULD WORK  
6 WITHOUT IT.

7 Q AND WHAT KIND OF CONTROL DOES A WEB HOSTING  
8 FACILITY HAVE OVER THE SERVERS THEMSELVES?

9 A WELL, A WEB HOSTING FACILITY HAS PHYSICAL  
10 ACCESS TO THE SERVER SO ULTIMATELY THEY CONTROL THE  
11 SERVERS COMPLETELY. WHETHER OR NOT THEY CHOOSE TO  
12 USE THAT PARTICULAR CONTROL IS A DIFFERENT MATTER,  
13 BUT IF YOU HAVE ACCESS TO A COMPUTER, YOU CAN  
14 PRETTY MUCH DO WHATEVER YOU WANT.

15 Q YOU KNOW, PERHAPS THIS MAY BE A LITTLE  
16 ELEMENTARY, BUT WHAT DO YOU MEAN BY PHYSICAL  
17 CONTROL?

18 A WELL, I MEAN, IF YOU HAVE ACCESS TO A  
19 COMPUTER, YOU CAN DO ANYTHING YOU WANT TO IT. YOU  
20 CAN UNPLUG IT. YOU CAN RESET THE ADMINISTRATOR  
21 PASSWORD AND GO IN AND CHANGE THE CONTENT. YOU CAN  
22 HIT IT WITH THE HAMMER UNTIL IT STOPS WORKING. YOU  
23 CAN DO ANY OF THESE THINGS. IF YOU HAVE ACCESS TO  
24 THE COMPUTER, YOU CAN DO ANYTHING YOU WANT.

25 Q IF YOU CAN TELL ME, WHY SHOULD A WEB HOST HAVE

1 THESE SORTS OF CONTROL OVER A SERVER OR WEB SITE?

2 A WELL, I WOULD IMAGINE GENERALLY IT WOULD BE A  
3 GOOD IDEA TO HAVE THAT SORT OF CONTROL IF FOR NO  
4 OTHER REASON THAN JUST THE SECURITY OF THE REST OF  
5 THE ENVIRONMENT.

6 SO IF SOMETHING BAD IS HAPPENING ON ONE  
7 PARTICULAR SERVER, YOU CAN GO IN AND STOP IT FROM  
8 DOING THAT. IF THAT ONE SERVER IS ATTACKING THE  
9 REST OF YOUR ENVIRONMENT, YOU CAN TURN IT OFF. IF  
10 THE ONE SERVER IS DOING SOMETHING ELSE WRONG, YOU  
11 CAN STOP IT.

12 Q AND HOW CAN A WEB HOST STOP IT?

13 A AGAIN, BACK TO ANY SORT OF THE PHYSICAL WAYS  
14 THEY CAN STOP IT OR LOGICALLY THEY COULD BLOCK  
15 TRAFFIC TO IT BY STOPPING IT AT THE ROUTER OR FIRE  
16 WALL.

17 Q DO YOU HAVE EXPERIENCE WITH THESE METHODS?

18 A YES, I DO.

19 Q AND ARE THESE METHODS INDUSTRY STANDARDS BASED  
20 ON YOUR EXPERIENCE?

21 A YES.

22 Q ARE THE DEFENDANTS ABLE TO DO THESE THINGS?

23 A YES, THEY ARE.

24 Q AND HOW CAN A DEFENDANT KNOW WHETHER A  
25 PARTICULAR WEB SITE IS ON ONE OF THEIR SERVERS?

1           A        THE DEFENDANTS CONTROL A BLOCK OF IP ADDRESSES  
2           SO THE EASIEST WAY FOR THEM TO FIND OUT IS TO  
3           FIGURE OUT WHAT IP ADDRESS IS ASSOCIATED WITH THAT  
4           WEB SITE AND THEN CHECK AND SEE WHETHER OR NOT THEY  
5           CONTROL IT.

6           Q        HOW CAN A MEMBER OF THE GENERAL PUBLIC FIND  
7           OUT WHO HOSTS A WEB SITE?

8           A        PRETTY MUCH THE SAME WAY YOU WOULD DO A DN  
9           SERVICE LOOKUP OR A PING IN ORDER TO FIND OUT WHAT  
10          THE IP ADDRESS ASSOCIATED WITH THAT WEB SITE WAS  
11          AND THEN YOU WOULD DO A REVERSE IP LOOK UP IN ORDER  
12          TO FIND OUT WHO WAS RESPONSIBLE FOR THAT PARTICULAR  
13          IP ADDRESS.

14          Q        IS THERE A PARTICULAR PLACE WHERE YOU WOULD  
15          LOOK IN TERMS OF MATCHING UP AN IP ADDRESS WITH WHO  
16          THAT IP ADDRESS IS ASSIGNED TO?

17          A        THERE ARE FIVE OR SIX DIFFERENT GROUPS CALLED  
18          RIR'S, OR REGIONAL INTERNET REGISTRY GROUPS, AND  
19          BASICALLY THEY'RE THE ONES RESPONSIBLE FOR DOLING  
20          OUT IP ADDRESSES TO VARIOUS COMPANIES AND YOU WOULD  
21          LOOK AT THEIR INFORMATION TO FOUND OUT WHO WAS  
22          RESPONSIBLE FOR A PARTICULAR IP.

23          Q        AND IS THERE AN AMERICAN --

24          A        YES, ARIN.

25          Q        AND IS THE INFORMATION THAT YOU OBTAINED FROM

1 ARIN, IS THAT RELIABLE?

2 A YES, IT IS.

3 Q AND HOW DO YOU KNOW IT'S RELIABLE?

4 A WELL, IN ORDER FOR ARIN TO GIVE YOU AN IP  
5 ADDRESS YOU HAVE TO GIVE THEM A FAIR AMOUNT OF  
6 INFORMATION INCLUDING WHAT YOU'RE GOING TO DO WITH  
7 THE IP ADDRESS, WHETHER OR NOT YOU HAD ANY BEFORE,  
8 WHAT YOUR BUSINESS IS ACTUALLY IN THE BUSINESS OF  
9 DOING AND THINGS LIKE THAT.

10 THEY ACTUALLY CHECK SOME OF THIS  
11 INFORMATION AND YOU ALSO HAVE TO PAY AHEAD OF TIME  
12 BEFORE YOU GET THE IP ADDRESSES.

13 SO THE INFORMATION THAT ARIN HAS IS WHO  
14 IS ULTIMATELY RESPONSIBLE FOR THAT IP ADDRESS.

15 Q AND YOU MENTIONED PINGING A FEW TIMES. CAN  
16 YOU TELL US WHAT PINGING IS?

17 A SURE. PING IS A NETWORK TOOL THAT IS USED TO  
18 CHECK THE CONNECTIVITY OF A PARTICULAR END POINTER.  
19 BASICALLY IT DOES TWO THINGS. IF YOU DO A PING ON  
20 A DNS NAME OR A DOMAIN NAME, EXCUSE ME, IT WILL DO  
21 A DNS LOOKUP TO FIND OUT WHAT THE ACTUAL IP ADDRESS  
22 IS AND THEN IT WILL SEND OUT PACKETS TO THAT IP  
23 ADDRESS TO SEE IF IT CONNECTS AND HOW LONG IT TAKES  
24 TO CONNECT.

25 IF YOU JUST GIVE IT AN IP ADDRESS, IT

1 WILL JUST DO THE SECOND PART WHICH IS SENDING OUT  
2 PACKETS TO MAKE SURE THE DEVICE IS LISTENING ON THE  
3 OTHER END.

4 Q AND PINGING AND FINDING OUT ASSIGNMENTS OF IP  
5 ADDRESSES, IS THAT ALL PUBLIC INFORMATION?

6 A YES, IT IS.

7 Q HOW MUCH TIME DOES IT TAKE TO DO A PING?

8 A NOT LONG, LESS THAN 30 SECONDS.

9 Q DO YOU KNOW IF THE DEFENDANTS HAVE A POLICY OF  
10 HANDLING COMPLAINTS IN INTELLECTUAL PROPERTY  
11 INFRINGEMENT?

12 A YES, IT IS.

13 Q AND HOW DO YOU KNOW THIS?

14 A THEY HAVE A POLICY ON THEIR WEB SITE.

15 Q AND BRING UP EXHIBIT 609? THERE IS A HARD  
16 COPY UP THERE IF YOU NEED IT, BUT CAN YOU TELL ME  
17 WHAT THAT IS.

18 A YES. THIS IS A PRINTOUT OF THE ACCEPTABLE USE  
19 POLICY ON THE DEFENDANT'S WEB SITE.

20 Q DID YOU BRING THIS OUT?

21 A YES, I DID.

22 Q IS AN INTELLECTUAL PROPERTY COMPLAINT A TYPE  
23 OF ABUSE IN YOUR EXPERIENCE WITH WEB HOSTING?

24 A YES, IT IS.

25 Q IS IT A CATEGORY OF ABUSE ACCORDING TO

1 DEFENDANTS STATED POLICIES?

2 A YES, IT IS. IT IS ACTUALLY -- IT WOULD BE  
3 PART OF B, WHICH IS UTILIZE THE SERVICES IN  
4 CONNECTION WITH ANY ILLEGAL ACTIVITY. AND IT WOULD  
5 ACTUALLY BE PART OF ROMAN NUMERAL I, WHICH IS  
6 UTILIZE THE SERVICES TO COPY MATERIAL FROM THIRD  
7 PARTIES, OR THE NEXT ONE DOWN, II, WHICH IS  
8 MISAPPROPRIATE OR INFRINGE THE PATENTS, COPYRIGHTS  
9 AND THINGS LIKE THAT. SO, YES, DEFINITELY.

10 Q AND DID THE DEFENDANTS STATED POLICIES INCLUDE  
11 A PROVISION THAT ALLOWED IT TO DISCONTINUE SERVICE  
12 IN THE EVENT OF ABUSE?

13 A YES, IT DID. IF YOU SCROLL DOWN A FEW PAGES  
14 WE'LL GET TO THAT POINT. RIGHT THERE.

15 SO ACCORDING TO THEIR POSTED ACCEPTABLE  
16 USE POLICY, THEY COULD DO ANYTHING FROM WARNING THE  
17 CUSTOMER TO SUSPENDING THE OFFENDER CUSTOMER FROM  
18 SERVICES, TERMINATING THE CUSTOMER, IMPOSING FEES,  
19 REMOVING THE OFFENDING CONTENT OR TAKING ANY OTHER  
20 IN ACCORDANCE WITH THE POLICY. SO BASICALLY THEY  
21 CAN DO ANYTHING THEY WANT IF SOMEBODY VIOLATES  
22 THEIR ACCEPTABLE USE POLICY.

23 Q AND ARE THESE POLICIES CONSISTENT WITH THE WEB  
24 HOST?

25 A YES.

1 Q AND DID YOU FORM ANY OPINIONS REGARDING THE  
2 DEFENDANT'S EXECUTION OF THE ADVERTISED POLICY?

3 A YES, I DID.

4 Q AND WHAT WERE THOSE?

5 A THEY HAVE A POLICY THAT SHOWS ALL OF THE  
6 THINGS THAT THEY CAN DO BUT THEIR EXECUTION, THE  
7 PROCEDURES INVOLVED IN EXECUTING THE POLICY ARE  
8 COMPLETELY ARBITRARY AND EFFECTIVELY RANDOM.

9 THEY'RE BASED SOLELY ON THE SHORT-TERM  
10 MEMORY OF THE PEOPLE WHO HAPPEN TO GET THE ABUSE  
11 COMPLAINT OR THE VOLUME OF COMPLAINTS THAT THEY  
12 HAPPEN TO GET IN A PARTICULAR PERIOD OF TIME.

13 Q DID YOU NOTICE ANY DIFFERENCE REGARDING THE  
14 LEVEL OF RESPONSE TO COMPLAINTS?

15 A YES. IF -- THERE'S A FEW CASES IN THE CHEN  
16 DEPOSITION WHERE HE SAYS IF HE GETS AN ABUSE  
17 COMPLAINT FOLLOWED BY A PHONE CALL HE'LL REACT  
18 IMMEDIATELY WHEREAS IF HE GETS AN ABUSE COMPLAINT  
19 HE'LL JUST SEND IT ON TO THE END CLIENT.

20 IF HE GETS 30 ABUSE COMPLAINTS A DAY THEN  
21 HE'LL RESPOND IMMEDIATELY. BUT AGAIN, IF HE GETS  
22 AN ABUSE COMPLAINT ONCE EVERY TEN DAYS, THEY WON'T  
23 NECESSARILY DO ANYTHING SPECIAL.

24 AND THE OTHER THING IS THAT THERE ARE TWO  
25 PEOPLE DEALING WITH ABUSE COMPLAINTS. SO IF ONE OF

1           THEM GETS ONE OF THE COMPLAINTS, THEY MAY REACT  
2           DIFFERENTLY THAN IF SOMEBODY ELSE DOES.

3           Q       DOES DEFENDANT'S POLICY REQUIRE REMOVAL  
4           ALLEGEDLY OF INFRINGING CONTENT WITHIN A SPECIFIED  
5           PERIOD OF TIME?

6           A       NO, IT DOES NOT.

7           Q       IS THAT SOMETHING THAT IT SHOULD?

8           A       IN MY OPINION, YES.

9           Q       AND WHY?

10          A       WELL, IT GIVES YOU A CLEAR LINE, A CLEAR  
11          ABILITY TO ESCALATE YOUR RESPONSE IF SOMETHING  
12          DOESN'T HAPPEN.  SO IF YOU HAD A POLICY THAT SAID  
13          48 HOURS, FOR INSTANCE, THEN AFTER 48 HOURS YOU  
14          WOULD HAVE A DEFINITE LACK OF RESPONSE AND THE  
15          ABILITY TO DO SOMETHING ELSE AND YOU WOULD BE ABLE  
16          TO BACK THAT UP AND YOU WOULD BE ABLE TO SAY, LOOK,  
17          THIS IS WHAT I DID.

18                   THEY DON'T HAVE THAT EITHER WRITTEN IN  
19          THE POLICY OR IN ANY SORT OF PROCEDURE THAT I CAN  
20          TELL.

21          Q       DURING THIS PERIOD OF RESPONSE, DOES IT MATTER  
22          IF THE DEFENDANTS HAVE AN ALLEGED RESELL OR NOT?

23          A       NO, NOT REALLY.  I MEAN, IT WOULD BASICALLY BE  
24          THE SAME AS SAYING YOU OWN AN APARTMENT BUILDING  
25          AND ONE PERSON IN THE APARTMENT SELLING THE DRUGS.



1                   YOU KNOW, WHO CARES WHETHER OR NOT  
2           THERE'S MORE PEOPLE IN THE APARTMENT, YOU WANT TO  
3           STOP THEM FROM DOING THAT.

4           Q        IS IT YOUR OPINION THAT THE DEFENDANT'S  
5           CUSTOMER, WHOEVER THAT IS, IS ULTIMATELY  
6           RESPONSIBLE?

7           A        YES.

8           Q        DO DEFENDANTS HAVE ADMINISTRATIVE ACCESS TO  
9           THE SERVERS?

10          A        YES, EFFECTIVELY THEY DO.

11          Q        DO YOU KNOW IF THEY'RE ABLE TO USE THEIR  
12          PASSWORDS?

13          A        YES, THEY ARE.

14          Q        AND CAN I PLEASE HAVE EXHIBIT 616.

15                   WOULD YOU PLEASE REVIEW THAT?

16          A        SURE.

17          Q        CAN YOU TELL US WHAT EXHIBIT 616 IS?

18          A        YES.   EXHIBIT 616 IS AN EXTRACT THAT I MADE  
19          FROM THE CPRO DATABASE.   IN ORDER TO CREATE THIS I  
20          DID A KEY WORD SEARCH FOR THINGS LIKE UNPLUG OR  
21          ABUSE OR RESET OR COUNTERFEIT AND JUST ONLY VIEWED  
22          THOSE.   SO THAT'S WHAT THIS IS.

23          Q        AND CAN I BRING YOUR ATTENTION TO PAGE 16?

24          A        YES.

25          Q        CAN YOU SEE THE HIGHLIGHTED PORTION THERE?

1 A I CAN.

2 Q AND CAN YOU READ IT, PLEASE?

3 A IT SAYS, "NUMBER 137356 REPLUGGED. SO DONNA  
4 CAN TURN OFF WEB SERVICES AND PERFORM BACKUP, ROOT  
5 PASSWORD, RESET TO ABUSE 0229X, AUTHORIZED BY STEVE  
6 CHEN. OKAY TO TURN IT BACK ON THEN."

7 Q IS THAT AN EXAMPLE OF WHAT YOU SAID EARLIER  
8 ABOUT RESETTING PASSWORDS?

9 A YES, IT IS.

10 Q CAN WE GO TO PAGE 14 OF THAT SAME EXHIBIT.

11 A YOU KNOW, THAT'S ALSO AN EXAMPLE OF THEM  
12 MODIFYING THE WEB CONTENT BECAUSE IT SAYS "SO DONNA  
13 CAN TURN OFF WEB SERVICES."

14 Q OKAY. CAN WE GO TO PAGE 14 AND SCROLL DOWN TO  
15 THE HIGHLIGHTED SECTION. CAN YOU READ THE PART  
16 THAT IS CLOSEST TO THE TOP?

17 A SURE. CUSTOMER 38382. NUMBER 133131,  
18 UNPLUGGED PER STEVE DUE TO COUNTERFEIT PRODUCT  
19 THIRD COMPLAINT WWW.LOVERNIKE.COM.

20 Q CAN YOU READ THE NEXT HIGHLIGHTED PORTION?

21 A THE NEXT HIGHLIGHTED PORTION?

22 Q YES.

23 A CUSTOMER 38382, NUMBER 133160, REPLUGGED,  
24 CUSTOMER RESOLVED LOVERNIKE.COM ABUSE COMPLAINT PER  
25 STEVE.

1 Q AND THE THIRD?

2 A THE THIRD ONE IS THE SAME CUSTOMER NUMBER WITH  
3 THE NUMBER 133265, SERVER UNPLUGGED PER STEVE DUE  
4 TO CONTINUOUS COUNTERFEIT PRODUCT ABUSE,  
5 WWW.LOVERNIKER.COM. NOW, IT IS ON 205.209.173.9.  
6 KEEP MOVING IP IN THE SERVER.

7 Q DO ALL OF THESE APPLY TO THE SAME CUSTOMER?

8 A YES, I BELIEVE SO.

9 Q AND HOW MANY COMPLAINTS ARE THERE IN THOSE  
10 THREE HIGHLIGHTED PORTIONS?

11 A WELL, IT LOOKS LIKE THERE ARE AT LEAST FIVE  
12 COMPLAINTS BECAUSE THE FIRST STARTS WITH  
13 COUNTERFEIT PRODUCT THIRD COMPLAINT.

14 Q IN THIS SITUATION SHOULD THE DEFENDANTS HAVE  
15 TERMINATED THAT CUSTOMER?

16 A I BELIEVE SO, YES.

17 Q AND WHY DO YOU BELIEVE SO?

18 A BECAUSE THE CUSTOMER IS ACTIVELY FLAUNTING THE  
19 ACCEPTABLE USE POLICY. THEY KNOW THEY'RE DOING  
20 SOMETHING WRONG. THE WEB SITE HAS BEEN SHUT DOWN  
21 MULTIPLE TIMES BEFORE, BUT THEY KEEP ON MOVING IT  
22 TO A DIFFERENT IP ADDRESS AND EXPECTING EVERYTHING  
23 TO BE OKAY.

24 Q CAN I BRING YOUR ATTENTION TO EXHIBIT 592.

25 A OKAY.

1 Q CAN YOU PLEASE REVIEW THAT EXHIBIT AND TELL ME  
2 WHAT IT IS?

3 A YES. THAT WAS A PICTURE THAT WAS TAKEN OF THE  
4 CPRO DATABASE THAT WAS SHOWN ON THE SCREEN DURING  
5 THE ACQUISITION OF THE DEFENDANT'S DATA CENTER.

6 Q DO YOU KNOW IF THERE WAS A FORENSIC  
7 ACQUISITION AT THE DEFENDANT'S DATA CENTER?

8 A THERE WAS A COURT ORDER.

9 Q AND HOW IS THIS RELEVANT TO ANY CONCLUSIONS  
10 THAT YOU FORMULATED?

11 A WELL, THE PARTS THAT ARE INTERESTING TO ME ARE  
12 -- THERE'S A FEW LINES ABOVE AND A FEW LINES BELOW  
13 THE HIGHLIGHTED LINE.

14 THE FIRST ONE SAYS, "CUSTOMER 39237,  
15 PATRICK." IT GIVES A NUMBER THAT I AM ASSUMING IS  
16 THE TICKET NUMBER. IT SAYS, "REMOVE 204.13.65.49  
17 FROM 205.209.143.107 POSTING 100 COUNTERFEIT FRAUD  
18 W," AND I WAS ASSUMING THAT WAS WEB SITES.

19 AND THEN UNDERNEATH THE HIGHLIGHTED LINE  
20 TWO DOWN THERE'S ANOTHER ONE FOR CUSTOMER 39237  
21 THAT SAYS "MAIN IP WAS REMOVED FROM MAIN IP  
22 205.209.143.107 DUE TO IGNORING NIKE COMPLAINT."

23 AND TWO BELOW THAT THERE'S ANOTHER ONE  
24 THAT SAYS, "IP ADDRESS WAS REMOVED FROM  
25 205.209.143.107 DUE TO LV COMPLAINT HOSTING 45

1 COMPLAINT." AND THEN IT SAYS, "HOSTING EIGHT  
2 COUNTERFEITS."

3 Q AND HOW ARE THESE RELEVANT TO YOUR  
4 CONCLUSIONS?

5 A WELL, IT SHOWS THAT THEY DEFINITELY HAVE THE  
6 ABILITY TO REMOVE OR TO RESTRICT OR REMOVE IP  
7 ADDRESSES FROM INDIVIDUAL CLIENTS. AND IT SHOWS  
8 THAT THEY HAVE -- IT CERTAINLY SEEMS THAT THEY HAVE  
9 A LOT OF PROBLEMS WITH ONE PARTICULAR CLIENT.

10 Q I'M GOING TO SHOW YOU A PICTURE OF 593. CAN  
11 YOU TELL ME WHAT THAT PICTURE IS?

12 A YEAH. THAT'S A PICTURE OF THE HARD DRIVE THAT  
13 CONTAINS THE DIGITAL EVIDENCE PROVIDED BY GSI.  
14 THAT PARTICULAR EVIDENCE WAS THE RESULT OF A KEY  
15 WORD SEARCH DONE ON THE FORENSIC IMAGES TAKEN OF  
16 THE DEFENDANT'S COMPUTER SYSTEMS.

17 Q AND GSI IS GUIDANCE SOFTWARE?

18 A YES, IT IS.

19 Q AND CAN I BRING YOUR ATTENTION SPECIFICALLY TO  
20 593.31. AND WHAT IS THIS?

21 A THIS IS A BUNCH OF THUMBNAIL PICTURES FROM ONE  
22 PARTICULAR DIRECTORY THAT WAS IN THAT PARTICULAR  
23 DATA THAT WAS THE KEY WORD RESPONSE. IT APPEARS TO  
24 BE A BUNCH OF HANDBAGS.

25 Q AND HAVE YOU VERIFIED THAT THE INFORMATION

1 REFLECTED IN EXHIBIT 593.31 IS A CORRECT  
2 REPRESENTATION OF WHAT IS ON EXHIBIT 593?

3 A YES, IT IS.

4 Q AND LOOKING AT 593.31, CAN YOU MAKE ANY  
5 CONCLUSIONS AS TO THIS?

6 A YEAH. THE PART THAT I AM MOST INTERESTED IN  
7 IS THE DIRECTORY SECTOR. IF YOU MOVE IT DOWN A  
8 LITTLE BIT, BASICALLY IT APPEARS THAT THERE ARE A  
9 FAIR AMOUNT OF WEB SITES AND YOU CAN SEE THAT  
10 BECAUSE OF THE V HOST AND THERE ARE SOME BELOW  
11 THAT.

12 SO THERE ARE A FAIR AMOUNT OF WEB SITES  
13 THAT LOOK LIKE THEY'RE RESPONSIVE TO LOUIS VUITTON  
14 MONOGRAM OR THE KEY WORD SEARCHES THAT WE CHOSE.

15 Q AND HOW MANY SERVERS WERE COPIED?

16 A THERE WERE FIVE SERVERS.

17 Q AND HOW MANY HARD DRIVES WAS THAT ALTOGETHER?

18 A THERE WERE SEVEN HARD DRIVES. TWO OF THE  
19 SERVERS HAD TWO HARD DRIVES IN THEM.

20 Q DO YOU KNOW WHEN THEY WERE COPIED?

21 A THEY WERE FORENSICALLY IMAGED ON MARCH 25TH  
22 AND 26TH.

23 Q OF WHAT YEAR?

24 A 2009.

25 Q AND DO YOU KNOW HOW MANY SERVERS DEFENDANTS

1 OPERATE?

2 A ACCORDING TO STEVEN CHEN'S DEPOSITION, AROUND  
3 1400.

4 Q AND HOW MANY WEB SITES DID YOU FIND ON THESE  
5 FIVE SERVERS THAT WERE RESPONSIVE TO THE SEARCHES  
6 FOR LOUIS VUITTON PRODUCT?

7 MR. LOWE: EXCUSE ME, YOUR HONOR. WE'LL  
8 OBJECT TO HIM TESTIFYING ABOUT MORE THAN ONE WEB  
9 SITE THAT HE FOUND BASED ON THE RULING THE COURT  
10 MADE PREVIOUSLY. I BELIEVE HE ACTUALLY ONLY  
11 CONFIRMED ONE WEB SITE.

12 THE COURT: LET ME SEE IF I UNDERSTAND  
13 THE OBJECTION.

14 IN OTHER WORDS, PREVIOUSLY HE EXPRESSED  
15 OPINIONS AND GAVE A REPORT WHERE HE GAVE HIS  
16 OPINION WITH RESPECT TO HAVING DONE SOME WORK AND  
17 IS YOUR OBJECTION THAT THIS TESTIMONY WAS BEYOND  
18 THAT?

19 MR. LOWE: YES, YOUR HONOR, IT SOUNDS  
20 LIKE HE'S ABOUT TO TESTIFY TO -- SHE ASKED HIM HOW  
21 MANY WEB SITES DID YOU FIND AND THE INFORMATION  
22 THAT WE HAVE BEEN PROVIDED PREVIOUSLY IS THAT HE  
23 ACTUALLY WAS ABLE TO CONFIRM AND REBUILD ONLY ONE.

24 THE COURT: WELL, HE HAVEN'T BEEN ASKED  
25 HOW MANY HE CONFIRMED AND REBUILT.

1                   SO I DON'T UNDERSTAND THE OBJECTION. I'M  
2 WILLING TO LISTEN BUT --

3                   MR. LOWE: WELL, THE QUESTION IS HOW DOES  
4 HE KNOW THEY'RE WEB SITES.

5                   THE COURT: WELL, THAT'S SUBJECT TO YOUR  
6 CROSS-EXAMINATION OF IT. SO THE OBJECTION IS  
7 OVERRULED.

8                   THE WITNESS: WILL YOU ASK THE QUESTION  
9 AGAIN?

10                  MS. WANG: SURE.

11 Q       HOW MANY WEB SITES DID YOU FIND ON THE FIVE  
12 SERVERS THAT WERE RESPONSIVE FOR SEARCHES FOR LOUIS  
13 VUITTON?

14 A       OKAY. I FOUND 1186 THAT WERE RESPONSIVE TO  
15 THE KEY WORD SEARCHES.

16 Q       AND CAN I BRING UP EXHIBIT 615. CAN YOU TELL  
17 ME WHAT THAT IS?

18 A       YES, THIS IS THE LIST OF THOSE SITES.

19 Q       AND DID YOU DO ANY IN-DEPTH ANALYSIS ON ANY  
20 ONE OF THEM?

21 A       I DID CURSOR ANALYSIS ON A FEW OF THEM AND  
22 THEN I DID INDEX ANALYSIS ON ONE WHICH WAS  
23 BIGWORLDSHOES.COM.

24 Q       AND WHY DID YOU PICK THIS PARTICULAR WEB SITE?

25 A       WELL, I PICKED THAT ONE BECAUSE IT WAS FAIRLY



1 EASY TO SPOT THE DIRECTORY THAT IT WAS CONTAINED IN  
2 AND HAD THE NAME IN IT. SO IT WAS VERY EASY TO  
3 SPOT.

4 THE SERVER THAT WAS ON WAS ACTUALLY UP  
5 AND RUNNING AT THE TIME, THE SYSTEMS WERE TAKEN  
6 DOWN FOR IMAGING. ALSO THE WEB SITE WAS UP AND  
7 RUNNING AT THE TIME THE SERVER WAS IMAGED.

8 I ALSO FOUND WEB LOGS THAT INDICATED THE  
9 WEB SITE WAS ACTIVELY BEING VISITED UP UNTIL THE  
10 TIME THE SYSTEM WAS ACTUALLY BEING IMAGED.

11 IN ADDITION TO ALL OF THIS THERE WAS A  
12 RELATIVELY EASY-TO-SPOT LOUIS VUITTON PRODUCT PART  
13 OF THIS PARTICULAR WEB SITE AND THAT PART OF THE  
14 WEB SITE WAS ALSO BEING ACCESSED UP UNTIL THE TIME  
15 THE SYSTEM WAS BEING IMAGED ON MARCH 25TH.

16 Q AND CAN I BRING UP EXHIBIT 611. CAN YOU  
17 REVIEW EXHIBIT 611 AND TELL ME WHAT THAT IS?

18 A YES. EXHIBIT 611 IS THE LOUIS VUITTON WALLET  
19 PAGE OF THE WEB SITE AS IT WAS WHEN THE SYSTEM WAS  
20 IMAGED ON THE 25TH.

21 Q DID YOU EVER GO TO BIG WORLD SHOES ON LINE?

22 A YES, I DID. I ACTUALLY WENT TO BIG WORLD  
23 SHOES WAS ON-LINE AND WHEN I DID MY ANALYSIS I WENT  
24 TO THE WEB SITE AND COMPARED IT TO THIS ONE.

25 Q DID YOU MAKE ANY CONCLUSIONS REGARDING THAT

1 COMPARISON?

2 A YES, I DID. I BASICALLY DOWNLOADED MOST OF  
3 THAT WEB SITE, AND I COMPARED AROUND 18,000 JPEG  
4 IMAGES FROM THE ON-LINE WEB SITE TO THE IMAGES THAT  
5 WERE ON THE REBUILT BIGWORLDSHOES.COM AND OF THOSE  
6 18,000 THERE WERE 15,000, 990 IDENTICAL PICTURES.

7 SO IN MY OPINION I WOULD SAY IT'S THE  
8 SAME WEB SITE, JUST THE ON-LINE WEB SITE HAS MORE  
9 UPDATES OR CONTENT.

10 Q AND COULD I BRING UP EXHIBIT 613. CAN YOU  
11 REVIEW THAT EXHIBIT AND TELL ME WHAT THAT IS?

12 A YES. THAT'S THE ON-LINE WEB SITE AS TO WHEN I  
13 DID MY ANALYSIS ON JUNE 25TH, I BELIEVE. AND YOU  
14 CAN TELL THE DIFFERENCE BETWEEN THE TWO BECAUSE  
15 UNDERNEATH THE FOOT WORK CATEGORY IT HAS A NUMBER  
16 IN THERE WHICH IN THIS CASE IS 8244, WHICH I AM  
17 ASSUMING AT THIS POINT IS ROUGHLY THE AMOUNT OF  
18 PRODUCTS THAT ARE AVAILABLE ON THE WEB SITE.

19 THE NUMBER ON THE REBUILT WEB SITE WAS 66  
20 SOMETHING.

21 Q AND WHY DID YOU ONLY DO THE IN-DEPTH ANALYSIS  
22 FOR THIS ONE WEB SITE?

23 A DUE TO LACK OF TIME.

24 Q COULD YOU HAVE DONE THE SAME ANALYSIS FOR ANY  
25 OTHER WEB SITES THAT YOU FOUND ON THE SERVERS?

1 A YES, I COULD.

2 Q AND HOW COULD YOU CHARACTERIZE DEFENDANT'S  
3 PRACTICAL APPLICATION OF ITS POLICIES?

4 A INCONSISTENT AND EFFECTIVELY ARBITRARILY.

5 Q DID THE DEFENDANTS EXERCISE THE CONTROL THAT  
6 IT COULD HAVE TO STOP REPEATED ABUSE ON THEIR  
7 SERVERS?

8 A NO, THEY DID NOT.

9 Q DID DEFENDANTS SELECTIVELY EXERCISE THEIR  
10 CONTROL OVER THEIR SERVERS?

11 MR. LOWE: EXCUSE ME, YOUR HONOR.  
12 OBJECT. LEADING.

13 THE COURT: OVERRULED. I'LL ALLOW THAT  
14 WITH EXPERTS.

15 THE WITNESS: YES.

16 BY MS. WANG:

17 Q SHOULD THEY HAVE DONE SO?

18 A NO, I DON'T THINK SO.

19 MS. WANG: NO FURTHER QUESTIONS AT THIS  
20 TIME, YOUR HONOR.

21 THE COURT: VERY WELL. IT'S A BIT EARLY  
22 FOR A BREAK SO I'LL ASK YOU TO CROSS-EXAMINE.

23 WE'LL STOP AT ABOUT 2:30 OR SO.

24 / / / /

25 / / / /

1 **CROSS-EXAMINATION**

2 BY MR. LOWE:

3 Q GOOD AFTERNOON, MR. WILSON. YOU TESTIFIED  
4 EARLIER ABOUT YOUR EXPERIENCE WITH THE WARNER MUSIC  
5 GROUP AND THAT YOU WERE WORKING FOR THE WEB HOSTING  
6 BRANCH OF THAT ORGANIZATION. DO I UNDERSTAND THAT  
7 CORRECTLY?

8 A YES, THE TECHNICAL SERVICES GROUP.

9 Q AND HOW LONG WERE YOU IN THAT POSITION?

10 A BETWEEN THREE AND FOUR YEARS.

11 Q AND THAT IS THE WEB SITES THAT WERE HOSTED BY  
12 WARNER MUSIC GROUP DURING THE TIME YOU WERE THERE  
13 WERE ALL OF -- THEY WERE ALL PEOPLE UNDER CONTRACT  
14 WITH WARNER MUSIC?

15 A YES.

16 Q SO SORT OF AN IN-HOUSE POSTING FACILITY?

17 A CORRECT.

18 Q AND YOU INDICATED THAT THOSE WEB SITES FOR THE  
19 MOST WERE NOT CONTROLLED BY WARNER MUSIC GROUP; IS  
20 THAT RIGHT?

21 A WELL, AGAIN, THEY WERE CONTROLLED BY WARNER  
22 MUSIC GROUP IN THE BROADER SENSE BUT INDIVIDUALLY  
23 THEY'RE CONTROLLED BY THE ARTISTS MANAGEMENT OR THE  
24 ARTISTS THEMSELVES.

25 Q AND MAYBE YOU CAN EXPLAIN WHAT YOU MEAN BY

1 CONTROL IN THAT SENSE?

2 A WELL, CONTROL IN THAT SENSE WOULD BE PRETTY  
3 MUCH EVERYTHING. THE THING IS THAT SOME OF THE WEB  
4 SITES WAS MORE THE CONTENT WAS CONTROLLED BY THE  
5 INDIVIDUAL ARTISTS, AND WE ACTUALLY TOOK CARE OF  
6 THE ACTUAL WEB SITE ITSELF AND THE SERVER.

7 THERE WERE SOME WEB SITES WHERE THE  
8 ARTISTS MANAGEMENT OR THE ARTISTS THEMSELVES HAD  
9 FULL CONTROL OVER THE ENTIRE SERVER. WE  
10 ACTUALLY -- WE ONLY HAD ADMINISTRATIVE RIGHTS FOR  
11 THINGS LIKE REBOOTING THE SYSTEM AND PRETTY MUCH  
12 ANYWHERE IN BETWEEN.

13 Q SO THAT LETTER EXAMPLE WHERE YOU ONLY HAD  
14 ADMINISTRATIVE RIGHTS TO REBOOT A SYSTEM, COULD  
15 THAT BE CHARACTERIZED AS AN UNMANAGED HOSTING  
16 OPERATION?

17 A YES.

18 Q AND THAT WOULD BE DIFFERENT THAN MANAGING A  
19 WEB SITE FOR A CLIENT, FOR EXAMPLE?

20 A CORRECT.

21 Q AND IS THE WAY THAT A WEB SITE IS HANDLED  
22 EITHER UNMANAGED OR MANAGED SO TO SPEAK DEPENDS  
23 UPON THE TECHNICAL ABILITY OF THE CUSTOMER OR  
24 CLIENT?

25 A NOT NECESSARILY. SOMETIMES IT'S DEPENDENT ON

1           WHETHER OR NOT THE CUSTOMER WANTS TO DEAL WITH THE  
2           HASSLE OF MAINTAINING THE SERVER HIMSELF.

3           Q       BUT IN THE EVENT THAT THE CUSTOMER WANTS TO  
4           DEAL WITH THE MAINTAINING AND MANAGING AND  
5           CONTROLLING THE WEB SITE, THEN THEY'RE ENTITLED TO  
6           DO THAT; IS THAT CORRECT?

7           A       DEPENDING ON HOW MUCH MONEY THEY MAKE FROM  
8           WGS.

9           Q       BUT IT WASN'T THOUGHT TO BE INAPPROPRIATE FOR  
10          THEM TO DO SO?

11          A       NO.

12          Q       AND IN THOSE CASES WHERE THE ARTISTS OR THEIR  
13          MANAGER OR MANAGEMENT OPERATED THE WEB SITE, THEY  
14          DETERMINED WHAT CONTENT WAS ON THE WEB SITE?

15          A       YES, THEY DID.

16          Q       THEY -- DID THEY ACTUALLY SET UP THE WEB SITE  
17          OR DESIGN THE WEB SITE, FOR EXAMPLE?

18          A       IN MOST CASES THEY SET UP THE WEB SITE  
19          THEMSELVES.  THEY DIDN'T DEAL WITH THE ACTUAL WEB  
20          SERVICE SOFTWARE BUT, YES, IN SOME CASES THEY DID  
21          THE WHOLE THING.

22          Q       AND THE WEB SERVER SOFTWARE IS WHAT?

23          A       THE WEB SERVER SOFTWARE IN OUR CASE WAS ANY  
24          ONE OF A NUMBER OF DIFFERENT APPLICATIONS.

25          Q       I'M JUST ASKING WHAT IT IS, IS A GENERIC TERM.

1 I'M SORRY.

2 A THE WEB SERVER SOFTWARE IS THE SOFTWARE USED  
3 TO SERVE UP CONTENT FOR A WEB SITE SO IIS WOULD BE  
4 THE WINDOWS WEB SERVER. IT'S JUST THE THING THAT  
5 GIVES YOU THE WEB PAGES WHEN YOU ASK FOR IT.

6 Q IIS IS SEPARATE FROM WINDOWS OPERATING SYSTEM?

7 A I DON'T KNOW ABOUT THE ACTUAL LISTENING PART  
8 OF IT. IT'S A COMPONENT OF THE WINDOWS OPERATING  
9 SYSTEM.

10 Q AND -- BUT IT'S A SEPARATE COMPONENT FROM WHAT  
11 SOMEONE WOULD HAVE ON THEIR ORDINARY COMPUTER, FOR  
12 EXAMPLE?

13 A YOU WOULD HAVE TO DEFINE ORDINARY BUT, YES, I  
14 GUESS YOU COULD SAY THAT.

15 Q AND THAT PARTICULAR SOFTWARE IS ONE OF THE  
16 KIND OF EXAMPLES OF SOFTWARE THAT ONE WOULD USE TO  
17 OPERATE AND TO CREATE AND OPERATE A WEB SITE?

18 A CORRECT.

19 Q AT YOUR JOB AT WARNER MUSIC, DID WARNER  
20 PROVIDE THAT SOFTWARE TO ITS CUSTOMERS OR CLIENTS?

21 A YES, MOST OF THE TIME THEY DID. MOST OF THE  
22 TIME THEY ACTUALLY PROVIDED THE BEST OS AND THE  
23 UNDERLYING INFRASTRUCTURE NECESSARY TO PROVIDE A  
24 WEB SITE.

25 Q LET ME SEE IF I UNDERSTAND. THEY PROVIDED THE

1 WEB SERVER SOFTWARE, THEY PROVIDED THE OPERATING  
2 SYSTEM AND THEY PROVIDED THE MACHINES?

3 A CORRECT.

4 Q AND THE MACHINES AND THE HARD DRIVE AND THE  
5 CONNECTIONS TO THE INTERNET?

6 A CORRECT.

7 Q FOR THOSE CLIENTS OR CUSTOMERS OF YOURS AT  
8 WARNER MUSIC WHO WERE, LET'S SAY, USING THE  
9 UNMANAGED APPROACH TO YOUR WEB HOSTING, DID THEY  
10 SOMETIMES PROVIDE THEIR OWN WEB SERVER SOFTWARE?

11 A THEY COULD, ALTHOUGH I DON'T THINK THAT ANY OF  
12 THEM DID. IN GENERAL THE WAY IT WORKED IS THAT WE  
13 WOULD SET UP THE SYSTEM FOR THEM TO BEGIN WITH, AND  
14 WE WOULD HAND THE SYSTEM OFF TO THEM AND THEY WOULD  
15 GO AND DO WHATEVER MODIFICATIONS THEY WANTED TO.

16 Q AND YOU WOULDN'T NECESSARILY KNOW WHAT THAT  
17 WAS?

18 A CORRECT.

19 Q I BELIEVE YOU INDICATED A MOMENT AGO THAT SOME  
20 OF YOUR CUSTOMERS IN THAT SITUATION ACTUALLY  
21 CONTROLLED AN ENTIRE SERVER?

22 A CORRECT.

23 Q SO THEY WERE, WHAT, ASSIGNED A SERVER AND  
24 ASSIGNED SOME IP ADDRESSES TO USE?

25 A YES.



1 Q THAT OTHERWISE HAD BEEN PREVIOUSLY ASSIGNED TO  
2 WARNER MUSIC GROUP?

3 A YES.

4 Q AND ALL WARNER MUSIC DID AS A WEB HOST WAS TO  
5 KEEP THE MACHINES RUNNING AND HOOKED UP TO THE  
6 INTERNET?

7 A AND TO MAKE SURE THAT THE SYSTEM DIDN'T GET  
8 ATTACKED FROM THE OUTSIDE AND DIDN'T ADVERSELY  
9 AFFECT THE REST OF THE ENVIRONMENT.

10 Q SO THAT'S THE TECHNICAL ABUSE OR TECHNICAL  
11 PROCESS THAT YOU WERE INVOLVED IN PARTICULARLY?

12 A MOSTLY, YES, THAT'S CERTAINLY THE DAY-TO-DAY  
13 OPERATION.

14 Q SO IN THAT ENVIRONMENT YOUR JOB IS JUST TO  
15 MAKE SURE THAT EVERYTHING WAS RUNNING CORRECTLY  
16 WITHOUT ANY REGARD FOR WHAT WAS ON THE WEB SITE?

17 A GENERALLY, NO. CORRECT.

18 Q AND THE CONTENT OF THE WEB SITE AS YOU SAID  
19 WAS CONTROLLED BY YOUR CUSTOMER IN ALL CASES;  
20 RIGHT?

21 A YES.

22 Q DID YOU EVER HAVE TO DISABLE AN IP ADDRESS FOR  
23 ONE OF THE CUSTOMERS?

24 A YES.

25 Q AND WHY WAS THAT FOR THAT OCCASION?

1           A       FOR THE MOST PART IT WAS BECAUSE THE SYSTEM  
2           WAS CAUSING SOME HARM TO OUR ENVIRONMENT, IT WAS  
3           BEING ATTACKED AND IT WAS BEING HACKED AND  
4           SOMETHING ELSE TO THE ENVIRONMENT.

5                       THERE WERE ONE OR TWO OCCASIONS WHERE THE  
6           CONTENT ON THE WEB SITE WAS NOT -- WASN'T ALLOWED  
7           IN OUR ENVIRONMENT SO IT HAD -- THE WEB SITE HAD TO  
8           BE SHUT DOWN.

9           Q       WHAT SORT OF CONTENT WOULD NOT BE ALLOWED? AN  
10          EXAMPLE?

11          A       IT WAS DOING CREDIT CARD BASED TRANSACTIONS  
12          AND WMG WASN'T SET UP FOR THAT SO IT HAD TO BE  
13          TURNED OFF.

14          Q       CAN YOU EXPLAIN WHAT WMG WASN'T SET UP FOR?

15          A       THERE ARE CERTAIN SECURITIES AND CHECKS AND  
16          BALANCES THAT YOU HAVE TO BE ABLE TO HANDLE FOR  
17          CREDIT CARD INFORMATION, AND WE DIDN'T HAVE THAT.  
18          SO THIS PARTICULAR WEB SITE SET UP A -- I BELIEVE  
19          IT WAS SOMEPLACE WHERE YOU COULD DONATE SOMETHING.  
20          I DON'T ACTUALLY REMEMBER THE FULL DETAIL OF THE  
21          CONTENT, BUT BASICALLY THEY HAD CREDIT CARD  
22          INFORMATION AND THEY WERE DOING CREDIT CARD  
23          TRANSACTIONS, AND THAT'S NOT ALLOWED IN THE WMG  
24          ENVIRONMENT.

25                       SO AS SOON AS WE FOUND THAT OUT WE HAD TO

1           TURN OFF THE WEB SITE COMPLETELY.

2           Q       IS WHAT YOU'RE TALKING ABOUT SOMETHING ON THE  
3           ORDER OF ATTEMPTING TO RUN AN E-COMMERCE SITE?

4           A       YES.

5           Q       OKAY.   JUST FOR OUR UNDERSTANDING HOW WOULD  
6           YOU EXPLAIN E-COMMERCE OR AN E-COMMERCE SITE?

7           A       WELL, I WOULD SAY AN E-COMMERCE SITE IS  
8           ANYTHING THAT SELLS SOMETHING OVER THE INTERNET  
9           WHICH WOULD BE THE E PART.

10          Q       AND THE SALE PART WOULD REQUIRE THE ABILITY TO  
11          PROCESS, FOR EXAMPLE, CREDIT CARDS?

12          A       NO, NOT NECESSARILY.   IF YOU'RE TALKING ABOUT  
13          ON THAT INDIVIDUAL WEB SITE?   NO.   THE CREDIT CARD  
14          PROCESSING COULD BE HANDLED BY A THIRD PARTY.

15          Q       THROUGH THE WEB SITE OR OTHERWISE?

16          A       EITHER.

17          Q       IS THERE A TYPICALLY SECURITY OR LET'S SAY A  
18          MORE SECURE PROCEDURE FOR HANDLING CREDIT CARD  
19          TRANSACTIONS OVER THE INTERNET THAN NORMAL E-MAIL  
20          OR WEB SITE TRAFFIC?

21          A       HOPEFULLY, YES.

22          Q       AND HOW IS IT SECURE?

23          A       IT SHOULD BE MUCH MORE SECURE.   THE DATA ON  
24          EITHER END NEEDS TO BE PROTECTED FROM OTHER PEOPLE  
25          TRYING TO STEAL IT EFFECTIVELY SO THE DATA WOULD

1 HAVE TO BE ENCRYPTED, AND IT WOULD HAVE TO BE  
2 CORRIDORED OFF FROM THE REST OF THE ENVIRONMENT.  
3 AND I'M NOT FAMILIAR WITH THE PKI STRUCTURE SO I  
4 COULDN'T TELL YOU, BUT IT'S SIGNIFICANTLY MORE  
5 SECURE THAN A REGULAR WEB HOSTING FACILITY.

6 Q IS THERE TYPICALLY A DIFFERENT SORT OF  
7 ADDRESS, A DIFFERENT PROTOCOL THAT IS FOLLOWED FOR  
8 A WEB SITE THAT IS OPERATING IN A SECURE  
9 ENVIRONMENT THAN ONE THAT IS NOT, A DIFFERENCE  
10 BETWEEN HTTP AND HTTPS, FOR EXAMPLE?

11 A YES, HTTPS ENCRYPTS THE TRAFFIC.

12 Q AND DO YOU KNOW ANYTHING ABOUT THE  
13 CERTIFICATION THAT IS REQUIRED TO HAVE AN HTTPS  
14 SITE?

15 A A LITTLE BIT, YES.

16 Q AND IS THERE SOME SORT OF CERTIFICATION  
17 NECESSARY FOR THE WEB SITE?

18 A YOU GENERALLY NEED A CERTIFICATE THAT  
19 BASICALLY ALLOWS YOU TO ENCRYPT THE DATA AND TO  
20 PROVE THAT YOU ARE WHO YOU SAY YOU ARE, AND YOU  
21 USUALLY HAVE TO BUY THAT CERTIFICATE FROM SOME  
22 TRUSTED THIRD PARTY.

23 Q LIKE A BANK OR SOMETHING?

24 A WELL, I GUESS EFFECTIVELY, YES, LIKE A BANK  
25 FOR DIGITAL CERTIFICATES BUT, YES.

1 Q DO YOU KNOW IF IT'S NECESSARY FOR SOMEONE  
2 OPERATING A SECURITY WEB SITE FOR OPERATING  
3 ENCRYPTIONS OF MONEY TO OPERATE THE SAME IP ADDRESS  
4 AT ALL TIMES THAT IS ON THEIR CERTIFICATE?

5 MS. WANG: OBJECTION. I THINK WE'RE  
6 MOVING OUT OF HIS AREA OF EXPERTISE.

7 THE COURT: IT DID OCCUR TO ME THAT IT  
8 GOES BEYOND THE SCOPE OF HIS DIRECT TESTIMONY  
9 ALTHOUGH IT'S marginally RELATED. ALTHOUGH I  
10 BELIEVE WE WOULD COME TO SOMETHING THAT TIES INTO  
11 WHAT HE DID WITH THE DEFENDANT'S COMPUTER.

12 LET'S TAKE THIS INTERRUPTION TO TAKE A  
13 BREAK. WE'LL COME BACK IN TEN MINUTES.

14 (WHEREUPON, A RECESS WAS TAKEN.)

15 THE COURT: VERY WELL. YOU MAY RESUME  
16 YOUR EXAMINATION.

17 MR. LOWE: IF IT PLEASE THE COURT.

18 Q MR. WILSON, I WAS ASKING YOU ABOUT THE  
19 DIFFERENCE BETWEEN A HTTP AND HTTPS. THOSE ARE TWO  
20 DIFFERENT WAYS OF TRANSMITTING INTERNET PROTOCOLS;  
21 IS THAT CORRECT?

22 A YES.

23 Q AND IN YOUR EXAMINATION OF MATERIALS THAT YOU  
24 OBTAINED FROM SERVERS FROM THE DEFENDANT'S  
25 FACILITIES, DID YOU FIND ANY EVIDENCE OF ANY HTTPS

1 WEB SITES, ANY SECURE WEB SITES, IN OTHER WORDS?

2 A I WASN'T ACTUALLY LOOKING FOR IT, BUT, NO, NOT  
3 THAT I CAN RECALL, NO.

4 Q THANK YOU. I'D LIKE TO DIRECT YOUR ATTENTION  
5 TO EXHIBIT 1511 THAT IS ON THE MONITOR IN FRONT OF  
6 YOU.

7 GOING BACK TO YOUR WORK, FOR EXAMPLE,  
8 WITH WARNER MUSIC GROUP AND MANAGING THE WEB SITES,  
9 WOULD YOU LOOK AT THIS AND TELL ME WHAT PART OR  
10 PARTS OR STEPS I GUESS AS THEY'RE LISTED ON HERE  
11 WERE PROVIDED BY WARNER MUSIC GROUP TO ITS ARTISTS,  
12 CLIENTS?

13 A IS THERE ANYTHING BELOW STEP 3?

14 Q OH, I'M SORRY, YES. PLEASE SCROLL DOWN. I  
15 CAN GIVE YOU A PAPER COPY IF THAT WOULD HELP YOU.

16 A SURE. THAT WOULD BE GREAT. SO YOUR QUESTION?

17 Q WHAT PARTS, IF ANY, OF THESE SIX STEPS DID  
18 WARNER MUSIC GROUP PROVIDE FOR ITS CLIENTS IN  
19 ESTABLISHING A WEB SITE OR SETTING UP A WEB SITE?

20 A WMG PROVIDED ANYWHERE FROM I GUESS STEP THREE  
21 TO ALL SIX. IT DEPENDS ON THE INDIVIDUAL CLIENT.

22 Q I'M SORRY. I DON'T QUITE UNDERSTAND. FROM  
23 STEP THREE OR UP TO STEP THREE? WHAT DO YOU MEAN  
24 STARTING AT STEP THREE?

25 A WELL, I'M SAYING THAT WMG WOULD AT THE VERY

1 MINIMUM PROVIDE AN INTERNET SERVER TO STORE THE  
2 CONTENT AND AN IP ADDRESS AND A QUANTITY OF  
3 BANDWIDTH.

4 Q THAT IS REFLECTED IN STEP THREE ON THIS?

5 A CORRECT. NOW, WMG ALSO, DEPENDING ON THE  
6 INDIVIDUAL ARTIST OR MANAGEMENT OR WHATEVER, WOULD  
7 PROVIDE ANYWHERE FROM THAT TO ALL SIX STEPS.

8 WE WOULD ACTUALLY HELP THEM DEVELOP THE  
9 WEB CONTENT AND WE WOULD DO THE DOMAIN NAME  
10 REGISTRATION, WE WOULD MAKE SURE THAT THE IP  
11 ADDRESS WAS SET UP CORRECTLY. WE WOULD DO THE  
12 WHOLE THING.

13 Q NOW, WMG ITSELF WAS NOT A REGISTERED DOMAIN  
14 REGISTRAR, WAS IT?

15 A NO, IT WAS NOT.

16 Q SO IT WOULD BE NECESSARY FOR YOU OR SOMEBODY  
17 ELSE IN THE ORGANIZATION TO APPLY TO A DOMAIN  
18 REGISTRAR TO GET A DOMAIN NAME?

19 A CORRECT.

20 Q OKAY. DID -- AND APPARENTLY THERE WERE TIMES,  
21 IF I UNDERSTAND YOUR TESTIMONY CORRECTLY, WHERE YOU  
22 WOULD ACTUALLY HELP DEVELOP THE CONTENT USING SOME  
23 WEB SITE DEVELOPMENT SOFTWARE?

24 A YES, NOT ME PERSONALLY BUT WMG.

25 Q SOME MIGHT?

1 A UH-HUH.

2 Q BUT FOR OTHER CLIENTS YOU MIGHT NOT?

3 A CORRECT.

4 Q NOW, IN TERMS OF THE IP ADDRESSES, HOW DID  
5 THOSE COME TO BE ASSIGNED?

6 A WMG HAD A SMALL BLOCK OF IP ADDRESSES THAT  
7 WERE AVAILABLE TO THEM, AND WE WOULD BASICALLY  
8 ASSIGN THOSE IP ADDRESSES INTERNALLY TO WHATEVER  
9 CLIENTS NEEDED IT.

10 Q BY SMALL, HOW MANY ARE WE TALKING ABOUT?

11 A ONE C CLASS, I BELIEVE, POSSIBLY TWO. SO I  
12 BELIEVE 256 AND 512 IP ADDRESSES.

13 Q AND YOU WOULD CHANGE THEM FROM TIME TO TIME,  
14 ASSIGN THEM TO DIFFERENT FOLKS FROM TIME TO TIME?

15 A CORRECT.

16 Q DID WMG GET THOSE ASSIGNMENTS DIRECTLY FROM  
17 ARIN OR SOME OTHER ORGANIZATION?

18 A I DON'T KNOW.

19 Q THEY MIGHT HAVE OBTAINED THEM FROM SOME OTHER  
20 IP, FOR EXAMPLE?

21 A YEAH, THEY MAY HAVE. I DON'T THINK THEY DID,  
22 BUT I'M NOT SURE.

23 Q BY THE WAY, WAS WMG AN ISP, AN INTERNET  
24 SERVICE PROVIDER?

25 A WELL, THE PHRASE ISP I TAKE TO MEAN PROVIDING



1 INTERNET CONNECTIVITY TO ITS CLIENTS AND SO, NO, IT  
2 WAS MORE OF A HOSTING FACILITY.

3 Q SO I THINK WHAT YOU CHARACTERIZED AS WEB  
4 HOSTING?

5 A YES.

6 Q MORE THAN INTERNET SERVICE PROVIDER?

7 A CORRECT.

8 Q AND WEB HOSTING MIGHT BE ONE THING THAT AN  
9 INTERNET SERVICE PROVIDER MIGHT DO?

10 A I MEAN, WE'RE GETTING INTO KIND OF A GRAY AREA  
11 HERE, BUT BASICALLY AN ISP PROVIDES THEM A WAY FOR  
12 MULTIPLE INDIVIDUALS TO GET TO THE INTERNET WHEREAS  
13 A HOSTING SERVICE PROVIDES AN END POINT FOR  
14 MULTIPLE INTERNET USERS TO GET TO.

15 SO BASICALLY AN ISP IN MY DEFINITION OF  
16 IT WOULD ALLOW NORMAL USERS TO GET TO THE INTERNET  
17 AND A HOSTING SERVICE OR A HOSTING PROVIDER OR WEB  
18 HOSTING PROVIDER OR WHATEVER WOULD SUPPLY AN END  
19 POINT FOR THE PEOPLE TO GO TO.

20 Q I'M NOT ENTIRELY CLEAR WHAT YOU MEAN BY AN END  
21 POINT?

22 A WELL, AN END POINT WOULD BE FOR A WEB HOSTING  
23 FACILITY IT WOULD BE A WEB SITE. FOR AN E-MAIL  
24 HOSTING FACILITY IT WOULD BE AN E-MAIL SERVER OR  
25 THAT SORT OF THING.

1                   SO ANYWHERE WHERE PEOPLE WANT TO ACTUALLY  
2 GO TO GET INFORMATION TO DO SOMETHING.

3           Q       THE COMMUNICATIONS PROVIDER?

4                   THE COURT:  I HAVE TO -- DO YOU -- THE  
5 WORDS ARE HELPFUL, BUT PICTURES ARE SO MUCH BETTER  
6 IN THIS SITUATION.  I WANT TO EXPRESS A FRUSTRATION  
7 THAT PERHAPS THE JURY AND I ARE BOTH EXPERIENCING.

8                   WE HAVE NO IDEA WHAT IS PHYSICALLY  
9 LOCATED AT THE DEFENDANT'S FACILITIES, WHAT THOSE  
10 THINGS THAT ARE PHYSICALLY LOCATED THERE DO, HOW  
11 THE -- YOU KNOW, BECAUSE WE HAVE HEARD OF SERVERS  
12 AND INTERNET ADDRESSES BUT YOU BOTH HAVE LOST US  
13 WITH RESPECT TO WHAT IS PHYSICALLY THERE AND  
14 WHATEVER IS THERE DOES.

15                  MR. LOWE:  I APPRECIATE THAT.

16                  THE COURT:  AND THE LANGUAGE IS NOT  
17 HELPING US.  ALSO USING WARNER AND HOW IT IS SET UP  
18 AND WHAT IT DOES IS NOT -- IT'S UNDULY CONSUMPTIVE  
19 OF OUR TIME TO UNDERSTAND WHAT THE DEFENDANTS DO  
20 AND HOW WHATEVER THEY DO AFFECTS THE PLAINTIFF.  
21 AND SO I'M GOING TO URGE BOTH OF YOU TO KEEP THIS  
22 RELEVANT TO THE EVENTS THAT ARE HERE.

23                  NOW, IT IS PERMISSIBLE TO CROSS-EXAM AN  
24 EXPERT BECAUSE HE WORKED ON THIS WARNER SYSTEM  
25 BECAUSE HE KNOWS WHAT HE'S TALKING ABOUT REFERENCE

1 TO WHAT HE HAS DONE IN THE PAST, BUT TO FULLY  
2 UNDERSTAND THE WARNER SYSTEM AND HOW IT OPERATED IS  
3 NOT AS PRODUCTIVE OF OUR TIME AS TO FULLY  
4 UNDERSTAND THE DEFENDANT'S SYSTEM AND HOW IT  
5 OPERATES.

6 SO LET'S MOVE AHEAD.

7 MR. LOWE: THANK YOU, YOUR HONOR.  
8 PERHAPS MR. WILSON CAN HELP US HERE.

9 Q HAVE YOU BEEN TO THE DEFENDANT'S FACILITIES?  
10 DO YOU KNOW WHAT THEY LOOK LIKE?

11 A NO, I HAVE NOT.

12 Q DO YOU THINK YOU KNOW WHAT THEIR FACILITIES  
13 LOOK LIKE FROM YOUR PRIOR EXPERIENCE OR WHAT  
14 EQUIPMENT WOULD BE THERE, HOW IT IS SET UP?

15 A YES, GENERALLY I KNOW HOW IT WOULD BE SET UP.

16 Q COULD YOU DESCRIBE THAT FOR THE JURY?

17 A SURE. I BELIEVE THAT THEIR FACILITY IS  
18 BASICALLY A DATA CENTER.

19 SO A DATA CENTER WOULD BE THE TYPE OF  
20 THING THAT YOU GUYS SEE IN THE MOVIES WITH ONE ROOM  
21 FULL OF A WHOLE BUNCH OF REALLY LOUD COMPUTERS  
22 STACKED IN VERTICAL ROWS ALL OVER THE PLACE WITH  
23 NIFTY RAISE AND TILES AND BASICALLY NOT A WONDERFUL  
24 PLACE TO WORK IN, BUT IT'S A WONDERFUL PLACE FOR  
25 COMPUTERS TO BE BECAUSE IT KEEPS THEM ALL COLD.

1                   EFFECTIVELY THAT'S WHAT A DATA CENTER IS  
2                   A WHOLE BUNCH OF COMPUTERS SHOVED INTO A SMALL  
3                   AMOUNT OF SPACE AND WITH ALL KINDS OF CABLES.

4                   Q        AND THE CABLES CONNECT THESE COMPUTERS TO THE  
5                   INTERNET THROUGH SOME KIND OF UPSTREAM PROVIDER?

6                   A        CORRECT, OR IT WOULD BE ANOTHER DATA CENTER.

7                   THE COURT:   I HOPE YOU DON'T THINK THAT  
8                   SATISFIES ME.   AND MAYBE THERE ARE OTHER WITNESSES  
9                   WHO ARE GOING TO DO WHAT THE COURT IS ASKING THE  
10                  PARTIES TO DO, IT'S JUST VERY DIFFICULT FOR ME TO  
11                  FOLLOW THE LANGUAGE AND UNDERSTAND IT, ESPECIALLY  
12                  WHEN WE'RE MIXING NOW WARNER WITH THE DEFENDANT'S  
13                  FACILITIES, BUT MOVE AHEAD.

14                  MR. LOWE:   WE'LL TRY TO ACCOMMODATE THAT,  
15                  YOUR HONOR, AND WE WILL HAVE OTHER WITNESSES.

16                  Q        MR. WILSON, WOULD IT BE CORRECT TO SAY THAT  
17                  WARNER HAD OPERATED OUT OF A DATA CENTER OR NOT?

18                  A        YES, WARNER HAD A DATA CENTER.

19                  Q        AND IT HAD MAYBE FEWER COMPUTERS THAN THE  
20                  DEFENDANT HAD AS FAR AS YOU KNOW OR SERVERS?

21                  A        YEAH, IT HAD FEWER COMPUTERS, BUT I BELIEVE  
22                  THE TECHNOLOGIES AT THE TIME THAT THE TECHNOLOGY  
23                  WAS SUCH THAT THE COMPUTERS WERE BIGGER SO I HAVE  
24                  AN IDEA THAT WMG'S WAS LARGER, BUT I DON'T KNOW FOR  
25                  CERTAIN.

1 Q BUT CONCEPTUALLY THEY'RE THE SAME KIND OF  
2 FACILITY?

3 A YES.

4 Q HOW DOES ONE COMMUNICATE IN ONE OF THESE DATA  
5 CENTERS WITH THESE SERVERS?

6 A TO DO WHAT?

7 Q FOR ANY PURPOSE? ANYONE ON THE INTERNET, HOW  
8 WOULD THEY COMMUNICATE WITH THESE SERVERS IN THIS  
9 DATA CENTER?

10 A THROUGH THE NETWORK CONNECTIVITY THAT IS  
11 PROVIDED BY THE WEB HOSTING FACILITY.

12 Q PERHAPS WE CAN SHOW YOU ANOTHER CHART, AND I  
13 BELIEVE THAT WOULD HELP. 1610, PLEASE.

14 MR. WILSON, I'LL SHOW YOU A COPY OF PAGE  
15 1610.

16 A PLEASE. THANK YOU.

17 Q DOES THIS SIMPLIFIED CHART HELP YOU EXPLAIN  
18 HOW PEOPLE CONNECT TO A DATA CENTER IN ANY WAY?

19 A WELL, IT'S A LITTLE SIMPLIFIED. YEAH, IT DOES  
20 ACTUALLY EXPLAIN IT.

21 Q COULD YOU LEAD US THROUGH THIS A LITTLE BIT,  
22 PLEASE?

23 A SURE. OKAY. BASICALLY IN STEP ONE IT LOOKS  
24 LIKE THE USER WANTS TO GET TO GOOGLE.COM. SO THEY  
25 PUT IN THE DATA IN THE WEB BROWSER OF GOOGLE.COM.

1                   WHAT HAPPENS IS THAT BEHIND THE SCENES  
2                   THE COMPUTER ACTUALLY DOES WHAT THEY CALL A DNS  
3                   LOOK UP, WHICH IS DOMAIN NAME SERVICE LOOKUP OR  
4                   DOMAIN NAME RESOLVER WHICH IN THIS CASE IS STEP  
5                   TWO.

6                   AND WHAT THAT DOES IS GO AND ASK A BUNCH  
7                   OF DEDICATED COMPUTERS WHAT IS THE IP ADDRESS THAT  
8                   IS ASSOCIATED WITH GOOGLE. SO IT'S JUST ASKING FOR  
9                   AN ADDRESS.

10                  EVENTUALLY THAT INFORMATION COMES BACK,  
11                  WHICH I GUESS WOULD BE STEP THREE. YEAH, THAT'S  
12                  STEP THREE. SO THAT INFORMATION COMES BACK AND IT  
13                  SAYS THE IP ADDRESS WE WANT IS BLOCKED. ALL RIGHT.

14                  NOBODY REALLY CARES WHAT THAT IP ADDRESS  
15                  IS, IT'S JUST AS FAR AS THE NORMAL USER IS  
16                  CONCERNED IT'S A BUNCH OF NUMBERS.

17                  NUMBER FOUR IS ALSO BEHIND THE SCENES.  
18                  NUMBER FOUR IS THE USER'S COMPUTER SAYS, ALL RIGHT,  
19                  THEN I WANT TO GO TO GOOGLE.COM, AND IT'S AT THIS  
20                  ADDRESS. SO I'M GOING TO SEND OUT THE REQUEST TO  
21                  GIVE ME THE WEB SITE.

22                  THAT REQUEST TRAVELS THROUGH THE INTERNET  
23                  THROUGH ALL OF THE LITTLE LINES AND EVENTUALLY GETS  
24                  TO NUMBER FIVE WHICH IS THE COMPUTER THAT IS  
25                  ACTUALLY POSTING THE WEB SITE FOR GOOGLE. IT GETS

1 THE DATA FROM THAT COMPUTER AND SENDS THE  
2 INFORMATION BACK TO THE COMPUTER SCREEN OR USER.

3 Q NOW, IN THE MIDDLE OF THIS IS THE INTERNET  
4 SERVICE PROVIDER AND SERVERS BLOCK, IS THAT THE  
5 DATA CENTER THAT YOU WERE TALKING ABOUT TYPICALLY?

6 A THE ONE WITH THE LITTLE PICTURE WITH THE  
7 WIRELESS ROUTER IN IT.

8 Q YES.

9 A YES, THAT WOULD BE A DATA CENTER, YES.

10 Q AND DOWN BELOW IT ARE SOME ILLUSTRATIONS OF  
11 MAYBE SERVERS OR SOME SUCH DEVICE?

12 A YEAH.

13 Q AND SO THE INFORMATION COMES TO THOSE SERVERS  
14 FROM WHAT SOURCE?

15 A THE WEB SITE INFORMATION YOU MEAN?

16 Q YES.

17 A IT WOULD BE BY WHOMEVER IS CONTROLLING THE WEB  
18 SITE. SO IT WOULD BE PUT ONTO THE SERVERS FOR --  
19 TO BE SERVED UP TO WHOEVER WANTED TO LOOK AT THE  
20 WEB SITE.

21 Q SO SOME THIRD PARTY WOULD UPLOAD INFORMATION  
22 ON TO THOSE SERVERS? IS THAT THE WAY IT WOULD  
23 WORK?

24 A YES.

25 Q AND THEN THAT WOULD BE PASSED BACK THROUGH THE

1 INTERNET USER TO THE USER?

2 A RIGHT.

3 Q AND THIS HAPPENS AT A VERY FAST SPEED I  
4 PRESUME?

5 A HOPEFULLY. IF IT DOESN'T PEOPLE DEFINITELY  
6 GET UPSET.

7 Q ALL RIGHT. DO YOU HAVE ANY REASON TO BELIEVE  
8 THAT THE DEFENDANT'S INTERNET SERVICE PROVIDER  
9 OPERATIONS AND DATA CENTER WOULD BE OPERATING  
10 DIFFERENTLY THAN THIS ILLUSTRATES?

11 A NO.

12 Q NOW, I BELIEVE YOU TESTIFIED THAT A WEB HOST  
13 IN YOUR VIEW, MAYBE I DIDN'T WRITE THIS DOWN RIGHT,  
14 IS LIKE AN APARTMENT BUILDING OR IS IT --

15 A A WEB HOLDING FACILITY IS LIKE AN APARTMENT.

16 Q A WEB HOSTING FACILITY, AND THAT'S ONE THAT  
17 HAS SERVERS AND HAS DATA ON THEM CONCERNING WEB  
18 SITES. IS THAT WHAT YOU ARE TALKING ABOUT?

19 A UH-HUH.

20 Q SO A SERVER IS, SAY, A MINIATURE APARTMENT  
21 BUILDING IN YOUR ANALOGY?

22 A WELL, AN IP ADDRESS WOULD BE A MINIATURE  
23 APARTMENT BUILDING, BUT IT DEPENDS. YOU CAN USE  
24 EITHER ONE, YES.

25 Q ALL RIGHT. SO HOW DOES THE IP ADDRESS DIFFER



1 FROM THE SERVER?

2 A YOU CAN HAVE MULTIPLE IP ADDRESSES ON ONE  
3 SERVER.

4 SO BASICALLY SO I GUESS IF YOU REALLY  
5 WANTED TO TALK ABOUT IT THAT WAY YOU COULD SAY THE  
6 SERVER WOULD BE A FLOOR OF THE APARTMENT BUILDING  
7 SO YOU COULD HAVE MULTIPLE ROOMS WITHIN AN  
8 INDIVIDUAL SERVER JUST LIKE YOU HAVE -- OR MULTIPLE  
9 ROOMS WITHIN A FLOOR JUST LIKE YOU CAN HAVE  
10 MULTIPLE IP ADDRESSES WITHIN AN INDIVIDUAL SERVER.

11 Q AND YOU CAN HAVE MULTIPLE, LET'S SAY, WEB  
12 SITES ON A SINGLE IP ADDRESS?

13 A CORRECT.

14 Q AND ONE OR TWO OR HUNDRED MAYBE?

15 A YES.

16 Q AND TRYING TO STAY WITH THAT ANALOGY A LITTLE  
17 BIT, ARE YOU TALKING ABOUT, FOR EXAMPLE, PEOPLE  
18 LIVING IN A ROOM ON THIS FLOOR OR USING A ROOM ON  
19 THIS FLOOR FOR SOME PURPOSE?

20 A YES.

21 Q OKAY. THE WEB HOST FACILITY, DO THEY  
22 NECESSARILY KNOW WHAT THE WEB CONTENT IS ON THE WEB  
23 SITES?

24 A NO.

25 Q AND WHY IS THAT?

1 A BECAUSE IT USUALLY TAKES MORE EFFORT THAN  
2 THEY'RE USUALLY WILLING TO PUT FORTH.

3 Q AND WHAT EFFORT?

4 A YOU WOULD ACTUALLY HAVE TO GO TO THE SITE AND  
5 LOOK AT THE CONTENT.

6 Q AND NOT GO TO THE SERVERS AND LOOK IT UP. I  
7 MEAN, YOU WOULDN'T BE ABLE TO JUST LOOK AT THE  
8 SERVER AND SEE WHAT IS GOING ON IN VARIOUS WEB  
9 SITES THAT HAPPEN TO BE USING THAT SERVER?

10 A WELL, YEAH. I MEAN, THAT'S BASICALLY WHAT  
11 YOU'RE DOING WHEN YOU'RE TALKING ABOUT GOING TO THE  
12 WEB SITE. YOU WOULD HAVE TO GO TO THE SERVER AND  
13 THEN LOOK ON THE SERVER AT THE WEB SITES THAT ARE  
14 ON THE SERVER AND THEN LOOK AT THE CONTENT.

15 Q AND WHEN YOU'RE LOOKING AT IT, AREN'T YOU  
16 SAYING THAT YOU REALLY HAVE TO GO TO A WEB BROWSER  
17 ON A COMPUTER THAT IS HOOKED UP TO THE INTERNET  
18 THAT IS IN TURN HOOKED UP TO THE SERVER ON THE  
19 INTERNET?

20 A YOU COULD DO IT THAT WAY, OR IF YOU HAVE  
21 PHYSICAL ACCESS TO THE SYSTEM YOU CAN ACCESS THE  
22 SYSTEM DIRECTLY.

23 Q DO YOU KNOW IF THE COMPUTERS IN THE  
24 DEFENDANT'S DATA CENTER OR DATA CENTERS GENERALLY  
25 HAVE SCREENS ON THESE COMPUTERS?

1           A       THEY DON'T HAVE PHYSICAL SCREENS LOCALLY.  
2           THEY HAVE REMOTE KVM'S. IT STANDS FOR KEYBOARD,  
3           VIDEO, MOUSE BUT KVM IS WHAT IT IS. BUT THEY HAVE  
4           KVM SWITCHES THAT ALLOW REMOTE ACCESS TO THE  
5           SYSTEM, WHETHER OR NOT THEY ACTUALLY HAVE A  
6           PHYSICAL MONITOR ATTACHED.

7           Q       BUT IF YOU HAVE MULTIPLE IP ADDRESSES ON A  
8           SERVER AND YOU HAVE MULTIPLE WEB SITES OR USES,  
9           LET'S SAY, ON AN IP ADDRESS, IT WOULD BE DIFFICULT  
10          TO KEEP UP WHAT IS GOING ON WITH ALL OF THEM,  
11          WOULDN'T IT?

12          A       YES.

13          Q       AND IT'S NOT CUSTOMARY FOR INTERNET SERVICE  
14          PROVIDERS TO DO THAT, IS IT?

15          A       I DON'T BELIEVE SO.

16          Q       IN FACT, YOU DON'T KNOW ANY WHO DO THAT?

17          A       NO, BECAUSE AGAIN IT TAKES TOO LONG.

18          Q       WELL, IS IT ALSO -- STRIKE THAT. NOW, YOU  
19          INDICATED ALSO IN YOUR DIRECT TESTIMONY THAT YOU  
20          WERE TALKING ABOUT THE ROUTERS LIKE A POST OFFICE.

21                    NOW, WE HAVE A COUPLE ROUTERS ON THIS OR  
22          SEVERAL ROUTERS ON THIS CHART, EXHIBIT 1610. DO  
23          THEY ALL DO THE SAME FUNCTION ROUGHLY IN YOUR VIEW  
24          AS THIS POST OFFICE ANALOGY?

25          A       YEAH, BASICALLY.

1 Q AND HOW EXACTLY DOES THAT WORK IN A DATA  
2 CENTER AS FAR AS YOU KNOW?

3 A IT'S THE SAME BASIC IDEA. THE INDIVIDUAL  
4 ROUTERS WOULD BASICALLY BE ACTING LIKE LOCAL POST  
5 OFFICES TO SET UP SERVERS. SO IF THE TRAFFIC  
6 NEEDED TO GET TO A PARTICULAR SERVER, THE ROUTER  
7 WOULD BE ABLE TO DIRECT IT TO THAT SERVER.

8 Q AND JUST LIKE THE POST OFFICE, IT ONLY READS  
9 THE ADDRESS TO DECIDE WHICH BOX TO PUT IT IN OR  
10 WHERE IN THE APARTMENT BUILDING TO SEND IT; IS THAT  
11 RIGHT?

12 A CORRECT, ALTHOUGH ALSO JUST LIKE A POST  
13 OFFICE, IF THERE IS A CHANGE OF ADDRESS FORM  
14 SUBMITTED OR THERE'S A, YOU KNOW, A STOP OF SOME  
15 SORT AND IT WOULD BEHAVE LIKE THAT, TOO.

16 Q NOW, THE POST OFFICE DOESN'T READ YOUR MAIL,  
17 DOES IT, ORDINARILY?

18 A NOT ORDINARILY. NOT THAT I KNOW OF.

19 Q PEOPLE WOULDN'T LIKE IT IF THEY DID, RIGHT?

20 A PROBABLY NOT.

21 Q ISN'T IT ALSO TRUE THAT IF THE POST OFFICE  
22 OPENED EVERY LETTER TO READ IT BEFORE THEY SENT IT  
23 ON, THAT WOULD SLOW DOWN THE SERVICE UNBELIEVABLY?

24 A WELL, I THINK NOW YOU'RE GETTING THE  
25 THEORETICALLY. I'M BETTING THERE'S A WAY TO DO

1 THAT FAIRLY QUICKLY, BUT I DON'T KNOW WHAT THAT IS.

2 Q OKAY. THE ROUTER DOESN'T OPEN ANY OF THE  
3 PACKETS OF INFORMATION THAT ARE TRANSMITTED OVER  
4 THE INTERNET, DOES IT, OTHER THAN TO LOOK FOR AN  
5 ADDRESS?

6 A WELL, YEAH, BUT THE PROBLEM IS THAT OTHER THAN  
7 TO LOOK FOR AN ADDRESS IS OPENING IT.

8 SO IT IS ACTUALLY VIEWING THE CONTENTS OF  
9 THE PACKETS IN ORDER TO BE ABLE TO TELL WHERE IT'S  
10 SUPPOSED TO GO.

11 Q BUT THAT'S ALL IT'S SUPPOSED TO DO; IS THAT  
12 RIGHT?

13 A IT DEPENDS ON THE TYPE OF ROUTER. CERTAIN  
14 ROUTERS HAVE THE ABILITY TO DO MORE DEEP LEVEL  
15 INSPECTIONS, AND IT WILL ACTUALLY LOOK AT THE  
16 PACKET AND THE CONTENTS ITSELF.

17 Q ISN'T IT TRUE THAT INFORMATION THAT TRAVELS  
18 OVER THE INTERNET, EVEN A LOOKUP FOR GOOGLE OR  
19 WHATEVER ISN'T ALL IN ONE PACKET NECESSARILY BUT  
20 MAYBE A SERIES OF PACKETS?

21 A CORRECT.

22 Q MAYBE SERIES AND ONES?

23 A UH-HUH.

24 Q AND IF YOU WANTED TO OPEN OR YOU WANTED TO SEE  
25 WHAT A MESSAGE WAS OR WHAT WAS BEING TRANSFERRED TO

1 OR FROM, YOU WOULD HAVE TO OPEN A SERIES OF PACKETS  
2 AND THEN HOLD THEM AND UNTIL YOU SEND THEM ON IF  
3 YOU WANTED TO KIND OF SCREEN THINGS?

4 A THEORETICALLY, YES.

5 Q AND THAT'S NOT VERY PRACTICAL, IS IT?

6 A AGAIN, IT DEPENDS ON YOUR DEFINITION OF  
7 PRACTICAL, AND IT DEPENDS ON THE HARDWARE THAT  
8 YOU'RE USING.

9 Q OKAY. NOW, YOU MENTIONED YOU COULD USE A  
10 ROUTER TO STOP OR REROUTE INFORMATION FROM OR TO A  
11 WEB SITE; IS THAT CORRECT?

12 A UH-HUH.

13 Q BY THAT DO YOU ESSENTIALLY MEAN YOU WOULD  
14 DISABLE THE IP ADDRESS?

15 A EFFECTIVELY. YOU COULD DISABLE THE IP  
16 ADDRESS. YOU COULD TELL IT TO SEND THE INFORMATION  
17 TO A DIFFERENT LOCATION, ALL SORTS OF THINGS BUT  
18 EFFECTIVELY WHAT YOU WOULD BE DOING IS DISABLING  
19 THE IP ADDRESS, YES.

20 Q OKAY. MAYBE YOU CAN TELL US IF SOMEONE LET'S  
21 SAY AT AN ISP WHAT PHYSICALLY HAPPENS OR WHATEVER  
22 LOGICALLY IT IS?

23 A WELL, LOGICALLY THEY WOULD GO IN AND  
24 RECONFIGURE THE ROUTER TO NOT REROUTE THE TRAFFIC  
25 FOR THAT PARTICULAR ADDRESS.

1 Q SO THEY WOULD PROGRAM THE ROUTER TO REJECT THE  
2 MAIL OF THAT PARTICULAR ADDRESS?

3 A YES.

4 Q NOW, YOU INDICATED AT WARNER MUSIC THAT YOU  
5 DIDN'T HAVE CONTROL OF THE WEB SITES. YOU JUST  
6 MAINTAINED THE INFRASTRUCTURE SO TO SPEAK; IS THAT  
7 RIGHT?

8 A ACTUALLY --

9 Q IN ONLY A FEW CASES?

10 A IN ONLY A FEW CASES WE DIDN'T HAVE DIRECT  
11 CONTROL. MOST OF THE TIME WE DID.

12 Q BUT IF IT WAS A MANAGED SETUP THEN YOU  
13 WOULDN'T HAVE THAT DIRECT CONTROL?

14 A NOT DIRECTLY. ALTHOUGH AGAIN BECAUSE WE HAVE  
15 ACCESS TO THE PHYSICAL SYSTEM, WE NEEDED IT, WE  
16 HAVE DIRECT CONTROL.

17 Q AND BECAUSE THESE PEOPLE WERE UNDER CONTRACT  
18 TO WARNER MUSIC, IF YOU ASKED THEM FOR ACCESS, THEY  
19 WOULD PRETTY MUCH HAVE TO GIVE IT TO YOU, WOULDN'T  
20 THEY?

21 A YOU WOULD THINK, BUT, NO, NOT NECESSARILY.

22 Q REALLY?

23 A WELL, ALTHOUGH THEY ARE UNDER CONTRACT, THE  
24 IDEA OF THEM ALL BEING HAPPY FRIENDLY PEOPLE THAT  
25 GET ALONG IS PROBABLY NOT REALISTIC. SO SOME OF

1           THEM LIKED US AND WERE VERY HELPFUL AND IF WE ASKED  
2           THEM FOR HELP AND THEY WOULD GIVE IT TO US AND  
3           VICE-VERSA AND SOME NOT SO MUCH.

4           Q        AND SO EVEN THOUGH YOU HAD PHYSICAL CONTROL  
5           OVER THE SERVERS AT YOUR DATA CENTER, YOU WOULDN'T  
6           HAVE NECESSARILY ACCESS TO CONTENT OF THE WEB  
7           SITES, IF SOME WEB SITE OPERATOR DIDN'T WANT TO  
8           GIVE YOU THAT ACCESS?

9           A        NO, WE WOULD HAVE ACCESS TO THE SITE BECAUSE  
10          WE WOULD HAVE PHYSICAL CONTROL.  THERE'S NO  
11          QUESTION ABOUT THAT.

12                    IF WE HAVE THE PHYSICAL SYSTEM, WE HAVE  
13          ACCESS TO ANYTHING ON THE SYSTEM.

14                    THE QUESTION IS JUST WHETHER OR NOT THEY  
15          WOULD WANT TO LET US TOUCH THE CONTENT.

16          Q        IF THEY DIDN'T WANT TO LET YOU TOUCH IT, YOU  
17          WOULDN'T BE ABLE TO, NOTWITHSTANDING THAT YOU'RE AT  
18          THE DATA CENTER?

19          A        PERHAPS ADMINISTRATIVELY WE WOULDN'T BE ABLE  
20          TO, BUT TECHNICALLY WE WOULD ALWAYS BE ABLE TO.

21          Q        AND YOU WOULD BE ABLE TO DO THAT BY, WHAT,  
22          RESETTING THE PASSWORD?

23          A        IN SOME CASES WE WOULD RESET THE PASSWORD AND  
24          IN SOME CASES WE WOULD RECONNECT TO THE SYSTEM  
25          BECAUSE WE WOULD ALREADY HAVE AN ADMINISTRATIVE



1 ACCOUNT.

2 Q BUT YOU WOULD HAVE TO HAVE ADMINISTRATIVE  
3 CONTROL OVER THE WEB SITE IN ORDER TO BE ABLE TO DO  
4 THAT WITHOUT CHANGING THE PASSWORD?

5 A WE WOULD HAVE TO HAVE CONTROL AT LEAST AT THE  
6 SAME LEVEL AS THE -- AS WHATEVER THE CONTENT WAS.

7 SO IF THE CONTENT WAS CREATED BY AN  
8 INDIVIDUAL USER BOB, THEN WE WOULD HAVE TO HAVE THE  
9 SAME LEVEL OR GREATER CONTROL THAN BOB DID.

10 Q AND IF BOB WOULDN'T GIVE IT TO YOU THEN WHAT?

11 A AGAIN WE'RE BACK DOWN TO WE HAVE PHYSICAL  
12 ACCESS OF IT. WE COULD GET ADMINISTRATIVE CONTROL  
13 AND GET IN IF WE NEEDED TO OR WE WOULD TELL BOB TO  
14 FIX IT.

15 Q WOULD THAT BE DISRUPTIVE FOR YOU TO GET IN  
16 WITHOUT HIS PERMISSION?

17 A DISRUPTIVE TO WHOM?

18 Q TO HIS WEB SITE?

19 A YES, PROBABLY. IT DEPENDS ON IF WE CHANGED  
20 ANYTHING, BUT YES.

21 Q OKAY. HE WOULDN'T BE HAPPY I TAKE IT?

22 A WELL, BOB IS PROBABLY NEVER HAPPY SO.

23 Q NOW, YOU MENTIONED THERE IS CONTROL, AND I  
24 BELIEVE YOU SAID YOU COULD ALWAYS TAKE A HAMMER TO  
25 THE MACHINE. YOU WERE BEING FACETIOUS, WEREN'T

1 YOU?

2 A YES, ALTHOUGH YOU COULD. I WOULD RECOMMEND  
3 AGAINST IT BECAUSE IT TENDS TO MAKE A MESS.

4 Q THAT'S NOT A WELL ACCEPTED ADMINISTRATIVE  
5 TECHNIQUE?

6 A CORRECT.

7 Q AND OBVIOUSLY AT SOME POINT YOU COULD JUST  
8 UNPLUG THE SERVER?

9 A YES.

10 Q HOW OFTEN DID YOU HAVE TO DO THAT AT WARNER,  
11 IF EVER?

12 A MOST OF THE TIME WE WOULDN'T UNPLUG THE ACTUAL  
13 POWER FOR THE SYSTEM, BUT WE DID HAVE A FEW  
14 OCCASIONS WHERE WE WOULD HAVE TO UNPLUG THE NETWORK  
15 FROM THE SYSTEMS.

16 Q SO WHY DID YOU NOT WANT TO UNPLUG A SERVER?

17 A BECAUSE IT WOULD BE DISRUPTIVE FOR BUSINESS,  
18 BUT IN THESE CASES IT'S ALSO BECAUSE IF I UNPLUG  
19 THE SERVER IT'S ALSO IMPORTANT FOR ME TO  
20 INVESTIGATE WHAT WENT WRONG OR WHAT REQUIRED US TO  
21 PULL THE NETWORK OUT OF IT.

22 Q BUT IF YOU HAD A NUMBER OF USERS ON A SERVER  
23 AND VARIOUS IP ADDRESSES USING THAT SERVER AND  
24 MULTIPLE WEB SITES USING THE IP ADDRESSES, IF YOU  
25 UNPLUG THE SERVER, YOU SHUT DOWN EVERYBODY; RIGHT?

1 A CORRECT.

2 Q AND EVEN IF THERE'S A PROBLEM WITH ONE  
3 PARTICULAR WEB SITE, FOR EXAMPLE, YOU DON'T WANT TO  
4 DO THAT TO DISABLE EVERYONE'S WEB SITE?

5 A IF WE CAN AVOID IT, RIGHT.

6 Q YOU TALKED ABOUT ARIN DURING YOUR DIRECT  
7 TESTIMONY. DO YOU KNOW WHETHER OR NOT ARIN HAS A  
8 CONNECTION TO DATABASES RUN BY ISP'S THAT HAVE IP  
9 ADDRESSES ASSIGNED TO IT IN ORDER TO OBTAIN  
10 INFORMATION AS TO WHO IS USING THE IP ADDRESSES?

11 A I'M SORRY. I DON'T UNDERSTAND THAT.

12 Q LET ME TRY TO SIMPLIFY THIS. DO YOU KNOW  
13 WHETHER OR NOT ARIN HAS A POLICY OR REQUIREMENT OF  
14 HAVING ACCESS TO AN ISP'S CUSTOMER LIST IN ORDER TO  
15 LOOK UP THINGS ON THE CUSTOMER'S -- THE ISP'S  
16 DATABASE, IN ORDER TO KNOW WHO IS USING AN ISP  
17 ADDRESS?

18 A I DON'T BELIEVE THAT THEY DO, NO.

19 Q OKAY. AND DO YOU KNOW IN THIS PARTICULAR  
20 INSTANCE WHETHER IN THIS INSTANCE IN DEALING WITH  
21 THESE DEFENDANTS IN THIS CASE, WHETHER ARIN, IN  
22 FACT, HAS ACCESS TO THE CPRO DATABASE TO DETERMINE  
23 WHO IS ASSIGNED A PARTICULAR IP ADDRESS?

24 A I DOUBT THAT THEY HAVE ACCESS TO THE DATABASE,  
25 AND I DOUBT THAT THEY CARE WHO IS ASSIGNED THAT

1 PARTICULAR DATABASES.

2 Q THEY DON'T CARE?

3 A IT'S ACCORDING TO ARIN THAT THE DEFENDANTS ARE  
4 ASSIGNED AN IP ADDRESS.

5 Q AND SO ARIN DOESN'T CARE WHO THEY ASSIGN THEM  
6 TO?

7 A NO, I DON'T EXPECT SO. ARIN IS MUCH MORE  
8 CONCERNED WITH WHO IS ULTIMATELY RESPONSIBLE FOR  
9 THE IP ADDRESS, WHICH WOULD BE THE DEFENDANTS IN  
10 THIS CASE.

11 Q YOU TESTIFIED ABOUT THE DEFENDANT'S ACCEPTABLE  
12 USE POLICY. WOULD YOU AGREE THAT THEIR POLICY IS  
13 CONSISTENT WITH INDUSTRY STANDARDS FOR SUCH  
14 POLICIES?

15 A THEIR POSTED POLICY SEEMS TO BE PRETTY  
16 STANDARD, YES.

17 Q WOULD YOU AGREE THAT IN TERMS OF DEALING WITH  
18 AN ABUSE COMPLAINT THAT THERE'S A REQUIREMENT TO  
19 EXERCISE SOME JUDGMENT AS TO WHAT OUGHT TO HAPPEN  
20 DEPENDING UPON THE NATURE OF THE ABUSE?

21 A IF THERE WAS A WRITTEN POLICY IN PLACE THAT  
22 ACTUALLY GOES OVER ALL OF THE DIFFERENT ABUSE OF  
23 THE COMPLAINTS THAT A COMPANY NORMALLY GETS THEN  
24 YOU SHOULDN'T HAVE TO DEAL WITH A WHOLE LOT WITH  
25 JUDGMENT. YOU SHOULD HAVE A BASIC POLICY THAT SAYS

1 THAT IF THIS IS A SPAM ABUSE, DO THIS; IF THIS IS  
2 AN IP STEALING ABUSE, DO THIS; IF THIS IS A  
3 COUNTERFEIT ABUSE, DO THIS.

4 SO I DON'T THINK JUDGMENT IS NECESSARILY  
5 THAT IMPORTANT IN THIS CASE IF THERE WAS ACTUALLY A  
6 POLICY OR PROCEDURE THAT ACTUALLY COVERED THE WHOLE  
7 THING.

8 Q SO YOU THINK, PERHAPS, YOU COULD JUST HAVE AN  
9 AUTOMATED SYSTEM TO DEAL WITH THE ABUSE COMPLAINTS,  
10 OR DO YOU ACTUALLY HAVE TO HAVE SOME HUMAN  
11 INTERACTION?

12 A I WOULD SAY THE PROCESS COULD BE AUTOMATED,  
13 BUT THE BIGGEST ISSUE WITH AUTOMATION IS THE  
14 EXPENSE. BUT AGAIN, IT ALL DEPENDS ON WHAT TYPE OF  
15 COMPLAINTS THEY'RE GETTING AND THE FORMAT, ET  
16 CETERA.

17 Q IS IT YOUR VIEW THAT EVERY ALLEGATION OF  
18 COPYRIGHT OR TRADEMARK INFRINGEMENT SHOULD BE DEALT  
19 WITH THE SAME WAY?

20 A IT DEPENDS ON WHAT THE SAME WAY IS. WHAT ARE  
21 WE TALKING?

22 Q WELL, IF I UNDERSTAND WHAT YOU WERE SAYING IF  
23 YOU HAVE A STANDARD POLICY FOR DEALING WITH SUCH  
24 THINGS THEN THAT WOULD BE SUFFICIENT.

25 SO I'M ASKING IF THERE IS ONE WAY OF

1 DEALING WITH COMPLAINTS ABOUT TRADEMARK OR  
2 COPYRIGHT INFRINGEMENT, AND ONLY ONE WAY?

3 A WELL, I WOULD SAY THAT THE ONE WAY GENERICALLY  
4 WOULD BE TO INFORM THE PERSON RESPONSIBLE THAT  
5 THERE'S SOME SORT OF IP COMPLAINT AGAINST THEIR  
6 INFORMATION AND TELL THEM TO EITHER FIX IT OR TO  
7 SHOW THAT THERE IS NO COMPLAINT OR WHETHER ITS  
8 NECESSARY OR NOT OR VALID OR WHATEVER.

9 AND THEN IF THAT DOESN'T HAPPEN THEN  
10 REMOVE THE CONTENT ITSELF. I MEAN, THAT'S A PRETTY  
11 BASIC PROCESS THAT DOESN'T REALLY REQUIRE A WHOLE  
12 LOT OF JUDGMENT OR A WHOLE LOT OF EFFORT TO  
13 EXECUTE.

14 Q SO YOU'RE NOT SUGGESTING THAT EVERY TIME THEY  
15 GET A COMPLAINT OR COMPLAINT OF AN IP ABUSE THAT  
16 THEY SHOULD DISABLE AN IP ADDRESS OR UNPLUG THE  
17 SERVER?

18 A NO.

19 Q ARE YOU FAMILIAR WITH THE PROVISIONS OF THE  
20 DIGITAL MILLENNIUM COPYRIGHT ACT CONCERNING THE  
21 HANDLING OF COMPLAINTS ABOUT COPYRIGHT INFRINGEMENT  
22 ON THE INTERNET?

23 A NO, CERTAINLY NOT ENOUGH TO BE ABLE TO TESTIFY  
24 ABOUT IT.

25 Q OKAY. SO YOU'RE NOT FAMILIAR WITH THE

1           PROCEDURE THEREBY ALLOWING SOMEONE WHO IS BEING  
2           COMPLAINED AGAINST TO MAKE A REBUTTAL?

3           A       NO, I'M NOT.

4           Q       GO BACK A MOMENT TO YOUR ADMINISTRATIVE ACCESS  
5           TO A SERVER IN A DATA CENTER. YOU MENTIONED I  
6           BELIEVE ABOUT TALKING ABOUT RESETTING PASSWORDS?

7           A       YES.

8           Q       IS THAT A SOMEWHAT EXTREME METHOD FOR DEALING  
9           WITH PROBLEMS?

10          A       I GUESS IT DEPENDS ON WHAT IS THE PROBLEM. IF  
11          THE PROBLEM IS THAT THE END USER FORGOT HIS  
12          PASSWORD THEN, NO, IT'S A GREAT WAY TO FIX IT.

13          Q       IF THERE'S ANOTHER KIND OF PROBLEM?

14          A       AGAIN, IT DEPENDS ON WHAT TYPE OF PROBLEM  
15          WE'RE TALKING ABOUT.

16          Q       WOULD IT BE DISRUPTIVE TO RESET A PASSWORD  
17          WHEN A CUSTOMER DOESN'T AUTHORIZE IT?

18          A       IT COULD BE IF THE CUSTOMER WAS USING THAT  
19          ACCOUNT ON A REGULAR BASIS.

20          Q       WELL, LET'S SAY THAT YOU HAVE A SERVER THAT  
21          YOU HAVE LEASED TO A THIRD PARTY FOR THEM TO USE  
22          AND LEASE AND BREAKING IT DOWN TO OTHER USERS AND  
23          IT HAS ONE PASSWORD THAT IS CONTROLLED BY THE  
24          PERSON WHO IS LEASING THAT SERVER.

25                   IF YOU RESET THE PASSWORD, WOULDN'T YOU

1 DISRUPT EVERYBODY THAT THEY'RE DEALING BUSINESS  
2 WITH, EVERYBODY DOWN THE LINE?

3 A IT DEPENDS ON HOW THE PEOPLE WHO ARE DOWN THE  
4 LINE ACCESSING THE SERVER. THEY'RE PROBABLY NOT  
5 ACCESSING IT THROUGH THE SAME ACCOUNT BECAUSE  
6 EVERYONE WOULD HAVE ADMINISTRATIVE ACCESS.

7 SO IN THIS SCENARIO THE MOST LIKELY  
8 OUTCOME WOULD BE YOU WOULD BE DISRUPTING YOUR  
9 CLIENT OUTCOME, THE ONE USING THE SYSTEM WITH  
10 ACCESS.

11 Q YOU WERE -- IF WE COULD LOOK AT EXHIBIT 616.  
12 PAGE 6 OF THAT?

13 A OKAY.

14 Q THIS IS A CPRO DATABASE REPORT FROM THE  
15 DEFENDANTS I BELIEVE YOU TESTIFIED?

16 A YES, AN EXTRACT FROM THAT AND IN PARTICULAR  
17 DIRECTING YOUR ATTENTION TO PAGE 16 WHICH YOU WERE  
18 TESTIFYING ABOUT EARLIER THIS AFTERNOON. UH-HUH.

19 Q YOU WERE SAYING, I BELIEVE, THAT IT SHOWED THE  
20 ABILITY FOR THE DEFENDANTS TO MODIFY WEB CONTENT.  
21 WAS THAT YOUR TESTIMONY?

22 A YES.

23 Q AND WHY DO YOU REACH THAT CONCLUSION?

24 A WELL, WHERE IT MENTIONS "SO DONNA CAN TURN OFF  
25 WEB SERVICES." TURNING OFF WEB SERVICES IN MY MIND



1 IS VERY DIRECTLY AFFECTING CONTENT ON THE SERVER.  
2 SO IF DONNA TURNED OFF THE WEB SERVICES THEN THERE  
3 WOULD BE NO MORE WEB SITES.

4 Q HOW DO YOU KNOW WHO DONNA IS?

5 A WELL, I'M ASSUMING DONNA IS A PERSON THAT HAS  
6 TO DO WITH THE DEFENDANTS. SO I DON'T KNOW.

7 Q SO IF IT TURNS OUT THAT DONNA IS THE CUSTOMER,  
8 THEN YOUR CONCLUSION WOULD BE INCORRECT?

9 A YEAH, IN THIS CASE IT WOULD.

10 Q NOW, I BELIEVE PAGE 14 OF SOME SAME EXHIBIT,  
11 YOU TESTIFIED I BELIEVE THAT THERE WAS AN  
12 INDICATION OF MULTIPLE PROBLEMS; IS THAT RIGHT?

13 A THERE'S AN INDICATION OF AT LEAST FIVE  
14 COMPLAINTS IF THE DATA HERE IS TO BE BELIEVED, YES.

15 Q AND YOUR CONCLUSION IS, WHAT, ABOUT I BELIEVE  
16 YOU SAID SOMETHING ABOUT MOVING IP'S.

17 A YES. THE LAST COMPLAINT SAYS.

18 Q WHAT IS THE DATE OF IT, PLEASE?

19 A 12-3-2007.

20 Q WOULD YOU SCROLL DOWN. CAN YOU DIRECT US TO  
21 THE PARTICULAR ENTRY YOU'RE TALKING ABOUT?

22 A IT'S THE ONE RIGHT ABOVE THE --

23 THE COURT: CAN YOU ENLARGE IT?

24 MR. LOWE: THANK YOU. I CAN EVEN READ IT  
25 NOW.

1 Q WERE YOU CONCLUDING FROM THIS ENTRY IN THE  
2 CPRO DATABASE THAT THE DEFENDANTS WERE REMOVING THE  
3 IP ADDRESS?

4 A NO, I WAS CONCLUDING THAT THE CLIENT WAS, THE  
5 END CLIENT WAS MOVING THE COUNTERFEIT PRODUCT TO  
6 DIFFERENT IP ADDRESSES.

7 Q AND DOESN'T IT SHOW THEN THAT BECAUSE OF THAT  
8 THAT THE DEFENDANTS UNPLUGGED THE SERVER?

9 A YES, AND THEN IT SHOWS THAT THEY REPLUGGED AND  
10 THEN THEY UNPLUGGED IT AGAIN AND SO ON.

11 Q SO THEY WERE UNPLUGGING IT IN ORDER TO STOP  
12 THIS MOVING AROUND ON THE SERVER, MOVING ON ON  
13 DIFFERENT IP ADDRESSES?

14 A CORRECT.

15 Q AND ISN'T THAT AN APPROPRIATE THING FOR THEM  
16 TO DO?

17 A WELL, AGAIN, IN MY OPINION, THE APPROPRIATE  
18 THING FOR THEM TO DO WOULD BE TO UNPLUG IT ON THE  
19 FIRST OR SECOND COMPLAINT.

20 BY THE FIFTH COMPLAINT I THINK THAT THIS  
21 IS OBVIOUSLY A SITUATION WHERE THE CLIENT IS  
22 WILLFULLY DISREGARDING ACCEPTABLE USE POLICY.

23 Q WELL, HOW DO YOU KNOW THAT LOVERNIKE.COM IS  
24 THE CLIENT OF THE DEFENDANTS, OR DO YOU KNOW?

25 A LOVERNIKE.COM WOULD BE A WEB SITE THAT IS ON

1 THE SERVERS THAT THE CLIENT IS RESPONSIBLE FOR.

2 Q BUT THEY'RE NOT NECESSARILY THE CUSTOMER OF  
3 THE DEFENDANTS?

4 A IT DOESN'T REALLY MATTER.

5 Q WELL, ARE THEY OR ARE THEY NOT?

6 A WE DON'T KNOW. THEY COULD BE.

7 Q ASSUMING THEY ARE NOT, LET'S ASSUME THERE IS  
8 ONE OTHER PARTY BETWEEN THAT IS A RESELLER THAT  
9 RENTED A WHOLE SERVER.

10 A UH-HUH.

11 Q AND THEY HAVE A CUSTOMER IN TURN WHO IS AN  
12 ABUSER OF THE WEB SITE WITH THIS NIKELOVER.COM WEB  
13 SITE, SHOULD THEY TERMINATE EVERYBODY THAT THAT  
14 RESELLER IS DOING BUSINESS WITH JUST BECAUSE OF  
15 THIS ONE ABUSER?

16 A IT SEEMS TO ME THAT BY ABOUT COMPLAINT NUMBER  
17 THREE, THE CUSTOMER -- SO WHATEVER CUSTOMER IS  
18 REPRESENTED BY 38382 SHOULD PROBABLY HAVE  
19 TERMINATED THE END CLIENT THAT WAS RESPONSIBLE FOR  
20 LOVERNIKE.COM.

21 BY COMPLAINT NUMBER FIVE, IN MY MIND BOTH  
22 THE CUSTOMER 38382 AND WHOEVER THE CUSTOMER IS OR  
23 ISN'T TALKING TO HAVE BOTH PRETTY MUCH SAID THAT  
24 THEY AREN'T PAYING VERY MUCH ATTENTION TO THE  
25 ACCEPTABLE USE POLICY.

1 Q AND IS THE SERVER GETTING THEIR ATTENTION?

2 A APPARENTLY NOT.

3 Q NO?

4 A WELL, IT DIDN'T GET ENOUGH ATTENTION FOR THEM  
5 TO STOP.

6 Q WELL, THEN THEY UNPLUG IT AGAIN THEN, DON'T  
7 THEY?

8 A SURE.

9 Q DO YOU HAVE ANY IDEA HOW MANY DOWNSTREAM WEB  
10 SITES MIGHT BE HANDLED BY THIS ONE CUSTOMER THAT  
11 THE DEFENDANTS ARE DEALING WITH?

12 A NO.

13 Q AND IF IT'S IN THE THOUSANDS THEY SHOULD STOP  
14 DOING BUSINESS WITH THEM BECAUSE OF ONE PROBLEMATIC  
15 ABUSE WEB SITE?

16 MS. WANG: OBJECTION, SPECULATION, YOUR  
17 HONOR.

18 THE COURT: OVERRULED.

19 THE WITNESS: AGAIN, WELL THE OTHER THING  
20 IS THAT YOU CAN'T SEE WHETHER OR NOT THIS IS JUST  
21 ONE ISSUE. SO IN ORDER TO BE ABLE TO ANSWER THAT  
22 CORRECTLY I WOULD HAVE TO SEE THE PRINTOUT FOR ALL  
23 CUSTOMER 38382 COMPLAINTS.

24 PROBABLY THE OTHER WAY TO GO ABOUT THIS  
25 WOULD BE TO SEE SOME SORT OF RECORD OF ACTUAL ABUSE

1 COMPLAINTS THAT WERE CAUSED OR DIRECTED TOWARD THIS  
2 PARTICULAR CUSTOMER.

3 BY MR. LOWE:

4 Q IN OTHER WORDS, YOU WOULD HAVE TO EXERCISE  
5 SOME JUDGMENT IN ORDER TO KNOW WHAT THE RIGHT THING  
6 TO DO WAS?

7 A YES.

8 Q IF YOU LOOK AT EXHIBIT 592, PLEASE. THIS IS  
9 THE PHOTOGRAPH OF PAGE OR WHATEVER FROM THE CPRO  
10 DATABASE; IS THAT RIGHT?

11 A I DON'T KNOW YET.

12 Q OKAY. 592. I'M SORRY. WE DON'T HAVE ONE OF  
13 THOSE COPIES FROM THE PLAINTIFF. IF THE PLAINTIFF  
14 WOULD PUT IT ON THE SCREEN.

15 THANK YOU.

16 THE WITNESS: WHERE DID IT GO?

17 THE COURT: SOMETIMES IT TAKES A MINUTE  
18 TO RESET.

19 BY MR. LOWE:

20 Q THERE WE GO. YOU POINTED OUT A NUMBER OF  
21 ACTIONS THAT WERE TAKEN BY THE DEFENDANT REFLECTED  
22 IN THAT DATABASE; IS THAT RIGHT?

23 A YES.

24 Q AND WHAT DATE ARE WE LOOKING AT OR DATES?

25 A THE DATE FOR THE FIRST ONE WOULD BE 7-30-2008.

1 Q AND HOW FAR DOWN DOES THAT GO DATE WISE? CAN  
2 YOU TELL?

3 A YEAH. CAN YOU SCROLL DOWN A LITTLE? THE LAST  
4 ONE WAS 2-2-2009.

5 Q NOW, YOU MENTIONED, IF I'M NOT MISTAKEN, FIVE  
6 ACTIONS THAT WERE TAKEN BY THE DEFENDANTS  
7 CONCERNING VARIOUS ABUSE COMPLAINTS; IS THAT RIGHT?

8 A ON THIS PAGE? YES.

9 Q OKAY. AND THEY WERE REMOVING SOMETHING. WHAT  
10 WAS YOUR UNDERSTANDING OF WHAT THEY WERE DOING?

11 A IT APPEARS THAT THEY WERE REMOVING AN IP  
12 ADDRESS FROM A PARTICULAR SERVER.

13 SO THAT WOULD PROBABLY MEAN REMOVING IT  
14 FROM THE ROUTER SO THE TRAFFIC DOESN'T GET THERE  
15 ANYMORE.

16 Q IF YOU COULD BRING UP EXHIBIT 1559, PLEASE.  
17 DO YOU RECOGNIZE THIS, SIR?

18 A YES.

19 Q AND WHAT IS IT?

20 A THIS IS THE PARSED WEB LOGS FOR THE LOUIS  
21 VUITTON PART OF BIGWORLD SHOES.COM.

22 Q CAN YOU EXPLAIN EXACTLY WHAT THAT IS FOR THE  
23 BENEFIT OF THOSE WHO ARE NOT IN YOUR BUSINESS?

24 A SURE. BASICALLY THE WEB LOGS ARE JUST GOING  
25 TO BE A SERIES OF TEXT ENTRIES IN VERILOG OR

1 MULTIPLE TEXT FILES SO NOT ANYTHING A NORMAL PERSON  
2 WOULD WANT TO READ AT ALL. THERE ARE PAGES AND  
3 PAGES OF THEM.

4 SO IN ORDER TO GET A MORE MARGINALLY PAGE  
5 TO READ LIKE THIS YOU RUN IT THROUGH A WEB LOG  
6 ANALYZER. IN THIS CASE I USED A FREE PRODUCT  
7 CALLED WEBLYZER BUT THERE ARE MULTIPLE OTHER  
8 PRODUCTS YOU CAN HAVE. IT JUST DEPENDS ON WHAT YOU  
9 HAVE AT HAND.

10 WHAT THIS DOES IS THAT IT GOES THROUGH  
11 AND PARSES THE INFORMATION IN THE WEB LOGS, AND IT  
12 SHOWS YOU HOW MANY VISITS FOR THIS PARTICULAR WEB  
13 LOG AND WHAT THE TIME PERIOD WAS AND THINGS LIKE  
14 THAT, WHAT ACTUAL PICTURES THEY LOOKED AT.

15 IT GIVES YOU SOME IDEA AS TO WHETHER OR  
16 NOT YOUR WEB SITE IS BEING USED BASICALLY.

17 Q THIS IS SOMETHING THAT A WEB SITE OPERATOR WHO  
18 IS CREATING AND WOULD USE FOR THEIR OWN INTERNAL  
19 PURPOSES TO SEE HOW THINGS ARE GOING?

20 A USUALLY, YES.

21 Q ALL RIGHT. SO THIS WEBLYZER PROGRAM GENERATED  
22 THIS INFORMATION?

23 A NO, THE WEB SITE GENERATED THIS INFORMATION.  
24 THIS PARSED IT AND PUT IT INTO SOME SORT OF  
25 READABLE FORMAT.

1 Q AND IF WE GO TO PAGE 2 OF THIS EXHIBIT. WHAT  
2 DOES THAT REFLECT?

3 A THAT JUST SHOWS HOW MANY HITS THERE WERE  
4 DURING THIS PERIOD OF TIME. SO IT SHOWS THAT THE  
5 WEB SITE WAS BEING ACCESSED ON THE 26TH AND 27TH OF  
6 FEBRUARY.

7 Q OF 2009?

8 A YES.

9 Q ONLY THOSE TWO DAYS?

10 A IN FEBRUARY, YES.

11 Q OKAY. NOW, IF I'M UNDERSTANDING THE CAPTION  
12 ON THIS, IF YOU CAN SCROLL DOWN A LITTLE BIT  
13 FURTHER, THIS SAYS THAT IT'S REPORTING SUCCESSFUL  
14 REQUESTS OF ALL TYPES WHICH WOULD BE EVERYTHING AND  
15 IN A WEB SITE OR OUTSIDE OF A WEB SITE; IS THAT  
16 CORRECT? ANY KIND OF A REQUEST FOR INFORMATION?

17 A NO, THIS IS WEB SITE REQUEST.

18 THIS IS SHOWING ALL OF THE ACTUAL WEB LOG  
19 DATA FOR THESE TWO DAYS. SO ANYTHING THAT ACTUALLY  
20 GOT TO A WEB SITE IT WAS REQUESTING SOME SORT OF  
21 PAGE ON THE WEB SITE. THAT'S WHAT THIS IS  
22 RECORDING.

23 Q NOW, ON THAT MONTH THERE WERE ONLY TWO DAYS  
24 THAT YOU WERE HITTING ANYTHING, ANYBODY WAS HITTING  
25 THAT WEB SITE; IS THAT RIGHT?



1 A CORRECT.

2 Q THE BIGWORLDSHOES.COM?

3 A NOT THE BIGWORLDSHOES.COM.

4 Q I'M SORRY. PLEASE REPEAT YOUR ANSWER.

5 A I SAID NOT THE BIGWORLDSHOES.COM WEB SITE,  
6 JUST THE LOUIS VUITTON PART OF THE  
7 BIGWORLDSHOES.COM WEB SITE.

8 Q JUST TO HELP US UNDERSTAND THIS EXHIBIT A  
9 LITTLE BIT. IF YOU GO BACK TO THE FIRST PAGE  
10 THERE'S A TITLE ON HERE THAT I'D LIKE YOU TO  
11 EXPLAIN. WHAT IS THY OR PCID EQUALS 16?

12 A SURE. THE PART OF THE BIGWORLDSHOES.COM WEB  
13 SITE THAT HAD TO DO WITH LOUIS VUITTON HAD TWO  
14 EASY-TO-SPOT CHARACTERISTICS, IN THE GIGANTIC URL  
15 WAS THERE IT SAID EITHER PCID EQUALS 16, WHICH WAS  
16 THE MAIN PAGE THAT YOU SAW THAT HAD ALL OF THE  
17 PICTURES OF THE VARIOUS PRODUCTS OR IN THE CASE OF  
18 THE ACTUAL PICTURES OF THE PRODUCT THERE WAS A  
19 CAPITAL THY IN THE URL.

20 SO THE URL IS GIGANTIC BECAUSE THEY HAVE  
21 THINGS NESTED IN THE STRUCTURE. BUT THE BOTTOM  
22 LINE IS ANYTHING IN THE LOUIS VUITTON WAS IN THE  
23 THY OR LOUIS VUITTON DIRECTORY OR SOMEWHERE ELSE.

24 Q ALL RIGHT. SO THAT WAS JUST A WAY THAT YOU  
25 USED TO ISOLATE PARTICULAR INFORMATION RELATED TO

1 LOUIS VUITTON?

2 A CORRECT.

3 Q IF YOU WOULD GO TO PAGE 6. WERE YOU ABLE TO  
4 MAINTAIN FROM THE SERVERS THAT YOU COPIED AND HAD  
5 BEEN PROVIDED TO YOU, USE INFORMATION THAT ALLOWED  
6 THE PRODUCTION OF THIS PARTICULAR EXHIBIT?

7 A YES, THE DATA EXISTS WITHIN THE WEB LOGS.

8 Q SO THE DATA CAME FROM THE WEB LOGS WHICH WERE  
9 ON THE SERVERS; CORRECT?

10 A CORRECT.

11 Q OKAY. AND PAGE 6, WHAT DOES THAT SHOW? WHAT  
12 IS THAT CHART?

13 A THIS SHOWS AN INCOMPLETE CHART OF THE LOCATION  
14 OF THE INDIVIDUAL USERS, AND BASICALLY THE WEBLYZER  
15 PROGRAM THAT I USED HAS A VERY SMALL INTERNAL  
16 DATABASE THAT ACTUALLY TELLS IT AN IP ADDRESS  
17 BELONGS TO IT AND GIVE A LOCATION.

18 SO SINCE I WAS USING IT ON A FORENSIC  
19 SYSTEM THAT WAS NOT CONNECTED TO THE INTERNET IT  
20 DIDN'T HAVE THE ABILITY TO GO OUT AND GET BETTER  
21 DATA. SO THAT'S WHY IT SAYS UNRESOLVED.

22 Q WELL, WHAT DOES IT REFLECT?

23 A IT REFLECTS HOW MANY USER OR WHERE THE USERS  
24 WERE THAT IT COULD IDENTIFY.

25 Q THE USERS BEING PEOPLE LIKE ORDINARY PEOPLE

1           LOOKING FOR THIS INFORMATION ABOUT THE LOUIS  
2           VUITTON PRODUCTS, IS THAT WHAT YOU ARE GETTING TO?

3           A       WELL, THE SAME PEOPLE MAY BE INCORRECT, BUT,  
4           YEAH, COMPUTERS.

5           Q       COMPUTER USERS?

6           A       WELL, OR THERE'S A USER AT THE END OF THAT  
7           COMPUTER, YES.

8           Q       OKAY. AND THIS PARTICULAR CHART SHOWS THAT  
9           THE ONLY ONES THAT COULD IDENTIFY CAME FROM FRANCE?

10          A       CORRECT, THE ONLY ONE THAT WEBLYZER COULD  
11          IDENTIFY CAME FROM FRANCE.

12          Q       ALL RIGHT. IF WE COULD GO TO -- AND THAT WAS  
13          FOR THE MONTH OF FEBRUARY; IS THAT RIGHT? '09?

14          A       YES.

15          Q       AND IF WE COULD GO TO PAGE 14 OF THIS EXHIBIT.  
16          IS THIS A SIMILAR CHART FOR THE MONTH OF MARCH  
17          2009?

18          A       YES, IT IS.

19          Q       AND ONCE AGAIN, THE MAJORITY IS UNRESOLVED?

20          A       THE MAJORITY IS UNRESOLVED BY WEBLYZER, THE  
21          FREE PRODUCT THAT I USED TO PARSE IT.

22          Q       AND THE PARTS THAT WERE RESOLVED REFLECTS THE  
23          COUNTRIES FROM WHICH HITS CAME; IS THAT RIGHT?

24          A       YES.

25          Q       AND THE ONLY COUNTRIES THAT IT FOUND WERE

1 CANADA, FRANCE, CHINA, SWITZERLAND, GERMANY, INDIA  
2 AND HONG KONG; IS THAT RIGHT?

3 A CORRECT.

4 Q THANK YOU. IF WE COULD GO TO PAGE 27 I  
5 BELIEVE. THIS IS ANOTHER CHART SHOWING HITS IN  
6 JANUARY I BELIEVE; IS THAT RIGHT?

7 A YES.

8 Q AND, ONCE AGAIN, ABOUT 31 PERCENT WERE  
9 UNRESOLVED; IS THAT RIGHT?

10 A YES.

11 Q AND THE ONLY ONES -- THE ONLY HITS THAT WERE  
12 IDENTIFIED CAME FROM THE NETHERLANDS, GREAT  
13 BRITAIN, BELGIUM, BRAZIL, ITALY, CHINA, AND FRANCE;  
14 IS THAT CORRECT?

15 A CLOSE. THERE ARE ALSO OTHERS. SO SOMETHING  
16 THAT LESS THAN A FEW PERCENT THAT IT DIDN'T BOTHER  
17 TO PUT ON THE CHART.

18 Q ALL RIGHT.

19 THE COURT: I DON'T SEE FRANCE AND CHINA  
20 ON THIS ONE.

21 MR. LOWE: SCROLL DOWN A LITTLE BIT TO  
22 27.

23 THE WITNESS: CHINA AND FRANCE ARE  
24 PROBABLY ON THE OTHER.

25 BY MR. LOWE:

1 Q WELL, ON MY COPY I SEE --

2 A THE NAMES ARE LISTED, BUT THEY'RE NOT ON THE  
3 CHART.

4 Q OH, I SEE. DOWN BELOW. I SEE.

5 NOW, IN REBUILDING -- LET ME START  
6 FURTHER BACK. I BELIEVE YOU TESTIFIED THAT YOU HAD  
7 LOOKED AT INFORMATION CONCERNING BIGWORLDSHOES.COM?

8 A CORRECT.

9 Q AND YOU HAD TO REBUILD THE WEB SITE I THINK  
10 WAS THE PHRASE THAT YOU USED?

11 A I DID REBUILD THE WEB SITE, YES.

12 Q OKAY. AND WHAT DOES REBUILD MEAN? WHAT DOES  
13 REBUILDING A WEB SITE FROM SERVER INFORMATION?

14 A WELL, IN THIS CASE WHAT IT MEANS IS THAT I  
15 TRIED TO RECREATE THE WEB SITE AS IT WOULD HAVE  
16 BEEN VISIBLE ON THE SERVER AT THE TIME THE SYSTEM  
17 WAS TAKEN DOWN FOR IMAGING.

18 Q AND WHAT DID YOU HAVE TO DO IN ORDER TO  
19 REBUILD THAT?

20 A BASICALLY I NEEDED TO -- OKAY. IN ORDER TO  
21 REBUILD THE WEB SITE, WHAT I NEEDED TO DO WAS  
22 ACTUALLY REBUILD THE SERVER AND PUT IT INTO WHAT IS  
23 CALLED A VIRTUAL IMAGE.

24 SO THE EASIEST WAY TO EXPLAIN THIS WOULD  
25 BE IMAGINE TAKING AN ENTIRE COMPUTER AND PUTTING IT

1 INTO ONE OR TWO FILES SITTING ON YOUR COMPUTER AND  
2 THEN RUNNING IT LIKE IT WAS ITS OWN LITTLE  
3 MINIATURE ENVIRONMENT.

4 SO IN ORDER TO MORE EASILY VIEW THE DATA  
5 IN THE NATIVE FORMAT, I HAD TO DO THAT TO A  
6 PARTICULAR WEB SERVER THAT WE WERE TALKING ABOUT.

7 SO ONCE I DID THAT THEN I COULD ACTUALLY  
8 VIEW THE WEB SITE AS IT WOULD HAVE BEEN SEEN BY A  
9 NORMAL END USER.

10 THERE ARE A NUMBER OF OTHER WAYS THAT I  
11 COULD HAVE DONE IT AND THAT WAS JUST THE MOST  
12 EXPEDIENT SOLUTION FOR ME AT THE TIME.

13 Q DID YOU HAVE TO USE SOFTWARE TOOLS OR SOME  
14 OTHER THING THAT WERE NOT ON THE SERVER THAT YOU  
15 HAD TO PROVIDE?

16 A YES.

17 Q AND HOW MANY DIFFERENT SOFTWARE PROJECTS DID  
18 YOU HAVE TO USE TO DO THIS REBUILDING?

19 A TWO OR THREE. I HAD A FORENSIC IMAGE SO IN  
20 ORDER TO BE ABLE TO VIEW THE DATA ON THE FORENSIC  
21 IMAGE I HAD TO USE ENCASE. AND IN ORDER TO CONVERT  
22 THE DATA FROM THE FORENSIC IMAGE INTO THE VM IMAGE,  
23 VIRTUAL MACHINE, I HAD TO USE A PRODUCT CALLED LIVE  
24 VIEW WHICH IS JUST A FREE PRODUCT THAT DOES EXACTLY  
25 WHAT I JUST SAID, IT CONVERTS REAL COMPUTERS OR

1 IMAGES OF REAL COMPUTERS INTO VIRTUAL IMAGES.

2 AND THEN I ACTUALLY HAD TO USE THE VM  
3 SOFTWARE ITSELF IN ORDER TO VIEW THE VIRTUAL IMAGE.

4 Q AND THEN YOU HAD TO USE WEBLYZER?

5 A NO, ACTUALLY WEBLYZER WASN'T RELATED TO THE  
6 REBUILD BECAUSE I HAD ACCESS TO THE WEB LOGS  
7 THROUGH THE FORENSIC IMAGE.

8 Q OKAY. SO THE REBUILDING REQUIRED USING  
9 ENCASE, LIVE VIEW AND VM, OR VIRTUAL MACHINE?

10 A UH-HUH.

11 Q AND THEN WEBLYZER WAS ANOTHER PROGRAM USED TO  
12 ACCESS AND MAKE SOME SENSE OF THE LOGS?

13 A TO ANALYZE.

14 Q TO ANALYZE THE LOGS.

15 HOW DID YOU GET ACCESS TO THE DATA ON THE  
16 SERVERS? DID YOU HAVE A PASSWORD?

17 A NO. SINCE I HAD THE FORENSIC IMAGE I DIDN'T  
18 NEED THE PASSWORD. IT'S THE SAME AS EFFECTIVELY  
19 HAVING A HARD DRIVE IN YOUR HAND. I WAS ABLE TO  
20 PLUG IN AND GET TO ALL OF THE DATA THAT I NEEDED.

21 Q AND HOW DID YOU DO THAT? WHAT DID YOU DO TO  
22 GET TO THE DATA? DID YOU USE ANOTHER PIECE OF  
23 SOFTWARE?

24 A ENCASE.

25 Q ENCASE DOES THAT?

1 A YES.

2 Q AND IS THERE SOMETHING CALLED H TRACK?

3 A HT TRACK YOU MEAN?

4 Q HT TRACK RATHER, YES.

5 A HT TRACK IS A PROGRAM THAT IS USED TO DOWNLOAD  
6 ENTIRE WEB SITES SO WHEN I WAS TALKING EARLIER  
7 ABOUT COMPARING THE CURRENT WEB SITE  
8 BIGWORLD SHOES.COM WEB SITE THAT IS ON-LINE RIGHT  
9 NOW TO THE REBUILT ONE I USED HT TRACK TO DOWNLOAD  
10 THE CURRENT WEB SITE SO I DIDN'T HAVE TO GO ON THE  
11 INTERNET.

12 Q SO IF I UNDERSTAND YOU GOT THESE SERVERS AND  
13 THEY WEREN'T THE THINGS THAT YOU COULD JUST PLUG IN  
14 OR OPEN UP IMMEDIATELY AND JUST VIEW THEM AS WEB  
15 SITES WITHOUT GOING THROUGH A FAIR AMOUNT OF WORK?

16 A CORRECT.

17 Q THEY'RE JUST A LOT OF FILES?

18 A RIGHT.

19 Q STORED SOMEWHERE TRYING TO FIND THE RIGHT  
20 FILES AND FIGURING OUT WHICH GOES WHERE AND PUTTING  
21 THEM TOGETHER AND TRYING TO MAKE IT WORK AS IF YOU  
22 WERE VIEWING IT ON THE INTERNET WAS WHAT YOU WERE  
23 DOING USING ALL OF THESE PROGRAMS?

24 A CORRECT.

25 Q IS IT TRUE THAT NONE OF THOSE PROGRAMS THAT



1 YOU USED WERE ON THE SERVERS?

2 A I ACTUALLY DIDN'T CHECK, BUT I WOULDN'T  
3 IMAGINE THEY WERE, NO.

4 Q THEY'RE NOT THINGS THAT PEOPLE TYPICALLY HAVE  
5 THAT ARE NOT IN YOUR BUSINESS?

6 A CORRECT.

7 Q SO THE SERVERS DIDN'T HAVE ENCASE OR LIVE VIEW  
8 OR VM OR HT TRACK OR WEBLYZER?

9 A CORRECT.

10 Q OKAY.

11 A THEY MIGHT HAVE HAD WEBLYZER BUT NOT THE REST  
12 OF THEM.

13 Q OKAY. SO IF SOMEONE WHO WANTS TO SEE WHAT  
14 SORT OF INFORMATION IS ON WEB SITES AND THEY DON'T  
15 HAVE A SPECIFIC WEB SITE THAT THEY KNOW TO LOOK TO  
16 OR AN IP ADDRESS TO LOOK TO, IF THEY JUST ARE GOING  
17 IN BLIND, THEY ACTUALLY HAVE TO DO WHAT YOU HAVE  
18 DONE, ISN'T THAT RIGHT, TO SEE WHAT IS STORED ON  
19 THE SERVER?

20 A CAN YOU RESTATE THAT BECAUSE ACCORDING TO THAT  
21 YOU'RE JUST GETTING RANDOM DATA FROM A RANDOM WEB  
22 SERVER, AND THAT DOESN'T MAKE SENSE.

23 Q WELL, LET'S SAY THAT SOME ISP WANTED TO FIND  
24 OUT WHAT WEB SITES ARE ON THIS SERVER OVER IN THE  
25 CORNER, ONE OF THESE 1500 SERVERS?

1 A UH-HUH.

2 Q IN ORDER TO FIND THAT OUT IF THEY DON'T HAVE  
3 PASSWORD ACCESS AND THEY DON'T HAVE A NAME TO LOOK  
4 FOR, WOULDN'T THEY HAVE TO DO WHAT YOU DID IN ORDER  
5 TO SEE WHAT IS ON THE SERVER?

6 A WELL, THEY CAN GO TO THE PERSON WHO CONTROLS  
7 THE SERVER AND ASK THEM. THAT WOULD WORK, TOO.

8 Q BUT IF THAT PERSON DOESN'T GIVE THEM  
9 PERMISSION?

10 A THEN THEY WOULD PROBABLY NEED A COURT ORDER IN  
11 ORDER TO FIND OUT.

12 Q ALL RIGHT. ARE YOU FAMILIAR WITH ANY LAWS  
13 THAT RESTRICT INTERNET SERVICE PROVIDERS FROM  
14 MONITORING WHAT IS ON THEIR SERVICE OR DISCLOSING  
15 WHAT IS ON THEIR SERVERS?

16 A I'M FAMILIAR WITH THE LAWS, YES, BUT NOT  
17 ENOUGH TO TESTIFY ABOUT THEM.

18 Q ALL RIGHT. DO YOU AGREE THAT THERE ARE SOME  
19 RESTRICTIONS THAT MIGHT REQUIRE A COURT ORDER TO DO  
20 WHAT IT IS YOU'RE TALKING ABOUT?

21 A YES.

22 Q NOW, YOU TESTIFIED EARLIER THAT YOU THINK THAT  
23 THERE COULD BE AN APPROPRIATE SYSTEM FOR RESPONDING  
24 TO ABUSE COMPLAINTS. THAT WOULD NOT REQUIRE THE  
25 EXERCISE OF JUDGMENT. DO I UNDERSTAND THAT RIGHT?

1 A YEAH, IF YOU HAD A WELL WRITTEN POLICY THEN  
2 JUDGMENT WOULD BE TO A MINIMUM.

3 Q AND DO YOU KNOW OF ANY EXAMPLE OF ANY COMPANY,  
4 HOSTING COMPANY THAT HAS THE KIND OF  
5 WELL-THOUGHT-OUT PROCEDURES THAT YOU'RE ALLUDING TO  
6 THAT WOULD NOT REQUIRE THE EXERCISE OF JUDGMENT?

7 A NO, I DON'T BECAUSE THE ONLY COMPANY THAT I  
8 WORK WITH DOES WEB HOSTING.

9 Q SO YOU'RE JUST ASSUMING THAT SOMEBODY CAN COME  
10 UP WITH ONE OF THESE POLICIES?

11 A I KNOW SOMEONE COULD COME UP WITH ONE OF THOSE  
12 POLICIES. I CAN COME UP WITH ONE OF THOSE  
13 POLICIES.

14 Q BUT YOU HAVEN'T SEEN AN ACTUAL COMPANY THAT  
15 HAS ACTUALLY DONE IT?

16 A NO.

17 Q WOULD YOU AGREE THAT HAVING THIS WRITTEN  
18 PROCEDURE, AS YOU CHARACTERIZED, AS OPPOSED TO THE  
19 WRITTEN FORMAL PROCEDURE THAT IS USED BY THE  
20 DEFENDANTS WHEN THEY ONLY HAVE TWO PEOPLE DOING THE  
21 ABUSE HANDLING, THE ABUSE COMPLAINT HANDLING, WOULD  
22 YOU AGREE THAT IT'S NOT ESSENTIAL TO HAVE THAT  
23 WRITTEN POLICY WHEN YOU JUST HAVE TWO PEOPLE  
24 INVOLVED?

25 A WELL, I THINK WE TALKED EARLIER ABOUT WHAT IS

1 AND ISN'T ESSENTIALLY TO A WEB. ESSENTIALLY ALL  
2 YOU NEED IS POWER, A WEB SERVER AND AN INTERNET  
3 CONNECTION, POSSIBLY A ROUTER. SO, NO, IT WOULDN'T  
4 BE ESSENTIAL. IT WOULD JUST BE USEFUL.

5 Q OKAY. YOUR PREFERENCE IN PARTICULAR?

6 A YES, I CERTAINLY WOULDN'T DO IT WITHOUT ONE.

7 Q ARE YOU FAMILIAR WITH USING WHOIS LOOKUP  
8 EFFORTS?

9 A YES.

10 Q AND WOULD YOU AGREE THAT WHOIS INFORMATION MAY  
11 SOMETIMES BE INACCURATE?

12 A WHOIS INFORMATION FOR DOMAIN NAMES CAN BE  
13 INACCURATE, YES.

14 Q AND DOES IT MATTER WHERE YOU GET THE WHOIS  
15 INFORMATION AS TO WHETHER OR NOT IT'S MORE OR LESS  
16 LIKELY TO BE ACCURATE?

17 A I'M PRETTY SURE THAT IF I ASKED THAT LADY IN  
18 THE BACK SHE WOULD NOT HAVE CORRECT INFORMATION,  
19 NO. SO IT DOES MATTER WHERE YOU GET IT.

20 Q I'M TALKING ABOUT SOURCES ON THE INTERNET, OF  
21 COURSE.

22 A OKAY. YES, IT CERTAINLY MATTERS WHERE YOU GET  
23 IT. THE PARTICULAR ONE IS THE DOMAIN NAME  
24 REGISTRAR, THE ONE WHO GOT THE INFORMATION BOTHERED  
25 TO TAKE DOWN THE INFORMATION, BOTHERED TO CHECK IT,

1 THINGS LIKE THAT. SO, YES.

2 Q SOME ARE MORE -- SOME ENTRIES MIGHT BE MORE  
3 RELIABLE OR ACCURATE THAN OTHERS AND DIFFERENT  
4 PEOPLE MAKING THE ENTRIES MIGHT BE MORE RELIABLE  
5 THAN OTHERS?

6 A CORRECT.

7 Q THANK YOU.

8 I HAVE NO FURTHER QUESTIONS.

9 THE COURT: VERY WELL. ANY REDIRECT?

10 MS. WANG: YES, YOUR HONOR.

11 **REDIRECT EXAMINATION**

12 BY MS. WANG:

13 Q MR. WILSON, WHILE WE HAVE THIS EXHIBIT UP ON  
14 THE SCREEN, EARLIER YOU STATED THAT THE WEBLYZER  
15 CHARTS HERE WERE INCOMPLETE; IS THAT CORRECT?

16 A YES.

17 Q AND DIDN'T YOU ALSO DISCLOSE THAT FACT DURING  
18 YOUR DEPOSITION?

19 A YES, I DID.

20 Q AND DURING YOUR DEPOSITION DIDN'T YOU DISCLOSE  
21 THE FACT THAT BECAUSE THE --

22 MR. LOWE: EXCUSE ME, YOUR HONOR.

23 LEADING.

24 THE COURT: I'LL ALLOW THIS WITH EXPERTS.

25 BY MS. WANG:

1 Q AND DIDN'T YOU DISCLOSE THE FACT THAT THE  
2 REASON THAT THIS WAS INCOMPLETE OR INACCURATE WAS  
3 BECAUSE IT WAS NOT CONNECTED TO THE INTERNET?

4 A CORRECT.

5 Q AND DID YOU CONNECT THE SYSTEM TO THE INTERNET  
6 TO COMPLETE THE PIE CHART -- TO COMPLETE THE  
7 INCOMPLETE PIE CHARTS?

8 MR. LOWE: OBJECTION, YOUR HONOR. THIS  
9 HAS BEEN THE SUBJECT OF AN EARLIER RULING BY THE  
10 COURT.

11 THE COURT: WAS THIS SOMETHING THAT WAS  
12 DONE AFTER THE WITNESS TESTIFIED AND RENDERED HIS  
13 REPORT AND WAS NOT DISCLOSED?

14 MS. WANG: WELL, YOUR HONOR, IT WAS  
15 DISCLOSED. MR. WILSON SPECIFICALLY STATED DURING  
16 THE DEPOSITION THAT THIS WAS NOT COMPLETE BECAUSE  
17 IT WASN'T CONNECTED TO THE INTERNET.

18 THE COURT: I UNDERSTAND THAT BECAUSE --  
19 BUT I THOUGHT WHERE YOU WERE GOING IS SHOWING WHAT  
20 HE DID TO COMPLETE IT, AS OPPOSED TO ACKNOWLEDGING  
21 THAT IT WAS INCOMPLETE. YOU MAY ASK HIM TO  
22 REAFFIRM ANYTHING THAT HE SAID IN HIS DEPOSITION.

23 MS. WANG: YES, YOUR HONOR. I GUESS WHAT  
24 I'M SAYING IS --

25 THE COURT: NO, PUT A QUESTION TO THE

1 WITNESS. I'M ALLOWING YOU TO ASK HIM TO REAFFIRM  
2 ANYTHING HE TESTIFIED TO IN HIS DEPOSITION OR HE  
3 DISCLOSED IN HIS REPORTS.

4 MS. WANG: SO REGARDING THE COMPLETED PIE  
5 CHART AM I ABLE TO BRING IT UP ON THE SCREEN?

6 THE COURT: IF HE DISCLOSED IT IN HIS  
7 REPORT AND TESTIFIED TO IT IN HIS DEPOSITION, YOU  
8 MAY.

9 BY MS. WANG:

10 Q DID YOU TESTIFY IN YOUR DEPOSITION ABOUT THE  
11 PROCEDURE TO COMPLETE THIS PIE CHART?

12 A I BELIEVE I DID.

13 Q AND WHAT DID YOU TESTIFY AS TO THE METHOD TO  
14 COMPLETE THE PIE CHARTS?

15 A RIGHT. THE METHOD WOULD BE JUST CONNECTING  
16 THE WEBLYZER PRODUCT TO THE INTERNET SO IT COULD  
17 ACTUALLY GO THROUGH AND LOOK UP THE INFORMATION ON  
18 THE INTERNET SO I DIDN'T HAVE TO DO IT BY HAND.

19 Q AND SO THE PIE CHARTS IN EXHIBIT 1559, THEY  
20 ARE INCORRECT?

21 A YES, EFFECTIVELY.

22 Q AND HOW DO YOU KNOW THIS?

23 A BECAUSE --

24 MR. LOWE: OBJECTION, YOUR HONOR. IF  
25 HE'S GOING TO TESTIFY TO ANYTHING HE DID AFTER HIS

1 DEPOSITION.

2 THE COURT: SUSTAINED.

3 MS. WANG: YOUR HONOR, I GUESS I'M  
4 MISUNDERSTANDING THE RULING ON THE MOTION IN  
5 LIMINE.

6 THE COURT: WELL, LET ME CLARIFY.  
7 EXPERTS ARE ABLE TO RENDER OPINIONS ABOUT THINGS  
8 BEYOND WHAT ARE FACTS AND GIVE US THEIR OPINIONS,  
9 BUT WE REQUIRE THAT THEY DISCLOSE THEIR OPINIONS  
10 AND EVERYTHING THEY HAVE DONE TO COME TO THEM IN A  
11 REPORT.

12 WE MAKE THEM AVAILABLE FOR A DEPOSITION,  
13 AND THEY CAN BE EXAMINED ABOUT THEIR REPORT AND  
14 INFORMATION. THEY CAN SUPPLEMENT THAT LATER ON AT  
15 ANY POINT IN TIME.

16 THE ONE THING THEY CAN'T DO IF ALL OF  
17 THAT IS OVER IS TO COME TO DIFFERENT OPINIONS OR DO  
18 DIFFERENT WORK WHICH IS NOT DISCLOSED.

19 I TAKE THE OBJECTION TO BE THAT THE  
20 WITNESS IS BEING ASKED TO TALK ABOUT SOMETHING THAT  
21 HE DID AFTER THE DEPOSITION, AFTER THE REPORT.

22 I COULD BE WRONG ABOUT THAT, BUT I'VE  
23 TRIED TO COMMUNICATE TO COUNSEL THAT YOU MAY ASK  
24 ANY QUESTION ABOUT WHAT THE WITNESS DID IN HIS  
25 REPORT, DISCLOSED IN HIS REPORT, TESTIFIED TO IN



1 HIS DEPOSITION.

2 YOU MAY NOT ASK A QUESTION THAT ELICITS  
3 FROM HIM AFTER ALL OF THAT WAS OVER DID YOU DO  
4 FURTHER WORK THAT WAS NOT TOLD TO US, AND I WANT  
5 YOU TO TELL US ABOUT THAT. GO AHEAD.

6 BY MS. WANG:

7 Q MR. WILSON, ISN'T IT TRUE THAT THE INFORMATION  
8 IN YOUR PIE CHARTS EXHIBIT 1559 ARE INCOMPLETE?

9 A YES.

10 MR. LOWE: OBJECTION.

11 THE COURT: OVERRULED. HE SAID THAT THEY  
12 ARE INCOMPLETE BECAUSE AS HE LOOKED AT THEM THEY  
13 ARE INCOMPLETE AND UNRESOLVED DATA, WE HAVE THAT.

14 BY MS. WANG:

15 Q MR. WILSON, YOU TESTIFIED REGARDING WEB  
16 HOSTING PRACTICES WHAT THEY DID AND DON'T DO. WAS  
17 THAT IN A GENERAL SENSE?

18 A YES.

19 Q WOULD THOSE PRACTICES BE DIFFERENT IN THE  
20 CONTEXT OF RECEIVING ABUSE COMPLAINTS?

21 A NO, THEY SHOULD BE ABOUT THE SAME.

22 Q WHEN YOU TESTIFIED REGARDING WHETHER OR NOT A  
23 WEB HOST WOULD INSPECT CONTENT --

24 A UH-HUH.

25 Q -- AND YOU SAID THAT, IS IT CORRECT -- IS IT

1 YOUR TESTIMONY THAT YOU SAID THAT THEY WOULD NOT DO  
2 SO BECAUSE IT TAKES TIME THAT THEY MAY NOT WANT TO  
3 USE?

4 A YES, EXACTLY.

5 Q WOULD THAT BE DIFFERENT IF THAT WEB HOST  
6 RECEIVED AN ABUSE COMPLAINT?

7 A IT DEPENDS ON THE LEVEL OF THE ABUSE COMPLAINT  
8 BUT THEORETICALLY, NO. I MEAN, IF THE ABUSE  
9 COMPLAINT IS SOMETHING DIRECTED AT A PARTICULAR  
10 LOCATION AND, YOU KNOW, AND SERIOUS ENOUGH THEN I  
11 WOULDN'T SEE WHY THEY WOULDN'T EITHER ACT ON THE  
12 COMPLAINT AS IF IT WERE A COMPLAINT OR CHECK IT,  
13 SEE WHETHER OR NOT IT'S THERE OR SEE WHETHER OR NOT  
14 IT ACTUALLY MATCHES THE ABUSE COMPLAINT.

15 Q SO TO CHECK WHETHER THE COMPLAINT IS --  
16 WHATEVER IS BEING COMPLAINED ABOUT IS THERE, THAT  
17 WOULD REQUIRE CHECKING THE CONTENT?

18 A IT COULD. BUT AGAIN IT DEPENDS ON THE  
19 COMPLAINT. BUT AGAIN IF WE'RE TALKING ABOUT AN IP  
20 TYPE OF COMPLAINT THEN YEAH.

21 Q AND REGARDING EXHIBIT 616. IF WE CAN BRING  
22 THAT UP.

23 A UH-HUH.

24 Q DOES THIS EXCERPT SHOW ANY RECORDS CONCERNING  
25 ABUSE COMPLAINTS RECEIVED?

1 A YES.

2 Q WOULD IT SHOW RECORDS OF ALL ABUSE COMPLAINTS  
3 RECEIVED?

4 A NO. ACTUALLY IT SHOWS RECORDS OF ACTIONS AND  
5 SO IT SHOWS RECORDS OF THINGS THAT WERE TAKEN AS A  
6 RESULT OF ABUSE COMPLAINTS.

7 SO IT ACTUALLY DOESN'T SHOW THE RECORD OF  
8 THE ABUSE COMPLAINT ITSELF. SO LIKE IT SHOWS -- IT  
9 DOESN'T SHOW A RECORD THAT THERE WAS AN E-MAIL OR  
10 THERE WAS 12 OR 12,000 E-MAILS RELATED TO THE FACT  
11 THAT THEY UNPLUGGED IT ON 8-22-2005.

12 Q AND IT WOULDN'T SHOW IF THE DEFENDANTS DID  
13 NOTHING?

14 A CORRECT.

15 Q ARE THE DEFENDANTS WEB HOSTS?

16 A YES.

17 MS. WANG: NO FURTHER QUESTIONS, YOUR  
18 HONOR.

19 THE COURT: FURTHER QUESTIONS?

20 MR. LOWE: VERY BRIEFLY, YOUR HONOR.

21 **RECROSS-EXAMINATION**

22 BY MR. LOWE:

23 Q HOW MUCH TIME DID YOU SPEND, MR. WILSON, IN  
24 REBUILDING THE BIGWORLDSHOES.COM INFORMATION AND  
25 DOING YOUR ANALYSIS PRIOR TO YOUR DEPOSITION?

1 A QUITE A FEW HOURS. TEN OR TWENTY I WOULD  
2 IMAGINE.

3 Q TEN OR TWENTY HOURS. AND YOU DO THIS SORT OF  
4 THING FOR A LIVING SO TO SPEAK?

5 A I DON'T DO THAT SORT OF THING. THE NICE THING  
6 ABOUT FORENSICS IS THAT IT'S DIFFERENT EVERY SINGLE  
7 TIME I DO IT.

8 THE REASON I TOOK SO LONG THIS TIME IS  
9 THAT THIS WAS THE FIRST TIME THAT I DID THIS  
10 PARTICULAR INSTANCE. SO IF I HAD TO DO IT AGAIN,  
11 IT WOULD PROBABLY TAKE ME ABOUT AN HOUR AND A HALF.

12 Q BY THE WAY, YOU HAVE BEEN COMPENSATED FOR YOUR  
13 WORK BY LOUIS VUITTON; IS THAT RIGHT?

14 A I'M COMPENSATED FOR MY WORK BY GUIDANCE  
15 SOFTWARE, AND I BELIEVE GUIDANCE SOFTWARE IS  
16 COMPENSATED BY LOUIS VUITTON.

17 Q AND DO YOU KNOW HOW MUCH GUIDANCE SOFTWARE  
18 CHARGES BY THE HOUR TO LOUIS VUITTON FOR YOUR  
19 SERVICES?

20 A IT DEPENDS ON THE -- ON WHAT I'M DOING.

21 Q AND CAN YOU TELL US APPROXIMATELY WHAT THE  
22 HOURLY RATE IS?

23 A I BELIEVE THE HOURLY RATE FOR ANALYSIS IS  
24 SOMEWHERE AROUND 325 AN HOUR AND FOR TESTIMONY IT'S  
25 500 AN HOUR.

1 Q THANK YOU.

2 NOTHING FURTHER.

3 THE COURT: I HATE TO DELAY YOUR TIME  
4 EVEN MORE, BUT THERE WAS A COUPLE OF ASPECTS OF  
5 YOUR TESTIMONY THAT THE COURT WANTED TO CLARIFY,  
6 AND AGAIN, I VERY SELDOM ASK QUESTIONS, AND I NEVER  
7 WANT TO FAVOR ONE SIDE OR THE OTHER. I JUST WANT  
8 TO CLARIFY SOMETHING.

9 COUNSEL TOOK YOU THROUGH VARIOUS SOFTWARE  
10 THAT YOU USED FOR WHAT YOU DESCRIBED AS REBUILDING  
11 BIG WORLD SHOES.

12 THE WITNESS: UH-HUH.

13 THE COURT: AND THEN YOU LATER TALKED  
14 ABOUT KVM OR SOME KIND OF SOFTWARE WHERE ACCESS  
15 COULD BE GAINED TO THE CONTENT OF WHAT IS ON THE  
16 SERVER. ARE THOSE MEANINGFUL WORDS THAT I'M SAYING  
17 TO YOU?

18 THE WITNESS: UH-HUH.

19 THE COURT: THE QUESTION THAT I HAVE IS  
20 THAT IF YOU ARE A WEB HOST AND YOU RECEIVE A  
21 COMPLAINT, IN ORDER TO SEE WHAT THE WORLD IS SEEING  
22 ON THAT SITE, WHAT DO YOU NEED?

23 DO YOU NEED KVM, OR DO YOU HAVE TO GO  
24 THROUGH THE 10- OR 20-HOUR PROCESS TO SEE WHAT IS  
25 THERE IF YOU ACTUALLY WANT TO VIEW IT FOR

1 INVESTIGATORY PURPOSES?

2 THE WITNESS: IF YOU WANTED TO VIEW WHAT  
3 WAS VISIBLE ON THE WEB SITE YOU WOULD ACTUALLY  
4 ACCESS IT THE SAME WAY ANY NORMAL PERSON WOULD. SO  
5 YOU WOULD JUST GO TO THE WEB SITE.

6 THE ONLY DIFFERENCE BETWEEN IS IF YOU  
7 WERE LOCAL OR NOT IS THEN YOU KNOW WHERE THE END  
8 POINT IS.

9 BUT I MEAN, LIKE IN THIS PARTICULAR CASE  
10 IF YOU WANTED TO SEE WHAT WAS ON BIGWORLDSHOES.COM,  
11 YOU WOULD GO TO IT JUST EXACTLY THE SAME AS ANYONE  
12 ELSE WOULD AND SEE WHAT THE CONTENTS.

13 THE COURT: AND WHAT DOES YOUR REBUILDING  
14 THE WEB SITE ACCOMPLISH OTHER THAN SIMPLY SEEING  
15 WHAT THE WORLD WOULD SEE AT THAT WEB SITE?

16 THE WITNESS: THAT'S PRETTY MUCH IT. I  
17 HAD ACCESS TO ALL OF THE DATA WITH THE FORENSIC  
18 IMAGE BUT SOMETIMES LOOKING AT THE DATA THROUGH  
19 ENCASE AND THROUGH FORENSIC IMAGE ISN'T AS EASY FOR  
20 ME OR SOMEONE ELSE TO PARSE AND ANALYZE.

21 SO WHAT I DID WAS THAT I TRIED TO REBUILD  
22 IT IN A MORE NORMAL FORMAT SO I COULD SEE WHAT IT  
23 LOOKED LIKE TO THE OUTSIDE WORLD.

24 THE COURT: THE WITNESS MAY BE EXCUSED.  
25 THANK YOU VERY MUCH.

1                   AND THAT'S THE END OF OUR DAY, MEMBER OF  
2 THE JURIES. I'LL ASK COUNSEL TO REMAIN BECAUSE I  
3 BELIEVE WE'RE VERY CLOSE IF NOT AT THE END OF THE  
4 PLAINTIFF'S CASE. SO WE'LL TURN IT OVER TO THE  
5 DEFENSE.

6                   WE'RE ON SCHEDULE AND ACTUALLY I BELIEVE  
7 WE'RE WAY AHEAD OF SCHEDULE FROM THE TIME ESTIMATES  
8 THAT I GAVE YOU, AND THAT'S ONE OF THE REASONS I  
9 WANTED TO TALK WITH THE LAWYERS. AND I'LL TALK TO  
10 YOU ABOUT THAT TOMORROW MORNING.

11                   YOU MAY BE EXCUSED.

12                   (WHEREUPON, THE PROCEEDINGS IN THIS  
13 MATTER WERE HELD OUT OF THE PRESENCE OF THE JURY:)

14                   THE COURT: VERY WELL. WE'RE OUT OF THE  
15 PRESENCE OF THE JURY.

16                   WHAT IS THE REMAINDER OF THE PLAINTIFF'S  
17 CASE?

18                   MR. COOMBS: THAT WAS THE REMAINDER OF  
19 THE PLAINTIFF'S CASE.

20                   THE COURT: SO YOU INTEND IN THE MORNING  
21 TO REST?

22                   I WOULD SUGGEST THAT YOU CONFER WITH YOUR  
23 OPPONENT AND PROVIDE MS. GARCIA WITH A LIST OF  
24 EXHIBITS THAT YOU CONSIDER TO BE IN EVIDENCE AS  
25 PART OF THE PLAINTIFF'S CASE AND JUST MAKE SURE

1            THAT THEY'RE ALL AVAILABLE.

2                            THERE WERE SOME THAT WAS WITH THE  
3            PREVIOUS WITNESS HIS LIT FILES OR TAG FILES, AND I  
4            NEVER SAW THEM.    SO I WAS WORRIED THAT I DIDN'T  
5            KNOW WHAT THOSE EXHIBITS WERE.    AND THEN YOUR  
6            COLLEAGUE RAN OFF A BUNCH OF EXHIBITS THAT WERE NOT  
7            IDENTIFIED, AND I WANT TO MAKE SURE THAT WE PUT  
8            THOSE SOME PLACE IN THE COURTROOM.

9                            I HAVE A COPY HERE OF PAPER EXHIBITS, AND  
10            YOU SHOULD EXPECT THAT MY RULE PROVIDES SINCE YOU  
11            HAVE BEEN USING VIDEO IMAGES OF THE EXHIBITS THAT  
12            YOU SHOULD PREPARE A LAPTOP COMPUTER WITH A DVD  
13            WITH AN ACTUAL IMAGE SO THAT THE JURY CAN GO  
14            THROUGH THE SAME PROCESS THAT YOU HAVE TAKEN US  
15            THROUGH OF BRINGING THOSE UP WITHOUT HAVING TO  
16            SEARCH THROUGH VOLUMES OF NOTEBOOKS OF THOSE  
17            PAPERS.

18                            MR. COOMBS:    YOUR HONOR, IT'S MY  
19            UNDERSTANDING THAT THE JURY WILL HAVE A DIGITAL  
20            IMAGE OF PAPER EXHIBITS IN THE JURY ROOM WITH THEM.  
21            THEY WILL NOT NEED THE PAPER EXHIBITS THEMSELVES.

22                            THE COURT:    THAT'S CONVENIENT.    IT SHOULD  
23            BE AVAILABLE JUST IN CASE, AND IF THIS SET IS WHAT  
24            YOU HAVE GIVEN TO ME IS WHAT YOU WISH TO SERVE FOR  
25            THAT PURPOSE, I'M HAPPY TO.    I HAVE NOT MADE ANY



1 NOTES. THEY'RE AVAILABLE FOR THAT PURPOSE.

2 YOU'RE READY TO START YOUR CASE TOMORROW?

3 DO YOU ANTICIPATE MAKING RULE 50 MOTIONS?

4 MR. LOWE: WE DO, YOUR HONOR.

5 THE COURT: I DON'T EXPECT THAT I WOULD  
6 TAKE TIME AWAY FROM THE JURY FOR THAT PURPOSE.

7 PRESUMING THAT THE PLAINTIFF NOW RESTS, I  
8 ALWAYS WANT YOU TO FORMALLY REST IN FRONT OF THE  
9 JURY SO THEY UNDERSTAND THAT.

10 LET'S CONSIDER THE PLAINTIFF HAS RESTED  
11 AND PERHAPS THIS WOULD BE A CONVENIENT TIME FOR YOU  
12 TO SIMPLY TENDER YOUR MOTION.

13 DO YOU INTEND TO MAKE IT IN WRITING?

14 MR. LOWE: WE ARE DOING SO AT THIS TIME  
15 FILING IT WITH THE COURT, TWO MOTIONS, ACTUALLY ONE  
16 ON COPYRIGHT AND ONE ON TRADEMARK.

17 THE COURT: VERY WELL. I'LL CONSIDER  
18 THOSE ARE TIMELY MOTIONS THAT ARE MADE, BUT IT IS  
19 MY PRACTICE, UNLESS I'M CONVINCED THAT THIS IS AN  
20 EXTRAORDINARY CASE, TO HAVE YOU GO AHEAD AND OPEN  
21 YOUR CASE. I CAN ALWAYS COME BACK TO THOSE, OR AS  
22 WE ARE ADVISED IN THE TRIAL COURT, DENY THEM AND  
23 ALLOW YOU TO PUT ON YOUR CASE. AND I CAN ALWAYS  
24 HAVE A MOTION FOR JUDGMENT AFTER THE CLOSE OF  
25 EVIDENCE.

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MR. LOWE: CERTAINLY.

THE COURT: VERY WELL. I'LL SEE YOU  
TOMORROW MORNING AT 9:00 O'CLOCK.

(WHEREUPON, THE EVENING RECESS WAS  
TAKEN.)