

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

1			
2			
3			
4			
5	LOUIS VUITTON)	C-07-03952-JW
6	MALLETIER, S.A.,)	
7)	AUGUST 21, 2009
8	PLAINTIFF,)	
9)	VOLUME 4
10	V.)	
11)	PAGES 1 - 208
12	AKANOC SOLUTIONS, INC.,)	
13	ET AL.,)	
14)	
15	DEFENDANTS.)	
16	-----)	

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

A P P E A R A N C E S:

FOR THE PLAINTIFF: J. ANDREW COOMBS
BY: J. ANDREW COOMBS
ANNIE S. WANG
517 E. WILSON AVENUE
SUITE 202
GLENDALE, CALIFORNIA 91206

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

(APPEARANCES CONTINUED ON THE NEXT PAGE.)

OFFICIAL COURT REPORTER: IRENE RODRIGUEZ, CSR, CRR
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

INDEX OF PROCEEDINGS

FOR THE DEFENDANTS:

STEVEN CHEN

DIRECT EXAMINATION P. 5
CROSS-EXAMINATION P. 165

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 SAN JOSE, CALIFORNIA

AUGUST 18, 2009

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

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

6 THE COURT: VERY WELL. ARE YOU READY TO
7 RESUME?

8 MR. COOMBS: YES, YOUR HONOR.

9 THE COURT: SUMMON THE JURY.

10 (WHEREUPON, THE FOLLOWING PROCEEDINGS
11 WERE HELD IN THE PRESENCE OF THE JURY:)

12 THE COURT: VERY WELL. YOU MAY PROCEED.

13 MR. COOMBS: THANK YOU, YOUR HONOR. AT
14 THIS TIME THE PLAINTIFF RESTS.

15 THE COURT: VERY WELL. THE PLAINTIFF
16 RESTS.

17 I UNDERSTAND THERE ARE CERTAIN OTHER
18 LEGAL PROCEEDINGS WE WOULD TAKE UP AT THIS TIME OUT
19 OF THE PRESENCE OF THE JURY. THE COURT HAS
20 DEFERRED THAT TO A LATER TIME.

21 SO THE COURT AT THIS TIME WILL CALL ON
22 DEFENSE COUNSEL TO CALL YOUR FIRST WITNESS.

23 MR. LOWE: THANK YOU, YOUR HONOR. IF IT
24 PLEASE THE COURT, WE WOULD CALL STEVE CHEN.

25 THE COURT: VERY WELL. MR. CHEN.

1 THE CLERK: PLEASE RAISE YOUR RIGHT HAND.

2 **STEVEN CHEN,**

3 BEING CALLED AS A WITNESS ON BEHALF OF HIMSELF,

4 HAVING BEEN FIRST DULY SWORN, WAS EXAMINED AND

5 TESTIFIED AS FOLLOWS:

6 THE WITNESS: YES.

7 THE CLERK: PLEASE BE SEATED. COULD YOU

8 PLEASE STATE YOUR FULL NAME AND SPELL YOUR LAST

9 NAME FOR THE RECORD.

10 THE WITNESS: STEVE CHEN. S-T-E-V-E,

11 C-H-E-N.

12 **DIRECT EXAMINATION**

13 BY MR. LOWE:

14 Q GOOD MORNING, MR. CHEN. ARE YOU A DEFENDANT

15 IN THIS CASE?

16 A YES.

17 Q AND YOU HAVE BEEN PRESENT DURING THE ENTIRE

18 TRIAL SO FAR?

19 A YES.

20 Q HOW ARE YOU EMPLOYED?

21 A I STARTED THE COMPANY. SO AT THIS POINT I'M

22 GENERAL MANAGER OF MANAGED SOLUTIONS GROUP, INC.,

23 AND AKANOC SOLUTIONS.

24 Q THE OTHER TWO DEFENDANTS IN THIS CASE?

25 A YES, THAT'S CORRECT.

1 Q AND WOULD YOU TELL US A LITTLE BIT ABOUT YOUR
2 BACKGROUND, YOUR EDUCATIONAL BACKGROUND, WHERE YOU
3 COME FROM?

4 A I'M ORIGINALLY FROM TAIWAN, AND I HAD AN
5 OCEANOGRAPHY DEGREE BACK IN TAIWAN BEFORE I CAME TO
6 THE STATES. I CAME IN 1977. I LANDED IN LOS
7 ANGELES. I HAD AN M.B.A. DEGREE THROUGH PEPPERDINE
8 UNIVERSITY.

9 Q ARE YOU A UNITED STATES CITIZEN?

10 A YES.

11 Q WHAT SORT OF BUSINESS OR BUSINESSES HAVE YOU
12 BEEN ENGAGED IN SINCE YOU CAME TO THE UNITED
13 STATES?

14 A MOSTLY PRODUCTION AREAS, ELECTRONICS. LATE
15 2003, BEGINNING OF 2004 WE START UP THIS WEB
16 HOSTING BUSINESS THROUGH MANAGED SOLUTIONS GROUP,
17 INC.

18 Q WOULD YOU LOOK AT EXHIBIT 1523. AND CAN YOU
19 TELL ME WHAT THIS IS, SIR?

20 A THIS IS THE CORPORATE REGISTRATION PAPER.

21 Q FOR WHAT COMPANY?

22 A FOR MANAGED SOLUTIONS GROUP, INC.

23 Q ALL RIGHT. AND WOULD YOU TAKE A LOOK AT 1524.
24 AND TELL ME WHAT THIS IS, IF YOU KNOW?

25 A THIS IS ANOTHER STATE OF CALIFORNIA CORPORATE

1 REGISTRATION INFORMATION.

2 Q FOR WHAT COMPANY?

3 A THIS IS FOR AKANOC SOLUTIONS, INC.

4 Q THANK YOU. WHAT IS THE NATURE OF THE BUSINESS
5 FOR MANAGED SOLUTIONS GROUP AND AKANOC SOLUTIONS?

6 A WE ARE IN GENERAL TERMS WE CALL A WEB HOSTING
7 BUSINESS. IT'S A SEGMENT OF INTERNET SERVICE
8 PROVIDER. SO IT'S A SEGMENT OF THE ISP INDUSTRY.

9 AND WHAT WE DO BASICALLY IS PROVIDE A
10 DATA CENTER ENVIRONMENT WITH A SERVER OR WITH
11 OPERATIONS SYSTEM AVAILABLE TO THE SERVER, AND WE
12 TURN IT OVER TO OUR CUSTOMER FOR REMOTE MANAGEMENT.

13 Q DO AKANOC AND MANAGED SOLUTIONS GROUP WORK
14 TOGETHER IN THIS BUSINESS?

15 A MANAGED SOLUTIONS GROUP, INC., CURRENTLY IS
16 HOLDING THE ASSET, THE HARD ASSET OF ALL OF THE
17 EQUIPMENTS AND AS FAR AS THE OPERATION IS CONCERNED
18 IT'S BASICALLY AKANOC SOLUTIONS GROUP, INC.,
19 PERSONNEL.

20 Q AND WHAT DO YOU HAVE TO HAVE TO BE IN THE
21 INTERNET SERVICE PROVIDER BUSINESS SUCH AS YOU ARE?
22 WHAT RESOURCES DO YOU HAVE TO HAVE?

23 A FIRST WE NEED TO BE IN A DATA CENTER
24 ENVIRONMENT. SO DATA CENTER ENVIRONMENT IS
25 DIFFERENT THAN REGULAR BUSINESS OFFICE.

1 IT DOES HAVE MANY -- A LOT OF THE -- MANY
2 OF THE INTERNET BANDWIDTH PROVIDERS INTO THE SAME
3 DATA CENTER.

4 SO THEN YOU HAVE CONNECTION TO THE
5 OUTSIDE WORLD. AND YOU HAVE BACKUP POWERS, NOT
6 LIKE THE REGULAR POWER LIKE WE HAVE AT HOME.

7 Q SPECIAL POWER?

8 A SPECIAL POWER ARRANGEMENTS. YOU HAVE UPS
9 WHICH IS AN INTERRUPTED POWER SUPPLY AND YOU HAVE
10 DIESEL ENGINE BACKUP FOR THAT PURPOSE. SO ALL OF
11 THAT IS ON THE POWER SIDE.

12 AND YOU HAVE SPECIAL COOLING
13 ENVIRONMENTS, BIG AIR CONDITIONING UNITS FOR
14 COOLING DOWN ALL OF THE EQUIPMENTS.

15 Q AND WHAT ELSE DO YOU HAVE TO HAVE?

16 A FROM THERE YOU NEED PERSONNEL. SO WE PROVIDE
17 24-7 ON-SITE SERVICE. SO WE CONSTANTLY HAVE PEOPLE
18 MANNING ALL OF THE EQUIPMENTS AND FROM THERE YOU
19 NEED TO HAVE SERVERS AND ROUTERS.

20 Q AND WHAT ARE SERVERS?

21 A SERVERS BASICALLY IS A -- JUST LIKE A PC BUT
22 IT LOOKS DIFFERENT. IT'S SHAPED IN A FORM THAT
23 SAVES SPACE BECAUSE IN DATA CENTER IT'S -- THE
24 SPACE IS VERY IMPORTANT. YOU CAN'T HAVE THE
25 REGULAR BOX LIKE THE PC.

1 USUALLY THE STACK OF MACHINES WE PUT IN
2 40 MACHINES IN ONE STACK. THERE'S NO WAY THAT THE
3 REGULAR PC CAN GET INTO THAT TYPE OF DENSITIES.

4 SO THERE ARE SPECIAL TYPE OF HARDWARES
5 THAT WORK PRETTY MUCH THE SAME AS THE REGULAR PC
6 BUT DIFFERENT IN MECHANICAL FORM.

7 Q AND YOU PUT THEM IN RACKS; IS THAT RIGHT?

8 A YES, AND FOR SPACE MANAGEMENT.

9 Q AND WHAT ELSE DO YOU NEED TO OPERATE AN ISP,
10 WHAT OTHER EQUIPMENT?

11 A A ROUTER. BASICALLY IT'S JUST LIKE OTHER
12 PEOPLE TESTIFIED YESTERDAY. IT'S THE MAIN GATEWAY
13 AT THE FRONT, AND SO WHATEVER COMES IN THROUGH THAT
14 GATEWAY, IT IS DISTRIBUTED TO ANY SPECIFIC
15 EQUIPMENT THAT HAS THAT PARTICULAR IP ADDRESS.

16 Q HOW MANY ROUTERS DO YOU USE IN YOUR BUSINESS
17 AT THE DATA CENTER?

18 A HOW MANY ROUTERS? BUT MANY. IT'S JUST ONE
19 THAT IS PERFORMING AS THE GATEWAY. THE REST IS
20 MORE LIKE A BACKUP OR THE SECONDARY ROUTING
21 PURPOSE.

22 SO WE SEND ONE BIG CHUNK TO -- WELL,
23 LET'S PUT IT THIS WAY, A BIG POST OFFICE VERSUS A
24 LOCAL POST OFFICE.

25 Q OKAY.

1 A SO IT GOES THROUGH THE BIG ONE AND THEN
2 THROUGH THE SECONDARY ONE AND THEN GOES TO THE
3 MACHINE.

4 Q OKAY. SO THE BIG ONE YOU'RE TALKING ABOUT,
5 ALL OF THE COMMUNICATION COMING IN GOES THROUGH ONE
6 BIG ROUTER?

7 A THAT'S CORRECT.

8 Q WHAT ELSE DO YOU NEED TO OPERATE AN INTERNET
9 SERVICE PROVIDER BUSINESS?

10 A WE COVERED FACILITY. WE COVERED THE
11 BANDWIDTH. WE COVERED THE SERVERS.

12 Q WELL, LET'S TALK ABOUT THE BANDWIDTH FOR A
13 MOMENT. WHAT DO YOU MEAN BY BANDWIDTH?

14 A BANDWIDTH IS JUST LIKE AT HOME IF YOU HAVE
15 INTERNET CONNECTIONS AND YOU GO THROUGH PEOPLE LIKE
16 AT & T AND GO THROUGH PEOPLE LIKE COMCAST, BUT IN
17 DATA CENTER ENVIRONMENT IT'S JUST VERY BIG PIPE
18 INSTEAD OF PEOPLE USE AT HOME BECAUSE WE HANDLE A
19 LOT OF TRAFFIC THROUGH THAT BIG PIPE.

20 Q WHEN YOU TALK ABOUT A BIG PIPE, WHAT IS GOING
21 THROUGH THIS PIPE?

22 A A LOT OF DATA.

23 Q DATA?

24 A IN ELECTRONIC FORM BUT FOR PEOPLE WHO IT'S
25 EASY TO UNDERSTAND, IT'S JUST LIKE WATER GOING

1 THROUGH THE PIPE AND THERE'S DIFFERENT MEASURE OF
2 THE PIPE OR THE WATER ITSELF.

3 Q DIFFERENT SIZES OF PIPE SO TO SPEAK ARE
4 AVAILABLE?

5 A NO, NOT EXACTLY. IT'S A BIG PIPE THAT
6 EVERYTHING CAN GO -- RUN THROUGH THAT PIPE.

7 SO IT'S IN MORE OR LESS LIKE IN A CONTROL
8 FORM OR WHATEVER GOES THROUGH THAT PIPE, IT ALL
9 GOES THROUGH ALTOGETHER.

10 Q THE ELECTRONIC DATA?

11 A YES, THE ELECTRONIC DATA.

12 Q HOW IS THAT MEASURED AS IT GOES THROUGH THE
13 PIPE? JUST TELL US HOW YOU TALK ABOUT THE QUANTITY
14 OF DATA GOING THROUGH THE PIPE?

15 A WE MEASURE BY THE SIZE OF THE PIPE THAT ARE
16 PROVIDED. BUT WHEN WE DISTRIBUTE TO OUR CUSTOMER
17 WHO USE INDIVIDUAL SERVERS, MORE OR LESS WE MEASURE
18 BY THE VOLUME.

19 Q THE VOLUME?

20 A THE VOLUME. SO THEN EACH INDIVIDUAL SERVER IS
21 CALCULATED BY A CERTAIN VOLUME BASED ON THE DATA
22 THAT THEY TRANSMIT.

23 Q THE AMOUNT -- THE VOLUME OF DATA?

24 A YES.

25 Q AND ARE YOU TALKING ABOUT VOLUME OF DATA BY

1 DAY OR BY MONTH OR WHAT?

2 A WE CALCULATE IT BY MONTH.

3 Q AND HOW IS IT MEASURED? WHAT IS THE UNIT OF
4 MEASURE FOR THE VOLUME DATA THAT YOU USE?

5 A IN GIGABYTE. A BYTE IS EIGHT LITTLE BITS. SO
6 WHEN WE CALCULATE THE SIZE OF THE PIPE WE CALCULATE
7 BY MEGABITS. IN BITS.

8 BUT THEN WHEN EIGHT BITS IS ONE BYTE. SO
9 WHEN WE CALCULATE BY VOLUME, THEN IT BECOMES BYTE.

10 Q SO WHEN YOU TALK ABOUT MEGABYTES, IS THAT A
11 MILLION BYTES?

12 A MEGABYTES IS A MILLION BYTES, YES.

13 Q AND ALL RIGHT. AND A GIGABYTE IS HOW MANY?

14 A ONE THOUSAND TIMES A MEGABYTE.

15 Q A BILLION BYTES THEN?

16 A BILLION, YES.

17 Q WHERE ARE YOU PHYSICALLY LOCATED? WHERE IS
18 THE BUSINESS PHYSICALLY LOCATED?

19 A TWO BLOCKS FROM HERE. 50 SOUTH MARKET STREET.

20 Q SAN JOSE, CALIFORNIA?

21 A SAN JOSE, CALIFORNIA, THAT'S CORRECT.

22 Q AND WHAT IS LOCATED AT THAT ADDRESS?

23 A THAT BUSINESS IS ONE OF THE MAIN HUBS OF ALL
24 OF THE TELECOMMUNICATIONS BUSINESS. AT & T IS
25 THERE. ALL OF THE BIG GUYS YOU NAME IT ARE THERE.

1 IT'S CALLED MAY WEST BUILDING.

2 BACK IN BOSTON THERE'S ONE CALLED MAY
3 EAST. SO THAT'S THE TWO COMMUNICATION HUB THAT IS
4 IN THE BUILDING. OTHER THAN THAT IS I.R.S.

5 Q SO YOU'RE LOCATED IN ONE OF THE LARGEST DATA
6 CENTERS IN THE UNITED STATES?

7 A I DON'T WANT TO SAY THE LARGEST, BUT I CAN
8 CERTAINLY SAY ONE OF THE MOST IMPORTANT MAIN HUBS.

9 Q WHY IS IT AN IMPORTANT MAIN HUB?

10 A SPECIFICALLY BECAUSE THAT PUTS US IN A
11 POSITION THAT VERY CLOSE TO THE SO-CALLED
12 BACKBONES. SO TO US ONE HUB WE'RE INTO THE MAJOR
13 INTERNET CONNECTIONS INTO THE BIG CLUBS PER SE.

14 Q IS THIS A LARGE BUILDING?

15 A YES, FAIRLY LARGE. I THINK IT'S 16 STORIES.

16 Q AND NOTHING IN THERE BUT DATA CENTERS?

17 A DATA CENTERS ARE.

18 Q AND I.R.S.?

19 A YES.

20 Q AND GOOD COMPANY. WHO DO YOU GET YOUR
21 INTERNET CONNECTION? WHO IS YOUR UPSTREAM INTERNET
22 PROVIDER?

23 A BANDWIDTH WISE WE HAVE GLOBAL PROCESSING AND
24 COGENT COMMUNICATIONS.

25 Q GLOBAL PROCESSING AND COGENT COMMUNICATIONS.

1 WHY DO YOU USE TWO?

2 A JUST BECAUSE OF THE BACKUP. IF ONE GOES DOWN,
3 WE HAVE ANOTHER ONE FOR BACKUP.

4 Q AND YOU PAY FOR THEIR SERVICE OR THE SERVICE
5 THEY GIVE YOU?

6 A OH, YES, FAIRLY EXPENSIVE.

7 Q HOW DO THEY CHARGE YOU, ACCORDING TO QUANTITY
8 OR SOME OTHER WAY?

9 A ACCORDING TO THE PIPE, THE SIZE OF THE PIPE.
10 SO WE NEED TO MAKE A BASIC COMMITMENT TO THE
11 PROVIDER. WE BUY 700 MEGABYTE, AND WE HAVE A MONTH
12 TO COMMIT TO THAT AND ANYTHING ON TOP OF THAT THE
13 CHARGE IS EXTRA.

14 Q NOW, WE HEARD TESTIMONY IN THIS CASE ABOUT IP
15 ADDRESSES OR INTERNET PROTOCOL ADDRESSES. DO YOU
16 HAVE TO HAVE THOSE IN YOUR BUSINESS?

17 A YES, IN ORDER TO HAVE THE INTERNET WORK EVEN
18 AT HOME YOU NEED TO HAVE AN IP ADDRESS THROUGHOUT
19 THE NET.

20 MAYBE MOST OF THE GENERAL CONSUMERS OR
21 GENERAL PC USERS DOESN'T KNOW BUT EVERY TIME IF YOU
22 WANT TO CONNECT TO ANY TYPE OF NETWORK, EITHER THE
23 HOME NETWORK OR GOING OUTSIDE, YOU NEED TO HAVE AN
24 IP ADDRESS.

25 SO FOR HOME YOU GET A PRIVATE IP ADDRESS

1 AND IF YOU WANT TO GO TO THE NET, OR THE INTERNET,
2 YOU NEED TO HAVE AN IP ADDRESS ASSIGNED TO YOUR
3 USAGE OR YOUR LOCATION.

4 Q AND HOW DO YOU USE THE IP ADDRESSES IN YOUR
5 BUSINESS?

6 A WE GET ASSIGNMENT THROUGH ARIN. SO WE NEED TO
7 APPLY THROUGH ARIN TO GET A BIG BLOCK OF IT. SO AT
8 THIS POINT WE USED TO HAVE ABOUT 40,000 IP
9 ADDRESSES ASSIGNED TO US. NOW WE HAVE -- WE'RE
10 DOWN TO 3 -- 30,000. A BIG CHUNK.

11 AND WHEN WE GET ASSIGNMENT TO ARIN, WE
12 REASSIGN THOSE IP ADDRESSES TO ANY SINGLE SERVER.

13 SO EVERY SINGLE SERVER WILL HAVE ITS OWN
14 IP ADDRESS WHEN WE'RE ASSIGNED TO THEM.

15 Q SO YOU JUST HAVE ONE IP ADDRESS ASSIGNED TO
16 THE SERVER?

17 A MULTIPLE IP ADDRESSES. IT DEPENDS ON THE
18 APPLICATION.

19 Q OKAY. SO WHAT KIND OF CUSTOMERS DO YOU SELL
20 TO OR DEAL WITH?

21 A WE MAINLY DEAL WITH RESELLERS. WE CONSIDER
22 OURSELF MORE LIKE A WHOLESALE ENVIRONMENT. WE RENT
23 BIG SPACE FROM THE FACILITY PROVIDER.

24 WE RENT BIG BANDWIDTH FROM THE BANDWIDTH
25 PROVIDER AND THEN WE CHOP IT INTO SMALL PIECES AND

1 RERENT IT TO OUR CUSTOMER AND TO DEVELOP A SERVICE
2 CHANNEL, THEN WE FIND LOCAL RESELLERS TO HANDLE
3 THEIR OWN BUSINESS. SO MORE OR LESS LIKE ONE
4 SERVER MAY CONTRACT 50 HUNDRED SERVERS TO US AND
5 THEY SELL IT TO THEIR CUSTOMERS.

6 WE HAVE SOME DIRECT CUSTOMERS THAT COME
7 TO US DIRECTLY OR PEOPLE NEED VERY SPECIAL
8 ATTENTION THAT THEY DON'T LIKE TO WORK THROUGH ANY
9 MIDDLEMAN THAT THEY WILL COME TO US DIRECTLY, BUT
10 THE MAJORITY OF THIS IS GOING THROUGH THE RESELLER
11 CHANNEL.

12 Q WHAT DO YOU UNDERSTAND THE RESELLERS DO FROM
13 WHAT THEY RENT FROM YOU ON A MONTHLY BASIS?

14 MR. COOMBS: OBJECTION, YOUR HONOR.
15 FOUNDATION.

16 THE COURT: OVERRULED.

17 THE WITNESS: PRETTY MUCH THE SAME AS US,
18 THAT THEY HAVE THEIR WEB SITE UP AND THEN THEY ARE
19 SELLING INTERNET SERVERS LIKE US AND THEY MAY HAVE
20 DIFFERENT PROVIDERS ALTOGETHER, NOT JUST LIKE US,
21 BUT THEY PROVIDE TO SOME OTHER PROVIDERS, TOO,
22 PEOPLE IN THE INDUSTRY LIKE US.

23 SO BEYOND THAT I DON'T KNOW TOO MUCH
24 ABOUT HOW THEY DO THEIR BUSINESS.

25 BY MR. LOWE:

1 Q SO ARE THEY IN THE RETAIL BUSINESS OR THE
2 WHOLESale BUSINESS LIKE YOU?

3 A THAT I DON'T REALLY KNOW. I THINK THEY MAY BE
4 JUST LIKE US, TOO. THEY MAY BE IN WHOLESale OR
5 PROBABLY, TOO.

6 Q NOW, WHEN THEY RENT FROM YOU, DO YOU HAVE TO
7 KNOW WHAT THEY'RE GOING TO DO WITH THE SERVER AND
8 THE IP ADDRESSES AND THE BANDWIDTH THAT THEY'RE
9 RUNNING?

10 A NO, WE DON'T -- WE DON'T MANAGE ANYTHING
11 INSIDE OF THE SERVER.

12 WHEN WE RENT A SERVER TO OUR CUSTOMER
13 BASICALLY IT'S A HARDWARE AND PLUG IT INTO POWER,
14 PLUG IT INTO NETWORK CONNECTIONS, ASSIGN THE IP SO
15 THAT PEOPLE CAN ACCESS IT.

16 WE LOAD THE OPERATIONS SYSTEM, AND WE
17 TURN OVER THE ADMINISTRATIVE PASSWORD TO OUR
18 CUSTOMER AND IT'S ALL OF THEIR HEADACHE FROM THERE
19 ON.

20 Q OKAY. HOW LONG HAVE YOU BEEN RUNNING -- HOW
21 LONG HAVE YOU BEEN MANAGING MANAGED SOLUTIONS GROUP
22 AND AKANOC?

23 A LATE 2003 WE START UP THE BUSINESS SINCE THEN.

24 Q NOW, WE'VE HEARD SOME TESTIMONY EARLIER ABOUT
25 DEDIWEBHOST. CAN YOU TELL US WHAT THAT IS?

1 A DEDIWEBHOST IS A BRAND NAME.

2 Q BRAND NAME?

3 A IT'S A BRAND NAME FOR AKANOC SOLUTIONS, INC.

4 SO AKANOC SOLUTIONS, INC., ITSELF IS THE
5 CORPORATE ENTITY AND IN THE CORPORATE ENTITY WE
6 HAVE THREE BRAND NAMES, DEDIWEBHOST.COM, AND WE
7 HAVE AKANOC.COM, AND WE HAVE COLOALACARTE.COM.

8 Q AND WHAT BUSINESS, IF ANY, OR SPECIFIC WORK IS
9 DONE THROUGH DEDIWEBHOST OR COLOALACARTE?

10 A COLOALACARTE BY DEFINITION IS THAT YOU CAN
11 ORDER THINGS PIECE BY PIECE.

12 Q INSTEAD OF A PACKAGE?

13 A INSTEAD OF A PACKAGE. SO WHEN WE SAY THAT IN
14 ORDER FOR AN INTERNET SERVICE TO WORK YOU NEED TO
15 HAVE BANDWIDTH AND HARDWARE. SO IN A SENSE WE
16 SEPARATE THAT.

17 SO IF CUSTOMER WANTS TO HAVE A HEAVIER OR
18 MORE POWERFUL HARDWARE, THEY CAN ORDER THE HARDWARE
19 AT A HIGHER CLASS AND THEN PACKAGE WITH SMALLER
20 AMOUNT OF BANDWIDTH OR DIFFERENT TYPE OF OPERATING
21 SYSTEM, DIFFERENT TYPE OF OTHER FACTORS, WHATEVER
22 THEY WANT.

23 SO WE LET THEM CHOOSE INDIVIDUAL PIECES.

24 AND FOR AKANOC OR DEDIWEBHOST, IT'S THE
25 SAME THING THAT WE COME UP WITH JUST A STANDARD

1 PACKAGE WHERE YOU HAVE A HARDWARE PACKAGE WITH A
2 CERTAIN AMOUNT OF BANDWIDTH AND GIVEN A HARDWARE
3 PRICE.

4 Q SO COLOALACARTE PEOPLE CAN PICK AND CHOOSE THE
5 PARTS THAT THEY WANT FROM YOU, BUT IF THEY GO
6 THROUGH AKANOC, IT'S A PACKAGE?

7 A THAT'S CORRECT. AND CURRENTLY NOBODY IS
8 REALLY USING THAT COLOALACARTE MODEL SO WE MORE OR
9 LESS DO NOT OFFER ANY OF THIS THROUGH
10 COLOALACARTE.COM ANYMORE.

11 Q OKAY. ARE YOU STILL OFFERING BUSINESS THROUGH
12 DEDIWEBHOST?

13 A YES, THAT'S CORRECT.

14 Q AND WHAT IS THE DIFFERENCE BETWEEN DEDIWEBHOST
15 AND AKANOC IN THE WAY THAT YOU DEAL WITH YOUR
16 CUSTOMERS?

17 A DEDIWEBHOST MAINLY FOR ENGLISH SPEAKING
18 CUSTOMERS AND AKANOC.COM, ALTHOUGH WE OFFER BOTH
19 THE ENGLISH, OR THE WEB SITE ITSELF WE OFFER
20 ENGLISH AND CHINESE, BUT MANY, BECAUSE OF THE
21 CHINESE LANGUAGE, AKANOC IS MORE TOWARDS THE
22 CHINESE CUSTOMER.

23 Q SO YOUR WEB SITE, FOR EXAMPLE, WITH AKANOC HAS
24 INFORMATION IN CHINESE?

25 A YES, BOTH ARE IN CHINESE AND ENGLISH BUT THEN

1 DEDIWEBHOST ONLY HAVE IT IN ENGLISH.

2 Q SO YOUR -- IT'S JUST A QUESTION OF THE WAY YOU
3 PRESENT YOURSELF TO DIFFERENT PARTS OF THE WORLD?

4 A YES, THAT'S CORRECT.

5 Q COULD YOU TAKE A LOOK AT 1526 AND TELL ME WHAT
6 THAT IS?

7 A THIS IS A PROMOTION OF MATERIAL THAT WE RUN
8 THROUGH A WEB HOSTING TALK WHICH IS A FORUM.

9 Q A WHAT?

10 A A FORUM.

11 Q A FORUM?

12 A A CHAT ROOM THAT INDUSTRY PEOPLE USE, THE MOST
13 POPULAR CHAT ROOM IN THE INDUSTRY AND WE PUBLISH --
14 WE PERIODICALLY PUBLISH THIS TYPE OF PROMOTIONS
15 THROUGH WEB HOSTING TALK.

16 Q AND SO WHAT INFORMATION IS SHOWN ON THIS
17 EXHIBIT. IF YOU CAN SCROLL DOWN A LITTLE BIT?

18 A SO THE FIRST PART IS JUST SOME GENERAL TYPE OF
19 LANGUAGE AND THEN DOWN BELOW YOU START SEEING THE
20 PACKAGE AND YOU HAVE IT ON 2.0.

21 MR. LOWE: EXCUSE ME JUST A MOMENT.

22 COULD WE TURN THIS ON. THAT WOULD BE HELPFUL IF
23 THE JURY COULD SEE THIS. WAIT A MINUTE.

24 LET'S GO BACK TO THE TOP.

25 Q ALL RIGHT. LET'S START AT THE TOP OF THE

1 PAGE. WHAT IS AT THE TOP OF THE PAGE?

2 A A COUPLE OF SENTENCES OF GENERAL ADVERTISEMENT
3 OR STATEMENTS.

4 Q ALL RIGHT. IF YOU COULD SCROLL DOWN AND TELL
5 US WHAT IS SHOWN BELOW THAT?

6 A THEN YOU START SEEING THE PACKAGE THAT WE
7 OFFER.

8 Q DIFFERENT PACKAGES?

9 A DIFFERENT PACKAGES. SO WE HAVE THE CELERON
10 2.0, 512 MEGABYTES DRAMS.

11 Q AND LET'S TAKE THEM ONE AT A TIME AND SEE WHAT
12 THESE TERMS MEAN.

13 A SO THE FIRST ONE IS A PROCESSOR. SO IT'S A
14 PROCESSOR CLASS.

15 Q CELERON?

16 A CELERON AN INTENT PROCESSOR. 2.0 IS THE
17 SPEED.

18 Q OKAY.

19 A AND THE SECOND ONE IS THE MEMORY RESIDING ON
20 THAT SERVER. SO THE BIGGER MEMORY, YOU CAN USE IT
21 FOR BIGGER CAPACITY. BASICALLY FOR A PC TO -- OR A
22 COMPUTER TO RUN YOU NEED THE BRAIN WHICH IS THE
23 CPU.

24 Q THE BRAIN?

25 A THE BRAIN WHICH IS THE CPU ITSELF. IN THIS

1 CASE IT'S THE CELERON. AND THEN YOU NEED TO HAVE A
2 STORAGE WHICH LIKE IN THIS CASE IT'S 512 MEGABYTES.
3 IN A SENSE IT'S LIKE AN INSTANT MEMORY CAPACITY
4 THAT YOU CAN BUILD INTO YOUR BRAIN.

5 SO THE CPU IS THE MECHANISM OR DEVICE
6 THAT CONTROLS THE SPEED OF THE CALCULATION, BUT IF
7 YOU HAVE A LOT OF THE INFORMATION THAT CAN RESIDE
8 IN YOUR BRAIN AT THE SAME TIME, THEN YOU GET TO
9 PROCESS THE WHOLE THING A LOT FASTER.

10 NOW THE THIRD ONE SAYS 120 GIGABYTE WHICH
11 IS A HARD DRIVE. A HARD DRIVE IS A GENERAL
12 STORAGE, BUT -- SO THEN IT'S NOT AN INSTANT MEMORY
13 SIZE OR RESOURCES JUST RIGHT BY YOUR BRAIN. THAT'S
14 SOMETHING MAYBE ON YOUR SIDE OR IN YOUR POCKET.

15 SO EVERY TIME YOU WANT TO USE IT YOU TAKE
16 EXTRA WORK TO PULL IT OUT TO PUT IT IN YOUR INSTANT
17 MEMORY RESOURCES.

18 NOW, IF YOUR INSTANT MEMORY RESOURCES IS
19 ONLY -- THE SIZE IS ONLY THAT BIG (INDICATING),
20 THEN EVERY TIME YOU PULL SOMETHING FROM YOUR POCKET
21 AND TRY TO STICK IT IN, YOU NEED TO SWAP IT TO TAKE
22 SOMETHING OUT FROM THERE. SO THAT CREATES A LOT OF
23 THE WORK, THE EXTRA WORK FOR THE PC TO FUNCTION.

24 SO IN THAT CASE IF YOU HAVE A VERY QUICK
25 BRAIN, A LARGE CAPACITY POWER, YOU HAVE A BIG

1 MEMORY AND JUST MEMORY RESOURCES JUST RIGHT BY THAT
2 CPU, THAT BRAIN, AND THEN YOU HAVE A VERY BIG
3 STORAGE NEARBY THAT YOU CAN ACCESS THAT CREATES A
4 VERY BIG COMPUTER OR A VERY BIG SERVER.

5 ON THE OTHER HAND, IF EVERYTHING IS -- IF
6 YOU HAVE VERY MINIMUM CALCULATION POWER WITH VERY
7 MINIMUM MEMORY RESOURCES PLUS YOU ONLY HAVE A VERY
8 SMALL STORAGE, YOU KNOW, FOR THE ACCESS, THEN IT'S
9 A VERY SMALL COMPUTER AND WITH A VERY SMALL
10 COMPUTER WE CHARGE VERY LITTLE MONEY. WITH VERY
11 CHARGE CAPACITY, WE CHARGE MORE.

12 Q NOW, WHAT IS THE NEXT THING 600 GB DATA
13 TRANSFER. WHAT DOES THAT MEAN?

14 A SO THAT'S 600 GIGABYTE VOLUME OF THE BANDWIDTH
15 THAT CUSTOMER CAN USE PER MONTH. SO IF THIS
16 CUSTOMER, WHATEVER THEY WANT TO TRANSMIT TO THE
17 SERVER, THE TOTAL USAGE FOR THAT MONTH WOULD BE 600
18 GIGABYTE. ANYTHING ON TOP OF THAT WE NEED TO
19 CHARGE THEM MORE.

20 Q AND WHAT IS THE NEXT ITEM ON THERE 100 M BIT
21 PORT CONNECTION?

22 A OKAY. SO THIS IS 100 M BIT PORT CONNECTION.
23 YOU CAN LIMIT THE CONNECTION SIZE TO THE SERVER
24 ITSELF TO ONE MEGABYTE, TO 10 MEGABIT, TO 10
25 MEGABIT TO 1 MEGABIT. SO THEY GIVE THE CUSTOMER A

1 DIFFERENT SIZE. IT DEPENDS ON THE APPLICATION.

2 SO IF A CUSTOMER IS USING IT FOR LET'S
3 SAY DATA BACKUP, THEY ONLY USE IT AT MIDNIGHT THAT
4 THEY WANT TO BACKUP THEIR DATA. THEY NEED
5 SOMETHING VERY BIG PIPE WITH VERY FAST SPEED BUT
6 THEY'RE GOING TO USE IT FOR A VERY SHORT TIME
7 PERIOD AND LET EVERYTHING RUN THROUGH IT VERY FAST.

8 BUT SOME OF THE APPLICATION, THEY DON'T
9 NEED THE BIG PIPE. INSTEAD SOME OF THE APPLICATION
10 THEY WOULD LIKE TO LIMIT THE PIPE SIZE ITSELF
11 BECAUSE THEY DON'T WANT TO OVERRUN IT.

12 FOR INSTANCE LIKE SOMEBODY IS SERVING A
13 VIDEO ON COMCAM TO THEIR CUSTOMER. THEY DON'T WANT
14 TO HAVE IT WIDE OPEN BECAUSE IF EVERYBODY HAS IT
15 OPEN, EVERYBODY PULL DATA THROUGH IT AND THEN IT'S
16 GOING TO CREATE A LOT OF COST FOR THEM TO RUN
17 THROUGH THIS DATA.

18 SO THEY WOULD SAY GIVE ME UNLIMITED PIPE
19 SIZE SO THAT WE CAN -- EVEN IF IT'S RUNNING 100
20 PERCENT PIPE CAPACITY ALL OF THE TIME FOR THE WHOLE
21 MONTH, IT'S GOING TO COST US A CONTROLLABLE AMOUNT
22 OF DATA COSTS.

23 Q NEXT ON THERE IS TEN IP'S PER ARIN
24 JUSTIFICATION. WHAT DOES THAT MEAN?

25 A SO IN ORDER TO HAVE THE CONNECTION TO

1 ESTABLISH YOU NEED TO HAVE AT LEAST ONE IP. AND
2 MAINLY WE CALL IT ONE MAIN IP.

3 SO THIS SERVER WHEN WE DEPLOY TO THE
4 CUSTOMER WE HAVE ONE IP CONFIGURED ON THE NETWORK
5 ITSELF ALREADY.

6 NOW, WE ALSO HAVE AN EXTRA NINE IP'S FREE
7 OR WITH THE PACKAGE. AND THE CUSTOMER CAN APPLY
8 FOR THAT.

9 BECAUSE WHEN WE APPLY FOR THE IP THROUGH
10 ARIN, WE NEED TO JUSTIFY TO ARIN THAT WE'RE
11 ACTUALLY USING THOSE IP'S. THAT'S WHEN WE DID THE
12 APPLICATION.

13 WE CONSTANTLY NEED TO PRESERVE
14 INFORMATION. IF ONE DAY ARIN WANTS TO SAY WHO IS
15 CURRENTLY USING THIS IP'S AND WE NEED TO BE ABLE TO
16 BACK UP WITH OUR HARD COPY INFORMATION. THAT'S WHY
17 WE PUT THAT -- WE DON'T JUST GIVE EXTRA IP TO
18 CUSTOMER BUT INSTEAD WE NEED THEM TO FILL OUT AN
19 APPLICATION FORM FOR THAT.

20 Q SO THE JUSTIFICATION IS ESSENTIALLY AN ARIN
21 FORM THAT YOU HAVE TO FILL OUT IN ORDER TO KEEP
22 THESE IP'S ASSIGNED?

23 A YES, THAT'S CORRECT.

24 Q AND SO THIS PARTICULAR PACKAGE AT THIS TIME
25 HOW MUCH WERE YOU CHARGING FOR?

1 A FOR THIS ONE WE CHARGE \$55.

2 Q NOW WE HAVE SEVERAL PACKAGES DOWN HERE. CAN
3 YOU BRIEFLY LIST WHAT THEY ARE? YOU DON'T HAVE TO
4 GO THROUGH THE DETAILS.

5 A SO IF WE GO DOWN TO PENTIUM4 2.8 GIGAHERTZ HT,
6 AND THAT ONE IS GOING FOR \$100 PER MONTH.

7 SO YOU CAN SEE THAT BASICALLY PENTIUM4,
8 2.8 IT'S A HIGHER CAPACITY PROCESSOR THAN CELERON.
9 THAT'S ONE; AND, SECONDLY, IT HAS DOUBLED THE
10 MEMORY SIZE. IT HAS 1024 MEGABYTE DRAM VERSUS THE
11 512.

12 AND THE HARD DRIVE IS THE SAME SIZE. ALL
13 OF THE REST ARE THE SAME SIZE. IT'S JUST DIFFERENT
14 CPU AND MEMORY SIZE.

15 Q BEFORE WE LEAVE THIS PAGE, CAN YOU EXPLAIN
16 WHAT YOU HAVE TO PROVIDE TO ARIN TO GET THESE
17 INTERNET PROTOCOL ADDRESSES ASSIGNED TO YOU FOR USE
18 IN YOUR BUSINESS?

19 A ARIN DOES NOT ASSIGN IP ADDRESSES TO ANYONE
20 THAT WALKS IN AND SAYS "WE WANT AN IP ADDRESS."

21 IT NEEDS TO HAVE CERTAIN QUALIFICATIONS.
22 IT NEEDS TO HAVE A HISTORY OF IP ADDRESS USES.

23 SO WHEN WE FIRST START OUR BUSINESS WE
24 NEED RECORD FROM OUR PROVIDERS, TOO, TO ESTABLISH
25 THAT WE ARE ACTUALLY USING THOSE IP'S FOR A CERTAIN

1 PERIOD OF TIME. THEN WE TAKE THAT RECORDS AND
2 APPLY THROUGH ARIN THAT WE ARE ACTUALLY USING ALL
3 OF THESE IP'S. NOW WE WOULD LIKE TO HAVE OUR OWN
4 IP ASSIGNED TO US.

5 SO FROM THERE THEN YOU GROW. WHEN YOU
6 USE YOUR 75 PERCENT USAGE LIMITATIONS, YOU CAN TAKE
7 THAT TO ARIN AND THEY WILL DO AN AUDIT. AND THEY
8 WILL MAKE SURE THAT IF ALL OF THOSE IP'S ARE
9 CURRENTLY IN USE, THEN THEY WILL ADD MORE IP TO US.
10 SO STEP BY STEP WE GREW TO 40,000 IP'S.

11 Q ALL RIGHT. IF YOU WOULD GO TO THE NEXT PAGE
12 OF THIS EXHIBIT 1526 THERE IS A DISCUSSION OF
13 OPERATING SYSTEMS AND UPGRADES. CAN YOU EXPLAIN
14 THAT, PLEASE.

15 A OKAY. AS I PREVIOUSLY EXPLAINED, A HARDWARE,
16 ONCE YOU HAVE A SERVER HARDWARE SET UP, THEN YOU
17 NEED TO HAVE AN OPERATIONS SYSTEM IN ORDER TO LET
18 THE COMPUTERS START WORKING.

19 OPERATIONS SYSTEM MORE OR LESS IS JUST
20 LIKE A BASIC EDUCATION. THIS IS WHAT I USED TO
21 EXPLAIN TO PEOPLE WHO DON'T KNOW THE COMPUTER MUCH.

22 A HARDWARE GIVE YOU THE BIRTH OF THE
23 BABY. AND IT'S SOMETHING THAT YOU START LEARNING
24 ABOUT HOW TO COMMUNICATE WITH OTHER PEOPLE. AND
25 YOU START GETTING AN OPERATING SYSTEM WITH BASIC

1 EDUCATION OF HOW TO FUNCTION IN THIS WORLD AND FROM
2 THERE IT WOULD BE APPLICATIONS.

3 SO IN THIS CASE THERE ARE DIFFERENT TYPE
4 OF OPERATIONS SYSTEMS THAT YOU CAN CHOOSE. YOU CAN
5 CHOOSE LENOX BASED MACHINES, YOU CAN USE WINDOWS
6 BASED MACHINES, WINDOWS MACHINE THAT YOU NEED TO
7 PAY MONEY. LENOX SPACE IS FOR FREE AND YOU CAN
8 PICK AND CHOOSE.

9 Q SO WHAT ARE THESE FEDORA, DEBIAN, FREEBSD,
10 CENTOS, ARE THOSE ALL SYSTEMS?

11 A YES.

12 Q SLOW IT DOWN A LITTLE BIT.

13 A FEDORA CORE ON THE FIRST ONE 4, 5, 6 WHICH
14 MEANS VERSION 4, VERSION 5, VERSION 6; AND DEBIAN
15 3.1, THAT'S ANOTHER TYPE OF LENOX; FREEBSD STANDS
16 FOR FREE BERKELEY STYLE DISTRIBUTION. IT'S NOT
17 LENOX BUT IT'S CONSIDERED ANOTHER KNOCKOFF OF A
18 LENOX SYSTEM. AND CENTOS IS A LENOX.

19 Q AND WHY DO YOU OFFER SO MANY DIFFERENT TYPES
20 OF SYSTEMS?

21 A BECAUSE THE CUSTOMER NEEDS IT BECAUSE OF
22 DIFFERENT APPLICATIONS AND A DIFFERENT CUSTOMER HAS
23 DIFFERENT PREFERENCE.

24 Q WHO DECIDES WHAT OPERATING SYSTEM WILL BE
25 INSTALLED ON A SERVER?

1 A WHEN THE CUSTOMER ORDERS WE HAVE A DROP BOX
2 THAT THEY CAN SELECT.

3 Q SO YOU PROVIDE THE SERVER, THE IP ADDRESSES,
4 THE BANDWIDTH AND AN OPERATING SYSTEM?

5 A YES.

6 Q ALTHOUGH SOME OF THE OPERATING SYSTEMS YOU
7 CHARGE EXTRA FOR, IS THAT THE WAY IT WORKS?

8 A BECAUSE MICROSOFT CHARGES US, WE CHARGE THE
9 CUSTOMER.

10 Q SO A LICENSE FEE?

11 A YES.

12 Q NOW, WHAT ARE THE UPGRADES THAT YOU OFFER, OR
13 EXPLAIN HOW THAT WORKS?

14 A SO IN THE ORIGINAL PACKAGE WE WERE CHARGING,
15 LET'S SAY WE HAD A PACKAGE FOR 120 HARD DRIVE. AND
16 THE CUSTOMER SAYS WE NEED A BIGGER STORAGE OR
17 CAPACITY. WE NEED 250 CAPACITY GIGABYTE HARD
18 DRIVE.

19 SO IN THAT CASE WHEN THEY ORDER THEY
20 WOULD PUT IN THAT REQUEST, AND WE WOULD CHANGE THE
21 HARD DRIVE FROM 120 GIGABYTE TO 250 GIGABYTE AND
22 CHARGE \$20 PER MONTH EXTRA.

23 Q NOW, IT LOOKS AT THE BOTTOM OF THIS PAGE AND
24 THE TOP OF THE NEXT PAGE YOU'RE TALKING ABOUT
25 DIFFERENT KINDS OF MEMORY. DO YOU UNDERSTAND THAT

1 RIGHT?

2 A TOP OF THE PAGE? YES, THAT'S CORRECT, WHEN WE
3 HAVE ONE GIGABYTE, THAT'S THE INSTANT MEMORY
4 RESOURCES THAT I WAS TALKING ABOUT ORIGINALLY.

5 SO THEN IF CUSTOMER SAYS, WELL, YOU KNOW,
6 ONE GIGABYTE IS NOT ENOUGH FOR US, WE WANT TO
7 INCREASE IT TWO GIGABYTE, THEN THEY CAN SELECT HERE
8 AND PAY EXTRA FEE FOR IT.

9 Q AND THE TOP OF THE PAGE 3 HAS SOME REFERENCE
10 TO XEON. WHAT IS THAT?

11 A XEON IS A DIFFERENT CLASS OF THE PROCESSOR
12 WHICH USES A TOTALLY DIFFERENT TYPE OF MEMORY.

13 SO IF WE TURN BACK TO THE SECOND PAGE,
14 THE LOWER PART OF THE SECOND PAGE, WE LISTED
15 UPGRADE COSTS SO THE VERY LAST ONE SAYS 1 GIGABYTE
16 TO 2 GIGABYTE DRAMS. IT'S \$20 PER MONTH EXTRA BUT
17 WITHOUT XEON OR IS THE NOTATION.

18 NOW IF WE GO TO THE TOP OF THE THIRD PAGE
19 WE SEE 1 GIGABYTE TO 2 GIGABYTE WITH XEON NOTATION
20 AND WE'RE CHARGING \$30 EXTRA PER MONTH VERSUS 20.
21 THAT'S DIFFERENT TYPE OF MEMORY THAT WE USE, AND IT
22 COSTS MORE TO PURCHASE THAT MEMORY.

23 Q AND SOMETHING BELOW THAT THERE'S SOMETHING
24 ABOUT S-A-T-A RAID PORTS AND SO ON?

25 A FIRST, THAT'S A DIFFERENT TYPE OF HARD DRIVE

1 THAN THE REGULAR ID HARD DRIVE THAT WE USE.

2 BUT NOWADAYS THIS DOCUMENT HAS BEEN
3 PRINTED OUT THROUGH FAIRLY OLD WEB SITES. NOWADAYS
4 VIRTUALLY YOU CAN'T FIND HARD DRIVES SO SATA IS A
5 DIFFERENT -- A NEW TYPE OF HARD DRIVE THAT PEOPLE
6 USE NOWADAYS.

7 AND RAID IS A CONFIGURATION FOR STORAGE
8 MORE OR LESS LIKE YOU PUT FEW HARD DRIVES TOGETHER
9 AND TO CREATE SOME SORT OF REDUNDANCY AND DATA
10 PROTECTION PURPOSE YOU WOULD BE -- THAT'S WHAT A
11 RAID IS FOR.

12 Q ALL RIGHT. NOW, DO YOU OFFER ANY OTHER
13 SOFTWARE OTHER THAN WHAT YOU TESTIFIED ABOUT?

14 A OTHER THAN THIS WE ALSO PUT IN A SO-CALLED
15 CONTROL PANEL OR CONTROL PANEL IS A SOFTWARE OR
16 UTILITY SOFTWARE FOR PEOPLE TO USE TO CONTROL A
17 SERVER EASIER TO MAKE SPECIAL FUNCTIONS EASIER.

18 FOR INSTANCE LIKE YOU CAN USE THAT
19 CONTROL PANEL SOFTWARE TO RUN WEB SITES. YOU CAN
20 USE THAT CONTROL PANEL SOFTWARE TO RUN E-MAIL
21 SERVERS.

22 YOU CAN RUN BACKUPS, ANYTHING THAT --
23 THEY MAKE THINGS EASIER BECAUSE A LOT OF TIME THE
24 LENOX TYPE OF OS, OPERATING SYSTEM, UNLESS YOU'RE
25 VERY GOOD AT IT, IT'S DIFFICULT TO MANAGE BECAUSE

1 IT COMES IN TEXT FORM SO NOT A GENERAL USER CAN
2 USE.

3 WITH THE CONTROL PANEL BASICALLY THEY
4 JUST -- THEY MORE OR LESS BE ON TOP OF THE LENOX
5 OPERATING SYSTEM AND THEY CAN PULL OUT COMMANDS IN
6 A GRAPHIC FORM OR SOMETHING TO MAKE IT EASIER FOR
7 PEOPLE NOT REALLY GOOD AT USING COMMAND LINE TO
8 CONTROL A SERVER.

9 Q AND WHEN YOU TALK ABOUT CONTROL PANEL, THAT'S
10 THE NAME OF THE SOFTWARE PACKAGE?

11 A NO, THAT'S THE GENERAL TERM.

12 Q THE TYPE OF SOFTWARE PACKAGE?

13 A A TYPE OF SOFTWARE.

14 SO IN PARTICULAR A SOFTWARE WOULD BE
15 THINGS LIKE C PANEL, IT WOULD BE LIKE PLESK,
16 P-L-E-S-K.

17 Q AND THOSE ARE NAMES OF CONTROL PANELS?

18 A A PARTICULAR CONTROL PANEL SOFTWARE.

19 Q AND JUST SO I UNDERSTAND, CONTROL PANEL IS
20 SOMETHING THAT THE -- YOUR CUSTOMER USES OR
21 SOMETHING THAT YOU USE?

22 A NO, WE DON'T USE. I MEAN, IF THE CUSTOMER
23 REQUESTS IT, WE WOULD BUILD IT WHEN WE DEPLOY IT TO
24 THE CUSTOMER.

25 Q HOW DO YOU MARKET YOUR SERVICES?

1 A MAYBE THROUGH WEB HOSTING TALK FORUM. SO
2 PERIODICALLY I WOULD SAY BIWEEKLY WE ALWAYS POST A
3 PROMOTION THERE. WITH AKANOC.COM MANY AT THIS
4 STAGE IS MAYBE MORE WORD OF MOUTH BECAUSE WE DON'T
5 REALLY PROMOTE BUSINESS IN THE CHINA AREA AND WE
6 DON'T HAVE ENOUGH OF A PRESENCE THERE THROUGH OUR
7 RESELLER THERE ALREADY. AND WE DON'T REALLY WANT
8 TO CREATE MORE CONFLICT OF -- TERRITORIAL CONFLICTS
9 BETWEEN THESE AREAS. SO WE TEND NOT TO GO THERE
10 AND EXPLORE MORE BUSINESS.

11 Q ARE THERE ANY OTHER BUSINESSES LIKE YOURS IN
12 THE UNITED STATES?

13 A THERE ARE PLENTY. IF YOU GO TO WEB HOSTING
14 TALK, YOU CAN FIND HUNDREDS, PROBABLY EVEN
15 THOUSANDS. IT DEPENDS ON THE SCALE OF THE
16 BUSINESS.

17 Q SCALE MEANING SOME ARE BIGGER AND SOME ARE
18 SMALLER?

19 A THE ONE EXACTLY LIKE MINE CONSIDERED ONE OF
20 THE BIGGEST ONES, LAST I CHECKED THERE IT'S LIKE
21 60,000 SERVERS. WE ARE CONSIDERED VERY SMALL
22 TOWARD THAT SCALE.

23 BUT RUNNING A THOUSAND PLUS SERVERS IN A
24 DATA CENTER IS NOT LIKE YOU CAN RUN IT THROUGH A
25 GARAGE.

1 Q HOW MANY SERVERS DO YOU USE NORMALLY AT A
2 TIME?

3 A ANYWHERE BETWEEN 1,000 TO 1500 AT THIS POINT.

4 Q WHERE ARE YOUR CUSTOMERS LOCATED GENERALLY?

5 A WE REALLY DON'T KNOW, BUT I WOULD SAY AKANOC
6 IN CHINA. OTHER THAN BECAUSE WHEN THEY COMMUNICATE
7 WITH US, A LOT OF TIMES I NEED TO PUSH THEM BACK TO
8 SAY USE CHINESE BECAUSE I CAN'T UNDERSTAND YOUR
9 ENGLISH AND SO THAT'S AKANOC BRAND.

10 AS FAR AS DAILY WEB HOST, IT COMES FROM
11 ALL OVER THE PLACE.

12 Q THE UNITED STATES OR OUTSIDE OF THE UNITED
13 STATES?

14 A ALL OVER THE PLACE. WE CAN'T EVEN IDENTIFY
15 WHERE IT'S COMING FROM.

16 Q WHY CAN'T --

17 A I MEAN, WE CAN IDENTIFY BUT WE CAN'T MEMORIZE
18 WHERE IT'S COMING FROM.

19 Q OKAY. WHAT SORT OF PERSONNEL DO YOU HAVE TO
20 OPERATE THIS BUSINESS, AKANOC AND MANAGED SOLUTIONS
21 GROUP?

22 A EXCUSE ME?

23 Q WHAT PERSONNEL DO YOU HAVE?

24 A WE HAVE 13. I WOULD SAY 13 AT THIS POINT. WE
25 HAVE BEEN AT THIS LEVEL FOR TWO YEARS. PROBABLY

1 AFTER 2008, 2000 -- YEAH, 2007, 2008 WE'RE PRETTY
2 MUCH AT THIS LEVEL.

3 WE HAD ABOUT THREE GENERAL ACCOUNTING
4 CLERK. WE HAD TWO SALES.

5 Q TWO SALESPEOPLE?

6 A TWO SALES. ONE FOR AKANOC AND ONE FOR DAILY
7 WEB HOST. AND WE HAVE THE REST OF THE PEOPLE ARE
8 WE CALL IT IN THE CAGE. SO IT'S A TECHNICIAN THAT
9 THEY ARE IN THE DATA CENTER.

10 AND WE HAVE ONE PARTICULAR PERSON RUNNING
11 THE ROUTER. HE USED TO BE IN THE CAGE, AND HE GOT
12 REALLY SICK AND TIRED OF IT SO HE DECIDED NOT TO
13 SIT THERE. AND HIS WORK PUT HIM IN THE CAGE
14 ENVIRONMENT IS DEFINITELY HURTING THAN HELPING. SO
15 HE'S NOW REMOTELY HANDLING ALL OF THE ROUTING FOR
16 THE BUSINESS ITSELF.

17 Q AND WHO IS THAT?

18 A THAT'S ANDREW CHENG.

19 Q OKAY. WHO DO YOU HAVE MARKETING FOR YOU?

20 A WELL, AS I SAID, I HAVE TWO SALESPERSON. ONE
21 IS WILL LONE WHO IS FROM CHINA.

22 Q WILL LONE?

23 A WILL LONE, L-O-N-E, AND HE'S FROM CHINA. SO
24 HE'S BASICALLY MORE OR LESS THAT HE DEVELOPED ALL
25 AKANOC PERSONS WITH SUPERVISION OF MINE.

1 AND THE DAILY WEB HOST IS RUN BY THE --
2 THE SALES FUNCTION IS RUN BY PATRICK YEOH. HE'S
3 FROM MALAYSIA, BUT HE SPEAKS VERY GOOD ENGLISH AND
4 HE CAN HANDLE ALL OF THE ENGLISH CUSTOMER -- THE
5 ENGLISH SPEAKING CUSTOMERS NO PROBLEM.

6 Q MR. LONE, YOU SAID HE'S FROM CHINA. DOES THAT
7 GIVE HIM ANY ADVANTAGE IN DEALING WITH CUSTOMERS
8 THERE?

9 A IT GIVES HIM A LOT OF ADVANTAGE AS FAR AS
10 TYPING BECAUSE NOWADAYS PEOPLE DON'T EVEN LIKE TO
11 TALK ON THE PHONE. PEOPLE LIKE TO GO THROUGH
12 E-MAILS. SO HE CAN TYPE. I CAN READ, BUT I CANNOT
13 TYPE.

14 Q YOU CAN'T TYPE WHAT?

15 A TYPE CHINESE. I'M TOO OLD TO LEARN THAT. SO
16 HE COMMUNICATE WITH CUSTOMERS THROUGH CHINESE
17 TYPING WHERE A LOT OF TIMES IF I HAVE SOMETHING OR
18 EVEN TECHNICAL THAT I HAVE A HARD TIME THAT I KNOW
19 I WILL HAVE A HARD TIME USING ENGLISH TO EXPRESS IT
20 OR EXPLAIN IT TO THE CUSTOMER I WOULD ASK HIM AND
21 CALL HIM IN AND TELL HIM EXACTLY WHAT I NEED TO
22 EXPRESS AND HE WOULD IN TURN TRANSLATE IT IN
23 CHINESE AND SEND OVER THE MESSAGE. THAT'S MAINLY
24 HIS FUNCTION.

25 Q DO YOU READ CHINESE?

1 A YES, I READ CHINESE. THE TRADITIONAL FORM.
2 NOT THE SIMPLIFIED FORM WHICH IS WHAT THEY USE IN
3 MANDARIN, CHINA USE. I HAVE BEEN EDUCATED IN CHINA
4 SO I HAVE BEEN EDUCATED WITH THE TRADITIONAL FORM
5 OF CHINESE. IT LOOKS DIFFERENT.

6 Q OKAY. DO YOU PROVIDE TO YOUR CUSTOMERS ANY
7 WEB SITES? DO YOU DEVELOP WEB SITES FOR YOUR
8 CUSTOMERS?

9 A NO, WE DON'T.

10 Q DO YOU PROVIDE THEM ANY OTHER PRODUCTS, ANY
11 OTHER SOFTWARE FOR APPLICATIONS ABOVE THE OPERATING
12 SYSTEM OR THE CONTROL PANEL?

13 A NO, WE DON'T.

14 Q WHERE DO THOSE -- WHERE DOES THAT SORT OF
15 SOFTWARE COME FROM?

16 A WHEN WE TURN OVER THE ADMINISTRATIVE RIGHT OF
17 THE SERVER TO THE CUSTOMER, THEN THEY CAN REMOTELY
18 LOOK INTO THE SERVER. FROM THERE ON THEY CAN LOAD
19 WHATEVER THEY WANT TO LOAD. THEY CAN REMOTELY
20 CONTROL THE WHOLE UNIT.

21 Q AND WHAT DO YOU CALL THAT SORT OF A SETUP? IS
22 THERE A TERM FOR THIS IN THE INDUSTRY IT'S CALLED?

23 A UNMANAGED SERVICE.

24 Q UNMANAGED?

25 A UNMANAGED.

1 Q IS IT UNMANAGED?

2 A N-M, NANCY AND THEN MARY. NOW, THE NEED FOR
3 THE UNMANAGED SERVICE, A LOT OF TIME THE PARTICULAR
4 ENGINEERS WANT TO HAVE THE BASIC OPERATING SYSTEM
5 INSTALLED ONLY BECAUSE HE NEEDS TO HAVE SPECIAL
6 PATCHES, NOT PATCHES NORMALLY PEOPLE HAVE.

7 OR HE HAS AN APPLICATION, A PROPRIETARY
8 APPLICATION THAT HE DOESN'T WANT PEOPLE TO KNOW TO
9 UNDERSTAND, HE DOESN'T WANT PEOPLE TO HAVE ACCESS
10 TO THE SERVER FLAT OUT. SO IN THAT CASE HE WANTS
11 AN UNMANAGED SERVER FROM US AND FROM THERE HE CAN
12 BUILD WHATEVER HE NEEDS.

13 AND THERE ARE SITUATIONS LIKE BACKUP
14 INFORMATIONS, COMPANY DATA BACKUPS OR IF YOU HAVE
15 COMMON ASSETS FROM SOMEBODY ELSE THAT MAKES YOUR
16 DATA INSECURE WHICH LOSES THE PURPOSE OF RENDERING
17 A REMOTE STORAGE DEVICE.

18 SO IN THAT CASE THERE IS A NEED FOR THIS
19 TYPE OF SERVICE IN THE INDUSTRY.

20 AND ON THE OTHER END THERE'S ANOTHER TYPE
21 OF SERVICE AND WE CALL IT UNMANAGED SERVICE. IT
22 DOES NOT MEAN THAT THE MANAGED IS REALLY MANAGING
23 THE WHOLE APPLICATION. IT'S SIMPLY MANAGING THE
24 BASIC FUNCTION OF THE OPERATING SYSTEM.

25 FOR INSTANCE, A VERY GREAT EXAMPLE

1 NOWADAYS EVERYBODY HAS BEEN SUFFERING EVERY DAY AS
2 THE SO-CALLED "SECURITY BACKUP" OR "SECURITY PATCH"
3 OR "SECURITY UPDATE."

4 IF YOU READ THE PUBLIC SERVER WHERE
5 EVERYBODY CAN ACCESS TO THAT SERVER AND YOU DON'T
6 HAVE ENOUGH UPDATE OR SECURITY SOFTWARE TO PROTECT
7 YOUR SERVER, THEN MOST LIKELY YOU'LL BE IN FAIRLY
8 BIG TROUBLE.

9 AND IN A SENSE THAT THE PEOPLE RUNNING
10 THAT SERVER, THEY DON'T KNOW HOW TO MAKE A GOOD
11 PROTECTION TO THAT SERVER, THEY WILL RUN A
12 SO-CALLED UNMANAGED SERVICE SERVER.

13 NOW, IN THAT CASE WE DON'T DO THAT. WE
14 HAVE CUSTOMER ACTUALLY RUN AN UNMANAGED SERVER FROM
15 US.

16 Q UNMANAGED?

17 A I KNOW I'M CONFUSING A LOT OF PEOPLE.

18 THE COURT: NO. WHEN YOU SAY UNMANAGED
19 -- IT COMES OUT ALMOST AS UNMANAGED. YOU NEED
20 TO --

21 MAYBE WE CAN COME UP WITH ANOTHER TERM SO
22 WE CAN DIFFERENTIATE THE TWO.

23 BY MR. LOWE:

24 Q MAYBE YOU CAN STRESS THE UNMANAGED.

25 A OKAY. OKAY. SO MY CUSTOMER RAN AN UNMANAGED

1 SERVER FROM US. THEY WOULD IN TURN BUILD ALL OF
2 THAT SECURITY FEATURES TO THE SERVER.

3 Q THEY BUILD IT INTO THE SERVER?

4 A THEY WILL PUT THAT LAYER ON TOP OF OUR SERVER.

5 THEN THEY IN TURN RENT THAT SERVER OUT TO
6 THEIR CUSTOMER AS A MANAGE SERVER PACKAGE.

7 Q SO LET ME MAKE SURE I UNDERSTAND. YOU RAN AN
8 UNMANAGED SERVER TO YOUR CUSTOMER BUT THAT CUSTOMER
9 THEN MIGHT RESELL UNMANAGED SERVICES?

10 A THAT'S CORRECT. I JUST WANT TO CLARIFY THAT
11 WHEN WE TALK ABOUT UNMANAGED SERVER, IT DOES NOT
12 MEAN THAT ACTUALLY UNMANAGED SERVER IS MANAGING AN
13 APPLICATION. IT'S STILL NOT AT THAT LEVEL YET.

14 Q YOU'RE NOT MANAGING ANY APPLICATION EVEN IF
15 YOU'RE OFFERING UNMANAGED SERVERS?

16 A YES.

17 Q YOU'RE ONLY MANAGING THE OPERATING SYSTEM?

18 A THAT IS CORRECT.

19 Q OKAY. NOW, IS THERE A DIFFERENCE IN THE KIND
20 OF CUSTOMER THAT WOULD NEED AN UNMANAGED SERVICE OR
21 AN UNMANAGED SERVICE? I MEAN, YOU HAVE TO HAVE A
22 TECHNICAL BACKGROUND, FOR EXAMPLE?

23 A DEFINITELY PEOPLE THAT BUILD AN UNMANAGED.

24 Q UNMANAGED?

25 A UNMANAGED SERVERS, THEY HAVE A MORE TECHNICAL

1 BACKGROUND -- THEY HAVE MORE BACKGROUND THAN PEOPLE
2 THAT RENT UNMANAGED SERVER.

3 AND FROM UNMANAGED SERVER THEN WE GO INTO
4 APPLICATION.

5 NOW, APPLICATION IS TOTALLY WIDE OPEN
6 AREAS.

7 EVEN THE PEOPLE THAT MANAGE THAT OFFERS
8 THE SO-CALLED UNMANAGED SERVER THEY CANNOT HANDLE
9 THE APPLICATION BECAUSE, LIKE I SAID, THE
10 APPLICATION IS JUST WIDE OPEN.

11 IT MAY BE FOR VOICE OVER IP, IT MAY BE
12 FOR GAMING, IT MAY BE STRICTLY FOR VIDEO STREAMING
13 SERVING WHERE YOU CAN GET ONTO INTERNET AND CLICK
14 ON U-TUBE. VIDEO HAS A LOT OF VIDEO STREAMING AND
15 THAT'S NOT AN EASY TECHNOLOGY AND A LOT OF HOSTING
16 TO MANAGE.

17 VIDEO IS VERY LARGE TO TRANSMIT, NOT LIKE
18 THE WEB PAGE. SO WHEN IT GETS INTO APPLICATION,
19 THEN MOST LIKELY THE END CUSTOMER, THEY ONLY KNOW
20 HOW TO RUN THEIR OWN APPLICATION.

21 I DON'T SEE ANY PROFESSIONAL COMPANY THAT
22 CLAIM THAT THEY KNOW ALL OF THE APPLICATIONS IN THE
23 WORLD WHERE IF YOU CONTRACT ME I CAN MAKE THE BEST
24 SERVICE FOR YOU.

25 I THINK PEOPLE MORE OR LESS, TECHNICAL

1 PEOPLE WOULD MORE OR LESS GET AWAY FROM THERE AND
2 SAY I CAN TURN TO YOU SOMETHING THAT I UNDERSTAND
3 THAT I CAN MANAGE AND FROM THEN ON IT'S YOURS.

4 Q NOW, ONE OF THE DEFENDANTS HAS THE CORPORATE
5 NAME OF MANAGED SOLUTION GROUP. DOES IT PROVIDE
6 ANY SERVICES? DOES IT NOW PROVIDE ANY MANAGED
7 SERVICES?

8 A NO. ALL OF THE TIME THAT I WAS INVOLVED WITH
9 MANAGE.COM ALL OF THE WAY TO THE TIME THAT I SPLIT
10 NEVER HAVE -- NEVER OFFERED MANAGED SERVICES.

11 Q WHERE DID THAT NAME COME FROM MANAGED
12 SOLUTIONS?

13 A WHEN I FIRST START THE NEW BUSINESS, AS I WAS
14 EXPLAINING, I WAS IN THE HARDWARE BUSINESS BEFORE I
15 JUMPED INTO THIS. IT WAS ONE OF MY CUSTOMERS,
16 JACQUES PHAM -- I THINK WE MENTIONED THAT NAME IN
17 THE DEPOSITION READING YESTERDAY.

18 SO HE CAME TO ME AND HE SAYS, WELL,
19 STEVE, SINCE YOU HAVE SO MANY HARDWARES AND IF WE
20 JOIN AND I DO THE MARKETING AND THE SETUP OF THE
21 WHOLE BUSINESS AND YOU SUPPORT ME WITH ALL OF THE
22 HARDWARES, MAYBE WE CAN FORM A COMPANY THAT DO
23 HOSTING BUSINESS AT A BIGGER SCALE THAN HE WAS
24 DOING IN THE PAST.

25 SO THAT'S HOW I GOT INTO THIS BUSINESS.

1 AND HE PICKED THE NAME MANAGED.COM AND HE THINKS
2 IT'S AN EASY NAME TO REMEMBER AND IT'S SHORT AND
3 PUNCHY AND IN A SENSE FOR ADVERTISEMENT PURPOSE.

4 AND IT WENT WELL. WITHIN A YEAR I
5 STARTED SEEING THIS IS NOT RIGHT BECAUSE WE'RE
6 USING A NAME TO CONFUSE THE CUSTOMER WHICH IS NOT
7 MY STYLE OF RUNNING BUSINESS. SO THAT'S WHY WITHIN
8 A YEAR I SEPARATE FROM HIM THE BUSINESS.

9 AND THEN THE VERY SIMPLE DEAL FOR THAT IS
10 YOU TAKE YOUR NAME AWAY, YOU TAKE, YOU KNOW,
11 SO-CALLED YOU BUILD UP THE CUSTOMER OR WHATEVER,
12 YOU TAKE ALL OF THAT WITH YOU, BUT THEN I, YOU
13 KNOW, SINCE I OFFER ALL OF THE HARDWARE TO BEGIN
14 THE BUSINESS, THEN I KEEP ALL OF THE HARDWARE AND
15 YOU GET THE CUSTOMER AND THE NAME.

16 AND SO HE TOOK THAT. AND HE TOOK ALL OF
17 THE CUSTOMER AWAY TO A DIFFERENT CUSTOMER TO GET
18 SERVERS. AND WE HAD A DEAL THAT HE STILL
19 MAINTAINED HIS CUSTOMER DOING SERVICE AND WHATEVER,
20 AND WE WOULD RENT OUR CAPACITY INCLUDING PERSONNEL,
21 RUNNING THE DATA CENTER AND WHATNOT, THE WHOLE
22 CAPACITY TO HIM, BUT HE WOULD DEAL WITH HIS
23 CUSTOMER.

24 THAT'S WHERE THE MANAGED.COM COMES FROM.
25 THAT'S WHERE THE CONFUSION IS. THAT'S WHY I

1 STOPPED USING THAT.

2 Q SO THE MANAGED SOLUTIONS GROUP WAS SOMETHING
3 THAT YOU HAD WHEN YOU WERE DEALING WITH JACQUES
4 PHAM?

5 A YES, THAT'S WHEN WE FIRST INCORPORATED THE
6 COMPANY.

7 Q AT THE PRESENT TIME AS I UNDERSTAND YOU'RE NOT
8 MARKETING THROUGH MANAGED SOLUTIONS GROUP BUT ONLY
9 THROUGH AKANOC OR DAILY WEB HOST?

10 A NO, WE'RE NOT.

11 Q SO YOU DON'T USE THAT NAME IN THE PUBLIC?

12 A NO, WE'RE NOT.

13 Q BUT THE MANAGED SOLUTIONS GROUP STILL HAS
14 HARDWARE AND THE IP ADDRESSES ASSIGNED TO IT?

15 A THAT'S CORRECT.

16 Q SO YOU DON'T OFFER ANY MANAGED SERVICES THEN?

17 A NO, WE DON'T.

18 Q YOU MENTIONED THERE ARE MANY USES OF THE
19 SERVERS THAT YOU RENT OR LEASE OUT. AND JUST SO WE
20 CAN CLARIFY YOUR TESTIMONY, WHAT IS VOICE OVER IP?

21 A INTERNET PHONE. I THINK MOST OF THE PEOPLE BY
22 NOW PROBABLY HAVE SOME EXPERIENCE TALKING TO SKYPE.

23 Q SKYPE?

24 A S-K-Y-P-E, OR EVEN MSN OR EVEN YAHOO THAT YOU
25 CAN PUT YOUR HEADPHONE ON AND TALK TO ANOTHER BODY

1 ON THE OTHER SIDE.

2 THAT'S NOT THE TRADITIONAL PHONE. THAT'S
3 SO A GENERAL TERM IS VOICE OVER IP. THERE ARE
4 COMPANIES THAT ACTUALLY OFFER VOICE OVER IP INTO
5 YOUR HOME LIKE I THINK COMCAST OR CABLE ARE INTO
6 THIS BUSINESS RIGHT NOW.

7 SO BASICALLY YOU CAN USE THE INTERNET
8 PHONE JUST LIKE THE REGULAR PHONE. YOU DON'T EVEN
9 KNOW THAT IT'S NOT A TRADITIONAL PHONE THROUGH YOUR
10 REGULAR PHONE COMPANY. SO VOICE OVER IP WOULD BE A
11 GOOD EXAMPLE.

12 Q CAN YOUR SERVICES BE USED FOR VOICE OVER IP?

13 A YES, CUSTOMER RUNNING IT I DO HAVE MY OWN
14 VOICE OVER IP SERVICE MYSELF.

15 Q AND SOME OF YOUR CUSTOMERS DO?

16 A OH, YES.

17 Q YOU MENTIONED SOMETHING ABOUT GAMING. WHAT
18 ARE YOU TALKING ABOUT WITH USING YOUR SERVICES?

19 THE COURT: I WANT TO MOVE QUICKLY FROM
20 THESE APPLICATIONS THAT ARE NOT CHARGED IN THIS
21 CASE.

22 I APPRECIATE THAT THAT IS GOOD
23 BACKGROUND, BUT THERE'S NO CLAIM HERE HAVING TO DO
24 WITH THOSE TECHNOLOGIES. SO I'LL ALLOW YOU TO
25 INTRODUCE THE FACT THAT THE SERVERS MAY BE USED FOR

1 OTHER PURPOSES, BUT THE JURY WILL NOT HAVE TO
2 DECIDE ANY MATTER HAVING TO DO WITH VOICE OVER IP
3 OR ANY OF THOSE SO FAR AS THE COURT IS AWARE.

4 MR. LOWE: I APPRECIATE THAT. I JUST
5 WANTED TO CLARIFY SOME OF THE COMMENTS HE MADE
6 EARLIER, AND WE'LL GET THROUGH THIS VERY QUICKLY.

7 Q SO WHAT IS GAMING OVER THE INTERNET.

8 A PEOPLE PLAY INTERNET GAMES. SOMEHOW THEY NEED
9 TO HOOK UP WITH A CENTRAL SERVER THAT EVERYBODY CAN
10 PLAY OR A FAIR GROUND PER SE OVER THE SERVER THAT
11 HAS HIGH CONNECTIONS AND SO EVERYBODY CAN CONNECT
12 AND PLAY FAIRLY.

13 Q AND DO ANY OF YOUR CUSTOMERS USE YOUR SERVERS
14 FOR E-MAIL SERVICE DO YOU KNOW?

15 A OH, YES. A LOT OF -- A VERY GOOD EXAMPLE
16 WOULD BE SPAMMERS, THEY RUN OUR SERVER JUST FOR
17 SPAMMING PURPOSE.

18 Q AND IS THAT SOMETHING THAT YOU ENCOURAGE?

19 A NO, WE DON'T. I MEAN, IF WE CATCH IT, WE
20 UNPLUG IT.

21 Q AND ARE YOUR SERVERS USED TO YOUR KNOWLEDGE
22 FOR HOSTING WEB SITES?

23 A WE KNOW WE HAVE CUSTOMERS USING IT FOR WEB
24 SITE HOSTING PURPOSE, WE JUST DON'T KNOW WHERE.

25 Q WHAT IS YOUR ROLE OR THE COMPANY'S ROLE IN THE

1 OPERATION OF WEB SITES THAT USE YOUR SERVERS AND IP
2 ADDRESSES?

3 A I DON'T UNDERSTAND THE QUESTION.

4 Q DO YOU HAVE ANYTHING TO DO WITH WEB SITES THAT
5 HAPPEN TO BE USING YOUR SERVICES OR IP ADDRESSES?

6 A OTHER THAN PROVIDING CONNECTION TO THE
7 INTERNET, WE DON'T EVEN KNOW WHAT IS IN IT.

8 SO IF THIS PARTICULAR SERVER HAPPENED TO
9 RUN A WEB SITE, TECHNICALLY FROM US IT'S THE SAME
10 THING. WE GIVE THEM AN IP ADDRESS. WE GIVE THEM
11 CONNECTIONS, WE GIVE THEM POWER. WE GIVE THEM 24-7
12 SERVICE. IT'S THE SAME.

13 Q DO YOU PROVIDE ANY SORT OF SPECIAL SUPPORT FOR
14 WEB HOST OR WEB HOSTING?

15 A NO.

16 Q DO YOU PROVIDE ANY SOFTWARE FOR OPERATING WEB
17 SITES?

18 A NO.

19 Q DO PEOPLE HAVE TO ASK YOU IF THEY COULD USE A
20 WEB SITE OPERATING YOUR SERVERS?

21 A NO.

22 Q AND DO THEY HAVE TO TELL YOU IF THEY'RE GOING
23 TO DO THAT?

24 A NO.

25 Q AND WHY DON'T YOU KNOW THAT?

1 A WHY DON'T I?

2 Q WHY DON'T YOU KNOW THAT PEOPLE ARE USING YOUR
3 SERVERS FOR WEB SITES?

4 A THE ONLY THING THAT WE KNOW WHEN WE LOOK AT A
5 SERVER IS WHETHER THAT -- THAT THEY WOULD -- THAT
6 THEY WOULD INDICATE A LIGHT, THE LED IS FLASHING OR
7 NOT. THAT'S THE ONLY THING WE CAN SEE. IF IT'S
8 NOT FLASHING THEN THAT MEANS THAT THE NETWORK IS
9 DEAD.

10 Q IS DEAD?

11 A IT'S DOWN.

12 Q OKAY.

13 A THAT IT'S NOT FUNCTIONAL. OTHER THAN THAT
14 LOOKING AT A STACK OF MACHINES, THEY'RE ALL THE
15 SAME.

16 Q THE LIGHT IS ON, IT'S WORKING. IF IT'S NOT --

17 A THAT'S CORRECT. AND IF ANYTHING THAT THE
18 CUSTOMER NEEDS TO ACCESS TO DO, THEY SEND AN E-MAIL
19 THROUGH THE SUPPORT TICKET AND WE ACT ON IT
20 ACCORDINGLY.

21 Q WHAT DO YOU MEAN? WHAT WOULD A CUSTOMER ASK
22 YOU TO DO THROUGH E-MAIL?

23 A WHEN A CUSTOMER NOTICES THAT THE SERVER IS
24 DOWN, THEY SAY -- THEY SEND, YOU KNOW, WE HAVE A
25 SPECIFIC SUPPORT OR E-MAIL ADDRESS CALLED

1 REBOOT@AKANOC.COM.

2 Q REBOOT?

3 A REBOOT OR REBOOT@DAILYWEBHOST.COM. THE
4 CUSTOMER WHEN THEY CANNOT GET ACCESS TO THE
5 COMPUTER, THE FIRST THING THEY WILL SAY IS REBOOT.
6 AND WE JUST GO IN AND POWER CYCLE THE SERVER.

7 AND IF THEY COME BACK AND IT IS STILL NOT
8 WORKING, THEN WE WILL SAY WE REBOOTED IT. WE DON'T
9 KNOW WHAT IS NOT WORKING.

10 Q THAT'S THE MOST YOU CAN DO?

11 A AND IF THEY SAY, WELL, WE HAVE SOMETHING
12 IMPORTANT IN IT AND WE NEED THAT THING BACK UP
13 QUICK, WE WOULD SAY, WE WOULD OFFER YOU A REMOTE
14 KVM, WHICH IS A DEVICE THAT RUNS THROUGH THE
15 INTERNET. SO REMOTE KVM IS BY DEFINITION KVM.

16 SO IT HAS THE KEYBOARD MOUSE VIDEO
17 CONNECTION TO THE SERVER ITSELF AND THEN YOU HAVE
18 REMOTE MEANING THAT YOU CAN ACCESS THIS BOX THROUGH
19 AN IP ADDRESS AND GET INTO THIS BOX AND IN TURN
20 THIS BOX HOOKS UP TO THE SERVER ITSELF.

21 AND SO IF THEIR ORIGINAL CONNECTION THEY
22 CANNOT ACCESS IT, THEY CAN ACCESS IT THROUGH THIS
23 ONE AND JUST LIKE LOOKING AT A COMPUTER IN FRONT OF
24 YOU, AND YOU CAN FIGURE OUT WHAT WENT WRONG.

25 WE DEFINITELY DON'T WANT TO DEBUG SERVER

1 WHEN CUSTOMER HAS A PROBLEM SIMPLY BECAUSE A LOT OF
2 TIMES CUSTOMER MISUSE IT AND WHEN THEY HAVE
3 PROBLEMS THEN ONCE WE TOUCH IT AND THEY WOULD CLAIM
4 THAT WE SCREWED UP, NOT THEY SCREWED UP.

5 SO WE TEND TO SAY IF YOU SCREWED UP OR
6 SOMETHING YOU CANNOT -- YOU IDENTIFY SOMETHING THAT
7 YOU CANNOT FIX, WHAT WE CAN DO IS WE CAN ALWAYS DO
8 A RESTORE AND RETURN EVERYTHING BACK TO WHEN WE
9 DEPLOYED THE SERVER TO YOU, AND THEN YOU CAN TAKE
10 IT FROM THERE UNLESS THEY ARE SOMEONE FAIRLY
11 TECHNICALLY SURE THAT WE KNOW EACH OTHER GOOD
12 ENOUGH THAT THEY WILL SAY, HEY, COULD YOU GO INTO
13 MY SERVER AND -- HERE'S THE PASSWORD. COULD YOU GO
14 INTO MY SERVER AND MAKE A CONSOLE COMMAND TO IT AND
15 THIS WILL WORK.

16 IN THAT CASE WE WILL PROBABLY HELP THEM
17 TO DO THAT.

18 Q BUT DOES THAT HAPPEN VERY OFTEN?

19 A NO. VERY, VERY FEW CUSTOMER WILL TRUST THAT
20 THEY HAD THAT TYPE OF JUDGMENT.

21 Q I'M SORRY. YOU WOULD NOT TRUST THEM, OR THEY
22 WOULDN'T TRUST YOU?

23 A WE WOULD NOT TRUST THEM.

24 Q YOU MENTIONED SOMETHING ABOUT PASSWORDS. HOW
25 ARE PASSWORDS SET ON THESE SERVERS?

1 A WE SET UP THE PASSWORDS RANDOMLY WHEN WE FIRST
2 DEPLOYED THE SERVER.

3 Q WHEN YOU FIRST RENT IT OUT?

4 A WHEN WE FIRST RENT IT OUT WE HAVE -- I MEAN,
5 IN LENOX YOU CAN ASK THE COMPUTER TO GIVE YOU ALL
6 OF THE OPERATING SYSTEM TO GIVE YOU A RANDOM
7 PASSWORD AND YOU TURN THAT RANDOM PASSWORD TO THE
8 CUSTOMER.

9 IN A WINDOW BASED SYSTEM WE HAVE SPECIAL
10 CODES THAT WOULD CODE IT SO THAT WHEN WE ACTIVELY
11 RETURN IT TO THE CUSTOMER WE DOCUMENT THAT. BUT
12 MOST LIKELY WHEN WE TURN IT OVER TO THE CUSTOMER,
13 THEY CHANGE IT RIGHT AWAY.

14 Q SO EXPLAIN HOW A PASSWORD WORKS ON A COMPUTER?
15 WHAT DOES IT CONTROL?

16 A WE ONLY MET -- WE ONLY TOUCH THE SO-CALLED
17 ADMINISTRATIVE PASSWORD.

18 SO AN ADMINISTRATIVE PASSWORD IS THE
19 HIGHEST PASSWORD LEVEL, HIGHEST LEVEL OF THE
20 PASSWORD FOR THAT PARTICULAR SYSTEM THAT CAN GO
21 INTO WE CALL IT ROOT ACCESS.

22 Q ROOT ACCESS?

23 A YES, ROOT ACCESS, R-O-O-T. SO IN THAT CASE IT
24 CONTROLS EVERYTHING.

25 BUT WHEN WE TURN OVER THE CONTROL TO OUR

1 CUSTOMER, WE TURN OVER THE ROOT ACCESS TO THE
2 CUSTOMER.

3 Q BY GIVING THEM THE PASSWORD THAT HAS BEEN
4 GENERATED?

5 A THAT'S CORRECT.

6 Q AND IN YOUR EXPERIENCE DO THEY USUALLY KEEP
7 THAT PASSWORD OR DO THEY CHANGE IT?

8 A NO, THEY CHANGE IT RIGHT AWAY, IN PARTICULAR
9 FOR CHINA CUSTOMER, THEY READ -- I FINALLY FOUND
10 OUT WHY THEY CHANGE THE PASSWORD REALLY FAST IS
11 BECAUSE THEY'RE TYPING IN THEIR CHINESE -- THINGS
12 THAT THEY CAN REMEMBER IN CHINESE.

13 Q OH.

14 A BUT IN ENGLISH CHARACTERS SO THAT THEN THEY
15 COME UP WITH A SERIES OF SOMETHING THAT NOBODY CAN
16 UNDERSTAND.

17 Q SO THEY'RE TYPING SOMETHING IN ENGLISH FROM
18 CHINESE IS WHAT YOU'RE SAYING?

19 A YES.

20 Q AND WITHOUT THE PASSWORD, DO YOU HAVE ANY
21 ACCESS TO WHAT IS ON THAT SERVER?

22 A LIKE THE OTHER GENTLEMAN TESTIFIED UNLESS WE
23 BREAK IN, BREAK IN MEANING RESET THE PASSWORD AT
24 THE ADMINISTRATIVE LEVEL.

25 Q WITHOUT DOING THAT, WITHOUT RESETTING THE

1 PASSWORD, DO YOU HAVE ANY ACCESS?

2 A NO, NO, NO. I THINK THAT EVERYBODY HAS SOME
3 EXPERIENCE THAT LOST PASSWORD FOR YOUR OWN
4 COMPUTER, YOU'RE IN TROUBLE. IT WILL TAKE A WHILE
5 TO FIGURE OUT HOW TO RESET IT.

6 Q AND WHAT HAPPENED IF YOU WERE TO RESET THE
7 PASSWORD LIKE YESTERDAY MR. WILSON WAS SUGGESTING?

8 A THEN YOU GET TO GO INTO THE COMPUTER.

9 Q AND DO YOU DO THAT?

10 A NO, WE DON'T.

11 Q AND WHY NOT?

12 A THERE'S NO POINT FOR IT. IF WE GO INTO ANY
13 PARTICULAR COMPUTER THAT DOESN'T BELONG TO US,
14 FIRST OF ALL, WE'RE GOING TO HAVE A HARD TIME
15 FIGURING OUT WHAT IS IN IT, YOU KNOW. BUT WE DON'T
16 HAVE ANY REASON FOR WANTING TO KNOW WHAT IS IN IT.

17 SO EVEN IF WE BREAK INTO A COMPUTER, WHAT
18 IS THAT FOR? WE HAVE NO REASON TO DO THAT.

19 AND ONCE YOU GET IN, AS MR. WILSON
20 TESTIFIED YESTERDAY, IT TAKES SO MUCH EFFORT FOR
21 SOMEBODY IN HIS -- IT TOOK HIM 20 HOURS TO
22 RECONSTRUCT A PORTION OF THE DATA, WHAT DO WE NEED
23 TO DO?

24 Q WELL, LET'S SAY THAT YOU DID RESET A PASSWORD.
25 DOES THAT -- DOES YOUR CUSTOMER THEN STILL HAVE

1 ACCESS TO WHAT IS ON THAT MACHINE?

2 A NO, THE PASSWORD CHANGED.

3 Q SO HE DOESN'T KNOW THE PASSWORD?

4 A NO, HE DOESN'T. YEAH, HE WOULD NOT KNOW THE
5 REVISED PASSWORD.

6 Q AND DO YOU THINK THAT THAT WOULD MAKE THE
7 CUSTOMER HAPPY OR NOT?

8 A CERTAINLY NOT. IF HE CONCEDED THAT IT WAS HIS
9 OWN MACHINE AND WE JUST WALKED THROUGH IT. AND
10 NOBODY WOULD BE HAPPY IF SOMEBODY LIKE GOES THROUGH
11 YOUR DESK. IT'S THE SAME THING.

12 Q WHAT ABOUT PRIVACY ISSUES. ARE THERE ANY WHEN
13 YOU'RE RENTING THESE SERVERS OUT?

14 THE COURT: CAN WE USE THE CHANGE OF THIS
15 SUBJECT TO THE PRIVATE ISSUES AS THE MARKER TO COME
16 BACK AFTER OUR BREAK?

17 MR. LOWE: SURE.

18 THE COURT: IT'S 10:30, AND WE'LL TAKE A
19 TEN MINUTE BREAK.

20 (WHEREUPON, A RECESS WAS TAKEN.)

21 (WHEREUPON, THE PROCEEDINGS IN THIS
22 MATTER WERE HELD OUT OF THE PRESENCE OF THE JURY:)

23 THE COURT: READY TO RESUME?

24 MR. LOWE: YES, YOUR HONOR.

25 THE COURT: SUMMON THE JURY.

1 (WHEREUPON, THE FOLLOWING PROCEEDINGS
2 WERE HELD IN THE PRESENCE OF THE JURY:)

3 THE COURT: VERY WELL. YOU MAY CONTINUE
4 WITH YOUR EXAMINATION.

5 BY MR. LOWE:

6 Q MAY IT PLEASE THE COURT, CAN WE SEE EXHIBIT
7 21, PLEASE. MR. CHEN, CAN YOU PLEASE TELL ME WHAT
8 EXHIBIT 21 IS? IT SHOULD BE IN YOUR BOOK THERE?

9 A THIS SHOULD BE A SERVICE AGREEMENT THAT AKANOC
10 PROVIDED TO -- THE AKANOC WEB SITE.

11 Q IS THIS PUBLISHED ON YOUR WEB SITE?

12 A THAT'S CORRECT.

13 Q AND IS THIS AN AGREEMENT THAT YOU HAVE WITH
14 YOUR CUSTOMERS?

15 A YES.

16 Q AND WHAT DOES IT -- DOES IT PROVIDE FOR WHAT
17 YOU'RE SUPPOSED TO DO AND WHAT THE CUSTOMER IS
18 SUPPOSED TO DO, RESPECTIVE OBLIGATIONS?

19 A TO BE VERY HONEST WITH YOU, I PERSONALLY NEVER
20 REALLY READ THAT MYSELF.

21 IT JUST BASICALLY WE KNOW WHAT WE'RE
22 DOING AND WE'VE BEEN DOING IT.

23 Q OKAY.

24 A OTHER THAN THAT I MEAN, I DON'T READ THE VERY
25 DETAIL OF THAT, OF THE AGREEMENT ITSELF.

1 Q DOES YOUR RELATIONSHIP WITH YOUR CUSTOMERS
2 GIVE YOU THE RIGHT TO LOOK AT INFORMATION THAT THEY
3 PUT ON THE SERVERS?

4 A NO, THEY DON'T. ONCE WE TURN OVER THE
5 PASSWORD WE ASSUME THAT IT'S THEIRS. SO WE -- WE
6 HAD NO REASON TO GO BACK TO THE SERVER ITSELF.

7 Q DO YOU THINK YOU HAVE THE RIGHT TO LOOK AT ANY
8 PRIVATE INFORMATION ON THE SERVERS?

9 A I CERTAINLY DON'T THINK I HAVE THE RIGHT.

10 Q AND WHY IS THAT?

11 A I RENT SOMETHING TO MY CUSTOMER AND THEN IT
12 SHOULD BE MY CUSTOMER'S PROPERTY WHICH I DON'T
13 THINK THAT I SHOULD HAVE THE RIGHT TO GO IN AT MY
14 LEISURE AND CHECK WHAT IS IN IT.

15 JUST LIKE IF I GO TO THE BANK AND RENT A
16 SAFETY DEPOSIT, I DON'T THINK THAT I WOULD
17 APPRECIATE THAT THE BANK HAS ANY TYPE OF CAPACITY
18 TO GO INTO MY DEPOSIT AND SEARCH WHAT IS IN IT
19 EVERY DAY.

20 I DON'T THINK IT'S RIGHT.

21 Q IF YOU WERE -- FOR EXAMPLE, MR. WILSON
22 YESTERDAY WAS USING THE ANALOGY OF RUNNING SERVERS
23 AND SO ON LIKE YOU DO TO RENTING AN APARTMENT IN AN
24 APARTMENT BUILDING.

25 WOULD YOU HAVE A RIGHT AS THE OWNER OF

1 THE BUILDING TO GO INTO THE APARTMENT THAT YOU HAVE
2 RENTED?

3 A SAME THING. IF I TURN OVER THE COMPANY TO MY
4 CUSTOMER, OR EVEN PUBLIC STORAGE, I DON'T THINK I
5 HAVE ANY RIGHT TO GO IN AND INSPECT WHAT IS IN IT.

6 ONCE I TURN OVER THE PROPERTY TO
7 SOMEBODY, THEN IT'S THEIR RESPONSIBILITY. I CAN
8 BREAK THE KEY, MAKE IT FUNCTIONAL FOR EVERYONE TO
9 BE IN, BUT I CERTAINLY WILL NOT GO IN MYSELF
10 WITHOUT ANY LEGAL AUTHORITY.

11 Q YOU TALKED ABOUT SETTING THE PASSWORD, AND WE
12 TALKED ABOUT THE APARTMENT ANALOGY. IF YOU RENTED
13 AN APARTMENT, COULD YOU CHANGE THE LOCK ON THE
14 DOOR?

15 A I WOULD NOT CHANGE THE LOCK. I WOULD SIMPLY
16 BREAK IT UNTIL NO ONE CAN GET ACCESS OF IT UNTIL
17 LEGAL AUTHORITY COMES, IF TO THAT LEVEL.

18 I THINK THAT I HAVE INCIDENTS ORDERED BY
19 HOME SECURITY AND FBI TO PRESERVE A SERVER.

20 SO WE YANKED THE SERVER. WE UNPLUGGED
21 THE SERVER AND PUT IT ASIDE AND WAITED FOR THEM TO
22 COME INSPECT. I MEAN, WE CANNOT GO IN OURSELVES IN
23 ANY CASE.

24 Q YOU'RE TALKING ABOUT HOMELAND SECURITY OR FBI?
25 IS THAT WHAT YOU SAID?

1 A BOTH.

2 Q SO DO YOU GET REQUESTS FROM THEM PERIODICALLY
3 ABOUT THINGS GOING ON IN YOUR SERVERS?

4 A THERE WAS A FEW TIMES QUITE A BIT. ABOUT TWO
5 YEARS AGO. I THINK IT WAS EITHER THE IRAQ WAR OR
6 SOMETHING THAT THEY FOUND SOME OF THE WEB SITES
7 THAT HOSTED OUR SERVER AS SOME SORT OF SPECIAL
8 INTEREST TO THEM.

9 THEY EVEN SEND PEOPLE OVER TO STAY THERE
10 FOR TWO OR THREE DAYS.

11 Q WHEN THESE FEDERAL AUTHORITIES WANTED
12 SOMETHING FROM ONE OF THESE SERVERS, DID THEY BRING
13 YOU A COURT ORDER?

14 A OH, YES. YES. I HAVE SITUATIONS THAT I
15 RECEIVE PHONE CALLS FROM FBI AGENT, AND I WAS
16 OFFERING HIM THAT IF HE JUST WANT INFORMATION, I
17 CAN ALREADY GIVE YOU ANY INFORMATION. AND THEN HE
18 SAYS, OH, STOP RIGHT HERE. DON'T GIVE ME ANYTHING
19 BECAUSE IF YOU GIVE ME ANYTHING PRIOR TO THE
20 SUBPOENA, THEN THAT'S NOT EVIDENCE ANYMORE.

21 SO I LEARNED THAT THAT PARTICULAR DAY.
22 YOU KNOW, WITHOUT COURT ORDERS WE WOULD NOT
23 RESPOND.

24 Q ARE YOU FAMILIAR WITH WHAT IT TAKES TO SET UP
25 A WEB SITE? DO YOU KNOW HOW TO SET UP A WEB SITE,

1 THE PROCESS?

2 A PERSONALLY I HAVE NO EXPERIENCE MYSELF
3 DESIGNING A WEB SITE.

4 Q I'M NOT TALKING ABOUT DESIGNING. DO YOU KNOW
5 THE THINGS YOU HAVE TO DO TO GET A WEB SITE UP AND
6 RUNNING?

7 A OH, YES.

8 Q AND, IN FACT, DO COMPANIES HAVE THEIR OWN WEB
9 SITES FOR THEIR OWN PURPOSES, ADVERTISING AND
10 OTHERWISE?

11 DOES AKANOC, FOR EXAMPLE, HAVE A WEB
12 SITE?

13 A YES.

14 Q AND WHAT IS THAT USED FOR?

15 A TO BROADCAST OUR BUSINESS INFORMATION THROUGH
16 THE INTERNET.

17 Q SO THAT WAS JUST DEALING WITH YOUR BUSINESS
18 AKANOC?

19 A THAT'S CORRECT.

20 Q HAVE YOUR COMPANIES EVER CREATED ANY WEB SITES
21 FOR SOMEONE ELSE?

22 A NO.

23 Q I'D LIKE TO SEE EXHIBIT 1611, PLEASE. IF YOU
24 COULD PLEASE BRING IT UP, PLEASE.

25 MR. CHEN, EXHIBIT 1611 IS A DEMONSTRATIVE

1 SITE ENTITLED "HOW TO SET UP A WEB SITE."

2 HAVE YOU SEEN THIS BEFORE?

3 A YES.

4 Q AND DOES THIS ACCURATELY EXPLAIN HOW TO SET UP
5 A WEB SITE OR WHAT YOU HAVE TO GO THROUGH TO SET UP
6 A WEB SITE?

7 A YES.

8 Q AND COULD YOU EXPLAIN HOW THAT'S DONE. LET'S
9 TALK ABOUT THE FIRST STEP, WHAT IS THAT?

10 A THE FIRST STEP IS BASICALLY LIKE WHAT I SAID,
11 I MEAN, I DON'T HAVE THAT EXPERIENCE OR KNOWLEDGE
12 TO MAKE A WEB SITE SO YOU HIRE THE WEB MASTER TO
13 DESIGN IT YOURSELF.

14 Q AND SO YOU WOULD HAVE TO HAVE A COMPUTER AND
15 SOFTWARE?

16 A RIGHT.

17 Q DO YOU PROVIDE THE SOFTWARE FOR ANYBODY TO
18 CREATE A WEB SITE?

19 A NO.

20 Q AND DO YOU HAVE ANY OF THAT SOFTWARE ON ANY OF
21 YOUR SERVERS?

22 A NO.

23 Q AND WHAT IS THE SECOND STEP ONCE YOU HAVE A
24 DESIGNER THAT HAS DESIGNED THIS WEB SITE?

25 A LET ME GO BACK TO STEP ONE, A VERY EASY

1 COMMENT.

2 THERE'S NO WAY THAT YOU WANT TO DEVELOP A
3 WEB SITE IN A REMOTE SERVER.

4 YOU WANT TO DEVELOP THE WEB SITE IN FRONT
5 OF YOUR OWN STATION. JUST VERY TIME-CONSUMING. SO
6 YOU --

7 Q WHAT DO YOU MEAN TIME CONSUMING?

8 A BECAUSE THE REMOTE ACCESS TO A SERVER IN ANY
9 CASE IS NOT IN FRONT OF YOU. SO IT JUST TAKES
10 TIME.

11 Q TRANSMISSION TIME?

12 A YES, TRANSMISSION TIMES. BUT PARTICULARLY IF
13 IT'S A WEB SITE IT HAS A LARGE GRAPHIC DATA, IT
14 TAKES FOREVER TO UPLOAD, DOWNLOAD ONE PAGE AND
15 GOING BACK AND FORTH.

16 IT'S NOT FEASIBLE TO DO IT THAT WAY.

17 Q SO YOU WOULD WANT TO DEVELOP THE WEB SITE,
18 WHAT, ON A COMPUTER IN FRONT OF YOU?

19 A YES. I HAVEN'T SEEN ANYBODY THAT CAN DO THAT
20 TYPE OF JOB REMOTELY, PERSONALLY. TECHNICALLY I
21 DON'T THINK IT EVEN IS POSSIBLE.

22 Q SO LET'S GO ONTO THE SECOND STEP. WHAT IS
23 THAT?

24 A SO AFTER THE WEB SITE IS DESIGNED -- ACTUALLY
25 YOU WANT TO FIND A DOMAIN NAME FIRST. WHETHER THE

1 DOMAIN NAME IS AVAILABLE OR NOT -- SURE YOU CAN
2 DESIGN A WEB SITE IN MORE GRAPHIC FORMS, BUT YOU
3 STILL NEED A NAME FOR THE PURPOSE OF THE WEB SITE.

4 IN OUR CASE IF WE WANT TO SET UP THE NAME
5 AS AKANOC.COM, THE FIRST THING WE NEED TO DO IS
6 FIGURE OUT WHETHER THAT PARTICULAR DOMAIN NAME IS
7 AVAILABLE OR NOT.

8 SO YOU NEED TO GO TO A DOMAIN REGISTRAR
9 TO SEARCH THE AVAILABILITY OF THAT PARTICULAR
10 DOMAIN.

11 ONCE IT'S AVAILABLE, YOU MAKE UP YOUR
12 MIND THAT'S THE NAME YOU WANT, THEN YOU REGISTER IT
13 AND YOU BUY THE NAME PER SE.

14 Q WHAT IS A DOMAIN REGISTRAR?

15 A A DOMAIN REGISTRAR IS WHERE -- IT'S JUST LIKE
16 FRANCHISE TAX BOARD. IF YOU WANT TO START YOUR
17 BUSINESS, YOU GO TO FRANCHISE TAX BOARD AND
18 REGISTER YOUR BUSINESS NAME. SAME.

19 THING TO THAT EFFECT. IN THE INTERNET
20 WORLD, IT'S THE SAME LIKE THAT. THEY ISSUE A
21 DOMAIN NAME LIKE THE BUSINESS NAME SO YOU CAN USE
22 THAT.

23 Q SO YOU HAVE TO GO TO A REGISTRAR, A DOMAIN
24 REGISTRAR AND YOU HAVE A NAME THAT YOU WOULD LIKE
25 TO SELECT AND THEY WOULD TELL YOU IF YOU CAN USE

1 THAT NAME?

2 A YES, THAT'S CORRECT.

3 Q AND YOU PAY THEM?

4 A YOU PAY THEM TO -- JUST LIKE THE BUSINESS
5 LICENSE, YOU PAY FOR IT.

6 Q NOW, WHO ARE THESE DOMAIN REGISTRARS?

7 A OTHER ISP'S, THEY JUST PERFORM DIFFERENT
8 FUNCTION IN THE ISP FIELD.

9 Q YOUR COMPANIES OR THE DEFENDANT COMPANIES
10 HERE, THE MANAGED SOLUTIONS GROUP AND AKANOC
11 SOLUTIONS ARE INTERNET SERVICE PROVIDERS?

12 A YES.

13 Q ARE THEY DOMAIN REGISTRARS?

14 A NO, WE ARE NOT.

15 Q WHAT WOULD IT TAKE TO BECOME A DOMAIN
16 REGISTRAR AS FAR AS YOU UNDERSTAND?

17 A THERE ARE SPECIAL LICENSE REQUIREMENTS --
18 THERE ARE NOT TOO MANY IN THE WHOLE WORLD. SO IT'S
19 JUST LIKE STOCK TRADING FLOOR.

20 Q STOCK TRADING FLOOR?

21 A NEW YORK STOCK EXCHANGE ON THE TRADING FLOOR
22 YOU NEED SPECIAL LICENSED PEOPLE TO BE ON THE
23 FLOOR. IT'S NOT SOMEBODY THAT YOU CAN JUST
24 ESTABLISH A BUSINESS AND SAY I WANT TO BE THE
25 DOMAIN REGISTRAR. THERE'S A SPECIAL QUALIFICATION

1 POINT.

2 Q AND HAVE YOU EVER BEEN A DOMAIN REGISTRAR OR
3 YOUR COMPANY?

4 A NO, WE DON'T HAVE THAT TYPE OF QUALIFICATION.

5 Q LET ME -- WELL, STRIKE THAT.

6 ARE THERE SOME COMPANIES IN THE WORLD
7 THAT OFFER THE SORT OF SERVICES THAT YOU OFFER
8 RENTING SERVERS, FOR EXAMPLE, WHO ARE ALSO DOMAIN
9 REGISTRARS?

10 A YES, THEY MAY HAVE SOME SORT OF SIDE BUSINESS
11 FOR IT, BUT IF YOU ARE A DOMAIN REGISTRAR, MOST
12 LIKELY YOU WOULD LIKE TO FORM YOUR BUSINESS MODEL
13 IN THE WEB SITE HOSTING TYPE BUSINESS BECAUSE
14 THAT'S MORE RETAIL TO EVERYBODY.

15 IT'S DIFFICULT TO GET A BUSINESS FOR VOIP
16 SERVICE, BUT IT'S VERY EASY TO GET 1,000 PEOPLE TO
17 A DOMAIN NAME HOST A WEB SITE. SO THE BUSINESS
18 MODEL IS TOTALLY DIFFERENT.

19 Q CAN YOU GIVE US AN IDEA OF WHO SOME OF THESE
20 DOMAIN REGISTRARS ARE THAT YOU WOULD BE FAMILIAR
21 WITH?

22 A YAHOO WOULD BE A GOOD ONE, GO DADDY WOULD BE A
23 GOOD ONE. IF YOU THINK OF HOSTING A DOMAIN,
24 HOSTING A WEB SITE, YOU GO WEB SITE -- YOU KNOW,
25 WEB HOSTING OR WEB SITE HOSTING ON GOOGLE. THEY

1 GIVE YOU A LIST OF THE SELECTIONS AND YOU CLICK ON
2 ANY ONE. ALWAYS YOU WILL SEE THAT THEY HANDLE
3 DOMAIN REGISTRATIONS, EITHER THEY ARE THE TIER ONE
4 LICENSEE TO ISSUE DOMAINS OR THEY ARE DOMAIN
5 REGISTRAR RESELLERS USING THEIR LOGO, THEIR LINK TO
6 THEIR WEB SITE.

7 BUT IN GENERAL IF YOU WANT TO BE IN THE
8 WEB SITE HOSTING BUSINESS YOU NEED TO HANDLE THE
9 DOMAIN NAMES BECAUSE MOST OF THE GENERAL PUBLIC
10 DOESN'T KNOW HOW TO REGISTER A DOMAIN NAME FROM
11 THERE AND TURN IT INTO A WEB SITE.

12 Q SO IF I'M AN INDIVIDUAL AND I HAVE A NEW
13 BUSINESS IN MY GARAGE THAT I WANT TO GET ON THE
14 INTERNET, YOU'RE SUGGESTING THAT IT WOULD BE MORE
15 LIKELY OR EASIER FOR ME TO GO LIKE YAHOO OR GO
16 DADDY OR SOMETHING?

17 A CERTAINLY. THAT'S A ONE STOP SHOP. YOU GO IN
18 AND YOU REGISTER YOUR DOMAIN, AND THEY WILL GIVE
19 YOU A HOSTING SPACE.

20 AND THEN FROM THERE YOU UPLOAD YOUR
21 DESIGN OR WEB SITE CONTENT AND YOU TURN IT ON AND
22 IT'S WORKING.

23 Q ALL RIGHT. NOW, ON STEP 2 ON THIS CHART,
24 THERE ARE SEVERAL ENTITIES THAT ARE LISTED HERE.

25 WE HAVE THE DOMAIN REGISTRAR THAT YOU

1 JUST TALKED ABOUT. AND THEN THERE'S A TOP LEVEL
2 DOMAIN REGISTRY SHOWN AN ICANN. WHAT ARE THOSE
3 ENTITIES?

4 A AS I SAID THE TOP REGISTRY -- ICANN IS THE ONE
5 THAT CONTROLS EVERYTHING, ALL OF THE DOMAIN NAMES,
6 DIFFERENT GEOGRAPHICAL AREAS.

7 Q AND THEY CONTROL EVERYTHING ON THE INTERNET
8 THROUGHOUT THE WORLD?

9 A YES. AND IF YOU WANT TO BE AN INTERNET
10 REGISTERED THEN YOU NEED TO APPLY AND YOU HAVE
11 DIFFERENT GEOGRAPHIC REGISTRIES AND YOU HAVE
12 DIFFERENT REGIONS.

13 Q SO WHAT'S THE DIFFERENCE BETWEEN A TOP LEVEL
14 DOMAIN REGISTRY AND A DOMAIN REGISTRAR?

15 A I DON'T KNOW.

16 Q OKAY. YOU KNOW THAT THEY EXIST?

17 A YES.

18 Q NOW, LET'S TALK ABOUT STEP 3 ON THIS CHART FOR
19 SETTING UP A WEB SITE. TELL US ABOUT THAT?

20 A IF IT'S A SINGLE WEB SITE LIKE I MENTIONED IT
21 WOULD BE LIKE GOING TO THOSE ONE WEB STOP SHOP LIKE
22 YAHOO AND YOU REGISTRAR THE DOMAIN AND THEY WOULD
23 HAVE DO YOU WANT TO HOST THE WEB SITE HERE AND, OH,
24 WE OFFER 20 MEGABYTE FREE SPACE THAT YOU CAN USE IT
25 FOR HOSTING PURPOSE AND THINGS LIKE THAT. SO

1 THAT'S ONE STOP SHOP.

2 IF YOU DON'T WANT TO DO THAT THEN YOU
3 SAY, WELL, UM, I WANT TO PUT MY OWN SERVER IN MY
4 OWN OFFICE, IN THAT CASE YOU CAN JUST REGISTER THE
5 DOMAIN BUT THEN HAVE NAME RESOLVER POINT THAT
6 RECORD TO YOUR OFFICE.

7 IN A SENSE IT'S LIKE YOU GO TO THE
8 FRANCHISE TAX BOARD AGAIN, YOU HAVE YOUR BUSINESS
9 LICENSE AND THEN YOU NEED TO SPECIFY WHAT -- WHAT
10 IS YOUR BUSINESS ADDRESS.

11 SO IN THIS CASE IF YOU WANT TO PUT YOUR
12 BUSINESS ADDRESS AT HOME THEN YOU CHANGE YOUR
13 ADDRESS. IF YOU WANT TO PUT IT IN YOUR OFFICE THEN
14 YOU CHANGE THE ADDRESS AGAIN.

15 THEN IN THIS CASE IF YOU WANT TO PUT IT
16 IN A PUBLIC SERVER LIKE OUR SERVICE AND THEN YOU
17 RENT IT FROM US AND YOU GET THE SERVER FROM US AND
18 YOU GO TO THE DOMAIN REGISTRAR TO CHANGE THE IP
19 ADDRESS AND SEND THE SIGNAL TO OUR IP.

20 Q AND NOW, ON STEP THREE IT LOOKS LIKE YOUR SORT
21 OF BUSINESS IS RIGHT HERE IN BETWEEN THESE VARIOUS
22 CONNECTIONS. CAN YOU EXPLAIN THAT?

23 A YES. I CAN EXPLAIN THAT. IF A CUSTOMER
24 DECIDES TO PUT A WEB SITE IN THE PUBLIC SERVER IN A
25 PUBLIC DATA CENTER, THEY CAN COME TO PEOPLE LIKE

1 US, RENT A SERVER, GET AN IP ADDRESS. THEY GO TO
2 NAME SERVER RESOLVER AND CHANGE THAT IP ADDRESS AND
3 THEN IT WILL BE CONNECTED.

4 Q IS THIS WHERE YOU ARE AT IN STEP THREE?

5 A YES, THAT'S CORRECT.

6 Q NOW, WHAT IS STEP FOUR?

7 A I THINK I'M ONE STEP AHEAD AS I JUST EXPLAINED
8 IT. ONCE YOU GET THE IP ADDRESS FROM US, THEN YOU
9 HAVE A FIXED IP ADDRESS, YOU CAN GO TO THE DOMAIN
10 REGISTRAR AND THERE'S A NAME SERVER RESOLVER OR
11 BASICALLY WE JUST CALL IT NAME SERVER.

12 SO THERE'S A NAME SERVER THAT YOU PUT
13 THAT IP ADDRESS INFORMATION IN IT AND THEN THE
14 DOMAIN WOULD TIE INTO THAT PARTICULAR IP ADDRESS.

15 Q SO THAT'S LIKE THE REGISTRATION OF AN ADDRESS
16 WITH THE TAX BOARD AS YOU WERE DISCUSSING?

17 A YES, THAT'S CORRECT.

18 Q WHAT IS STEP 5 IN SETTING UP THE WEB SITE?

19 A AND SO ONCE YOU HAVE -- LET'S SAY SOMEONE
20 RENTS A SERVER FROM ME AND I GAVE THEM THE SPECIFIC
21 IP ADDRESS THAT THEY'RE USING, NOW THEY CAN ACCESS
22 THE MACHINE REMOTELY THEIR CONTENT DEVELOPED IN
23 NUMBER ONE AND WHATEVER WEB SITE THAT THEY ALREADY
24 DESIGNED, THEY JUST UPLOAD THAT TO THE SERVER
25 ITSELF.

1 Q DOES THAT HAVE TO GO THROUGH YOU OR SOME
2 PERSON OR ARE THEY JUST --

3 A NO, NO. IT'S ALL DONE REMOTELY, DIRECTLY.

4 Q SO YOU DON'T SEE THIS MATERIAL COMING AND
5 GOING?

6 A NO, NO.

7 Q SO WHAT IS THE FINAL STEP?

8 A ONCE YOU HAVE THE WEB SITE CONTENT IN THE
9 SERVER ITSELF AND ONCE IT'S CONNECTED TO THE NAME
10 SERVER RESOLVER, THE INFORMATION CAN PASS THROUGH
11 AND THEN PEOPLE CAN -- ASSUMING IT'S XYZ.COM AND
12 IT'S IN THIS PARTICULAR IP ADDRESS, THEN IN THAT
13 CASE WHEN PEOPLE ARE LOOKING FOR XYZ.COM, IT WOULD
14 BE TRANSLATED INTO A CERTAIN IP ADDRESS AND THEN IN
15 THE INTERNET YOU WOULD LOOK FOR THIS PARTICULAR
16 SERVER. AND ONCE THEY HIT THE SERVER THEN THE WEB
17 FUNCTION OF THAT SERVER ITSELF WILL PICK IT UP AND
18 THEN START SERVING THE CONTENT.

19 Q IN ORDER TO OPERATE A WEB SITE THAT IS USING A
20 PUBLIC SERVER SUCH AS YOURS, DO YOU HAVE TO BE AT
21 THE DATA CENTER?

22 A NO. THE WHOLE THING, AS I SAID, IS ALL DONE
23 REMOTELY.

24 THE CONTENT IS DEVELOPED ON A PARTICULAR
25 COMPUTER IN FRONT OF THE WEB DESIGNER AND ALL OF

1 THIS IP INFORMATION AND DOMAIN NAME REGISTRATION,
2 IP INFORMATION, RENTING SERVERS IS DONE REMOTELY.

3 ANYBODY CAN GET ONTO THE INTERNET AND
4 FIND DAILYWEBHOST.COM OR AKANOC.COM AND SELECT THE
5 PACKAGE YOU WENT AND SUBMIT THE ORDER AND WE
6 DEPLORE THE SERVER WITH THE IP ADDRESS AND YOU TAKE
7 THE IP ADDRESS AND YOU GO BACK TO THE DOMAIN
8 REGISTRAR WEB SITE AND FILL IN THE IP ADDRESS AND
9 UPLOAD ALL OF YOUR INFORMATION TO THE SERVER THAT
10 YOU RENT FROM ME AND YOU MAKE THE CONNECTION AND
11 THAT IS IT.

12 Q AND AFTERWARDS IT CAN BE OPERATED REMOTELY?

13 A YES.

14 Q AND DO YOU HAVE TO KNOW ANYTHING ABOUT HOW THE
15 OPERATION IS GOING?

16 A WE DON'T KNOW. WE HAVE NO WAY TO KNOW WHEN IT
17 STARTS OPERATING.

18 Q ALL YOU SEE A LIGHT IS ON OR IT'S NOT ON?

19 A THAT'S CORRECT.

20 Q COULD WE TAKE A LOOK AT EXHIBIT 1610, PLEASE.
21 WHAT IS EXHIBIT 1610, MR. CHEN?

22 A THIS IS -- THE PREVIOUS GRAPH IS SHOWING HOW
23 TO SET UP A WEB SITE AND THIS IS HOW A REGULAR
24 VIEWER IN FRONT OF A COMPUTER LOOKS AT A WEB SITE,
25 HOW TO FUNCTION, HOW TO FLOW IT TECHNICALLY.

1 Q OKAY. IS THIS A SIMPLIFIED VERSION OF HOW IT
2 WORKS?

3 A VERY SIMPLIFIED.

4 Q OKAY.

5 A BUT IN PRINCIPAL, YES, THIS SHOULD BE ABLE TO
6 EXPLAIN.

7 Q OKAY. CAN YOU EXPLAIN HOW A USER GETS TO A
8 WEB SITE USING THIS SIMPLIFIED OUTLINE OF THE
9 INTERNET?

10 A OKAY. SO WE UNDERSTAND THE COMPUTER IS
11 WORKING MORE ON THE NUMBER SIDE. THE COMPUTER DOES
12 NOT KNOW SO-CALLED "YAHOO.COM." COMPUTERS KNOW
13 645.132.131, SOMETHING LIKE THAT.

14 SO THE FIRST STEP THAT -- BUT GENERAL
15 PEOPLE DOES NOT KNOW NUMBERS OR THE BUSINESS I'M
16 INVOLVED IN IN THIS. I MEAN, IN THIS BUSINESS THAT
17 I HAVE BEEN INVOLVED IN FOR FIVE YEARS, ALL OF THE
18 STAFF THAT I HAVE IN THE BACK OFFICE, NOBODY CAN
19 REMEMBER IP ADDRESS BECAUSE IT'S TOO MANY FOR THAT.

20 BUT PEOPLE DOES UNDERSTAND A NAME. SO
21 YAHOO.COM EVERYBODY CAN REMEMBER. SO YOU TYPE IN
22 YAHOO.COM.

23 THE FIRST THING YOU WILL DO IS TO GO TO
24 THE DOMAIN REGISTRAR TO LOOK FOR WHERE THE -- WHERE
25 THE YAHOO.COM RECORD IS.

1 Q NOW, I THINK IN THIS PARTICULAR REGISTRATION
2 IT'S I WANT TO GO TO GOOGLE. IS THAT THE SAME
3 THING?

4 A IT'S THE SAME THING. I HATE GOOGLE, BUT I
5 DIDN'T WANT TO SAY IT.

6 Q ALL RIGHT.

7 A SO LET'S GO TO GOOGLE.COM AND THEN IT GOES TO
8 WHOEVER REGISTERED THAT GOOGLE.COM'S NAME.

9 JUST LIKE IF IT'S A CALIFORNIA BUSINESS
10 NAME YOU GO TO CALIFORNIA FRANCHISE TAX BOARD TO
11 LOOK FOR INFORMATION ABOUT THIS COMPANY.

12 NOW, THERE THEY FIND THAT, OH, GOOGLE.COM
13 IS HERE AND THEN THE NEXT THING THEY FIND IS THE
14 MAIN SERVER.

15 Q LET'S TAKE THIS A LITTLE SLOWER. SO THE USER
16 TYPES IN GOOGLE.COM AND DOES IT HAVE TO GO THROUGH
17 THE INTERNET AND THE BACKBONE AND ALL OF THAT IN
18 ORDER TO EVEN FIND OUT WHAT THE ADDRESS IS?

19 A YES, IN THE SENSE THAT IF YOU CONNECT TO THE
20 INTERNET IT'S ALWAYS CONSIDERED THAT IT'S CONNECTED
21 TO THE SO-CALLED "BACKBONE."

22 BUT IN OUR WAY OF LOOKING AT THAT THE
23 BACKBONE IS THE REAL BACKBONE.

24 Q NOW, WHAT IS THE INTERNET BACKBONE?

25 A IT'S THE MAJOR TRUNK OF ALL OF THE FIBERS AND

1 CONNECTIONS AND THE MAJOR EXCHANGE OF THE TRAFFIC.

2 Q THE BIG PIPES?

3 A THE VERY BIG PIPES. IT ALWAYS GETS
4 REPRESENTED BY A CLOUD BECAUSE NOBODY REALLY KNOWS
5 WHAT IS IN IT. NOT EVEN I CAN UNDERSTAND FULLY
6 THAT WHAT IS IN IT BEING A BACKBONE.

7 BUT WHEN WE LOOK AT A TRAFFIC FROM HERE
8 TO LET'S SAY TO CHINA, BY LOOKING AT HOW IT'S
9 ROUTED TO CHINA WE KNOW WHO IS CONSIDERED THE
10 BACKBONE, WHO IS CONSIDERED JUST THE LOCAL
11 DISTRIBUTION ROUTER.

12 SO ANYWAY, SO YOU HAVE GOOGLE AND YOU
13 HAVE THE INTERNET AND YOU FIND WHO IS REGISTERED --

14 Q SO THE USER GOES THROUGH HER OWN ISP HERE LIKE
15 COMCAST OR SOMETHING?

16 A YES.

17 Q AND THEN THEY CONNECT HER TO THE BACKBONE AND
18 THAT CONNECTS HER TO THE REGISTRAR THAT CONNECTS
19 HER TO THE NAME SERVER?

20 A YEAH.

21 Q AND THEN THE NAME SERVER THEN TRANSLATED THAT
22 NAME GOOGLE TO A NUMBER?

23 A TO A SERVER IP ADDRESS, YES.

24 Q AND THIS GOES RIGHT BACK TO HER?

25 A YES, NOT THE PERSON WHO LOOKS AT THE SCREEN

1 BUT TO THE COMPUTER ITSELF AND SAYS IF YOU WANT TO
2 LOOK FOR GOOGLE.COM YOU GO TO THIS PARTICULAR IP
3 ADDRESS.

4 Q AND SO THE COMPUTER THEN SENDS OUT ANOTHER
5 SIGNAL GOING THROUGH THE ISP TO THE BACKBONE TO
6 WHERE?

7 A YEAH. BASICALLY IT'S A SIMPLE WAY OF
8 EXPLAINING THIS IS THAT WHOEVER IS HANDLING OUR
9 ROUTING, OUR UPSTREAM WILL HAVE THIS IP ADDRESS
10 OPEN SO THEN THIS REQUEST IS IN THE CLOUD ITSELF
11 TRYING TO FIND WHERE TO GO AND THEY WILL FIND THE
12 OPENINGS.

13 Q SO, FOR EXAMPLE, YOU WOULD SAY UPSTREAM LIKE
14 GLOBAL CROSSING?

15 A YES. AND SO WE NEED TO GIVE GLOBAL CROSSING
16 THAT ANYTHING THAT YOU SEE FOR 205.209.128,
17 ANYTHING IN THIS BIG BLOCK ALL OF THE WAY TO
18 205.209.191.255 FROM ZERO AND THAT'S A HUGE BLOCK.
19 AND THAT HAS ABOUT 16,000 IP'S.

20 SO BASICALLY GLOBAL CROSSING WILL SAY IF
21 IT'S WITHIN THIS RANGE, I WILL LET IT GO THROUGH.
22 IF IT IS NOT WITHIN THIS RANGE, THEN I WILL NOT LET
23 IT GO THROUGH.

24 SO THERE'S A REQUEST FROM THE LADY'S
25 COMPUTER COMING OUT WITH THIS REQUEST SAYING I'M

1 LOOKING AT 205.209.138.205, ASSUMING THAT'S A
2 NUMBER, AND THEN IT WILL SEE THERE'S A CLOUD AND
3 THEN IT WILL GO TO.

4 Q AND THEN IT WILL --

5 A SO GLOBAL CROSSING IS OUR OPTION.

6 Q YOUR UPSTREAM?

7 A YEAH, MY UPSTREAM SO IN TURN THEY WOULD
8 DELIVER THAT PACKET TO OUR ROUTER.

9 Q SO IT COMES DOWN HERE FROM THE BACKBONE AND
10 IT'S DELIVERED BY GLOBAL CROSSING THROUGH THE
11 BACKBONE TO YOUR ROUTER RIGHT HERE?

12 A THAT'S CORRECT.

13 Q AND WHAT HAPPENS?

14 A AND GENERALLY WE CALL IT OUR GATEWAY. SO IT'S
15 OUR MAIN POST OFFICE PER SE.

16 NOW, OUR ROUTER WOULD KNOW THIS
17 PARTICULAR 205.209.132 IP ADDRESS IS TIED TO ANY
18 PARTICULAR SERVER.

19 Q SO THE ROUTER KNOWS WHICH OF YOUR SERVERS, WE
20 JUST HAVE A FEW HERE, BUT IF YOU HAVE 1500 OF THEM
21 BUT IT KNOWS WHICH SERVER TO SEND THAT PACKET OF
22 INFORMATION TO?

23 A YES, THAT'S BY DEFINITION THE ROUTER'S ROUTING
24 TRAFFIC TO A PARTICULAR IP ADDRESS.

25 Q SO IT GETS TO THE ROUTER AND THE ROUTER THEN

1 SENDS IT TO A PARTICULAR SERVER AND THEN WHAT
2 HAPPENED?

3 A AND THEN THAT PARTICULAR REQUEST HAS A
4 SPECIFIC REQUEST FOR APPLICATION. IF IT MATCHES
5 THE APPLICATION INSIDE OF THE SERVER THEN THEY
6 SHAKE HANDS AND THEY'RE IN FUNCTION.

7 Q AND SO IF WE ASSUME JUST FOR ILLUSTRATION
8 PURPOSES THAT GOOGLE IS USING ONE OF YOUR SERVERS,
9 THEN IT COMES DOWN THROUGH THE SERVER AND DIRECTLY
10 TO GOOGLE; IS THAT RIGHT?

11 A THAT'S CORRECT, ASSUMING THAT TWO APPLICATION
12 MATCHES.

13 Q WHAT DO YOU MEAN BY THAT APPLICATIONS MATCH?

14 A OKAY. SO IF I'M SENDING A REQUEST, I'M BEING
15 THE VIEWER, I'M BEING THE LADY. I'M SENDING THE
16 REQUEST FOR A DOWNLOAD PROGRAM.

17 BUT THEN THE SERVER, ALTHOUGH IT HAS THE
18 IP ADDRESS BUT IT DOES NOT HANDLE THAT PARTICULAR
19 COMMAND BECAUSE I DON'T HAVE ANY DOWNLOAD
20 INFORMATION THEN THEY CANNOT SHAKE HANDS.

21 SO THAT MEANS THAT THAT PARTICULAR
22 REQUEST WOULD GET BACK TO THE VIEWER AND SAYS YOU
23 DON'T HAVE IT.

24 Q SO IF SHE'S ASKING FOR SOMETHING THAT THIS WEB
25 SITE OPERATOR ISN'T WILLING TO PROVIDE THROUGH THE

1 SERVER, THEN THE REQUEST IS REFUSED AND SHE GETS A
2 NOTICE?

3 A YES. I THINK A VERY GOOD EXAMPLE THAT
4 EVERYBODY HAS BEEN HITTING IS THAT YOU TRY TO GET
5 INTO A WEB SITE AND IT COMES BACK WEB PAGE OR NOT
6 AVAILABLE.

7 THE COURT: AGAIN, I APPRECIATE THIS
8 GENERAL DESCRIPTION ABOUT HOW INTERNETS OPERATE AS
9 BACKGROUND INFORMATION AND I'M WILLING TO AND WE'VE
10 GONE NOW ALL MORNING.

11 IT DOES SEEM TO ME THAT THIS NEEDS TO BE
12 MORE PERTINENT. THERE'S NOT ANY OBJECTIONS, BUT IT
13 SEEMS TO ME THAT IT'S CONSUMPTIVE OF TIME TO GIVE
14 GENERAL INFORMATION ABOUT HOW ONE MIGHT OPERATE
15 GOOGLE AND I HAVE CONCERNS THAT IT'S NOT RELEVANT
16 TO QUESTIONS THAT THE JURY WILL HAVE TO ANSWER AT
17 THE END OF THE DAY.

18 SO I'LL ASK YOU TO MOVE TO MORE PERTINENT
19 MATERIAL.

20 MR. LOWE: YOUR HONOR, I WAS JUST ABOUT
21 TO MOVE TO THE DISCUSSION.

22 THE COURT: I HEAR THAT EVERY TIME I
23 INTERRUPT THAT YOU'RE ABOUT TO. LET'S GO THERE.

24 MR. LOWE: WELL, I WILL. I'M GOING TO GO
25 TO THE DISCUSSION OF THE RESELLERS.

1 THIS ROW DOWN HERE ON THIS CHART
2 REPRESENTS RESELLERS OF SERVICES; IS THAT RIGHT?

3 A YES.

4 Q HOW DOES THIS WORK THEN FOR SOMEBODY USING
5 YOUR SERVERS GOING TO SOMEBODY DOING BUSINESS WITH
6 YOUR RESELLERS?

7 A I DON'T REALLY KNOW THEIR RELATIONSHIP, BUT I
8 TURN OVER MY SERVICE TO MY RESELLER AND IN TURN
9 THEY MAY RESELL THE WHOLE THING TO ANYBODY THAT
10 ACTUALLY OPERATES THE WEB SITE OR SOME OTHER
11 PURPOSE OR SOME OTHER APPLICATION.

12 I DON'T REALLY KNOW WHAT MY RESELLERS DO
13 WHEN THEY RECEIVE A DEPLOYMENT.

14 Q SO IF YOU HAVE A RESELLER THAT YOU TESTIFIED
15 ABOUT, THEY CONTROL THE SERVER?

16 A IN SOME CASES YES AND IN SOME CASES NO. I
17 HAVE SEEN IF I HAD A COMPLAINT TO MY RESELLER, MY
18 CONSENT -- MY RESELLER MAY COME BACK WITH THAT I
19 FORWARDED THE INFORMATION TO -- I FORWARDED THE
20 COMPLAINT TO MY CUSTOMER, OR THEY MAY COME BACK AND
21 SAY, WE ONLY TAKE ACTION ON IT. WHAT DOES THAT
22 MEAN? WHETHER THEY TALK TO THEIR END USER OR NOT,
23 I DON'T KNOW.

24 Q SO YOU DON'T CONTROL THE SERVER. MAYBE THE
25 RESELLER DOES OR MAYBE -- THEIR CUSTOMER DOES?

1 A ONCE WE TURN OVER THE ADMINISTRATIVE PASSWORD
2 TO OUR CUSTOMER, THEN WE DON'T HAVE ANY CONTROL
3 ANYMORE.

4 Q I'D LIKE TO GO BACK TO EXHIBIT 21 THEN,
5 PLEASE. AND I THINK PAGE 5. NOW, YOUR SERVICE
6 AGREEMENT WITH YOUR CUSTOMERS, DOES IT HAVE
7 RESTRICTIONS ON WHAT IT CAN DO WITH EQUIPMENT AND
8 IP ADDRESSES THAT YOU RENT THEM?

9 A WE DO SPECIFY, JUST LIKE EVERYBODY,
10 APPLICATIONS OR ACTIVITIES THAT THEY CANNOT BE
11 INVOLVED IN.

12 SO WHEN A COMPLAINT COMES TO US, BASED ON
13 THAT WE FORWARD IT TO THE CUSTOMER AND OUR CUSTOMER
14 WOULD RESPOND TO THAT PARTICULAR COMPLAINT.
15 WHETHER THEY FORWARD IT OUT AGAIN OR WHETHER THEY
16 DID IT ON THEIR OWN, WE HAD NO WAY TO KNOW.

17 BUT WE JUST WANT TO BASED ON A PARTICULAR
18 COMPLAINT ITEM AND WE WANT TO GET IT RESOLVED.

19 Q ALL RIGHT. BEFORE WE TALK ABOUT SPECIFIC
20 COMPLAINTS. DO YOU PROHIBIT CERTAIN THINGS TO BE
21 DONE ON YOUR SERVERS?

22 A YES.

23 Q AND IS THAT LISTED HERE ON THIS EXHIBIT?

24 A YEAH, BASICALLY, YES.

25 Q AND IF WE GO TO THE NEXT PAGE, DO YOU HAVE A

1 PROVISION IN YOUR AGREEMENTS FOR WHAT YOU CAN DO IF
2 THEY VIOLATE THOSE TERMS OF USE?

3 A YES, CERTAINLY.

4 Q AND WHAT SORT OF THINGS CAN YOU DO UNDER YOUR
5 CONTRACT WITH YOUR CUSTOMERS?

6 A STARTING FROM ADVISING THEM THAT THERE'S A
7 VIOLATION AND THEN WE CAN MOVE IT UP TO FORCE THEM
8 TO FIX THE PROBLEM OR WE CAN DISCONNECT PARTICULAR
9 SERVERS ALL OF THE WAY TO TERMINATING THEM.

10 Q AND HOW DO YOU DECIDE WHAT TO DO, WHICH OF
11 THESE ACTIONS TO TAKE?

12 A A LOT OF THE COMMON JUDGMENT. MOSTLY IF THE
13 CUSTOMER IS WILLING TO WORK WITH US, THEN THE
14 PROBLEM COMES AND GOES AND WE JUST TRY TO RESOLVE
15 THE PROBLEM OF BOTH SIDES TO THE BEST WE CAN, BUT
16 IF WE RUN INTO CUSTOMERS THAT JUST DON'T
17 CORROBORATE IN THE SENSE THAT WE HAVE VERY STRONG
18 REQUESTS AND VERY STRONG EVIDENCE THAT SOMETHING
19 NEEDS TO BE DONE AND THEY DON'T -- THEY JUST FLAT
20 OUT THEY WANT TO FIGHT, THE WORSE CASE IS THAT WE
21 TERMINATE THEM. WE UNPLUG AND WE SAY WE DON'T WANT
22 YOU AS A CUSTOMER.

23 Q ALL RIGHT. WHAT KIND OF COMPLAINTS DO THE
24 DEFENDANT COMPANIES GET? WHAT CATEGORIES OF
25 COMPLAINTS?

1 A THE ONE THAT WOULD BE SENSITIVE IS MORE OF THE
2 TECHNICAL TYPE OF COMPLAINTS LIKE, FOR INSTANCE,
3 LIKE MOST RECENTLY A BOT NET CONTROLLER.

4 Q BOT NET?

5 A BOT NET CONTROLLER, B-O-T, N-E-T. THAT'S
6 BASICALLY SOMETHING LIKE A MAJOR CONTROLLER
7 CONTROLLING A SERVER BEHIND THE SCENE THAT THEY
8 HACK INTO 50 COMPUTERS ALL OVER THE WORLD. MAYBE
9 YOUR SYSTEM HAS ALREADY BEEN HACKED. THEY HAVE A
10 BACK-DOOR CONTROL ONCE THEY HACK IN, BUT YOU JUST
11 DON'T KNOW. YOU DON'T EVEN SEE THAT.

12 AND ONE DAY THIS CONTROLLER WILL SAY
13 CERTAINLY GIVING INSTRUCTION TO ALL OF THE 50
14 SERVERS THAT THEY HAVE OUTSIDE AND SAY START
15 ATTACKING YAHOO.COM.

16 SO THEY ALTOGETHER SEND OUT A MASSIVE
17 TRAFFIC TO SOMEPLACE.

18 IN THAT CASE PEOPLE ONLY SEE THE 50
19 SERVERS BEING CONTROLLED DOING THE DAMAGE BUT
20 ACTUALLY THERE'S ONE GUY IN THE BACK THAT IS MAKING
21 ALL OF THAT TYPE OF CONTROLLING.

22 Q AND THAT'S NOT SOMETHING THAT THE OPERATOR OR
23 THE SERVER OR WHOEVER IS RUNNING THE SERVER KNOWS
24 ANYTHING ABOUT?

25 A WE DON'T REALLY CARE BECAUSE AT THAT LEVEL ALL

1 ISP'S REACT ALTOGETHER. BECAUSE IF WE SEE
2 SOMEBODY, WE KNOW SOME OTHER ISP HAS A TYPE OF
3 CONTROLLER IN THEIR SYSTEM AND WE WOULD NOTIFY THEM
4 AND IN TURN THEY WOULD NOTIFY US IF IT WAS IN OUR
5 NETWORK AND WE WOULD JUST UNPLUG THAT SERVER RIGHT
6 AWAY.

7 Q AND ALL RIGHT. WHAT OTHER KINDS OF COMPLAINTS
8 DO YOU GET?

9 A SOMETHING FROM LEGAL AUTHORITY ALWAYS ASKS US
10 TO DO I.D. THEFT.

11 Q I.D. THEFT?

12 A I.D. THEFT. WE CALL IT I.D. PHISHING. SO
13 THERE'S A SERVER OR A WEB SITE THAT TRIES TO STEAL
14 OTHER INFORMATION AND THEY CREATE A WEB SITE AND
15 BLOCK FROM PUTTING IN INFORMATION -- LET'S SAY YOU
16 CERTAINLY GET A NOTICE THAT SAYS PAY PAL AND YOUR
17 PAY PAL ACCOUNT IS HAVING SOME SORT OF DIFFICULTY,
18 YOU NEED TO LOG IN AND THEN YOU NEED TO DO
19 SOMETHING. THAT'S USUALLY A FAKE WEB SITE. YOU
20 TYPE IN YOUR INFORMATION, ALL OF YOUR INFORMATION
21 IS BEING STOLEN.

22 SO IN THAT CASE, YOU KNOW, THE LEGAL
23 AUTHORITY TOLD ME THAT IF YOU SEE THAT, JUST UNPLUG
24 IT, AND WE WILL RESOLVE IT LATER. BUT JUST TAKE
25 THAT THING AWAY. SO THINGS LIKE THAT, WE REACT

1 BASED ON INSTRUCTION FROM THE LEGAL AUTHORITY.

2 Q GOVERNMENT OFFICIALS IS WHAT YOU'RE TALKING
3 ABOUT?

4 A YES, YES.

5 Q AND DO YOU EVER GET SPAM COMPLAINTS?

6 A OH, YEAH, SPAM COMPLAINTS. WHEN IT HITS
7 SOMEBODY LIKE SPAM HOUSE. SPAM HOUSE IS A
8 GENERAL -- A PUBLIC SERVICE THAT TRACK ON THE
9 SPAMMING ACTIVITIES IN THE INTERNET WORLD.

10 BUT WHEN OUR SERVER GETS CITED FOR THAT
11 TYPE OF ABUSE, IT COMES IN VERY, VERY TECHNICAL
12 DETAILS THAT WE CAN VERIFY THAT WE KNOW IS DAMAGING
13 TO THE GENERAL INTENDED WORK, WE UNPLUG THOSE RIGHT
14 AWAY AND WE TERMINATE THE CUSTOMER.

15 Q AND WHAT ABOUT COMPLAINTS OF TRADEMARK AND
16 COPYRIGHT INFRINGEMENT? DO YOU GET THOSE
17 PERIODICALLY?

18 A YES, WE GET IT THROUGH ATTORNEYS, WE GET IT
19 THROUGH TRADEMARK OWNERS. WE GET IT THROUGH ALL
20 TYPES OF ANGLES.

21 Q DO YOU GET A LOT OF THEM?

22 A PROBABLY 10, 20 A WEEK AT THIS LEVEL. SO THAT
23 WE CAN SEE IT'S MORE OF A BUSINESS ARGUMENT,
24 BUSINESS PRACTICE. WE TEND TO FORWARD IT TO THE
25 CUSTOMER, OUR CUSTOMER AND LET MY CUSTOMER DEAL

1 WITH IT AT THE FIRST LEVEL.

2 BASICALLY THE BIG REASON FOR IT, AS I
3 SAID, THEY'RE COMING FROM ALL TYPE OF DIFFERENT
4 TYPE OF ANGLES. PERSONALLY I HAVE BEEN INVOLVED IN
5 A COUPLE THAT PEOPLE SEND CLAIMING THAT THEY HAVE
6 THE TRADEMARK RIGHT AND WORK DESIGN RIGHT OR
7 COPYRIGHT OR WHATEVER AND THEN THE OTHER PARTY IS
8 STEALING MY TRADEMARK OR THINGS LIKE THAT. AND IT
9 WOUND UP THAT WE REACT TO IT AND THEN THE OTHER
10 PARTY SAYS, NO, HE'S JUST MY EX-PARTNER. HE JUST
11 WANTS TO BRING ME DOWN.

12 SO THINGS LIKE THAT. WE HAVE NO WAY OF
13 JUDGING ALL DIFFERENT LEVELS OF THE COMPLAINT.

14 ON THE OTHER HAND, IT WOULD BE A LOT
15 EASIER THAT I FORWARD IT TO MY CUSTOMER AND LET
16 THEM LOOK INTO IT AND SEE HOW THEY WANT TO DO IT.

17 IF THEY RESPOND BACK AND SAY WE JUST WANT
18 TO TAKE DOWN THE CONTENT OR TAKEDOWN THAT
19 PARTICULAR WEB SITE, THAT PLEASES EVERYBODY.

20 BUT IF THEY COME BACK AND SAY, OH, WE
21 HAVE A DIFFERENT THOUGHT OF IT. WE OWN THIS. WE
22 WANT TO ARGUE. IN THAT CASE WE MAY SEND IT BACK TO
23 THE ORIGINAL COMPLAINANT AND LET THEM DEAL WITH IT.

24 Q DO YOU HAVE ANY WAY OF KNOWING WHO IS RIGHT
25 AND WHO IS WRONG IN THOSE SITUATIONS?

1 A NO, I DON'T WANT TO BE THE JUDGE IN THAT.

2 Q DO YOU HAVE ANY INFORMATION THAT WOULD ALLOW
3 YOU TO MAKE A DECISION OTHER THAN --

4 A I CAN'T DO ANYTHING WHEN THE NAME WITH THEIR
5 SIGNATURE CLAIMING THAT AND WITH THE LONG LIST OF
6 INFORMATION IN IT, I TEND TO THINK THEY HAVE A
7 POSITION BETTER.

8 Q OKAY. NOW, IS THERE A PROCEDURE FOR PEOPLE TO
9 COMPLAIN ABOUT COPYRIGHT INFRINGEMENT UNDER U.S.
10 LAW?

11 A WE HAVE A VERY GENERAL PROCEDURE.

12 Q I'M SORRY?

13 A IF THERE'S ANY COMPLAINT COMES IN, UNLESS IT'S
14 COMING FROM SOME ISP, THAT NEEDED SPECIAL AND
15 IMMEDIATE ATTENTION OTHERWISE GENERALLY A COMPLAINT
16 COMES IN, WE FORWARD IT TO OUR CUSTOMER AND LET OUR
17 CUSTOMER TAKE THE FIRST SHOT AT IT.

18 Q COULD YOU TAKE A LOOK AT EXHIBIT 54, PLEASE.
19 AND WHAT IS THIS, AS SOON AS IT COMES UP?

20 I THINK YOU HAVE IT IN YOUR BOOK THERE AS
21 WELL IF YOU NEED TO LOOK AT IT THIS WAY.

22 A WHAT NUMBER?

23 Q 54?

24 A I HAVE ALL OF THE DIGITS 54.

25 Q CAN YOU LOOK AT IT ON THE SCREEN AND TELL ME

1 WHAT THIS IS?

2 A THIS IS THE -- DO YOU WANT ME TO READ THE
3 WHOLE NAME?

4 Q YEAH, JUST READ THE WHOLE NAME.

5 A INTERIM DESIGNATION OF AGENT TO RECEIVE
6 NOTIFICATION OF CLAIMED INFRINGEMENT.

7 Q AND WAS THIS SOMETHING FILED BY AKANOC?

8 A YES, FILED BY MYSELF.

9 Q AND WHAT INFORMATION DOES IT PROVIDE?

10 A IT'S A CONTACT INFORMATION. IF SOMEBODY WANTS
11 TO MAKE COMPLAINTS REGARDING THE COPYRIGHT, THAT
12 TYPE OF COPYRIGHT INFRINGEMENT, THEN THEY GO
13 THROUGH THIS PARTICULAR CONTACT ADDRESS.

14 Q AND IT GIVES E-MAIL ADDRESSES?

15 A YES.

16 Q ALL RIGHT. WOULD YOU TAKE A LOOK AT EXHIBIT
17 55 AND IDENTIFY THIS. IS THIS THE SAME THING,
18 MAYBE?

19 A YES, THIS IS THE SAME THING FOR MANAGED
20 SOLUTIONS GROUP, INC.

21 Q DO YOU CUSTOMARILY GET COMPLAINTS ABOUT
22 INFRINGEMENT OR OTHER TYPES OF COMPLAINTS YOU HAVE
23 TO DEAL WITH, DO YOU CUSTOMARILY GET THOSE THROUGH
24 THE INTERNET OR THE E-MAIL? HOW DO YOU GET THEM?

25 A MOSTLY THROUGH E-MAIL SIMPLY BECAUSE THIS IS

1 AN INTERNET BUSINESS MOSTLY DONE THROUGH E-MAIL.

2 Q OKAY. IS THAT THE NORMAL CUSTOM IN THE
3 BUSINESS?

4 A I THINK IT'S VERY COMMON IN THE INDUSTRY.
5 E-MAIL RUNS A LOT FASTER THAN A PHYSICAL LETTER.

6 Q YOU KNOW, IF I MIGHT GO BACK. I THINK WE HAVE
7 A DUPLICATION OF EXHIBIT NUMBERS AND MAYBE YOU CAN
8 CONFIRM. I DIRECTED YOU TO EXHIBIT 54. IS THAT
9 THE SAME AS EXHIBIT 1606?

10 THE COURT: IT GOES WITH THE NUMBERS THAT
11 WE WERE SEEING YOUR TECHNICIAN REFER TO.

12 MR. LOWE: OH, OKAY.

13 Q 1606 IS A CERTIFIED COPY OF THE SAME THING
14 THAT 54 IS?

15 A YES.

16 Q AND IS EXHIBIT 1607, WHICH IS PROBABLY WERE
17 SEEN BEFORE, THE SAME THING AS EXHIBIT 55?

18 A YES, THAT'S CORRECT.

19 Q BUT IT'S A CERTIFIED COPY OF THAT
20 REGISTRATION?

21 A YES.

22 Q THANK YOU. EARLIER THIS MORNING YOU MENTIONED
23 A PROCESS A CUSTOMER MIGHT USE IF THEY WERE HAVING
24 TECHNICAL PROBLEMS WITH THEIR -- WITH THE SERVER
25 THAT YOU RENTED THEM AND I BELIEVE YOU USED THE

1 TERM K-V-M OR R-K-V-M. CAN YOU EXPLAIN WHAT THAT
2 IS?

3 A YES. RKVM. SO KVM IS KEYBOARD MOUSE -- NO,
4 KEYBOARD, VIDEO, MOUSE.

5 Q AND THE R STANDS FOR?

6 A THAT'S JUST LIKE YOUR COMPUTER THAT YOU HAD A
7 KEYBOARD AND YOU HAD A VIDEO WHICH IS THE SCREEN
8 AND YOU HAVE A MOUSE.

9 Q AND IS R MEANING REMOTE?

10 A R MEANING REMOTE.

11 SO MOST OF THE PEOPLE UNDERSTAND KVM
12 SWITCH DOES NOT REALLY UNDERSTAND RKVM SWITCH
13 MEANING REMOTELY THAT YOU CAN ACCESS THAT KVM BOX.

14 Q SO IF YOU HAVE A CUSTOMER THAT NEEDS HELP IN
15 RESOLVING SOME PARTICULAR PROBLEM ON THE SERVER,
16 AND YOU DON'T -- YOU'RE NOT IN A POSITION TO
17 PHYSICALLY DO THE WORK FOR THEM, HOW DO YOU USE THE
18 RKVM TO ALLOW THEM TO FIX IT?

19 A WHEN THE SERVER CANNOT BE ACCESSED THROUGH
20 THEIR ORIGINAL IP ADDRESS, THEY NEED TO ESTABLISH A
21 SECONDARY CONNECTION. SO IN THAT CASE THAT'S WHERE
22 RKVM COMES IN BECAUSE IT OPERATES THROUGH A
23 DIFFERENT IP ADDRESS.

24 Q AND THEN WHAT ARE THEY ABLE TO DO?

25 A THEY CAN SEE A SCREEN JUST LIKE US SEEING THAT

1 SCREEN IF WE HAVE LOCAL ACCESS.

2 Q OKAY. BY THE WAY, DO YOU HAVE SCREENS
3 ATTACHED TO THE SCREENS IN YOUR DATA CENTER?

4 A NO, WE DON'T. WE HAVE NO ROOM FOR SCREENS FOR
5 EACH COMPUTER.

6 Q DO YOU HAVE KEYBOARDS FOR EACH COMPUTER?

7 A NO.

8 Q AND SO RKVM ALLOWS THE REMOTE USER TO OPERATE
9 IT AS IF THEY WERE THERE, BUT THEY ACTUALLY HAVE
10 THE KEYBOARD AND MONITOR IN FRONT OF THEM?

11 A THAT'S CORRECT.

12 Q HOW MUCH TIME DO YOU SPEND EVERY WEEK DEALING
13 WITH COMPLAINTS ABOUT THINGS GOING ON WITH YOUR
14 SERVERS?

15 A THE ONE THAT I NEED TO SEND, I WOULD SAY TO
16 SEND THE COMPLAINTS OUT TO MY CUSTOMER IF I PROCESS
17 IT MYSELF, PROBABLY I SPEND LIKE A COUPLE OF HOURS
18 A DAY.

19 Q DO YOU HAVE ANYBODY ELSE THAT HELPED YOU WITH
20 THAT?

21 A JULIANA LUK. HER DEPOSITION WAS READ
22 YESTERDAY.

23 Q AND DOES ANYONE ELSE HANDLE THOSE COMPLAINTS
24 IN YOUR COMPANY?

25 A NO, ONLY ME AND JULIANA AND SHE'S MORE OR LESS

1 LIKE JUST HELPED ME TO SEND OUT THE COMPLAINTS.

2 Q AND HOW IS THE WORK DIVIDED BETWEEN YOU AND
3 JULIANA LUK ABOUT THESE COMPLAINTS?

4 A WELL, WE HAVE A COMMON E-MAIL ACCOUNT.

5 Q AND WHAT IS THAT?

6 A YOU KNOW, SHE HAS ABUSE@MANAGEDSG-INC.COM.
7 THAT'S FOR THE MANAGED SIDE.

8 AND THEN WE HAD ABUSE@COLOALACARTE.COM.

9 AND THEN THE THIRD ONE WOULD BE
10 ABUSE@AKANOC.COM.

11 AND THEN THE LAST ONE WOULD BE
12 SECURITY@AKANOC.COM.

13 SO ALL THAT THREE ABUSE ACCOUNTS RECEIVED
14 COMPLAINTS FROM OUTSIDE.

15 Q ABUSE COMPLAINTS?

16 A YES.

17 Q IS THE TERM ABUSE A COMMON ONE FOR PEOPLE IN
18 YOUR BUSINESS TO USE?

19 A YES.

20 Q OR FOR PEOPLE TO SEND ABUSE COMPLAINTS TO?

21 A YES. VERY SELDOM THAT YOU SEE COMPLAINTS
22 BEING SENT TO INFOSELS. SO IT'S ALL SENT TO ABUSE.

23 Q SO IF I HAVE A COMPLAINT ABOUT SOMETHING GOING
24 ON AT AN ISP, I WOULD USUALLY BE ABLE TO SEND IT
25 EASILY TO ABUSE AT WHATEVER THEIR E-MAIL IS?

1 A YEAH, MOST LIKELY I WOULD SAY 80, 90 PERCENT
2 OF THE ISP ABUSE HAS THE ACCOUNT FOR SENDING ABUSE
3 A MESSAGE.

4 Q AND WHAT ABOUT SECURITY, IS THAT ALSO A
5 COMMONLY USED NAME?

6 A THAT I DON'T REALLY KNOW. OVER TIME WE
7 DEVELOPED THAT AND THE REASON WE USE THAT FOR IS IF
8 WE HAVE -- LET'S SAY WE RECEIVE AN AVERAGE OF 50
9 COMPLAINTS A DAY THROUGH ALL 3 DIFFERENT ACCOUNTS,
10 THEN A LOT OF IT, YOU KNOW, IF WE START
11 COMMUNICATING WITH CUSTOMERS AND IT WILL GET BURIED
12 IN THAT E-MAIL ACCOUNTS.

13 SO WHAT WE DO IS THAT WE RECEIVE
14 EVERYTHING IN THROUGH THE ABUSE ACCOUNT, AND IF WE
15 NEED TO SEND IT TO THE CUSTOMER, IF WE NEED TO
16 RESPOND TO ANYTHING, THEN WE USE
17 SECURITY@AKANOC.COM TO RESPOND OR TO SEND OUR MAIL.

18 IN THAT CASE IF SOMEBODY WANTED TO
19 RESPOND THEN IT WOULD BE VERY LIMITED TO
20 SECURITY@AKANOC.COM. THAT'S HOW WE FUNCTION.

21 Q SO THE COMPLAINTS COME IN UNDER ABUSE TO
22 VARIOUS E-MAIL ADDRESSES BUT EVERYTHING GOES OUT?

23 A THAT IS CORRECT.

24 Q FROM SECURITY@AKANOC.COM?

25 A THAT'S CORRECT.

1 Q AND DO YOU MAKE A PRACTICE -- WELL, PLEASE
2 TELL ME HOW THE DEFENDANTS DEAL WITH ABUSE
3 COMPLAINTS GENERALLY?

4 A SO GENERALLY WHEN A COMPLAINT COMES IN I MORE
5 OR LESS WROTE UP A GENERAL LETTERHEAD SO THEN IT
6 STATES AND COVERS VIRTUALLY EVERYTHING, SPAM,
7 ILLEGAL ACTIVITIES, WHATEVER. SO IT'S A VERY
8 GENERAL FORM.

9 AND THEN IT SAYS YOUR IP ADDRESS AND THEN
10 YOUR -- YOU MAY HAVE A MAIN IP ADDRESS, WHICH IS
11 THE MAIN SERVER IP ADDRESS, AND THEN IT HAS SOME
12 EXTRA IP ADDRESS, THAT PARTICULAR EXTRA IP ADDRESS
13 IS CAUSING THE PROBLEM, AND THEN WE'LL FIND THAT
14 INFORMATION FOR THE CUSTOMER.

15 THIS PARTICULAR IP ADDRESS IS BEING
16 COMPLAINED BUT IT'S BEING RECITED IN THIS MAIN IP
17 ADDRESS AND THEN JULIANA WHAT SHE WOULD DO IS JUST
18 FORWARD THE WHOLE COMPLAINT TO THE CUSTOMER
19 DIRECTLY.

20 SO THAT CUSTOMER WOULD FIGURE OUT, YOU
21 KNOW, WHAT TO DO USUALLY IN PARTICULAR WITH DEALING
22 WITH THE CHINESE CUSTOMERS I'LL MAKE SOME
23 NOTATIONS, I'M SURE THEY DON'T HAVE THE CAPACITY OF
24 READING THE WHOLE THING BUT WHAT I NEED THEM TO
25 KNOW IS, FOR INSTANCE, LIKE THIS INCIDENT THAT I

1 WOULD SAY THIS PARTICULAR WEB SITE, IT'S BEING
2 COMPLAINED WITH ROLEX COUNTERFEIT PRODUCTS AND I
3 GIVE THEM THE IP ADDRESS THAT IS IN QUESTION AND
4 ALSO THE MAIN IP ADDRESS FOR THEIR SERVERS SO THEY
5 KNOW WHICH ONE TO LOOK FOR. AND I WOULD SAY WHO
6 MADE THE COMPLAINT? AND IT'S IN A SHORTER FORM.
7 THAT WOULD TAKE ME A LOT MORE TIME, BUT TO ME IT
8 WOULD BE A LOT MORE EFFECTIVE.

9 BUT FROM JULIANA, SHE USUALLY GOES
10 THROUGH THE E-MAIL AND FIND ALL OF THE COMPLAINTS
11 THAT NEED TO BE FORWARDED. AND THEN SHE JUST TAKES
12 THE GENERAL LETTERHEAD AND TAKES THE ATTACHMENT AND
13 JUST SENDS IT THROUGH THAT.

14 Q NOW, WHEN YOU GET A COMPLAINT, TYPICALLY WHAT
15 INFORMATION DOES SOMEONE GIVE YOU? LET'S SAY
16 SOMEONE SAYS THEY HAVE A TRADEMARK OR COPYRIGHT
17 INFRINGED, DO THEY IDENTIFY WHAT THAT MARK IS OR
18 WHAT THAT COPYRIGHT WORK IS?

19 A YES, USUALLY.

20 Q DO THEY GIVE YOU THE IP ADDRESS USUALLY?

21 A USUALLY, NO.

22 Q AND WHAT DO THEY GIVE YOU?

23 A JUST GIVE ME A DOMAIN NAME.

24 Q SO THEY JUST SAY AT THE XYZ.COM SITE SOMEBODY
25 IS DOING SOMETHING WITH MY TRADEMARK?

1 A YES.

2 Q WHAT DO YOU HAVE TO DO BEFORE YOU FORWARD ON
3 THOSE COMPLAINTS?

4 A IT COMES IN DIFFERENT FORMS. IT MAY VARY IN A
5 VERY SHORT SPOT, VISIBLE SPOT IN THE WHOLE
6 COMPLAINT.

7 SO I NEED TIME TO READ THOSE AND FIND
8 EXACTLY WHICH DOMAIN NAME THEY'RE COMPLAINING. AND
9 ONCE I HAVE THE DOMAIN NAME I NEED TO PING IT. AND
10 USUALLY I DO TWO PINGS.

11 I ASSUME MOST ATTORNEYS DON'T KNOW THIS.
12 THEY WILL COMPLAIN THAT IT'S XYZ.COM AND SO I PING
13 XYZ.COM AND THEN I WOULD ALSO PING WWW.XYZ.COM.

14 Q IS THERE A DIFFERENCE?

15 A YES. A LOT OF TIME PEOPLE REGISTER THE SAME
16 DOMAIN BUT WITHOUT WWW OR DIFFERENTLY. SO IT MAY
17 BE WWW.XYZ.COM AND IT'S POINTING TO THIS ONE BUT
18 THEN THE XYZ.COM IS POINTING TO THE OTHER IP.

19 SO I CHECK THAT, AND I WANT TO MAKE SURE
20 THAT THE COMPLAINT, WITHOUT KNOWLEDGE OF THE
21 ATTORNEY, THAT INDEED ANY ONE OF IT IS WITHIN MY
22 NETWORK. AND ONCE I FIND THAT NETWORK --

23 Q WELL, BEFORE WE DO THAT, YOU MENTIONED
24 PINGING. BRIEFLY COULD YOU TELL US WHAT YOU MEAN
25 BY THAT AND WHAT YOU'RE TALKING ABOUT THERE?

1 A IT'S JUST GO TO ANY COMPUTER THAT HAS A DOS
2 PROMPT BUT MOST OF THE PEOPLE DON'T USE IT SO
3 PROBABLY EVERY USER WOULD NOT KNOW.

4 YOU GO TO THE DOS PROMPT AND YOU TYPE
5 P-I-N-G, SPACE, THE DOMAIN NAME, WHICHEVER DOMAIN
6 NAME YOU WANT TO LOOK FOR AND IT COMES BACK WITH
7 THE IP INFORMATION IF INDEED IT'S A LIVE IP.

8 Q WHAT DO YOU MEAN IF IT'S A LIVE IP?

9 A A LIVE IP AT LEAST IS BEING REGISTERED IN THE
10 NAMES OF -- IT DOESN'T MEAN THE WEB SITE IS LIVE
11 BUT IT DOES AT LEAST PROVE IT'S BEING REGISTERED.

12 Q THE XYZ.COM IS REGISTERED SOMEWHERE?

13 A YES. LET'S ASSUME THIS VERY EASY. IF YOU GO
14 TO DOMAIN REGISTRAR, YOU WIPE OUT YOUR NAME SERVER
15 INFORMATION ON THE WEB SITE, THEN IF ANYBODY WANTS
16 TO FIND XYZ.COM THEN YOU CANNOT BE RESOLVED TO
17 ANYTHING.

18 JUST LIKE IF YOU GO TO THE FRANCHISE TAX
19 BOARD AND YOU WIPE OUT YOUR BUSINESS ADDRESS AND
20 THEN PEOPLE CAN FIND THE COMPANY BUT CANNOT FIND
21 THE ADDRESS INFORMATION.

22 Q OKAY. SO WHEN YOU PING YOU'RE ABLE TO FIND
23 OUT SOMETHING IS REGISTERED?

24 A YES.

25 Q AND IF IT IS REGISTERED THEN YOU'RE ABLE TO

1 FIND OUT AN IP ADDRESS?

2 A YES.

3 Q AND WHEN DO YOU FIND OUT WHETHER THAT IP
4 ADDRESS IS IN THE RANGE OF IP'S THAT HAVE BEEN
5 ASSIGNED TO YOU FROM ARIN?

6 A IF IT'S SOMETHING LIKE 205.209, IT'S OURS.

7 Q SO YOU KNOW YOURS?

8 A YES.

9 Q AND SO YOU RECOGNIZE YOURS?

10 A YES.

11 Q AND THEN HOW DO YOU DETERMINE IF IT IS
12 SOMETHING OR AN IP ADDRESS THAT IS ASSIGNED TO YOU,
13 HOW DO YOU FIND OUT WHICH CUSTOMER MIGHT BE USING
14 IT?

15 A WE GO TO OUR OWN DATABASE WE CALL CPRO.

16 Q C-P-R-O?

17 A C-P-R-O, YES. SO CPRO THERE'S A FIELD THAT
18 YOU TYPE IN THE IP ADDRESS AND IT WILL SHOW WHO IS
19 USING THAT PARTICULAR IP AT THAT PARTICULAR TIME.

20 Q AT THAT MOMENT IN TIME?

21 A YES.

22 Q AND THEN YOU DO WHAT?

23 A THEN I FORWARD THE COMPLAINT.

24 Q TO THAT CUSTOMER?

25 A TO THAT PARTICULAR CUSTOMER.

1 Q WHAT IF YOU CAN'T FIND IT ON YOUR CPRO
2 DATABASE?

3 A IF IT'S WITHIN OUR IP RANGE AND IT'S NOT SHOWN
4 FROM CPRO, THEN I NEED TO ASK MY TECHNICIAN, ROUTER
5 TECHNICIAN TO GO INTO THE ROUTER AND SEE EXACTLY
6 HOW WE ROUTE THAT PARTICULAR IP.

7 Q CAN YOU EXPLAIN THAT A LITTLE BIT, WHY YOU
8 WOULDN'T HAVE IT ON THE CPRO DATABASE?

9 A VERY, VERY, VERY SELDOM THAT WE RUN INTO THAT
10 TYPE OF SITUATION. BUT SOMETIMES DUE TO TECHNICAL
11 ERROR BUT SOMETIMES MAYBE DUE TO IMPROPER INSERTION
12 OF DATA, WE DON'T KNOW BUT VERY, VERY, VERY SELDOM
13 THAT WE RUN INTO THAT TYPE OF ISSUE.

14 Q OKAY. BUT YOU COULD AS A BACKUP GO TO THE
15 ROUTER INFORMATION TO FIND OUT WHERE THE ROUTER IS
16 SENDING THIS AND WHICH SERVER IT IS?

17 A YES.

18 Q DO YOU RECORD PINGING AS A RELIABLE WAY OF
19 TRANSMITTING A DOMAIN NAME TO AN IP ADDRESS?

20 A THAT'S THE BEST ONE I KNOW.

21 Q AND ARE THERE OTHERS, OTHER METHODS THAT SOME
22 PEOPLE USE TO TRY TO FIND OUT WHAT IP ADDRESS IS
23 USED BY A PARTICULAR DOMAIN?

24 A NOT UNTIL I'M INVOLVED IN THIS LAWSUIT. I
25 DON'T EVEN KNOW WHAT DOMAIN TOOLS IS.

1 Q SO YOU HAVE LEARNED SOMETHING ABOUT DOMAIN
2 TOOLS IN THIS LAWSUIT?

3 A YES.

4 Q OKAY. HAVE YOU FOUND DOMAIN TOOLS -- WELL,
5 FIRST OF ALL, HAVE YOU FOUND DOMAIN TOOLS IS
6 SUPPOSED TO HAVE SOME INFORMATION ABOUT THE IP
7 ADDRESS FOR DOMAIN? DOES DOMAIN TOOLS LIST AN IP
8 ADDRESS FOR THE DOMAIN NAME?

9 A IN THIS IT DOES, BUT I SPEND ABOUT ONE MONTH
10 SPENDING ABOUT HOW DOMAIN TOOLS WORK, AND I FOUND
11 IT UNRELIABLE AND I DOCUMENT A BUNCH OF THE
12 UNRELIABLE ENTRIES AND I DECIDED TO GIVE IT UP.

13 Q COULD YOU LOOK AT EXHIBIT 1607, PLEASE.

14 MR. COOMBS: OBJECTION, YOUR HONOR. THIS
15 WAS JUST PRODUCED LAST NIGHT.

16 MR. LOWE: IT'S JUST A DEMONSTRATIVE
17 EXHIBIT, YOUR HONOR, EXPLAINING ABOUT WHY HE
18 TESTIFIED ABOUT WHY IT'S UNRELIABLE.

19 MR. COOMBS: THE FOUNDATION --

20 THE COURT: WELL, IT'S A LITTLE EARLY.
21 LET ME LET YOU GO TO LUNCH, AND WE'LL RESOLVE THIS
22 AND COME BACK TO THIS MATTER AT 1:00 O'CLOCK.

23 (WHEREUPON, THE PROCEEDINGS IN THIS
24 MATTER WERE HELD OUT OF THE PRESENCE OF THE JURY:)

25 THE COURT: VERY WELL. WE'RE OUT OF THE

1 PRESENCE OF THE JURY. THIS LOOKS LIKE A PROFFER
2 FROM THE SCREEN.

3 MR. LOWE: YES, YOUR HONOR, THE WITNESS
4 WOULD TESTIFY THAT, FOR EXAMPLE, THIS SHOWS TWO
5 THINGS THAT HE HAS SEEN ON THE SCREEN OR ON THE
6 COMPUTER AT THE SAME TIME.

7 THE TOP PART IS A DOMAIN TOOLS REPORT
8 SHOWING AN IP ADDRESS AND BELOW IT IS A PINGING OF
9 THE SAME DOMAIN NAME THAT HE PASTED ONTO THIS PAGE.
10 AND THE POINT IS TO SHOW, AS HE TESTIFIED, THAT
11 SOMETIMES THE IP ADDRESS SHOWN BY DOMAIN TOOLS IS
12 INCORRECT BECAUSE IT'S DIFFERENT FROM THE ONE AT
13 THE VERY TIME THAT IS SHOWN BY PINGING.

14 THE COURT: SO THE ADDRESS AND ISSUE IS
15 ESHOES99.NET?

16 MR. LOWE: RIGHT.

17 THE COURT: SO TAKE ME BACK UP TO THE
18 DOMAIN TOOLS REPORT AND WHERE IS THE DOMAIN NAME
19 THAT IS BEING SEARCHED?

20 MR. LOWE: I BELIEVE THERE'S A BOX UNDER
21 THE LEFT SIDE, IT'S ABOUT FOUR OR FIVE COLUMNS DOWN
22 ESHOES99.NET. IT'S RIGHT UNDER IT LOOKS LIKE DIVX.

23 THE COURT: PUT THE CURSOR ON IT.

24 WHERE THE CURSOR IS NOW IS NOT PART OF
25 THE REPORT AS I UNDERSTAND IT. THAT'S PART OF THE

1 WINDOW BUT THAT'S NOT PART OF THE REPORT. WHERE IS
2 IT ON THE REPORT THAT IT'S WHERE THE SEARCH WAS?

3 THE WITNESS: CAN I RAISE MY HAND?

4 THE COURT: AH. SO THE DOMAIN NAME WHOIS
5 RECORD THE DOMAIN NAME ESHOES99.NET WOULD BE THE
6 REPORT BACK AS TO WHAT WAS SEARCHED?

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

8 THE COURT: AND THEN SHOW ME WHAT IS THE
9 IP ADDRESS THAT IS REPORTED 204.16 AND THEN SHOW ME
10 WHAT THE PING SHOWS.

11 WELL, THIS CERTAINLY APPEARS TO THE COURT
12 TO BE A DIFFERENCE AND THERE MAY BE AN EXPLANATION
13 OF IT.

14 NOW, YOUR OBJECTION IS WHAT?

15 MR. COOMBS: WELL, THE DOCUMENT IS DATED
16 APRIL 10, 2008 AND WHICH IS AFTER THE DISCOVERY
17 CUTOFF AND IT'S NOT BEEN PRODUCED UNTIL LAST NIGHT,
18 AND THERE'S NO EXPLANATION AS TO WHY IT WASN'T
19 PRODUCED. THERE'S NO DOCUMENTS AS TO WHY THIS
20 CONNECTS BECAUSE THE WITNESS JUST TESTIFIED THAT
21 WHEN YOU PING YOU GET DIFFERENT RESULTS IF YOU PING
22 ESHOES99.NET VERSUS WWW.ESHOES99.NET.

23 THE COURT: WHY WASN'T THIS PRODUCED
24 EARLIER IN DISCOVERY?

25 MR. LOWE: FIRST OF ALL, WE MADE

1 OBJECTIONS TO THE USE OF DOMAIN TOOLS, AND THE
2 COURT HAS ALLOWED THEM IN THE LAST COUPLE OF DAYS.
3 IT WAS NOT OUR INTENTION TO USE THIS IN THE CASE
4 BECAUSE WE BELIEVE THAT DOMAIN TOOL WAS NOT
5 PARTICULARLY RELIABLE.

6 THE USE OF THIS NOW IS IN THE NATURE OF
7 REBUTTAL EVIDENCE AND TO DEAL WITH THE FACT THAT
8 THIS DOMAIN TOOLS IS NOT NECESSARILY A RELIABLE WAY
9 OF DETERMINING AN IP ADDRESS.

10 SO WE HAD NOT INTENDED TO USE IT, BUT WE
11 NEED TO USE IT GIVEN THAT THE PLAINTIFF IN THE LAST
12 TWO DAYS HAS BEEN USING DOMAIN TOOLS VERY HEAVILY
13 AND REPORTS FROM DOMAIN TOOLS.

14 SO THIS IS MERELY A DEMONSTRATIVE EXHIBIT
15 THAT MR. CHEN HAD DONE EARLIER BUT WE HADN'T
16 PLANNED TO USE IT AS AN EXHIBIT IN OUR CASE IN
17 CHIEF.

18 THE COURT: WELL, IT'S NOT BEING OFFERED
19 AS A DEMONSTRATIVE. IT'S OFFERED AS SUBSTANTIVE
20 EVIDENCE AT THIS POINT AS YOU'RE EXPLAINING IT TO
21 ME.

22 IT IS TRUE THAT THERE HAVE BEEN INSTANCES
23 WHERE WE HAVE -- THE COURT HAS ALLOWED THE DOMAIN
24 TOOLS REPORT BECAUSE IT EXPLAINED PRIOR WITNESS'S
25 INVESTIGATORY STEPS IN THE DOMAIN TOOLS MATERIAL.

1 I ACTUALLY HAVE NO DIFFICULTY IN ALLOWING
2 YOU TO PUT ON WHAT APPEARS TO BE A SCREEN SHOT OF
3 THE DOMAIN TOOLS REPORT.

4 WHAT BECOMES MORE PROBLEMATIC, HOWEVER,
5 IS THE ADDED MATERIAL WHICH IS A STATEMENT THAT
6 THEY ACTUALLY PUT ON THE REPORT THAT IT IS
7 APPARENTLY REPORTED TO BE A SCREEN SHOT OF THE
8 RESULT OF THE PING.

9 AND AS COUNSEL POINTS OUT, IT COULD BE
10 THAT THIS CAN BE EXPLAINED HOW THE PINGING AND THE
11 DOMAIN TOOLS WERE LOOKING AT DIFFERENT THINGS. I
12 PRESUME THIS IS SOMETHING THAT CAN BE DEMONSTRATED
13 DYNAMICALLY ON SOMETHING THAT YOU CAN DO ON THE
14 INTERNET AND THEY CAN SHOW UP. AND THAT'S THE KIND
15 OF THING THAT THE TWO SIDES CAN PUT IN.

16 EXCEPT THAT THIS IS SOMETHING THAT THE
17 WITNESS WILL TESTIFY THAT HE ACTUALLY DID AND
18 JUSTIFY HIS RELIABILITY. AND THAT IS THE KIND OF
19 THING THAT SHOULD HAVE BEEN PREVIOUSLY DISCLOSED
20 BECAUSE I ALLOWED THE E-TOOLS MATERIAL IN, I'LL
21 ALLOW THIS IN, SUBJECT, OF COURSE, TO
22 CROSS-EXAMINATION.

23 MR. COOMBS: YOUR HONOR, MAY I RAISE ONE
24 ISSUE SORT OF TANGENTIAL TO WHAT YOU JUST MENTIONED
25 WHICH IS THE NOTION OF DYNAMIC PRESENTATION. I WAS

1 UNAWARE OF WHETHER WE COULD HAVE A LIVE INTERNET
2 CONNECTION IN THE COURTROOM AND HAVE A WITNESS
3 OPERATE THAT TO SHOW.

4 THE COURT: I'M SAYING THAT IS SOMETHING
5 THAT CAN BE DONE. IF YOU HAVE NOT ALL SET THAT
6 UP -- YOU'RE CONTROLLING THE PRESENTATION OF THE
7 EVIDENCE AND HOW THIS IS, AND SO I'M NOT SURE WHAT
8 PLACE THE TIE BETWEEN THESE IP ADDRESSES IN THE
9 DOMAIN NAMES PLAY IN THIS.

10 I PRESUME THAT THE DEFENSE WILL ARGUE
11 THAT THERE ARE DOMAIN NAMES COMPLAINED OF BY THE
12 PLAINTIFF WHICH WERE NOT SOLD BY RESELLERS ON THESE
13 SERVERS AND THAT'S WHY YOU'RE CONCERNED ABOUT IT.

14 AND THE ONLY EVIDENCE OF THAT ARE THE
15 E-TOOLS REPORTS.

16 IS THAT MY UNDERSTANDING?

17 MR. LOWE: THE DOMAIN TOOLS REPORT, YES.

18 MR. COOMBS: AS CORROBORATED BY
19 TESTIMONIAL EVIDENCE.

20 THE COURT: THAT'S STILL SOMETHING THAT
21 YOU CAN ARGUE ABOUT. THERE'S AN ARGUMENT AS TO
22 WHETHER YOU CAN BELIEVE THE EVIDENCE OR NOT AND SO
23 THIS IS IMPEACHING.

24 THE ONLY REAL OBJECTION, AS I SAID, IS
25 THE FAILURE TO EARLIER DISCLOSE IT, BUT I'LL ALLOW

1 IT AND YOU CAN CROSS-EXAMINE.

2 MR. LOWE: YOUR HONOR, THERE IS ONE OTHER
3 EXHIBIT, COUNSEL IS AWARE OF IT AND IT'S 1614 WHICH
4 IS ANOTHER SHOT OF DOMAIN SCREEN TOOLS AND IT HAS
5 TO DO WITH A HOSTING HISTORY THAT WAS DONE IN THE
6 SAME WAY AND THIS WITNESS WILL TESTIFY ABOUT IT.

7 THE COURT: AND WHAT IS THE IMPORT OF
8 THIS? WHAT IS THE PROFFER?

9 MR. LOWE: LET'S SEE. THE NAME SERVER OR
10 THE HISTORY OF ADDRESSING AND THE NAME SERVER FOR
11 THIS PARTICULAR ACCOUNT.

12 THE COURT: WHY IS IT RELEVANT?

13 MR. LOWE: WELL, IT SHOWS THAT THIS HAS
14 TO DO WITH THE DOMAIN NAME WENDY929.COM AND IT
15 SHOWS THAT THE IP ADDRESS HAS BEEN FREQUENTLY AND
16 REPEATEDLY CHANGED.

17 THE COURT: RIGHT.

18 MR. LOWE: AND THAT THERE HAD ALSO BEEN
19 CHANGES EVEN IN THE NAME SERVER HISTORY, DIFFERENT
20 NAME SERVERS HAVE BEEN USED BY WHOEVER IS OPERATING
21 WENDY929.

22 THE COURT: AND YOU HAVE THE --

23 MR. COOMBS: WE HAVE THE SAME OBJECTION.
24 THIS WAS DELIVERED LAST NIGHT ABOUT QUARTER TO 9:00
25 AND THE OTHER ISSUE IS THAT THESE ARE ISSUES WITH

1 COMMUNICATIONS BETWEEN COUNSEL AND THE WITNESS AND
2 SO I ASSUME THAT THEY'RE WAIVING THE PRIVILEGE.

3 THE COURT: I DID NOTICE THAT THERE WAS
4 SOMETHING ABOVE THE SCREEN SHOT WHICH APPEARED TO
5 BE PART OF AN E-MAIL.

6 MR. LOWE: YEAH, THIS WAS E-MAILED FROM
7 MR. CHEN TO OUR OFFICE JUST TO SHOW US THIS
8 DOCUMENT.

9 THE COURT: SO IS HIS PRESUMPTION
10 CORRECT?

11 MR. LOWE: WELL, HE WILL BE TESTIFYING
12 ABOUT THIS EXHIBIT AND HE CERTAINLY CAN BE
13 QUESTIONED ABOUT, YOU KNOW, HOW HE SENT IT TO
14 COUNSEL.

15 THE COURT: IT IS NOT NEW THAT THE
16 VARIOUS DOMAIN NAMES HAVE USED MULTIPLE IP
17 ADDRESSES.

18 SO INDEED THE PLAINTIFF PUT IN EVIDENCE
19 THAT THEY HAVE A HISTORY OF ESSENTIALLY USING
20 DIFFERENT IP ADDRESSES.

21 IS YOUR PROFFER HERE THAT NONE OF THE IP
22 ADDRESSES HERE THAT ARE SHOWN FOR WENDY ARE
23 ASSIGNED TO THE DEFENDANTS?

24 MR. LOWE: NO, YOUR HONOR. I'M NOT
25 SUGGESTING THAT, BUT IT DOES SHOW THAT IT CHANGES.

1 IT MOVES AROUND.

2 THE COURT: THEN THE OBJECTION IS
3 OVERRULED. I DO RECOGNIZE THAT THIS IS A TIMING
4 ISSUE GIVEN THE FACT THAT THERE ARE ONLY TWO
5 DOCUMENTS OF THIS KIND THAT I KNOW OF SO FAR.

6 MR. LOWE: I BELIEVE THAT'S ALL.

7 THE COURT: I'LL EXCUSE THE TARDINESS OF
8 THE DISCLOSURE BECAUSE IT'S AN ISSUE THAT HAS
9 ALREADY BEEN SERVICED, AND, THEREFORE, THERE'S NO
10 SURPRISE.

11 MR. COOMBS: BUT IN ADDITION TO THE
12 TARDINESS, THE DOCUMENTS DO PREDATE THE DISCOVERY
13 CUTOFF. SO APART FROM THE FACT THAT THEY WERE NOT
14 DISCLOSED AS EXHIBITS IN THE CASE AND IF THEY
15 INTENDED TO USE THEM, THEY REALLY SHOULD HAVE BEEN
16 PRODUCED.

17 THE COURT: I UNDERSTAND. THE OBJECTION
18 IS OVERRULED SUBJECT TO THE COURT'S ADMONITION.

19 WE'LL SEE YOU AT 1:00 O'CLOCK.

20 (WHEREUPON, THE LUNCH RECESS WAS TAKEN.)
21
22
23
24
25

1 **AFTERNOON SESSION**

2 (WHEREUPON, THE FOLLOWING PROCEEDINGS
3 WERE HELD IN THE PRESENCE OF THE JURY:)

4 THE COURT: PERHAPS THE MOST CHALLENGING
5 TIME, FRIDAY AFTERNOON. SO DAZZLE US.

6 MR. LOWE: WE HAVE DANCING GIRLS IN THE
7 HALLWAY, YOUR HONOR. I WISH.

8 THE COURT: ALL RIGHT. LET ME ALLOW YOU
9 TO FINISH YOUR EXAMINATION.

10 MR. LOWE: THANK YOU.

11 Q WOULD YOU PLEASE LOOK AT EXHIBIT 1315.

12 MR. CHEN, COULD YOU PLEASE TELL US WHAT
13 THIS IS?

14 A THIS IS A DOMAIN TOOLS SCREEN SHOT AND DOWN
15 BELOW IT HAS THE DOS PROMPT PING DATA.

16 Q AND WHERE DID THIS COME FROM?

17 A I GOT THIS A WHILE AGO WHILE I WAS USING OR
18 CHECKING OR LEARNING DOMAIN TOOLS.

19 Q SO YOU GOT THIS INFORMATION YOURSELF?

20 A YES.

21 Q OKAY. SO DID THIS COME FROM TWO DIFFERENT
22 PLACES WHAT WE SEE ON ONE SHEET NOW?

23 A YES. ONE IS FROM A DOS PROMPT WHICH I COPY
24 PASTED AND THEN ANOTHER CAME FROM DOMAIN TOOLS.

25 Q THAT YOU COPY AND PASTED?

1 A YES.

2 Q OKAY.

3 A TO MAKE IT ONE COPY.

4 Q OKAY. AND WHAT IS THE PURPOSE OF THESE --
5 WHAT DO THESE TWO ITEMS SHOW?

6 A AS I SAID I SPENT ABOUT A MONTH TRYING TO
7 UNDERSTAND HOW DOMAIN TOOLS WORK.

8 JUROR: WE CAN'T SEE.

9 THE COURT: OH, I TURNED IT OFF.

10 YOU MAY PROCEED.

11 THE WITNESS: AND AS I WAS EXPLAINING A
12 WHILE AGO THAT I TRIED TO UNDERSTAND HOW DOMAIN
13 TOOLS WORK AND I PROBABLY SPENT PROBABLY A MONTH
14 AND SIGN UP GOLD MEMBER SO I KNOW WHAT IS IN IT AND
15 EVENTUALLY I COME TO THE CONCLUSION THAT THIS IS
16 NOT A REALTIME DATABASE.

17 Q A REALTIME?

18 A YES. NOT SOMETHING THAT YOU CAN GET AN EXACT
19 PING DATA ON IT.

20 Q IS PING DATA REALTIME?

21 A PING DATA WILL BE REALTIME, YES.

22 Q SO IT GIVES A REPORT OF WHAT IS GOING ON THIS
23 VERY SECOND, FOR EXAMPLE?

24 A YES, IN THIS PARTICULAR CASE IF YOU LOOK AT
25 EVEN THE IP ADDRESS SHOWING 204.

1 Q WHAT ARE WE LOOKING AT, THE DOMAIN TOOLS
2 PRINTOUT?

3 A YES. UNDER SERVER DATA AND YOU HAVE THE IP
4 ADDRESS.

5 Q CAN WE HIGHLIGHT THAT.

6 A AND SEE THE IP LOCATION.

7 Q NOW, WHAT IS -- FIRST OF ALL, WHAT DOMAIN NAME
8 ARE YOU LOOKING FOR HERE?

9 A THIS IS ESHOES99.NET.

10 Q ALL RIGHT. SO GO BACK UP TO THE IP ADDRESS,
11 PLEASE, FOR THIS ON THE DOMAIN TOOLS.

12 A SO AT THAT PARTICULAR POINT IT WAS SHOWING
13 204.16.192.77 AND UNDER THAT IP LOCATION IT SAYS
14 NEW YORK.

15 Q IT HAS AKANOC SOLUTIONS ON THAT LINE THOUGH?

16 A YES.

17 Q HAS AKANOC EVER BEEN IN NEW YORK?

18 A NO.

19 Q ALL RIGHT.

20 A AND I DOCUMENT THIS AND JUST TO BE SURE THAT I
21 UNDERSTAND THAT THIS IS NOT REALLY A REAL TIME
22 DATABASE.

23 Q OKAY. COULD YOU GO DOWN TO THE PING
24 INFORMATION AT THE BOTTOM OF THIS PAGE. AND WHAT
25 IS THE DOMAIN OR THE IP ADDRESS FOR THIS DOMAIN

1 SHOWN BY THE PING?

2 A SO IT IS SHOWING 61.145.126.133. AND BY
3 LOOKING AT THE PING TIME IT HAS 592 MILLISECONDS.
4 SO MOST LIKELY THIS IS IN CHINA.

5 Q AND HOW DO YOU KNOW THAT?

6 A BECAUSE OF THE PING TIME.

7 Q BECAUSE IT TAKES A LONG TIME?

8 A IN THE STATES IT'S PROBABLY ANYWHERE BETWEEN
9 15 MILLISECONDS ALL OF THE WAY TO LESS THAN 100
10 MILLISECONDS IF IT'S IN THE EAST COAST.

11 Q SO IT HAS TO TRAVEL ALL THE WAY AROUND THE
12 WORLD ON THE INTERNET?

13 A THAT'S CORRECT.

14 Q AND SO ARE THE -- IS THE IP ADDRESS SHOWN IN
15 THE PING THE SAME AS THE IP ADDRESS SHOWN IN THE
16 DOMAIN TOOLS REPORT?

17 A NO, IT IS NOT.

18 Q AND WERE THOSE DONE AT THE SAME TIME?

19 A YES, THAT'S CORRECT.

20 Q AND SO WHAT CONCLUSION DID YOU REACH FROM THAT
21 EXPERIMENT?

22 A AS I SAID, I SPENT A MONTH AND I DOCUMENT
23 VIEWED THIS TYPE OF DIFFERENT INFORMATION, AND
24 THERE'S NO POINT FOR ME TO INVESTIGATE ANY FURTHER.

25 Q ALL RIGHT. IF YOU LOOK PLEASE AT EXHIBIT

1 1614. WHAT IS THIS?

2 A THIS IS ANOTHER DOMAIN TOOL RECORD. IT IS
3 UNDER -- IF YOU SIGN UP FOR A GOLD MEMBER, YOU CAN
4 GET INTO THE IP ADDRESS HISTORY.

5 IP ADDRESS HISTORY BASICALLY IT'S SHOWING
6 HOW THIS SERVER CHANGED ALL OF THE IP IN A CERTAIN
7 PERIOD OF TIME AND WHAT ARE WE SEEING ON THIS
8 SCREEN OR ON THIS EXHIBIT.

9 ON THE LEFT-HAND SIDE IT SHOWS ALL OF THE
10 IP CHANGES, FOR EXAMPLE, IT SAID 2004-04-18. SO IT
11 WILL BE APRIL 18. AND IT WAS A POST-ACTION IP. SO
12 IT'S SHOWING 61.129.113.9.

13 AND THEN ON THE SECOND ITEM IT WILL SHOW
14 2004-06-12, JUNE THE 12TH AND IT CHANGED FROM
15 PRE-ACTION IP, WHICH IS THE POST ACTION IP OF THE
16 FIRST ITEM AND IT SHOWED IT TO A DIFFERENT IP WHICH
17 IS 61.129.113.30 AND GOING DOWN.

18 Q AND SO ALL OF THESE LISTED ITEMS ARE JUST
19 CHANGES IN THE IP ADDRESS FOR THIS WEB SITE?

20 A THAT IS CORRECT.

21 Q AND HOW OFTEN DOES IT APPEAR THAT THESE
22 CHANGES ARE MADE?

23 A IN THIS PARTICULAR CASE IT CHANGED QUITE A
24 BIT. EVEN HALF A MONTH.

25 Q OKAY.

1 A AND I DID, REMEMBER I DOCUMENTED.

2 THE COURT: JUST A MOMENT. DON'T GO
3 BEYOND THE QUESTION.

4 BY MR. LOWE:

5 Q OKAY. HOW MANY OF THESE IP ADDRESSES ARE
6 WITHIN YOUR RANGE FOR WENDY929?

7 A THE SECOND FROM THE BOTTOM THAT IT GETS INTO
8 205.209.163.83.

9 Q OKAY.

10 A THAT WOULD BE TO MANAGED SOLUTIONS.

11 Q AND THAT LOOKS LIKE THAT OCCURRED ON SEPTEMBER
12 23RD, 2006?

13 A YES.

14 Q AND THEN IT CHANGED AGAIN?

15 A IT CHANGED FROM THE MANAGED SOLUTIONS IP
16 ADDRESS WHICH IS 205.209 BLOCK TO 204.13.69.140.
17 THAT WOULD BE AN AKANOC SOLUTION IP ADDRESS.

18 Q OKAY.

19 A SO MOST LIKELY IT CHANGED FROM ONE SERVER TO A
20 DIFFERENT SERVER.

21 Q BUT ALL OF THE PRIOR ITEMS WERE NOT ANY OF
22 YOUR SERVERS?

23 A NO.

24 Q OVER ON THE RIGHT-HAND SIDE IF WE CAN MOVE UP
25 JUST A LITTLE BIT. WHAT IS THAT NAME SERVER

1 HISTORY?

2 A IT LOOKS LIKE FOR THIS PARTICULAR DOMAIN THEY
3 EVEN CHANGE THE NAME SERVERS.

4 Q NOW, WHAT IS THE SIGNIFICANCE OF THAT IN YOUR
5 OPINION?

6 A PROBABLY THEY GET CHANGED OUT FROM ONE DOMAIN
7 REGISTRAR TO A DIFFERENT DOMAIN REGISTRAR.

8 Q AND DIFFERENT REGISTRAR HAS USED DIFFERENT
9 NAME SERVERS?

10 A THAT'S CORRECT.

11 Q NOW, LET'S GO BACK AND TALK TO YOUR RESPONSE
12 OR YOUR RESPONSE FROM AKANOC ABOUT COMPLAINTS
13 SPECIFICALLY OF COPYRIGHT OR TRADEMARK
14 INFRINGEMENT.

15 IF YOU GET A COMPLAINT LET'S SAY FROM A
16 COMPANY LIKE AT LOUIS VUITTON AND FOR AN ATTORNEY
17 FOR A COMPANY WORKING FOR LOUIS VUITTON, WHAT IS
18 THE PRACTICE OF THESE COMPANIES UNDER YOUR
19 MANAGEMENT TO DO WITH THAT COMPLAINT?

20 A I'LL FORWARD THE INFORMATION TO MY DIRECT
21 CUSTOMER.

22 Q AND WHAT DO YOU ASK THE DIRECT CUSTOMER TO DO?

23 A BASICALLY, AS I SAID, EITHER I OR JULIANA
24 WOULD FORWARD THE WHOLE COMPLAINT TO THE CUSTOMER
25 OR I WOULD MORE OR LESS TRANSLATE IN A SHORTER FORM

1 THAT SHOWING THE DOMAIN ITSELF, THE PRODUCT THAT
2 HAS BEEN COMPLAINED AND THEN THE IP'S IN QUESTION
3 AND ALSO THE MAIN SERVER FOR THAT PARTICULAR IP.

4 Q AND DO YOU EXPECT SOMETHING TO HAPPEN WHEN YOU
5 FORWARD THAT COMPLAINT?

6 A USUALLY THE CUSTOMER WILL RESPOND ALL
7 DIFFERENTLY BUT ONE THERE WAS WE FORWARD TO THEIR
8 CUSTOMER, THAT WOULD BE ONE TYPE OF RESPONSE.

9 THEN WE NEED TO WAIT AND HOW THE CUSTOMER
10 COME BACK WITH THE RESOLUTION.

11 THEY MAY COME BACK SAYING WE CLOSED THE
12 WEB SITE, TURNING OFF THE WEB SITE.

13 Q YOUR RESELLER CUSTOMER?

14 A YES.

15 Q OKAY. AND IN THAT CASE I WOULD TYPE IN AND
16 TRY TO VISIT THAT PARTICULAR WEB SITE AND SEE
17 WHETHER IT'S AVAILABLE OR NOT. AND USUALLY IT WILL
18 SHOW PAGE NOT FOUND?

19 A PAGE NOT FOUND. AND THAT USUALLY INDICATES
20 THAT THEY TAKE THAT WEB SITE OUT.

21 Q AND WHAT OTHER THINGS MIGHT -- WHAT OTHER
22 RESPONSES MIGHT YOU GET?

23 A THEY MAY GET -- THEY MAY SAY WE MOVED A WEB
24 SITE TO SOMEWHERE ELSE.

25 IN THAT CASE I WILL PING THE DOMAIN NAME

1 AND IF IT'S SHOWING SOME OTHER NETWORK'S IP NOT
2 WITHIN MY NETWORK, THEN I WOULD CONSIDER THEY HAVE
3 DONE THEIR JOB.

4 Q OKAY.

5 A THEY MAY, WHICH IS THE ONE THAT I REALLY LIKE,
6 IS THAT THEY MAY NOT RESPOND AT ALL.

7 Q WHY DO YOU LIKE THAT?

8 A BECAUSE THAT -- THERE'S NO CONFUSION. IF THEY
9 DON'T RESPOND TO ME, AT LEAST I CAN DISABLE THE IP
10 AND NO QUESTION IS ASKED BECAUSE YOU DON'T RESPOND
11 TO ME. IF YOU RESPOND TO ME WITH ANY TYPE OF
12 LEGITIMATE ARGUMENTS, THEN I STILL NEED TO WORK
13 WITH YOU.

14 BUT IF YOU JUST DON'T RESPOND, IT'S
15 EASIER FOR ME.

16 Q DO YOU EVER TRY TO ARGUE WITH THE PEOPLE WHO
17 MADE THE COMPLAINT TO YOU AT LOUIS VUITTON SAYING
18 WHY ARE YOU SAYING THESE THINGS OR SOMETHING LIKE
19 THAT?

20 A ARGUE WITH THE COMPLAINER OR THE COMPLAINEE?

21 Q THE COMPLAINER?

22 A THE COMPLAINER? YES. MANY TIMES I EVEN HAVE
23 THE ATTORNEY CALL ME DIRECTLY ON THE PHONE AND ASK
24 ME TO REMOVE A PARTICULAR WEB SITE WHEREAS I DID
25 REMOVE THE WEB SITE.

1 Q YOU MEAN YOU HAD ALREADY DONE IT?

2 A YEAH, I HAD ALREADY DONE IT AND TWO HOURS
3 LATER THEY CALL BACK AND SAY SINCE THEY ALREADY
4 HAVE MY DESKTOP OR MY PHONE NUMBER, MY DIRECT
5 NUMBER, THEY CALL ME AND I PICK UP THE PHONE AND
6 THEY SAY YOU HAVEN'T DONE YOUR WORK. AND I SAID I
7 ALREADY DONE IT. AND THEY SAY WHY IS THE WEB SITE
8 STILL UP? I DON'T KNOW. BECAUSE THEY MOVE TO
9 SOMEWHERE ELSE.

10 BUT I WANT YOU TO TAKE IT DOWN, BUT I
11 DON'T KNOW HOW BECAUSE IT'S UNDER MY CONTROL. SO
12 THAT TYPE OF ARGUMENT I HAVE WITH ATTORNEYS ALL OF
13 THE TIME.

14 AND SOME OF THE ATTORNEYS ARE EITHER
15 REMOTELY I HAVE TO SHOW THEM HOW TO DO PINGS
16 BECAUSE THEY DON'T KNOW HOW TO PING AND THAT AT
17 LEAST GIVES THEM SOME INDICATION THAT IT'S NOT
18 WITHIN MY NETWORK. IT'S SOMEWHERE ELSE.

19 AND SOME OF THE ATTORNEYS JUST DON'T EVEN
20 LISTEN. THEY JUST KEEP SAYING I WANT IT TAKEN
21 DOWN. AND I HAVE NO INFORMATION FOR THEM.

22 Q AND DO YOU HAVE ANYTHING TO DO IN THAT CASE?

23 A NO, IT'S NOT WITHIN MY CONTROL.

24 Q OKAY. DO YOU GET ANY BENEFIT AT ALL IN THESE
25 BUSINESSES FROM HAVING COUNTERFEIT PRODUCTS SOLD ON

1 WEB SITES?

2 A NO, I'M NOT INVOLVED IN ANY WEB SITE AT ALL.

3 Q DOES IT CREATE PROBLEMS FOR YOU WHEN YOU GET
4 COMPLAINTS LIKE THIS?

5 A YES, SAVE ME A LOT OF THE HEAVY MIND DEALING
6 WITH THESE TYPE OF COMPLAINTS.

7 Q NOW, YOU TESTIFIED ABOUT JULIANA LUK HANDLING
8 SOME OF THE COMPLAINTS. HOW DO YOU DETERMINE
9 WHETHER SHE HANDLES THEM OR YOU DO?

10 A AS I SAID, WE MONITOR THE SAME E-MAIL ACCOUNT,
11 AND SO THERE WERE TWO THINGS FAIRLY EASY TO SEE
12 WHEN THEY FORWARDED THINGS OUT OR NOT.

13 ONE IS IF SHE FORWARDED ANYTHING TO THE
14 COMPLAINEE, THEN THERE WOULD BE A MARK ON THE
15 SUBJECT LINE THAT IT SHOWS IT'S BEEN FORWARDED AND
16 ALSO THAT WE TAKE DOWN THE IN BOUND E-MAIL NUMBERS
17 AS REFERENCE SO THAT IF CUSTOMERS RESPOND OR
18 ANYTHING, WE CAN EASILY FIND THAT E-MAIL TO THE
19 ORIGINAL COMPLAINT AND WE CAN WORK ON IT.

20 SO IF SHE WENT THROUGH EVERYTHING BEFORE
21 ME, THEN I GET TO PICK UP THE REST OF IT.

22 AND SOMETIMES IF I SEE SOMETHING
23 IMPORTANT, THEN I WOULD STEP IN AND GET IT DONE
24 BEFORE SHE NOTICES IT AND SAME THING TO THAT EFFECT
25 SHE WOULD DO ON THE OTHER SIDE.

1 Q AND NOW, HAVE YOU GIVEN HER WRITTEN
2 INSTRUCTIONS ABOUT WHAT TO DO?

3 A ORIGINALLY, YES, WHEN I STARTED TRAINING HER
4 HOW TO DO THE JOB AND WHAT SPECIFICALLY SHE NEEDED
5 TO DO.

6 AND AT CERTAIN TIMES SHE START DOING MORE
7 AND MORE, INCLUDING EVEN, INCLUDING UNPLUGGING
8 CUSTOMER AND WHATNOT, AND TO THE POINT THAT
9 SOMETIMES, BECAUSE SHE'S NOT TECHNICAL ENOUGH TO
10 UNDERSTAND WHETHER SHE SHOULD REALLY UNPLUG
11 CUSTOMERS. SO IT BECOMES A BURDEN OF IS ARGUMENT
12 OF WORKING WITH THE CUSTOMER SO TO THE POINT THAT I
13 GAVE HER VERY STRICT INSTRUCTIONS THAT UNLESS YOU
14 ARE 100 PERCENT SURE OF SOMETHING THAT IS -- THAT
15 YOU KNOW HOW TO HANDLE IT, THEN JUST LEAVE THE --
16 BRING IT TO MY ATTENTION, AND I WILL TAKE CARE OF
17 IT FROM THERE.

18 SO SOMETHING LIKE IF SHE SEES 30, 50
19 SPANS FROM ONE SERVER IN A VERY SHORT PERIOD OF
20 TIME, SHE WILL UNPLUG IT OR NOW SHE KNOWS THAT
21 SHE'S CAPABLE OF LOOKING AT THE DATA AND MAKE THAT
22 DECISION.

23 SOMETHING THAT NEEDS TECHNICAL ANALYSIS,
24 THEN SHE JUST LEAVES IT TO ME.

25 Q AFTER YOU GET A COMPLAINT FROM SOMEONE OR

1 COPYRIGHT OR TRADEMARK OR WHATEVER, DO YOU MAKE A
2 RESPONSE FOR SOMEONE TO REPORT BACK TO YOU?

3 A FOR LEGALLY, I DO RESPOND. FOR PEOPLE ASKING
4 QUESTIONS MORE AT THE TECHNICAL LEVEL I WOULD
5 RESPOND.

6 FOR GENERAL COMPLAINT LIKE BUSINESS
7 COMPLAINTS OR TRADEMARK INFRINGEMENT AND THIS SORT
8 OF STUFF, I TRY NOT TO COMPLAIN -- I TRY NOT TO
9 RESPOND SIMPLY BECAUSE IT ENDS UP TALKING TO
10 SOMEBODY WHO DOESN'T KNOW BUT GIVE ME A LOT OF
11 PRESSURE.

12 Q SO HOW, HOW IS THE COMPLAINER SUPPOSED TO KNOW
13 THAT SOMETHING HAS BEEN DONE?

14 A WE FIGURE -- AFTER WORKING AND TRY TO
15 ESTABLISH A SYSTEM FOR A WHILE, WE FIGURE THAT NO
16 MATTER HOW WE TRY TO CHASE THAT PARTICULAR DOMAIN
17 NAMES, IT WON'T HELP BECAUSE LIKE, AS I SAID, THE
18 CUSTOMER MAY COME BACK WITH SAYING WE CLOSED THE
19 WEB SITE SO WE CLOSED THE WEB SITE.

20 WELL, I VERIFY WE CLOSED THE WEB SITE.
21 IT DOESN'T MEAN THAT TWO HOURS LATER, TWO DAYS
22 LATER THEY'RE GOING TO TURN BACK OR TURN ON THE WEB
23 SITE AGAIN.

24 WE CHASE A DOMAIN NAME OUT OF OUR
25 NETWORK. IT DOESN'T MEAN THAT IT'S NOT COMING BACK

1 BECAUSE WE HAVE NO CONTROL OVER IT. SO WE DON'T
2 KNOW HOW TO FOLLOW UP WITH THOSE.

3 Q NOW, LET'S TAKE A COMPLAINT AND YOU SEND IT ON
4 TO THE CUSTOMER SAYING WE HAVE TAKEN IT OFF OUR
5 SERVER OR SOMETHING, AND THEN YOU VERIFY IT'S NOT
6 THERE ANYMORE; IS THAT RIGHT?

7 A THAT'S RIGHT.

8 Q NOW, WHAT CAUSES YOU TO TAKE ANY STRONGER
9 ACTION?

10 A FOR INSTANCE, IF ANOTHER COMPLAINT COMES IN
11 AND SOMETIMES EVEN SAY A SECOND COMPLAINT, THEN
12 I'LL VERIFY IT AGAIN OR IF IT'S STILL WITHIN --
13 EVEN WITHIN THE SAME SERVER OR WITH A DIFFERENT IP
14 MOST OF THE TIME I WOULD JUST UNPLUG THE SERVER SO
15 WHOEVER OPERATES THAT SERVER KNOWS, YOU CANNOT JUST
16 MOVE AROUND.

17 IF THEY COME BACK WITH ANY REPLY OR ANY
18 QUESTION TO THE SECURITY DEPARTMENT SAYING WHY IS
19 MY -- WHY DID YOU UNPLUG MY WHOLE SERVER, THEN I
20 WOULD ANSWER TO THEM YOU CANNOT LET THIS PARTICULAR
21 WEB SITE IN THIS SERVER BECAUSE YOU ARE JUST
22 DODGING THE -- YOU ARE DODGING WHAT WE ASSIGN YOU
23 AS THAT PREVIOUS IP AND TO A DIFFERENT IP. THAT
24 WON'T WORK.

25 Q NOW, IF YOU UNPLUG THE SERVER, DOES THAT

1 AFFECT OTHER USERS DOWN THE LINE?

2 A YES, EVERYTHING ON MY SERVER IS BASICALLY
3 GONE.

4 Q AND HOW DOES THAT AFFECT YOUR CUSTOMER?

5 A ALL THE CUSTOMER ARE NOT FUNCTIONING.

6 Q SO YOUR CUSTOMER'S CUSTOMER ARE ALL OFF THE
7 INTERNET?

8 A YES. THAT'S ASSUMING THAT THIS PARTICULAR
9 PERSON IS MANAGING THAT PARTICULAR SERVER.

10 Q AND WHAT DOES A CUSTOMER HAVE TO DO TO GET YOU
11 TO PLUG THEM BACK IN?

12 A I WOULD TELL THEM TO MOVE THAT DOMAIN NAME OUT
13 OF MY NETWORK.

14 Q AND WHAT DO THEY HAVE TO DO TO PROVE THAT TO
15 YOU?

16 A OH, THEY WOULD COME BACK IN A LITTLE TIME AND
17 SAY WE ALREADY CHANGED THE NAME SERVER
18 REGISTRATION, MEANING THAT THEY MOVE THE IP TO
19 SOMEWHERE ELSE. AND ONCE I CAN PING THAT
20 PARTICULAR IP IS NOT IN MY NETWORK, THEN THEY MUST
21 HAVE DONE SOMETHING.

22 Q NOW, UNDER WHAT CIRCUMSTANCES WOULD YOU
23 DISABLE -- EXCUSE ME -- DISABLE AN IP ADDRESS
24 INSTEAD OF UNPLUGGING THE ENTIRE SERVER?

25 A MOST LIKELY AS I EXPLAINED, IF YOU DON'T

1 RESPOND TO MY REQUEST FOR A CERTAIN PERIOD OF TIME,
2 THEN THAT PUTS ME IN THE POSITION TO JUST DISABLE
3 YOU.

4 Q SO YOU TYPICALLY DO THAT IF YOU DON'T HEAR
5 FROM THEM?

6 A THAT'S CORRECT.

7 Q BUT IF YOU SEE REPEATED PROBLEMS ON A SERVER,
8 YOU'LL UNPLUG THE SERVER?

9 A THAT IS CORRECT.

10 Q NOW, DO YOU EVER STOP DOING BUSINESS WITH SOME
11 CUSTOMER OF YOURS BECAUSE OF COMPLAINTS LIKE THIS?

12 A IF THEY ALWAYS REACT TO RESPONSES TO THE
13 COMPLAINT THAT WE SEND THEN FOR CONTRACTUAL REASONS
14 I CAN TERMINATE THEM AS LONG AS THEY RESPOND TO
15 WHAT WE ARE SENDING OR -- SO WE CAN'T JUST SAY WE
16 DON'T LIKE YOU SO WE TERMINATE YOU BECAUSE THEY PAY
17 FOR THEIR SERVICE.

18 THE COURT: I WANT TO MAKE SURE THAT THE
19 JURY UNDERSTANDS THAT ALTHOUGH THE WITNESS IS
20 TESTIFYING AS TO HIS UNDERSTANDING AND HIS BUSINESS
21 PRACTICE, HE IS NOT CITING TO YOU -- IT WOULD BE UP
22 TO THE COURT TO INSTRUCT YOU ON THE LAW.

23 IN OTHER WORDS, WHAT HE MAY OR MAY NOT DO
24 UNDER A CONTRACT, THERE MAY BE HIS UNDERSTANDING OF
25 WHAT HE WOULD DO UNDER A CONTRACT AND WHAT HE

1 LEGALLY WOULD DO, WHICH COULD BE A MATTER OF LAW.
2 AND ALTHOUGH HE'S TESTIFYING HERE ABOUT THESE
3 PRACTICES, I WANT YOU TO UNDERSTAND THAT THIS IS
4 HIS TESTIMONY ABOUT WHAT HE UNDERSTANDS THAT HE CAN
5 DO.

6 BY MR. LOWE:

7 Q NOW, DO YOU -- HOW WELL DO YOU KNOW YOUR MAIN
8 CUSTOMERS THAT YOU DEAL WITH?

9 A MOST OF THE BIGGER RESELLERS FROM CHINA I HAVE
10 DIRECT E-MAIL COMMUNICATION WITH THEM OR DUE TO
11 EITHER SECURITY WORK OR TECHNICAL WORK.

12 Q AND HAVE YOU BEEN ABLE TO DETERMINE WHETHER
13 CUSTOMERS ARE TRUSTWORTHY AND ARE ABLE TO DO WHAT
14 THEY NEED TO DO TO PREVENT PROBLEMS?

15 A MOST LIKELY THEY ARE JUST LIKE US, THEY ARE
16 RESELLERS.

17 SO THEY ARE PRETTY MUCH THE SAME AS US.
18 THEY ARE BEING HIT FROM THE ABUSER PER
19 SE.

20 Q VICTIMIZED BY THE SAME ABUSER?

21 A YES.

22 Q AND DO THEY IN A SENSE HAVE TO GO THROUGH THE
23 SAME PROCESS THAT YOU GO THROUGH WHEN THEY GET
24 COMPLAINTS?

25 A THAT IS CORRECT.

1 Q NOW, DO YOU EVER LOOK AT THE CONTENT OF A WEB
2 SITE THAT SOMEONE IS COMPLAINING ABOUT, IN OTHER
3 WORDS, SOMEONE IS SAYING WE HAVE A WEB SITE THAT WE
4 THINK IS SELLING COUNTERFEIT PRODUCTS, DO YOU LOOK
5 AT THE WEB SITE YOURSELF?

6 A FOR THE FIRST ROUND I DON'T EVEN CHECK THE
7 CONTENT. BASICALLY IT'S JUST FORWARD THE COMPLAINT
8 TO THE CUSTOMER.

9 AND SOMETIMES THE CUSTOMER WILL COME BACK
10 WITH A RESPONSE SAYING THAT WHATEVER YOU
11 COMPLAINED, I REMOVED THAT CONTENT.

12 SO, FOR INSTANCE, IF VUITTON'S PRODUCT IS
13 ON THE WEB SITE AND THEY CLAIM THAT THEY CLEANED UP
14 THE WEB SITE, AND SO I DON'T -- I WOULD TAKE THAT
15 AS AN ANSWER AND GET IT GOING AT THAT POINT.

16 BUT IF I RECEIVE ANOTHER COMPLAINT FROM
17 THE ORIGINAL COMPLAINER, ASSUMING THAT LOUIS
18 VUITTON SENT ME ANOTHER COMPLAINT SAYING THAT THIS
19 PARTICULAR WEB SITE STILL HAVE LOUIS VUITTON
20 PRODUCT ON IT, I WOULD GO IN AND I WOULD MAKE SOME
21 SEARCH OR USUALLY THIS TYPE OF WEB SITE THEY HAVE A
22 SEARCH BOX AND I WOULD TRY TO SEARCH LOUIS VUITTON
23 PRODUCT.

24 AND IF I TRIED TO SEARCH SOMETHING ON IT,
25 I WOULD DISABLE THAT IP AND THEN I WOULD NOTIFY THE

1 CUSTOMER AND THAT I DISABLED YOUR IP BECAUSE OF
2 THIS OFFENSE.

3 Q NOW, WHEN YOU SAY YOU GO IN AND DO A SEARCH,
4 ARE YOU DOING THIS ON YOUR SERVERS OR ARE YOU DOING
5 THIS THROUGH THE INTERNET LIKE I DO?

6 A INTERNET. THERE'S NO WAY I CAN GO INTO THE
7 SERVER TO SEARCH IT SIMPLY BECAUSE IN THE SERVER
8 ITSELF IT'S JUST STORING DATA. I MEAN, I HAVE NO
9 WAY OF KNOWING HOW THE WEB SITE IS CONSTRUCTED.

10 Q SO YOU WOULD LOOK AT IT JUST LIKE ANYBODY ELSE
11 WOULD?

12 A THAT'S CORRECT.

13 Q NOW, DO YOU HAVE TIME TO LOOK AT EVERY WEB
14 SITE THAT SOMEONE COMPLAINS ABOUT?

15 A NO, NOT EVEN CLOSE.

16 Q WHAT DO YOU ASSUME ABOUT THE COMPLAINTS? DO
17 YOU ASSUME THEY'RE RIGHT OR THEY'RE NOT RIGHT?

18 A I ASSUME THAT ALL OF THE COMPLAINT IS
19 LEGITIMATE OR BUSINESS COMPLAINTS, MOSTLY
20 LEGITIMATE, BUT I FORWARD IT TO MY CUSTOMER. IF
21 THEY DON'T COME BACK AND ARGUE, THEN IT'S
22 LEGITIMATE. BUT IF THEY COME BACK AND ARGUE WITH
23 ANY REASON, LIKE I SAID, I MEAN, I RAN INTO A
24 SITUATION IN THE PAST, THEN THEY WOULD COME BACK
25 AND ARGUE.

1 Q NOW, DO YOU MAINTAIN ANY LOGS OF ALL OF THE
2 COMPLAINTS YOU GET?

3 A IT'S ALL IN THE E-MAIL.

4 Q IT'S IN THE E-MAIL.

5 YOU TESTIFIED EARLIER ABOUT THE CPRO
6 DATABASE. DO YOU MAINTAIN ANY RECORDS IN THE CPRO
7 DATABASE ABOUT THE COMPLAINTS?

8 A NO, WE DON'T.

9 Q WHAT DO YOU MAINTAIN IN THAT DATABASE?

10 A IN THE CPRO THE CLOSEST BESIDES ALL OF THE
11 CUSTOMER INFORMATION AND THE SERVER BASIC
12 INFORMATION LIKE IP ADDRESS AND WHATNOT THERE'S A
13 NOTE SECTION THAT WOULD BE A NOTE FOR ANYTHING THAT
14 HAPPENED TO THAT PARTICULAR SERVER.

15 SO, FOR INSTANCE, IF I PUT AN ORDER TO --
16 IF WE PUT -- IF WE DISABLE THE IP, THEN THERE WOULD
17 BE A NOTE SECTION OF THE DATE THAT THE IP HAS BEEN
18 REMOVED. IF THE TECHNICIAN -- BECAUSE THAT
19 PARTICULAR INPUT OR ENTRY IS INPUTTED BY THE
20 TECHNICIAN WHO HAS THE FINAL TOUCH OF THE SERVER
21 ITSELF.

22 SO IN THAT CASE WHOEVER MAKES THAT ENTRY,
23 IF THEY ARE CLEVER ENOUGH, THEY WOULD ALSO DOCUMENT
24 PER STEVE DUE TO SAY WEB SITE, DUE TO A CERTAIN
25 REASON OR SOMETHING LIKE THAT.

1 BUT AT LEAST IF WE REMOVE OR IF WE DO
2 ANYTHING TO THE SERVER ITSELF THERE WOULD BE A
3 RECORD.

4 Q SO THE RECORD YOU HAVE ON THE CPRO IS ABOUT
5 THE TECHNICAL THINGS THAT YOU'RE DOING WITH THE
6 SERVER?

7 A YES, MORE OR LESS.

8 Q OKAY.

9 CAN YOU ENLARGE THIS A LITTLE BIT. NOW,
10 YESTERDAY I BELIEVE MR. WILSON TESTIFIED ABOUT THIS
11 EXHIBIT AND ONE OF THE COMMENTS THAT HE MADE ABOUT
12 IT HAD TO DO WITH -- WELL, THERE WERE A COUPLE OF
13 THINGS BUT FIRST OF ALL HE SHOWED THAT YOU HAD THE
14 ABILITY TO UNPLUG SERVERS AND CHANGE IP ADDRESSES.

15 IS THAT CORRECT?

16 A PLEASE REPHRASE THAT.

17 Q DO YOU AGREE WITH MR. WILSON THAT THIS PAGE
18 FROM THE CPRO DATABASE SHOWS THAT YOU HAVE THE
19 ABILITY TO UNPLUG SERVERS OR TO DISABLE IP
20 ADDRESSES?

21 A NO, I DISAGREE.

22 Q WHY?

23 A FOR EXAMPLE, ON THAT PARTICULAR ENTRY THE
24 FIRST ONE IS 137356 NUMBER.

25 Q OKAY.

1 A SO THAT PARTICULAR NUMBER IS OUR HELP DESK
2 NUMBER OR WHAT IT IS IS IF I AM SENDING AN
3 INSTRUCTION TO OUR SUPPORT TEAM, WHICH IS ANSWERED
4 BY THE HELP DESK SOFTWARE, YOU WOULD ASSIGN A
5 TICKET NUMBER AND I PUT REPLUG. THAT MEANS I
6 INSTRUCT THEM TO REPLUG THE SERVER BACK SO WE CAN
7 GET ACCESS TO IT.

8 THE USER, THE CUSTOMER CAN GET ACCESS TO
9 IT.

10 Q OKAY.

11 A AND IT SAYS, "SO DONNA CAN TURN OFF WEB
12 SERVICES" AND ALL OF THAT, DONNA IS A CUSTOMER. SO
13 IT'S NOT THAT WE REPLUG. THEN WE GO INTO THE
14 SERVER ITSELF. WE DON'T NEED TO REPLUG TO GO INTO
15 THE SERVER TO MOVE ONTO.

16 SO THIS INDICATES THAT WE JUST MAKE THE
17 CONNECTION AVAILABLE AGAIN AND SO THE CUSTOMER CAN
18 GO IN AND DO WHAT THEY NEED TO DO.

19 Q SO IN THIS PARTICULAR REFERENCE ON THAT LINE
20 OF EXHIBIT 616, DONNA IS NOT AN EMPLOYEE OF YOURS?

21 A DONNA IS NOT.

22 Q DONNA IS A CUSTOMER?

23 A DONNA IS A CUSTOMER.

24 Q AND IS THAT THE WAY IT'S DONE ALL OF THE TIME
25 IF ANYTHING HAS TO BE CHANGED WITHIN THE SERVER,

1 THE CUSTOMER DOES IT?

2 A YES, AS I PREVIOUSLY EXPLAINED. WE TRY NOT TO
3 TOUCH ANYTHING TO THE SERVER ITSELF.

4 Q IF YOU CAN GO BEYOND THAT FIVE LINES
5 CONCERNING THE INFORMATION ABOUT DONNA, I THINK IT
6 STARTS OUT WITH 137723, IF YOU CAN HIGHLIGHT THAT.

7 WHAT DOES THAT ENTRY MEAN?

8 A BASICALLY I'M PUTTING AN INSTRUCTION TO THE
9 SUPPORT TEAM TO UNPLUG A SERVER DUE TO IGNORING
10 ABUSE WARNING.

11 SO IN THIS CASE THEY DID DOCUMENT THE --
12 WHAT TYPE OF WARNING IT IS, THE DETAIL OF THE
13 WARNING ITSELF.

14 Q BUT THIS JUST SHOWS IT WAS UNPLUGGED BECAUSE
15 OF AN ABUSE PROBLEM?

16 A YES, THAT'S CORRECT.

17 Q AND ARE THERE OTHER ACTIONS SHOWN ON THIS
18 EXHIBIT THAT YOU TOOK OR YOUR COMPANIES TOOK AS A
19 RESULT OF ABUSE COMPLAINTS?

20 A TWO MORE ITEMS DOWN, TICKET NUMBER 138813
21 SHOWING THE SAME THING, A ROUTER UPDATE. "REMOVE
22 204.13.71.8 OUT FROM 204.13.69.92 DUE TO
23 COUNTERFEIT OR WEB SITE SOAPPAREL.NET PER STEVE."

24 SO THAT'S ANOTHER INSTRUCTION THAT I SENT
25 IN TO DISABLE AN IP AND THEN ONE MORE DOWN IT'S THE

1 SAME THING AN IP TAKING OUT A SERVER FROM
2 EASTARBIZ.NET.

3 Q AND A FEW UP IT LOOKS LIKE TICKET NUMBER
4 137452. IT LOOKS LIKE YOU'RE REMOVING SOMETHING
5 REGARDING A COUNTERFEIT PRODUCT COMPLAINT FOR MY
6 SNEAKER WORLD?

7 A YES, I REMOVED 204.13.70.38 FROM 204.13.69.170
8 DUE TO COUNTERFEIT COMPLAINT.

9 Q AND I JUST WANT YOU TO CLARIFY TO THE JURY
10 WHAT YOU MEAN WHEN YOU REMOVE ONE NUMBER FROM
11 ANOTHER.

12 A THE FIRST ONE IS THE IP THAT IS RESIDING IN A
13 MAIN IP WHICH IS THE NAME SERVER AND THE NAME
14 SERVER ALWAYS HAS ATTACHED TO IT AND WE ATTACH IT
15 TO THAT IP.

16 Q SO THIS IS REMOVING AN EXTRA IP FROM A SERVER?

17 A THAT'S CORRECT BECAUSE THAT PARTICULAR IP IS
18 HOSTING SOMETHING THAT WE NEED TO TAKE CARE OF.

19 Q AND NOW, DO YOU HAVE ANY IDEA AS YOU OPERATE
20 YOUR BUSINESS, HOW MANY WEB SITES, FOR EXAMPLE,
21 HAVE USED A SINGLE IP ADDRESS?

22 A I HAVE NO IDEA. I HAVE SEEN COMPLAINTS COME
23 IN FROM LOUIS VUITTON THAT HAVE ONE SINGLE IP HAS
24 MORE THAN 100 WEB SITES OR DOMAIN NAMES ON IT.

25 I DON'T EVEN KNOW HOW IT WOULD WORK,

1 TECHNICALLY HOW IT PERFORMS.

2 Q IS THERE ANY WAY MANAGED SOLUTIONS GROUP OR
3 AKANOC SOLUTIONS COULD PERMANENTLY PREVENT SOME
4 DOMAIN OR WEB SITE FROM USING YOUR SERVERS OR YOUR
5 IP ADDRESSES?

6 A AT THE DOMAIN LEVEL?

7 Q YES.

8 A NO.

9 Q WHY IS THAT?

10 A IT'S NOT CONTROLLED BY US.

11 Q WELL, LET'S SAY IF YOU ARE GETTING A LOT OF
12 COMPLAINTS, FOR EXAMPLE, FROM LOUIS VUITTON, CAN
13 YOU STOP SOME OUTFIT LIKE WENDY929 FROM USING YOUR
14 SERVERS?

15 A WELL, AS I EXPLAINED IT PREVIOUSLY, THE NAME
16 SERVER CONTROLS WHERE THE IP WILL GO FOR THAT
17 DOMAIN, SO WHOEVER CONTROLS THE NAME SERVER, THEY
18 CAN POINT TO WHEREVER THEY WANT.

19 Q OKAY. BUT YOU CAN'T CHANGE THAT?

20 A WE CANNOT CHANGE THAT BECAUSE WE ARE THE
21 RECEIVER, WE ARE NOT THE TEACHER.

22 Q OKAY. DO YOU KNOW WHEN A DOMAIN OR WEB SITE
23 HAS BEGUN USING YOUR EQUIPMENT OR YOUR SERVER OR
24 ADDRESS?

25 A SINCE AS LONG AS THE WEB CONTENT IS THERE, THE

1 IP, THE NAME SERVER POINTS TO THAT PARTICULAR
2 SERVER, THAT'S WHEN IT'S ACTIVE.

3 WE HAD NO WAY OF KNOWING, ONE, WHETHER
4 THE CONTENT IS WITHIN OUR SERVER; TWO, WE HAVE NO
5 CONTROL WHEN THE DOMAIN IS GOING TO BE POINTED TO
6 OUR NETWORK.

7 Q AND IS THERE ANY WAY YOU STOP ONE OF THESE
8 DOMAINS FROM COMING BACK TO YOUR SERVERS?

9 A TECHNICALLY I HAVE NOT SEEN ANYTHING AT THE
10 RECEIVING END TO STOP SOMETHING COMING IN.

11 Q WOULD YOU LIKE TO IF YOU COULD?

12 A YES.

13 Q WHY?

14 A THAT WOULD TAKE CARE OF MY LAWSUIT HERE IF
15 THERE WAS ANYTHING THAT WE COULD DO.

16 Q DO YOU HAVE A SIMILAR PROBLEM WITH SPAM, FOR
17 EXAMPLE, PEOPLE GETTING SPAM ONTO YOUR SERVERS AND
18 BEING ABLE TO STOP THAT?

19 A IN SPAMMING WE ARE THE SOURCE. SO AS LONG AS
20 WE CAN IDENTIFY THE SOURCE, WE CAN DISABLE THAT
21 SOURCE BY SHUTTING DOWN THAT SERVER.

22 Q BUT THAT'S DIFFERENT FROM SOMEONE'S WEB SITE?

23 A THAT'S DIFFERENT FROM THE WEB SITE. AS I
24 SAID, THE WEB SITE IS CONTROLLED BY THE NAME
25 SERVER. SO NAME SERVER WE, WE HAVE NO WAY OF

1 TOUCHING THAT.

2 Q YESTERDAY THERE WAS SOME TALK ABOUT PURCHASES
3 ON THE WEB SITES AND THE DIFFERENCE BETWEEN A
4 SECURE WEB SITE AND A NONSECURE WEB SITE. ARE YOU
5 FAMILIAR WITH THAT?

6 A YES.

7 Q AND WHAT IS THE DIFFERENCE BETWEEN A SECURE
8 WEB SITE AND A NONSECURE WEB SITE?

9 A WELL, IT'S DIFFERENT. ASSUMING YOU GO TO YOUR
10 BANK ACCOUNT WELLSFARGO.COM OR YOU TYPE IN
11 WWW.WELLSFARGO.COM, OR I SHOULD START WITH
12 HTTP://WWW.WELLSFARGO.COM YOU GET A DOMAIN SITE.

13 Q YOU PUT THAT IN ON YOUR BROWSER AND IT TAKES
14 YOU TO A SITE?

15 A YES.

16 Q AND?

17 A AND AT THAT POINT YOU'RE STILL SEEING HTTP.
18 BUT WHEN YOU START LOCKING INTO YOUR PURCHASING
19 ACCOUNT, THEN IT WILL CHANGE IT TO HTTPS, COLON,
20 SLASH, SLASH THE REST OF IT. AND THEN THAT MEANS
21 THAT YOU ARE IN THE SECURE WEB SITE AND ALL OF THE
22 TRANSMISSION IN BETWEEN IS ALL ENCRYPTED.

23 Q SO IF THERE'S AN S AT THE END OF THE HTTP THAT
24 MEANS IT'S A SECURE SITE?

25 A THAT IS CORRECT.

1 Q AND WHAT IS THE DIFFERENCE BETWEEN THE SECURE
2 SITE AND THE NONSECURE SITE?

3 A A GENERAL RULE IS WITH THE INSCRIPTION IS THAT
4 SOMETHING THAT WHATEVER IS TRANSMITTED IN BETWEEN,
5 THE VIEWER AND THE SOURCE, THEY DON'T WANT PEOPLE
6 TO CATCH IT AND THEY DON'T WANT PEOPLE TO BE ABLE
7 TO DECODE IT IN A SENSE.

8 SO IT'S, IT'S -- IF YOU HAVE FINANCIAL
9 INFORMATIONS, FINANCIAL DATAS, OR YOUR PERSONAL
10 DATAS, I.D.'S, YOU KNOW, ALL OF THAT STUFF, OR EVEN
11 IN THE ENGINEERING FORM THAT THEY WANT TO TRANSMIT
12 FROM THIS WEB SITE TO THE OTHER WEB SITE, NOT OUR
13 WEB SITE BUT TO ANOTHER LOCATION FOR THEIR
14 PROPRIETARY ENGINEERING WORK AND THINGS LIKE THAT
15 THEY USE ALL OF THE SECURITY MEASURES.

16 Q SO IT'S AN ENCRYPTED PROCESS?

17 A THAT IS CORRECT.

18 Q AND WHAT DOES IT TAKE, IF YOU KNOW, TO GET A
19 SITE TO BE A SECURE WEB SITE?

20 MR. COOMBS: OBJECTION, YOUR HONOR.
21 RELEVANCE, FOUNDATION.

22 THE COURT: WELL, IT DID COME IN
23 YESTERDAY, BUT I WONDERED ABOUT ITS RELEVANCE THEN
24 AND I CONTINUE TO WONDER ABOUT ITS RELEVANCE NOW.
25 THERE'S NO CLAIM HERE THAT THIS JURY WILL HAVE TO

1 DECIDE WITH RESPECT TO PAYMENT PROCEDURES OR ANY OF
2 THAT.

3 MR. LOWE: WELL, YOUR HONOR, THERE WAS
4 TESTIMONY YESTERDAY CONCERNING PAYMENT PROCEDURES
5 THAT MR. HOLMES TESTIFIED TO AND HE INDICATED THAT
6 THEY WERE NOT SECURE SITES, BUT THIS WITNESS CAN
7 TESTIFY CONCERNING THE DIFFICULTY OR THE FACT THAT
8 IF IT IS A SECURE WEB SITE IT HAS TO HAVE A SINGLE
9 FIXED IP ADDRESS AND IT CAN'T MOVE AROUND LIKE
10 OTHERS.

11 THE COURT: YES, BUT THAT'S WHAT I'M
12 TRYING TO INQUIRE AS TO WHAT DIFFERENCE WILL THAT
13 MAKE IN DECIDING THE QUESTION OF CONTRIBUTORY
14 COPYRIGHT INFRINGEMENT AND TRADEMARK.

15 MR. LOWE: BECAUSE IF YOU DON'T HAVE A
16 SECURE WEB SITE, YOU'RE NOT GOING TO BE ABLE TO
17 TAKE PAYMENT OVER THE WEB SITE.

18 THE COURT: THAT'S THE CHOICE OF SOMEONE,
19 BUT IT'S NOT A CLAIM THAT WOULD BE A DEFENSE HERE.

20 ARE YOU RAISING AS A DEFENSE THAT WE
21 DON'T HAVE A SECURED WEB SITE, THEREFORE, WE CANNOT
22 BE FOUND LIABLE?

23 MR. LOWE: THE DEFENSE, YOUR HONOR, IS
24 THAT BECAUSE THE WEB SITES OR THE DOMAINS THAT ARE
25 BEING COMPLAINED ABOUT BY LOUIS VUITTON ARE NOT

1 SECURE WEB SITES, THEY, IN FACT, CHANGE THEIR IP
2 ADDRESS AND IN ORDER TO TAKE PAYMENTS THROUGH
3 CREDIT CARDS AND SO ON YOU WOULD HAVE TO HAVE A
4 SECURE WEB SITE THAT WOULD HAVE A FIXED IP ADDRESS
5 WHEREAS THESE MOVE AROUND AS WE HAVE HAD TESTIMONY.

6 THE COURT: ALL RIGHT. I WILL SUSTAIN
7 THE OBJECTION. I DON'T THINK IT'S LOST ON ME OR
8 THE JURY THAT THERE ARE DIFFERENT PROCESSES FOR
9 PAYMENT FOR GOODS THAN WOULDN'T PERHAPS BE INVOLVED
10 IN THE DISPLAY AND THE USE OF THE COPYRIGHT.

11 THIS CASE CONCERNS THE USE AND DISPLAY OF
12 THE COPYRIGHT AND WERE THIS A CASE WHERE THE
13 DEFENDANTS WERE ACCUSED SOMEHOW OF BEING INVOLVED
14 IN PAYMENT AND THOSE SORTS OF THINGS, THOSE MATTERS
15 MAY BE MORE RELEVANT.

16 ALTHOUGH THERE WAS TESTIMONY, AND I
17 UNDERSTAND WHY YOU WOULD WANT TO GO INTO THIS, BUT
18 I THINK IN VIEW OF THE TIME I AM GOING TO SUSTAIN
19 MY OBJECTION.

20 MR. LOWE: VERY WELL, YOUR HONOR.

21 Q HOW HARD IS IT FOR A WEB SITE OR DOMAIN THAT
22 YOU HAVE TAKEN SOME ACTION AGAINST TO MOVE TO A
23 DIFFERENT IP ADDRESS FROM ONE THAT IS IN YOUR RANGE
24 TO SOMEONE ELSE'S?

25 A PROBABLY WITHIN TEN MINUTES.

1 Q TEN MINUTES?

2 A YOU JUST NEED TO GO TO LOG INTO YOUR DOMAIN
3 REGISTRATION SITE, CHANGE THE IP ADDRESS FOR THE
4 NAME SERVER.

5 Q AND NOTHING ELSE IS NECESSARY?

6 A AND THEN IT'S A MATTER OF HOW FAST THAT NEW
7 NAME SERVER INFORMATION CAN BE UPDATED THROUGHOUT
8 THE WORLD.

9 Q DOES IT -- IS IT NECESSARY FOR ONE OF THESE
10 DOMAINS TO MOVE THE DATA FROM YOUR SERVERS TO MOVE
11 IT TO ANOTHER SERVER?

12 A I HAVE SEEN, AS I JUST SAID IT, MY EXPERIENCE,
13 I HAVE SEEN A COMPLAINER CALLING ME BACK TWO HOURS
14 LATER AND SAYS WHY THE WEB SITE IS STILL UP AND I
15 SAY, WE ALREADY TOOK IT DOWN FROM OUR END.

16 SO WHAT HAPPENED IS THAT IF THAT
17 PARTICULAR CONTENT IS RECITED IN SOME OTHER IP
18 ADDRESS SOMEWHERE, AS LONG AS THE NAME SERVER
19 RECORD IS CHANGED TO A DIFFERENT LOCATION AND MAKE
20 THE CONNECTION, THAT WEB SITE IS UP RIGHT AWAY.

21 Q IS DATA THAT IS VISIBLE ON A WEB SITE, DOES
22 THAT HAVE TO BE STORED IN JUST ONE PLACE OR CAN IT
23 BE STORED IN MULTIPLE PLACES ON MULTIPLE SERVERS?

24 A BY LOOKING AT THE TRAFFIC PATTERN OF SOME OF
25 THE CUSTOMERS THAT RENT SERVERS FROM US, USUALLY

1 WHEN THEY RENT SERVER THEY UPLOAD A LOT OF THE
2 STUFF.

3 SO I WOULD IMAGINE THAT WHETHER THEY USE
4 EVERYTHING INSIDE OR SOMETHING, THEY MAY BE JUST A
5 PACKAGE OF EVERYTHING IN IT AND SO ASSUMING I'M THE
6 WEB SITE OPERATOR IF I RAN VIRUS INSIDE OF THE
7 UNITED STATES AND UPLOAD ALL OF THE SAME CONTENT AT
8 THE SAME TIME, THEN IT'S A MATTER OF HOW I CHANGE
9 MY NAME SERVER INFORMATION.

10 Q SO LET'S SAY THE NAME SERVER IS POINTING TO
11 YOUR SERVER FOR THIS DOMAIN NAME AND YOU SOMEHOW
12 SHUT THEM DOWN, CAN THEY JUST POINT TO ANOTHER
13 SERVER WHERE THEY HAVE THE SAME INFORMATION?

14 A AS I SAID, TEN MINUTES.

15 Q I'D LIKE YOU TO LOOK AT EXHIBIT 1598, PLEASE.
16 CAN YOU TELL ME WHAT THAT IS?

17 A THIS IS A SUMMARY REPORT BASED ON ALL OF THE
18 E-MAIL LOG THAT WE HAVE FOR COMPLAINTS COMING IN
19 AND HOW WE DID THE CHECKING, HOW WE REACT TO EVERY
20 SINGLE COMPLAINT.

21 Q EVERY COMPLAINT OR JUST THE COMPLAINTS FROM
22 LOUIS VUITTON?

23 A THIS IS JUST FOR LOUIS VUITTON.

24 Q AND DOES THIS REFLECT COMPLAINTS THAT WERE
25 MADE FROM THE BEGINNING OF THIS LAWSUIT AND UP

1 UNTIL NOW?

2 A YES, THAT'S CORRECT.

3 Q SO EVERY TIME YOU GET NEW COMPLAINTS FROM
4 LOUIS VUITTON, YOU MAINTAIN E-MAIL RECORDS FROM THE
5 TIME OF THIS LAWSUIT?

6 A YES, THAT'S CORRECT.

7 Q AND WERE THOSE E-MAIL RECORDS PROVIDED TO
8 LOUIS VUITTON THAT ARE SHOWN IN SUMMARY IN THIS
9 CHART?

10 A YES, THAT'S CORRECT.

11 Q NOW, LET'S GO THROUGH A FEW OF THESE SO YOU
12 CAN EXPLAIN TO US WHAT THESE ENTRIES MEAN.

13 OVER ON THE LEFT COLUMN THE FIRST ONE IS
14 UNDER THE WORD COMPLAINT APE168.COM. THAT'S A
15 DOMAIN NAME?

16 A THAT'S CORRECT.

17 Q AND UNDER THE COLUMN NOTICE DATE, WHAT DOES
18 THAT MEAN?

19 A THAT'S THE DATE I WAS NOTICED ON THIS
20 PARTICULAR DOMAIN.

21 Q AND WAS THAT ACTUALLY THE DATE THAT YOU GOT
22 THE COMPLAINT IN THIS CASE?

23 A THAT'S CORRECT.

24 Q UNDER THE NEXT COLUMN IT SAYS RESOLUTION.
25 WHAT DOES THAT ENTRY MEAN?

1 A THAT MEANS WHEN I CHECKED THAT PARTICULAR
2 DOMAIN NAME, THE IP ADDRESS IS NOT WITHIN OUR
3 RANGE.

4 Q AND YOU CHECK IT BY PINGING?

5 A BY PINGING, YES.

6 Q AND NOW THERE'S ANOTHER NOTICE DATE. WHAT
7 DOES THAT RELATE TO?

8 A SO JANUARY 3RD OF 2008 I RECEIVE ANOTHER
9 COMPLAINT FROM LOUIS VUITTON.

10 Q ABOUT APRIL168.COM?

11 A THAT'S CORRECT. AND THEN AT THAT TIME I CHECK
12 IT'S SHOWING A DIFFERENT IP ADDRESS.

13 Q AND A DIFFERENT IP ADDRESS. AND WHAT IS THE
14 RESOLUTION OF THAT?

15 A THAT THE IP ADDRESS IS NOT WITHIN MY RANGE.

16 Q AND SO BOTH TIMES YOU GOT COMPLAINTS THIS
17 DOMAIN NAME WASN'T USING YOUR IP ADDRESS?

18 A THAT'S CORRECT.

19 Q AND YOU DIDN'T GET ANY MORE COMPLAINTS SINCE
20 THAT TIME --

21 A APPARENTLY NOT.

22 Q -- ABOUT THAT ONE? OKAY.

23 EXPLAIN TO US ABOUT THE NEXT LINE
24 ATOZBRAND.COM. IS THAT ANY DIFFERENT?

25 A THAT'S PRETTY MUCH THE SAME.

1 Q AND SO BOTH TIMES YOU GOT COMPLAINTS OF THIS
2 LAWSUIT FILED AND LATER IT WAS NOT IN YOUR RANGE?

3 A THAT'S CORRECT.

4 Q AND BAG925.COM. WHAT HAPPENED ON THAT?

5 A SAME THING.

6 Q AND ESHOES99.COM?

7 A SO THE NEXT TIME IT'S NOT WITHIN THE CHANGE.
8 THE NOVEMBER 26 IT'S NOT WITHIN RANGE.

9 Q THAT MEANS IT'S NOT WITHIN YOUR RANGE OF IP
10 ADDRESSES?

11 A CORRECT.

12 Q AND THEN IT LOOKS LIKE YOU HAVE ANOTHER
13 NOTICE?

14 A THEN JANUARY 3RD OF '08 I HAVE, OF 2008, I
15 HAVE NOT WITHIN RANGE AGAIN.

16 Q ANOTHER COMPLAINT OR NOTICE?

17 A ANOTHER NOTICE. AND THEN ON MARCH 3RD OF 2008
18 IT'S WITHIN MY NETWORK AND THEN I SEND THE TAKEDOWN
19 NOTICE TO THE CUSTOMER OF MARCH 3RD AND AT THAT
20 TIME I EVEN UNPLUGGED THE SERVER.

21 Q NOW, WHEN YOU GOT A NOTICE OF COMPLAINT ON
22 MARCH 3RD, 2008, WHAT IS THE -- IS IT THE SAME IP
23 ADDRESS AS THE ONE BEFORE?

24 A NO. THAT -- THE TWO ARE THE MARCH 3RD
25 ACTUALLY IS IN MY NETWORK.

1 Q BUT IT'S DIFFERENT FROM THE ADDRESS IT WAS
2 USING IN JANUARY?

3 A YES.

4 Q SO THE FIRST TIME YOU GOT A NOTICE THAT IT WAS
5 IN YOUR RANGE, A NOTICE ABOUT SOMETHING THAT WAS IN
6 YOUR RANGE WAS ABOUT MARCH 3RD OF '08?

7 A THAT'S CORRECT.

8 Q AND DID YOU GET ANY FURTHER NOTICES AFTER YOU
9 TOOK IT DOWN AND YOU SENT THE TAKEDOWN NOTICE AND
10 UNPLUGGED THE SERVER WITH THAT PARTICULAR WEB SITE,
11 ESHOES99.COM?

12 A ANY?

13 Q DID YOU GET ANY OTHER NOTICES FOR COMPLAINTS
14 FROM LOUIS VUITTON ABOUT ESHOES99.COM AFTER MARCH
15 3RD, 2008?

16 A APPARENTLY NOT.

17 Q NOW, WE HEARD TESTIMONY FROM MR. HOLMES
18 YESTERDAY THAT HE HAD PURCHASED SOMETHING FROM
19 ESHOES99 ON FEBRUARY 17, 2009. DO YOU RECALL THAT?

20 A YES.

21 Q DID YOU GET ANY OTHER NOTICE FROM LOUIS
22 VUITTON BETWEEN MARCH 3RD, 2008 AND BEFORE HIS
23 PURCHASE IN 2009?

24 A NO, I DID NOT.

25 Q IF WE CAN GO, BRIEFLY GO TO EXHIBIT 14. NOW,

1 THIS WAS A PLAINTIFF'S EXHIBIT, A LETTER THAT WAS
2 SENT BY MR. COOMBS TO ME. DOES IT LIST ESHOES99 ON
3 IT?

4 A YES.

5 Q AND WHAT IS THE DATE OF THAT LETTER?

6 A MARCH 31ST.

7 Q 2008?

8 A 2008.

9 Q WERE YOU ABLE TO ESTABLISH THAT THERE WAS ANY
10 ACTIVITY ON THAT WEB SITE BEFORE THE PURCHASE WAS
11 MADE?

12 A I LOST THE QUESTION.

13 Q DID YOU EVER GET ANY NOTICE THAT THERE WAS ANY
14 ACTIVITY ON THAT WEB SITE BEFORE THE NOTICE --
15 BEFORE THE PURCHASE WAS MADE?

16 A THE PURCHASE WAS?

17 Q BY MR. HOLMES?

18 A NO.

19 Q THANK YOU. IF WE COULD GO BACK TO 1598. THE
20 FIFTH ONE ON THE COMPLAINT IS WENDY929.NET. WOULD
21 YOU TELL US WHAT THAT LINE INDICATES?

22 A SO WENDY929.NET, THE FIRST TIME I CHECKED ON
23 AUGUST THE 20TH, 2007 THE WEB SITE WAS NOT
24 FUNCTIONAL AND THEN NOVEMBER 26TH WHEN I SEE IT
25 IT'S ON A DIFFERENT IP ADDRESS.

1 Q SO LET'S TALK ABOUT THIS FIRST RESOLUTION.
2 WHAT DO YOU MEAN ABOUT NOT FUNCTIONAL?

3 A SO WHEN YOU TYPE IN WWW.WENDY929.NET IT
4 RESPONDS PAGE NOT FOUND OR SOMETHING LIKE THAT.

5 Q SO IT WAS NOWHERE ON THE INTERNET AS FAR AS
6 YOU CAN TELL?

7 A THAT'S CORRECT.

8 Q AND SO YOU GOT ANOTHER NOTICE OF NOVEMBER 26,
9 '07?

10 A THAT'S CORRECT.

11 Q AND WHAT DID YOU DO WHEN YOU GOT THAT?

12 A SO IT WAS ON A DIFFERENT IP ADDRESS AND I SENT
13 THE TAKEDOWN NOTICE OR SENT OR FORWARDED THE
14 COMPLAINT TO CUSTOMER ON NOVEMBER THE 29TH.

15 Q OKAY. AND THEN IT LOOKS LIKE WHAT HAPPENED
16 THREE DAYS LATER OR JANUARY 3RD, RATHER?

17 A I RECEIVE ANOTHER COMPLAINT ON JANUARY THE 3RD
18 AND ANOTHER BATCH OF COMPLAINT AND THEN I CHECK ON
19 IT AND IT SAID WEB SITE NOT FOUND OR FUNCTION.

20 Q SO OF THE FIVE WEB SITES THAT HAD BEEN
21 COMPLAINED ABOUT IN THIS LAWSUIT ORIGINALLY THIS
22 APPEARS TO SHOW THAT ONE OF THEM WASN'T WORKING
23 WHEN YOU GOT THE COMPLAINT AND FOUR OF THEM WEREN'T
24 IN YOUR RANGE; IS THAT RIGHT?

25 A THE FIRST TIME WHEN I CHECKED, YES.

1 Q NOW, YESTERDAY IN READING YOUR DEPOSITION
2 TESTIMONY, MR. COOMBS ASKED YOU ABOUT THE FACT THAT
3 YOU DIDN'T HAVE CERTAIN E-MAIL RECORDS FROM A
4 PERIOD OF TIME EARLIER THAN THIS LAWSUIT. SO DO
5 YOU KNOW EXACTLY WHEN YOU GOT EARLIER COMPLAINTS
6 ABOUT THESE FIVE WEB SITES?

7 A IT'S A COMMON THING. I HAVE NO RECOLLECTION
8 ON THAT.

9 Q OKAY. WHAT HAPPENED WHEN THE SERVER -- WHAT
10 HAPPENED TO CAUSE YOU TO LOSE E-MAIL RECORDS?

11 A THE -- FOR THIS PARTICULAR SERVER THAT WENT
12 DOWN, BASICALLY IT'S JUST A BAD HARD DRIVE. AND
13 ONCE YOU HAVE A BAD HARD DRIVE, THERE'S NOTHING --
14 UNLESS YOU WANT TO SPEND BIG MONEY TO GET DATA
15 RETRIEVABLE, OTHERWISE IT'S A BAD HARD DRIVE AND
16 NOTHING YOU CAN PULL OFF OF THERE.

17 AND WE TRIED TO THE BEST WE CAN AND
18 EVENTUALLY THE TECHNICIAN SAY, WELL, LET'S BRING IN
19 ANOTHER ONE BECAUSE E-MAIL SERVER FOR US IT'S JUST
20 A WAY TO COMMUNICATE WITH CUSTOMER. WE NEVER THINK
21 WE NEED TO PRESERVE THE DATA FOR ANY TYPE OF
22 LAWSUIT.

23 SO WE BRING IN A NEW SERVER AND THEN FROM
24 THERE I THINK IT'S JUNE 15TH, WE HAVE A NEW SERVER
25 AND ANYTHING BEFORE THAT ALL IN THE HARD DRIVE AND

1 ANYTHING AFTER THAT IS A CLEAR RECORD.

2 Q SO FROM JUNE 2007 ON?

3 A THAT IS CORRECT.

4 Q AND IF YOU HAD GOTTEN THE COMPLAINT PRIOR TO
5 JUNE OF 2007, WOULD YOUR PRACTICE IN HANDLING THAT
6 COMPLAINT BEEN ANY DIFFERENT THAN THE WAY YOU
7 TESTIFIED HERE TODAY?

8 A NO. AT THAT TIME WE DON'T HAVE A LAWSUIT. WE
9 WOULD KEEP GOING EXACTLY THE SAME WAY.

10 Q DO YOU HAVE ANY IDEA WHY THE IP ADDRESSES FOR
11 THESE -- LET'S ASSUME THAT LOUIS VUITTON THOUGHT
12 THAT THERE -- THAT THESE DOMAINS, THESE WEB SITES
13 WERE BEING HOSTED ON YOUR SERVERS AND THAT'S WHY
14 THEY FILED A LAWSUIT. DO YOU HAVE ANY IDEA WHY
15 THEY WERE NO LONGER ON YOUR RANGE OR THEY WERE NOT
16 FUNCTIONING AT THE TIME OF THE LAWSUIT?

17 A SOMEBODY MUST HAVE DONE SOMETHING TO TRIGGER
18 THE IP FROM CHANGING.

19 Q SOMETHING CAUSED SOMETHING TO CAUSE THE IP TO
20 CHANGE?

21 A MOST LIKELY WE SEE SOMETHING AND WE FORWARD IT
22 TO THE CUSTOMER AND THE CUSTOMER DECIDES TO MOVE IT
23 AROUND.

24 Q NOW I WANT TO DROP DOWN TO A NUMBER OF THESE
25 ENTRIES AND TRY TO FOCUS ON THE ONES THAT

1 MR. HOLMES FOCUSSED ON YESTERDAY. BELOW THE DATE
2 OF NOVEMBER 26, 2007. WAS THAT THE DATE THAT YOU
3 GOT A NUMBER OF COMPLAINTS FROM LOUIS VUITTON?

4 A WHICH ONE?

5 Q NOVEMBER 26, 2007?

6 A YES, THAT ONE.

7 Q SO THE SECOND ONE UNDER THAT IS BAGS
8 4SELL.COM. DO YOU SEE THAT?

9 A YES.

10 Q AND TELL US WHAT HAPPENED WHEN YOU GOT THOSE
11 COMPLAINTS AND WHAT YOUR FOLLOW-UP WAS?

12 A SO NOVEMBER 26, 2007 WHEN I RECEIVED THE LIST
13 AND I VERIFIED THAT'S WITHIN MY IP RANGE, AND I
14 SENT THE COMPLAINT TO THE CUSTOMER ON NOVEMBER 29.

15 Q TWO DAYS LATER OR THREE DAYS LATER?

16 A YES.

17 Q AND DID YOU GET ANOTHER COMPLAINT OR NOTICE
18 AND AT ANOTHER TIME?

19 A JANUARY 3RD OF 2008 I DID RECEIVE ANOTHER
20 COMPLAINT THEN IT'S ON A DIFFERENT IP.

21 Q OKAY. WELL, I THOUGHT IT SAYS, YEAH, A
22 DIFFERENT IP AND? WAS IT OPERATIONAL? FUNCTIONAL?

23 A ON JANUARY 11 I VERIFIED THAT OF THE WEB SITE
24 IS NOT FUNCTIONING.

25 Q SO YOU GOT A NOTICE ON THE 3RD OF JANUARY OF

1 '08 AND THEN YOU CONFIRMED IT WAS NOT FUNCTIONAL?

2 A THAT'S CORRECT.

3 Q AND LET'S LOOK AT BIGWORLDSHOES.COM. WE HEARD
4 A LOT ABOUT THAT. YOU GOT THE COMPLAINT FROM THEM
5 FIRST WHEN?

6 A NOVEMBER 26, '07.

7 Q AND WHAT DID YOU DO?

8 A I SENT THE TAKEDOWN NOTICE TO OR FORWARDED THE
9 COMPLAINT TO THE CUSTOMER ON NOVEMBER THE 29TH.

10 Q AND THEN DID YOU GET ANOTHER NOTICE?

11 A AND THEN ON JANUARY 3RD I HAVE A DIFFERENT
12 COMPLAINT AND I CHECK ON IT AND IT'S ON A DIFFERENT
13 IP.

14 Q DIFFERENT THAN THE ONE BEFORE?

15 A YES.

16 Q OKAY.

17 A AND THEN I SENT ANOTHER TAKEDOWN NOTICE ON THE
18 11TH.

19 Q JANUARY THE 11TH?

20 A AND THEN I VERIFIED OUR WEB SITE DID NOT
21 RESOLVE ON THE 14TH.

22 Q IS THAT THE SAME AS NOT FUNCTIONING?

23 A YES.

24 Q AND THEN WHAT HAPPENED -- WHAT WAS THE NEXT
25 DATE THAT YOU HEARD ABOUT BIGWORLDSHOES.COM?

1 A EXCUSE ME. DOES NOT RESOLVE MEANING THAT IT
2 DOES NOT EVEN SHOW ANY IP'S.

3 Q AH.

4 A SO MOST LIKELY THE DOMAIN OPERATOR GOES INTO
5 THE REGISTRAR AND WIPE OUT THE NAME SERVER RECORDS.

6 Q AND YOU HAD TO CHANGE REGISTRARS OR SOMETHING?

7 A YES.

8 Q AND SO IF IT'S NOT FUNCTIONAL IT'S MAYBE JUST
9 TURNED OFF RIGHT NOW. BUT IF IT'S NOT RESOLVED,
10 IT'S NOT EVEN LISTED ON ANYBODY'S REGISTRY?

11 A THAT'S CORRECT.

12 Q SO WHEN WAS THE NEXT TIME THAT YOU HEARD ABOUT
13 BIGWORLDSHOES.COM?

14 A THEN JANUARY 30TH, 2009.

15 Q A YEAR LATER?

16 A YES. AND IT'S ON A DIFFERENT IP AGAIN WITHIN
17 OUR RANGE.

18 Q OKAY.

19 A AND THEN WE SENT THE COMPLAINT TO OUR
20 CUSTOMER, TAKEDOWN NOTICE SENT ON FEBRUARY THE 2ND.

21 AND THEN FEBRUARY THE 9TH I CONFIRMED
22 THAT IT'S OUT OF OUR RANGE?

23 Q OKAY. DID YOU HEAR FROM THEM AGAIN?

24 A ON FEBRUARY THE 4TH OF '09. SO I THINK IF YOU
25 LOOK AT THE RECORD JANUARY '09 -- NO, FEBRUARY THE

1 2ND TAKEDOWN NOTICE SENT AND FEBRUARY 4TH I SENT
2 OUT -- WELL, ACTUALLY IT'S THE SAME TAKEDOWN
3 NOTICE. I SENT IT ON THE 2ND.

4 Q OKAY.

5 A SO IT'S DUPLICATE RECORD, BUT I VERIFY IP
6 ADDRESS OUT OF RANGE ON FEBRUARY THE 9TH.

7 Q NOW, MR. HOLMES TESTIFIED THAT HE MADE A
8 PURCHASE FROM BIGWORLDSHOES.COM ON FEBRUARY 24,
9 2009. IS IT CORRECT TO UNDERSTAND THAT IT WAS
10 AFTER YOUR LAST NOTICE AND AFTER YOU CONFIRMED IT
11 WAS OUT OF YOUR RANGE?

12 A YES.

13 Q DID YOU GET ANY NOTICE FROM LOUIS VUITTON
14 ABOUT BIGWORLDSHOES.COM BETWEEN THE TIME THAT YOU
15 DETERMINED IT WAS NOT IN YOUR RANGE ON FEBRUARY 9,
16 2009 AND THE DATE OF PURCHASE ON FEBRUARY 24, 2009?

17 A NO, I HAVEN'T.

18 Q NOW, YOU ALSO HEARD TESTIMONY FROM MR. WILSON
19 THAT HE REBUILT A WEB SITE FROM SERVER DATA HE
20 COLLECTED FROM YOUR DATA CENTER AND THAT HE REBUILT
21 THIS BIGWORLDSHOES.COM WEB SITE. DO YOU REMEMBER
22 THAT?

23 A YES.

24 Q UNTIL HE DID THAT, DID YOU HAVE ANY KNOWLEDGE
25 THAT BIGWORLDSHOES.COM WAS USING YOUR SERVERS?

1 A NO, I HAVE NO WAY TO KNOW.

2 Q AND WHY DO YOU HAVE NO WAY TO KNOW?

3 A AS I PREVIOUSLY EXPLAINED, UNLESS I'M PINGING
4 THAT PARTICULAR DOMAIN EVERY TWO HOURS, OTHERWISE I
5 HAVE NO WAY TO KNOW WHEN -- WHERE THEY ARE GOING TO
6 LIMIT.

7 Q AND SO LET'S SAY BETWEEN FEBRUARY 2009 AND THE
8 TIME THAT MR. WILSON COLLECTED THE INFORMATION, DID
9 LOUIS VUITTON SEND YOU ANY NOTICES ABOUT
10 BIGWORLD SHOES.COM?

11 A NO.

12 Q AND IF THEY HAD, WHAT WOULD YOU HAVE DONE?

13 A SAME PROCESS. I WOULD CHECK ON THE IP. IF
14 THE IP IS RESIDING IN THE SAME SERVER, THEN I WOULD
15 UNPLUG THE SERVER.

16 Q ALL RIGHT. LET'S GO TO THE NEXT PAGE OF THIS
17 EXHIBIT AND DOWN TOWARD THE BOTTOM THERE'S AN ENTRY
18 FOR GUCCIFENDI.COM. DO YOU SEE THAT?

19 A YES.

20 Q AND CAN YOU TELL US WHEN YOU FIRST GOT A
21 NOTICE FROM LOUIS VUITTON ABOUT THAT?

22 A THAT WOULD BE NOVEMBER 26, '07.

23 Q AND WHAT DID YOU DO?

24 A SO THERE'S AN ENTRY SAYING TAKEDOWN NOTICE
25 SENT ON NOVEMBER 29.

1 Q AND DID YOU CHECK THE STATUS OF THIS ON
2 JANUARY 3RD, 2008?

3 A JANUARY 3RD, I BELIEVE THAT'S ANOTHER BATCH OF
4 THE COMPLAINTS OF THE DOMAINS AND THAT ONE ON THE
5 PARTICULAR COMPLAINTS IT DID LIST GUCCI FENDI.COM
6 AGAIN. AND I CHECKED ON THE WEB SITE AND THE WEB
7 SITE WAS NOT FUNCTIONAL.

8 Q AND NOW MR. HOLMES TESTIFIED THAT HE MADE A
9 PURCHASE FROM GUCCI FENDI.COM ON NOVEMBER 13, 2007.
10 DO YOU RECALL THAT?

11 A I DON'T RECALL THE DATE, BUT I DO RECALL THAT
12 HE MADE A PURCHASE.

13 Q OKAY. IF THAT DATE IS CORRECT THAT WOULD BE
14 SEVERAL DAYS BEFORE YOU GOT YOUR FIRST NOTICE FROM
15 LOUIS VUITTON ABOUT THIS WEB SITE?

16 A YES.

17 Q AND WOULD YOU HAVE ANY WAY OF KNOWING THAT
18 GUCCIFENDI.COM WAS SENDING COUNTERFEIT PRODUCTS AND
19 USING YOUR SERVERS AT THE TIME HE BOUGHT PRODUCTS
20 FROM THEM?

21 A NO.

22 Q LET'S GO TO THE NEXT PAGE, PAGE 3 AND THE
23 THIRD ITEM ON THAT PAGE IS INNIKE.COM. TELL US
24 WHEN YOU FIRST GOT NOTICE ABOUT THAT?

25 A ON NOVEMBER 26, '07 AND I PROCESSED THE

1 TAKEDOWN NOTICE ON NOVEMBER THE 29TH AND THEN
2 JANUARY THE 3RD OF 2008 THERE WAS ANOTHER COMPLAINT
3 WHICH I PROCESSED THE COMPLAINT TO THE CUSTOMER ON
4 JANUARY THE 14TH. AND IN THIS PARTICULAR CASE THE
5 IP WAS DISABLED ON THE NEXT DAY BECAUSE THE
6 CUSTOMER DID NOT REPLY.

7 Q SO THAT WAS ONE OF YOUR FAVORITE RESPONSES, NO
8 REPLIES SO YOU --

9 A THAT'S CORRECT.

10 Q SO YOU UNPLUG THEM BASICALLY. COULD WE TAKE A
11 LOOK AT EXHIBIT 7. IS THIS A LETTER FROM
12 MR. COOMBS TO ME THAT LISTS INNIKE.COM AND ALONG
13 WITH A LOT OF OTHERS?

14 A THAT'S CORRECT.

15 Q AND THIS WAS INTRODUCED YESTERDAY BY THE
16 PLAINTIFFS?

17 A YES.

18 Q AND IS THAT WHERE YOU GOT YOUR FIRST NOTICE OF
19 THIS PARTICULAR WEB SITE?

20 A YES.

21 Q NOW IF WE CAN GO BACK TO 1598, PLEASE. IF
22 MR. HOLMES YESTERDAY TESTIFIED THAT HE MADE A
23 PURCHASE IN MAY OF 2007, MAY 30TH, 2007, ACCORDING
24 TO MY NOTES, WOULD THAT BE BEFORE OR AFTER YOU GOT
25 YOUR FIRST NOTICE FROM LOUIS VUITTON?

1 A THAT WOULD BE BEFORE.

2 Q BEFORE YOU GOT YOUR FIRST NOTICE WOULD YOU
3 HAVE ANY IDEA THAT INNIKE.COM WAS USING YOUR
4 SERVERS TO SELL COUNTERFEIT GOODS?

5 A NO.

6 Q ANY WAY?

7 A NO WAY.

8 Q AND ON 7 IF WE CAN SCAN TO THE BOTTOM ON PAGE
9 3 LOOKING AT LUXURYTOUS.COM.

10 PLEASE TELL US WHAT HAPPENED WHEN YOU GOT
11 YOUR FIRST NOTICE AGAIN, ONCE AGAIN THAT SAME
12 EXHIBIT 7 ON NOVEMBER 26, 2007?

13 A WE VERIFIED THAT THE IP IS WITHIN OUR RANGE.
14 WE SENT OUR NOTICE TO THE CUSTOMER ON THE 29TH.

15 Q OKAY. AND DID YOU HAVE OCCASION TO CHECK IT
16 AGAIN?

17 A ON JANUARY THE 3RD IT'S ON A DIFFERENT IP.

18 Q BUT WITHIN YOUR RANGE?

19 A WITHIN OUR RANGE. AND SINCE IT'S ON A
20 DIFFERENT IP, MOST LIKELY IT'S A DIFFERENT CUSTOMER
21 SO I NEED TO SEND ANOTHER NEW TAKEDOWN NOTICE.

22 Q AND THEN DID YOU CHECK ON IT THE NEXT DAY?

23 A THEN THE NEXT DAY I SENT THE BATCH, EVERYTHING
24 OUT ON THE 14TH. SO THE SECOND DAY I VERIFIED
25 EVERY SINGLE NOTICE THAT I SENT AND I FOUND THIS

1 ONE WEB SITE DID NOT RESOLVE.

2 Q WHICH MEANS THAT IT DIDN'T -- IT WASN'T
3 REGISTERED ANYWHERE WITHIN THE INTERNET SERVER
4 SYSTEM?

5 A THAT'S CORRECT.

6 Q NOW, MR. HOLMES HAD TESTIFIED THAT HE MADE A
7 PURCHASE FROM THAT LOCATION ON NOVEMBER 6TH, 2007
8 IF MEMORY IS CORRECT. WOULD THAT HAVE BEEN BEFORE
9 OR AFTER YOU GOT YOUR NOTICE ABOUT LUXURYTOUS.COM?

10 A IT WOULD HAVE BEEN BEFORE.

11 Q AND WOULD YOU HAVE ANY WAY OF KNOWING THAT
12 THAT WEB SITE WAS SELLING COUNTERFEIT PRODUCTS AND
13 USING YOUR SERVER FOR COMMUNICATION?

14 A NO.

15 Q IF WE GO TO THE NEXT PAGE, PAGE 4 ABOUT
16 HALFWAY DOWN. PICKYOURGOODS.COM. PLEASE TAKE A
17 LOOK AT THAT AND TELL US WHAT NOTICE YOU GOT AND
18 WHAT YOU DID.

19 A NOVEMBER 26, '07 AND I SEND THE TAKEDOWN
20 NOTICE SENT ON NOVEMBER 29. AND JANUARY 3RD OF '08
21 I VERIFY. AND SO I NEED TO VERIFY A DIFFERENT
22 CUSTOMER AND ON THE 15TH THE WEB SITE DID NOT
23 RESOLVE.

24 Q ONCE AGAIN NOT LISTED ANYWHERE ON THE
25 INTERNET?

1 A THAT'S CORRECT.

2 Q AND IF MR. HOLMES BOUGHT PRODUCT FROM THEM IN
3 JUNE OF 2007, THAT WOULD HAVE BEEN BEFORE YOU GOT
4 YOUR FIRST NOTICE?

5 A THAT'S CORRECT.

6 Q IF YOU GO DOWN A COUPLE OF LINES TO RRGNL.COM.
7 WHEN DID YOU GET YOUR FIRST NOTICE?

8 A NOVEMBER 26, '07.

9 Q AND WHAT DID YOU FIND WHEN YOU CHECKED IT?

10 A WEB SITE NOT FUNCTIONAL.

11 Q TURNED OFF OR SOMETHING?

12 A PAGE NOT FOUND.

13 Q AND DID YOU CHECK IT AGAIN ON JANUARY 3RD OF
14 2008?

15 A YES, AND STILL WEB SITE PAGE NOT FOUND.

16 Q NOW, MR. HOLMES, I BELIEVE, THE RECORD WILL
17 SHOW THAT HE RECEIVED A PRODUCT FROM THIS WEB SITE
18 ON NOVEMBER 26, 2007, THE SAME DAY OF THE DATE OF
19 MR. COOMBS HERE. WOULD YOU HAVE GOTTEN ANY NOTICE
20 BEFORE HE MADE HIS PURCHASE?

21 A NO.

22 Q IF WE GO TO THE NEXT PAGE. THE FIRST ITEM ON
23 THAT IS SOAPPAREL.COM. COULD YOU TELL US WHAT THE
24 SEQUENCE OF EVENTS WAS REGARDING THAT?

25 A NOVEMBER 26, '07 WE RECEIVED THE FIRST

1 COMPLAINT. WE SENT THE COMPLAINT TO OUR CUSTOMER
2 ON THE 29TH, TWO DAYS LATER; AND THEN JANUARY 3RD I
3 HAVE ANOTHER COMPLAINT; AND THEN I SENT DOWN THE
4 TAKEDOWN NOTICE TO THE CUSTOMER ON THE 14TH; AND ON
5 THE 15TH WHEN I CHECK IT, IT'S STILL UP AND SO I
6 SAID NO IP.

7 Q AND IT SAYS NULL ROUTED IP?

8 A PRETTY MUCH THE SAME THING IT'S BLOCKING AT
9 THE ROUTER LEVEL.

10 Q AND THEN WHAT HAPPENED?

11 A ON MARCH 3RD, I RECEIVED A DIFFERENT COMPLAINT
12 BUT IT'S ON ANOTHER IP SO I NEED TO SEND A
13 DIFFERENT COMPLAINT TO MY CUSTOMER.

14 Q A DIFFERENT CUSTOMER?

15 A APPARENTLY IT'S A DIFFERENT CUSTOMER. IF IT'S
16 THE SAME CUSTOMER I WAS DOING IT IN THE SAME
17 SERVER, AND I WOULD UNPLUG THE SERVER AT THAT TIME.

18 Q WELL, IT SAYS THAT YOU DID UNPLUG THE SERVER
19 AT THAT TIME?

20 A THEN MAYBE IT'S THE SAME ONE. THERE ARE TWO
21 LEVELS OF THE TAKEDOWN NOTICE. ONE IS PLEASE TAKE
22 CARE OF THE PROBLEM. AND THE OTHER ONE IS THAT
23 YOUR IP HAS BEEN DISABLED OR YOUR SERVER HAS BEEN
24 UNPLUGGED DUE TO A SERIOUS OFFENSE, BUT WE CAN GO
25 BACK TO THE ORIGINAL E-MAIL TO SEE WHAT TYPE OF

1 COMPLAINT I SENT.

2 Q AND AS TO SOAPPAREL.COM, MR. HOLMES TESTIFIED
3 THAT HE RECEIVED GOODS FROM THEM ON MAY 26, 2007.
4 WAS THAT BEFORE OR AFTER YOU GOT YOUR NOTICE?

5 A THAT'S BEFORE.

6 Q AND THE NEXT ONE ON THIS PAGE IS
7 SUNNY7SHOES.COM. TELL US WHAT THE HISTORY WAS OF
8 YOUR ACTION ON THAT?

9 A THE FIRST COMPLAINT I RECEIVED IS ON NOVEMBER
10 26, '07. WHEN I CHECKED IP ADDRESS NOT WITHIN
11 RANGE.

12 Q NOT IN YOUR RANGE AT ALL?

13 A THAT'S CORRECT. AND JANUARY 3RD, '08, ANOTHER
14 COMPLAINT AND AT THAT TIME I CHECKED IP NOT WITHIN
15 OUR RANGE.

16 AND JANUARY THE 30, AS I RECEIVED ANOTHER
17 COMPLAINT, AND IT'S ON A DIFFERENT IP WHICH IS
18 WITHIN OUR RANGE. THEN I DISABLED THAT IP ON
19 FEBRUARY THE 2ND.

20 THEN WHEN I NEXT CHECKED IP ADDRESS NOT
21 WITHIN OUR RANGE ON FEBRUARY THE 9TH.

22 I THINK, AGAIN, IT'S A DUPLICATE ENTRY.

23 Q OKAY.

24 A THE NEXT ONE IS ON JANUARY 30TH AND FEBRUARY
25 4.

1 Q NOW, MR. HOLMES TESTIFIED THAT HE MADE TWO
2 PURCHASES FROM THIS WEB SITE, THE FIRST ONE, I
3 BELIEVE, WAS ON NOVEMBER 6TH, 2007. WAS THAT
4 BEFORE OR AFTER YOU GOT YOUR FIRST NOTICE?

5 A THAT'S BEFORE.

6 Q AND I BELIEVE HE TESTIFIED THAT HE MADE
7 ANOTHER PURCHASE IN FEBRUARY -- I'M SORRY -- MARCH
8 10TH OF 2009.

9 HAD YOU GOTTEN ANOTHER NOTICE ABOUT THAT
10 OTHER THAN WHAT IS SHOWN IN HERE ON THIS LINE
11 BEFORE HE MADE HIS PURCHASE THEN?

12 A NO, I DID NOT.

13 Q BUT ON NOVEMBER -- FEBRUARY 9TH OF 2009, THE
14 LAST YOU CHECKED THIS WEB SITE WAS NOT IN YOUR
15 RANGE?

16 A THAT'S CORRECT.

17 Q AND IF WE GO DOWN A COUPLE OF LINES WE GET TO
18 WATCHNREPLICA.NET. BRIEFLY TELL US ABOUT YOUR
19 HISTORY THERE?

20 A THE FIRST TIME I RECEIVED THIS IS ON NOVEMBER
21 26, '07 AND I FORWARDED THE COMPLAINT OUT NOVEMBER
22 THE 29TH OR TWO OR THREE DAYS LATER.

23 AND THEN I RECEIVED ANOTHER COMPLAINT
24 JANUARY THE 3RD. IT'S ON A DIFFERENT IP.

25 AND THEN THE RESOLUTION FOR THAT IS IP IS

1 NOT IN RANGE.

2 Q SO THE BOTH TIMES IT WAS NOT IN RANGE?

3 A THE FIRST ONE IS IN RANGE.

4 Q WE'RE LOOKING AT --

5 A WATCHNREPLICA.

6 Q WATCHNREPLICA?

7 A I'M SORRY. OKAY. WITH THAT PARTICULAR ONE,
8 BOTH TIMES WERE NOT WITHIN RANGE.

9 Q OKAY. AND IF MR. HOLMES PURCHASED PRODUCT FOR
10 THAT IN JULY OF 2007, THAT WOULD HAVE BEEN BEFORE
11 YOU GOT YOUR FIRST NOTICE?

12 A THAT'S CORRECT.

13 Q I WANT TO DROP DOWN TO PAGE 9 ON THIS NOTICE.
14 APPARENTLY IT SAYS YOU GOT ANOTHER ON JULY 25,
15 2008.

16 A IT APPEARS TO BE.

17 Q LET'S NOT GO THROUGH THE PAGE -- SO I'M GOING
18 UP TO PAGE 19. WHAT DID YOU DO WHEN YOU GOT THIS?

19 A I REMEMBER THERE WERE A COUPLE OF TIMES THAT I
20 RECEIVED COMPLAINTS FROM SINGLE IP'S CLAIMING THAT
21 THEY WERE 150, 100 DOMAIN NAMES ON ONE PARTICULAR
22 IP.

23 SO INSTEAD OF SENDING NOTICE TO THE
24 CUSTOMER ONE BY ONE, I JUST DISABLED THE IP, THAT
25 PARTICULAR IP BECAUSE I BELIEVE THAT THERE'S NO WAY

1 THAT IP'S, ALL OF THE DOMAINS CAN BE FUNCTIONED
2 JUST UNDER ONE IP AT ANY GIVEN TIME.

3 SO I WOULD ASSUME NOBODY REALLY VERIFIED
4 THIS. MAYBE THIS DOMAIN RECORDS ON THAT PARTICULAR
5 IP, BUT I DON'T BELIEVE THAT THOSE WEB SITES ARE
6 ALL LIVE WEB SITES.

7 Q OKAY.

8 A AND IF I DISABLED THE IP, WHICHEVER THEY
9 REALLY OPERATE ON THE IP, THEY WOULD COME BACK TO
10 ME. IF THEY DON'T COME BACK, SO BE IT.

11 Q NOW, IT LOOKS LIKE WITH SOME OF THESE ON THE
12 NEXT SEVERAL PAGES, YOU WENT BACK AND TOOK OTHER
13 ACTION ON OTHER DATES; IS THAT TRUE?

14 A BECAUSE I MIGHT HAVE RECEIVED ANOTHER
15 COMPLAINT BASICALLY ON THE SAME LIST.

16 Q OKAY. NOW, LET'S DROP DOWN TO PAGE 19 AND IT
17 LOOKS LIKE ABOUT THE FOURTH ITEM DOWN IS BAPESKY IS
18 HOW IT'S PRONOUNCED, BAPESKY.COM. WHEN DID YOU
19 FIRST GET A COMPLAINT ABOUT THIS AND TELL US WHAT
20 YOU DID AFTER THAT?

21 A THAT WOULD BE SEPTEMBER 19TH, '08 AND I
22 PROCESSED THE COMPLAINT THREE DAYS LATER ON THE
23 22ND.

24 Q AND WHAT IS THE NEXT ONE DOWN?

25 A THE RESELLER MADE A REPLY TO ME THAT THEY

1 REMOVED THE WEB SITE ON THE 22ND.

2 SO WE ARE AHEAD OF CHINA SO WHEN WE SEND
3 THE COMPLAINT TO THEM ON THE 9TH THEY REPLY ABOUT
4 THEIR ACTION. SO WE REPORT ON THE SAME DAY THAT WE
5 RECEIVE RESPONSES FROM RESELLER SAYING THAT THEY
6 REMOVED THE WEB SITE.

7 Q AND YOU GOT A COUPLE MORE COMPLAINTS ABOUT
8 THAT ONE?

9 A SO JANUARY THE 30TH, '09 I HAVE ANOTHER
10 COMPLAINT, AND IT'S ON A DIFFERENT IP. SO WE SEND
11 DOWN THE TAKEDOWN NOTICE OUT AND THEN ON FEBRUARY
12 THE 17TH I VERIFIED THAT IP WAS NOT WITHIN OUR
13 RANGE. MAYBE ON FEBRUARY THE 4TH I MAY HAVE
14 ANOTHER ONE.

15 Q OKAY. BUT YOU VERIFIED ON FEBRUARY 17TH OF
16 '09 IT WAS NOT WITHIN YOUR RANGE?

17 A THAT'S CORRECT.

18 Q AND NOW MR. HOLMES TESTIFIED I BELIEVE THAT HE
19 RECEIVED A PRODUCT PURCHASED MARCH 10TH, 2009. DID
20 YOU GET A REPORT STATING THAT HE RECEIVED HIS
21 NOTICE?

22 A NO, I DID NOT.

23 THE COURT: THAT'S -- I'M PRESUMING THAT
24 WE ARE ON PAGE 19 AND 20. WE DON'T HAVE MORE ON
25 THAT CHART.

1 MR. LOWE: JUST A QUICK SUMMARY.

2 THE COURT: ALL RIGHT.

3 BY MR. LOWE:

4 Q DOES THIS CHART REFLECT ALL OF THE COMPLAINTS
5 THAT YOU HAVE GOTTEN FROM LOUIS VUITTON SINCE THIS
6 LAWSUIT STARTED?

7 A YES.

8 Q AND WE CAN LOOK AT THIS TO SEE WHAT ACTION WAS
9 TAKEN?

10 A YES.

11 Q THANK YOU.

12 THE COURT: VERY WELL. IT'S ABOUT TWO
13 COMPLAINTS TO THE CUSTOMER 35. WE'LL TAKE A BREAK
14 NOW AND COME BACK AT ABOUT 2:45.

15 (WHEREUPON, A RECESS WAS TAKEN.)

16 THE COURT: VERY WELL. YOU MAY RESUME
17 YOUR EXAMINATION.

18 MR. LOWE: IF IT PLEASE THE COURT.

19 Q MR. CHEN, I ONLY HAVE A COUPLE MORE QUESTIONS
20 FOR YOU.

21 DO YOU OR MANAGED SOLUTIONS GROUP, INC.,
22 OR AKANOC SOLUTIONS, INC., DO ANYTHING AS FAR AS
23 YOU'RE AWARE TO INDUCE OR CAUSE OR MATERIALLY
24 CONTRIBUTE TO THE INFRINGEMENT BY ANY OF THE PEOPLE
25 WHO ARE SELLING INFRINGING PRODUCTS THAT WE HAVE

1 HEARD ABOUT TODAY?

2 A NO, WE DO NOT.

3 Q DO YOU KNOW WHO THE PEOPLE ARE WHO ARE SELLING
4 THESE COUNTERFEIT PRODUCTS?

5 A NO, WE DON'T.

6 Q THANK YOU. NOW, DO YOU HAVE ANY IDEA OF A
7 BETTER WAY FOR SOMEONE LIKE LOUIS VUITTON TO STOP
8 COUNTERFEITERS FROM SELLING ON THE INTERNET?

9 A AS I WAS COMMENTING MANY TIMES, THIS IS A VERY
10 SIMPLE SOLUTION. THE SINGLE BREAKAGE OF THE
11 CONNECTION IS THE NAME SERVER.

12 IF YOU COMPLAIN TO DOMAIN NAME REGISTRAR
13 AND LET THEM BLOCK THE ACCESS TO THE DOMAIN SERVERS
14 TO ACCESS THE DOMAIN SERVER THEN THEY KNOCK OUT
15 THAT DOMAIN NAME RIGHT AWAY.

16 Q SO ON EXHIBIT 1610 THE REGISTRAR IS RIGHT UP
17 HERE; IS THAT RIGHT?

18 MR. COOMBS: YOUR HONOR, IT LACKS
19 FOUNDATION AND CALLS FOR A LEGAL CONCLUSION.

20 THE WITNESS: THAT'S RIGHT.

21 THE COURT: WELL, IT DOES SEEM TO ME THAT
22 IT'S BEYOND THE COMPETENCY OF THE WITNESS TO
23 TESTIFY AS TO WHETHER OR NOT LAWFULLY AND FACTUALLY
24 THE SOLUTION IS ONE THAT COMPLIES WITH AND WOULD
25 NOT BE VIOLATIVE OF VARIOUS LEGAL PRINCIPLES, AND

1 SO I'LL SUSTAIN THE OBJECTION.

2 HIS MAIN CONCERN IS NOT TO BE THE SOURCE
3 OF CURING THE PROBLEM. HE'S NOT BEEN CHALLENGED
4 WITH NOT COMING UP WITH A SOLUTION. HE'S BEING
5 CHALLENGED ON THE CLAIMS THAT ARE BEING MADE.

6 BY MR. LOWE:

7 Q MR. CHEN, DO YOU THINK THAT THERE'S ANYTHING
8 THAT YOU CAN DO BEYOND WHAT YOU HAVE BEEN DOING
9 THAT WOULD STOP THE INFRINGEMENT OF PRODUCTS THAT
10 LOUIS VUITTON IS COMPLAINING ABOUT?

11 A NO, WE HAD NO WAY OF KNOWING WHEN, WHERE, HOW
12 A DOMAIN NAME WOULD GET INTO OUR NETWORK.

13 Q THANK YOU.

14 I HAVE NO FURTHER QUESTIONS AT THIS TIME,
15 YOUR HONOR.

16 **CROSS-EXAMINATION**

17 BY MR. COOMBS:

18 Q LET ME SEE, MR. CHEN, IF WE CAN AGREE ON A
19 COUPLE OF THINGS. COUNTERFEITING IS WRONG; RIGHT?

20 A YES.

21 Q AND IT'S AGAINST THE LAW?

22 A YES.

23 Q AND IT'S AGAINST THE POLICY OF AKANOC
24 SOLUTIONS, IS THAT NOT ALSO CORRECT?

25 A THAT'S CORRECT.

1 Q I'D LIKE TO PULL UP EXHIBIT 21 IF I MAY. I
2 THINK EARLIER YOU WERE TALKING ABOUT THIS DOCUMENT
3 BEING THE SERVICE AGREEMENT BETWEEN AKANOC AND ITS
4 CUSTOMERS; IS THAT CORRECT?

5 A THAT'S CORRECT.

6 Q AND TURNING TO PAGE 5 OF 6 OF THE EXHIBIT,
7 THAT'S THE ACCEPTABLE USE POLICY THAT FORMS PART OF
8 THE SERVICE AGREEMENT; IS THAT NOT ALSO CORRECT?

9 A CORRECT.

10 Q AND UNDER THE TERMS OF THAT POLICY IT
11 PROVIDES, AMONG OTHER THINGS, THAT IT IS A -- IT IS
12 PROHIBITED TO USE A SERVICE IN A WAY THAT VIOLATES
13 APPLICABLE LAW IN PARAGRAPH 4, B SUB 4; IS THAT
14 CORRECT?

15 A YES.

16 Q AND IT'S ILLEGAL TO USE IT UNDER SUBPARAGRAPH
17 B 3 TO USE IT TO MISAPPROPRIATE AGAINST COPYRIGHTS
18 AND TRADEMARKS; IS THAT ALSO CORRECT?

19 A THAT'S CORRECT.

20 Q AND SO THIS IS A BREACH OF YOUR CUSTOMERS WITH
21 AKANOC IF THIS CONDUCT OCCURS ON ITS SERVICE; IS
22 THAT ALSO CORRECT?

23 A THAT'S CORRECT.

24 Q NOW, EARLIER YOU STARTED TO TESTIFY ABOUT
25 CONTRACTUAL RIGHTS, THIS THEN GOES ON TO SPECIFY

1 WHAT THE CONSEQUENCES FOR VIOLATION OF THOSE
2 ACCEPTABLE USE POLICIES ARE; IS THAT ALSO NOT TRUE?

3 A THAT'S TRUE.

4 Q AND THAT'S IN PARAGRAPH 2 ON THE FOLLOWING
5 PAGE; IS THAT NOT TRUE? SCROLLING DOWN TO
6 PARAGRAPH C.

7 DO YOU SEE THAT?

8 A YES.

9 Q AND THIS PROVIDES FOR CERTAIN TOOLS AT
10 AKANOC'S DISPOSAL TO DEAL WITH A VIOLATION OF THE
11 ACCEPTABLE USE POLICY, INCLUDING THE INFRINGEMENT
12 OF INTELLECTUAL PROPERTIES THAT WE WERE JUST
13 TALKING ABOUT?

14 A THAT'S RIGHT.

15 Q AND AMONG THE TOOLS THAT IT PROVIDES IS C 1,
16 WARNING TO CUSTOMER?

17 A CORRECT.

18 Q AND IT PROVIDES IN SUB 2 SUSPENDING THE
19 OFFENDING CUSTOMER?

20 A THAT'S CORRECT.

21 Q AND IT PROVIDES IN 3 TERMINATING THE OFFENDING
22 CUSTOMER?

23 A THAT'S CORRECT.

24 Q AND SO TERMINATING THE CUSTOMER IS AN
25 AVAILABLE OPTION FOR AKANOC SOLUTIONS IN RESPONSE

1 TO INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS; IS
2 THAT ALSO NOT CORRECT?

3 A THAT IS CORRECT.

4 Q AND IT ALSO PROVIDES FOR IMPOSING FEES UNDER
5 PARAGRAPH SUB 4; IS THAT ALSO NOT CORRECT?

6 A THAT'S CORRECT.

7 Q AND IT DOESN'T ACTUALLY SPECIFY A MINIMUM OR
8 MAXIMUM IN THE NUMBER AMOUNT OF FEES THAT CAN BE
9 IMPOSED; IS THAT ALSO THE CASE?

10 A THAT'S CORRECT.

11 Q AND IT ALSO SAYS THAT AKANOC RESERVES THE
12 RIGHT TO REMOVE THE OFFENDING CONTENT UNDER SUB.
13 5, IS THAT ALSO NOT THE CASE?

14 A THAT'S CORRECT.

15 Q AND ALL OF THESE TOOLS THAT ARE PROVIDED FOR
16 BY YOUR OWN CONTRACT HAVE BEEN PART OF THAT
17 CONTRACT SINCE AKANOC STARTED DOING BUSINESS?

18 A THAT IS CORRECT.

19 Q AND THEY HAVE BEEN WITHIN THE ARSENAL OF
20 AKANOC'S CONTRACTUAL RIGHTS TO DEAL WITH COPYRIGHT
21 AND TRADEMARK INFRINGEMENT FROM 2003 AND 2004
22 WHENEVER AKANOC FIRST STARTED DOING BUSINESS?

23 A THAT IS CORRECT.

24 Q AND NOW, ONE THING I HAVEN'T SEEN IS TERMS OF
25 THE SERVICE AGREEMENT OR ACCEPTABLE USE POLICY FOR

1 MANAGED SOLUTIONS GROUP. IS THERE ONE?

2 A NO, THERE WAS NOT SIMPLY BECAUSE OF --

3 THE COURT: YOU WEREN'T ASKED -- YOU WERE
4 JUST ASKED WAS THERE?

5 THE WITNESS: NO.

6 BY MR. COOMBS:

7 Q DOES MANAGED SOLUTIONS GROUP MAINTAIN A WEB
8 SITE?

9 A NO.

10 Q AND HAS IT EVER MAINTAINED A WEB SITE SINCE
11 MANAGED SOLUTIONS GROUP SPLIT OFF FROM MANAGED?

12 A NO.

13 Q AND DOES IT HAVE ONE TODAY?

14 A NO.

15 Q DOES YOUR CUSTOMERS HAVE A RELATIONSHIP WITH
16 MANAGED?

17 A IT DOES NOT.

18 Q AND THAT'S TRUE IF THE IP IS OWNED BY MANAGED
19 SOLUTIONS GROUP?

20 A THAT'S CORRECT.

21 Q AND SO IT'S A GENERAL PUBLIC THAT IS LOOKING
22 AT A WEB SITE THAT IS WITHIN THE MANAGED SOLUTIONS
23 GROUP BLOCK OF IP NUMBERS, IT WOULD APPEAR THAT
24 MANAGED SOLUTIONS GROUP IS, IN FACT, THE OWNER OR
25 OPERATOR OR THE ISP WEB HOST OF THE APPLICABLE WEB

1 SITE. IS THAT ALSO NOT TRUE?

2 A COULD YOU REPHRASE THAT?

3 Q I'LL DO MY BEST. I REALIZE THAT IT GOT A
4 LITTLE AWAY FROM ME.

5 IS IT NOT ALSO TRUE THAT IF I LOOK AT THE
6 INTERNET, FOR EXAMPLE, AND FIND A WEB SITE, THE IP
7 ADDRESS OF WHICH THAT IS WITHIN THE BLOCK ASSIGNED
8 TO MANAGED SOLUTIONS GROUP, IT WOULD APPEAR TO ME
9 THAT MANAGED SOLUTIONS GROUP IS THE ISP OR WEB HOST
10 FOR THAT PARTICULAR WEB SITE?

11 A NO.

12 Q AND WHY NOT?

13 A BECAUSE THE IP HAS BEEN REASSIGNED TO AKANOC.

14 Q AND WHAT -- AND WHERE IS THAT REFLECTED?

15 A ARIN SHOULD HAVE THE RECORD.

16 Q AND WHEN WAS THAT REASSIGNMENT RECORDED IN THE
17 ARIN DATABASE.

18 A EVERY SINGLE TIME IF YOU CHECK ON IT IT WILL
19 BE THERE. IT'S REALTIME.

20 Q NOW, YOU WERE TALKING EARLIER ABOUT THE
21 BENEFITS FOR WEB SITES TO BE HOSTED ON YOUR SERVER
22 THAT IS DOWN HERE IN SAN JOSE. DO YOU RECALL THAT?

23 A YES.

24 Q AND PARTICULARLY BECAUSE IT'S AT THE END OF
25 THE PIPELINE FROM ASIA AND CLOSE TO THE BACKBONE

1 HERE IN THE UNITED STATES?

2 A NOT NECESSARILY JUST FOR ASIA. IT'S JUST
3 CLOSE TO THE BACKBONE.

4 Q BUT YOU HAVE AT LEAST IN THE PAST MARKETED THE
5 AKANOC SERVICES TO CLIENTS I THINK IN CHINA; IS
6 THAT CORRECT?

7 A THAT'S CORRECT.

8 Q I'D ASK THE WITNESS TO TAKE A LOOK AT EXHIBIT
9 583. CAN YOU TELL US WHAT THAT IS, MR. CHEN?

10 A THAT'S THE COMPANY PROFILE FROM THE AKANOC WEB
11 SITE IN ENGLISH.

12 Q AND HAS THAT OR SOMETHING LIKE THAT BEEN ON
13 THE AKANOC WEB SITE FOR A PERIOD OF TIME?

14 A YES.

15 Q AND IF YOU GO DOWN TO THE BOTTOM OF THE FIRST
16 PAGE THERE IS WHY IS IT SO HARD TO VISIT CHINA WEB
17 SITES FROM FOREIGN COUNTRIES. DO YOU SEE THAT?

18 A YES.

19 Q AND THERE'S AN EXPLANATION OF PROBLEMS WITH
20 BANDWIDTH, A SLOW TRAFFIC WITHIN THE CHINA FIRE
21 WALL. DO YOU SEE THAT?

22 A YES.

23 Q AND THAT IS PART OF THE VALUE ADDED THAT
24 AKANOC CAN OFFER TO BUSINESSES BASED IN CHINA IN
25 PARTICULAR AND AN INCENTIVE OR BENEFIT FOR THEM IN

1 LOCATING WITH YOUR SERVERS HERE IN SAN JOSE?

2 A THAT'S CORRECT.

3 Q SO IN ADDITION TO THE FACT THAT YOU PROVIDE
4 THE SERVERS, THE ROUTERS, THE BANDWIDTH THAT YOU
5 WERE TESTIFYING TO THIS MORNING, THERE'S ALSO THE
6 FACT THAT THE BASIC CONNECTIVITY THAT AKANOC OFFERS
7 THAT ENHANCES BASICALLY THE INTERNET EXPERIENCES
8 FOR PEOPLE THAT ARE VISITING HOSTING SITES ON YOUR
9 SERVERS?

10 A THAT IS CORRECT.

11 Q LET'S ACTUALLY TALK ABOUT THE DIGITAL
12 MILLINEUM COPYRIGHT ACT FOR JUST A MOMENT. I THINK
13 IT'S EXHIBIT 54 FOR ONE OF THE INTERIM DESIGNATION
14 OF THE DEFENDANTS; IS THAT CORRECT?

15 A YES.

16 Q AND CAN YOU TELL ME WHAT DATE THAT WAS FILED
17 ON?

18 THE COURT: IF THERE'S A DATE ON THE
19 DOCUMENT I'LL HAVE YOU SCROLL DOWN TO THE DATE
20 LINE.

21 THE WITNESS: NOVEMBER 30TH, 2007.

22 BY MR. COOMBS:

23 Q AND THAT WAS AFTER THE LAWSUIT WAS FILED AND
24 SERVED ON AKANOC SOLUTIONS?

25 A I BELIEVE SO.

1 Q DO YOU HAVE ANY QUESTION IN YOUR MIND ABOUT
2 THAT?

3 A FOR AKANOC? NO.

4 Q OKAY. WAS THE DESIGNATION FOR AGENT OF
5 SERVICE FOR MANAGED SOLUTIONS FILED AT OR ABOUT THE
6 SAME TIME AS THE EXHIBIT 54 DESIGNATION?

7 A I DID FILE ONE MYSELF, BUT I DON'T KNOW
8 WHETHER MY PREVIOUS EX-PARTNER, IF HE DID ANY
9 FILING AT ALL.

10 Q SO JUST SO I'M CLEAR, THERE MAY HAVE BEEN SOME
11 FILING IN CONNECTION WITH WHAT BECAME THE
12 MANAGED.COM BUSINESS BUT OTHER THAN THAT THE TWO
13 THAT HAVE BEEN MARKED AS EXHIBITS THAT YOU LOOKED
14 AT ARE THE FIRST DESIGNATIONS FILED BY THE
15 DEFENDANTS IN THIS ACTION; IS THAT CORRECT? AT
16 LEAST SINCE THE SPLIT WITH MR. PHAM WHICH OCCURRED
17 THREE OR FOUR YEARS AGO?

18 A THAT'S CORRECT.

19 Q SO FROM ABOUT 2004 UNTIL LATE 2007, THERE WAS
20 NO DESIGNEE FILED WITH THE COPYRIGHT OFFICE FOR
21 EITHER OF THE CORPORATE DEFENDANTS HERE?

22 A AS I SAID, I PERSONALLY HANDLE AKANOC ACCOUNTS
23 SO I KNOW THAT'S DEFINITELY TRUE.

24 Q WHO HANDLED MANAGED SOLUTIONS GROUP?

25 A FROM THE BEGINNING IT WAS JACK PHAM.

1 Q AND DOES HE HAVE ANYTHING TO DO WITH IT NOW?

2 A NO.

3 Q AND HAS HE HAD ANYTHING TO DO WITH IT FOR THE
4 LAST THREE YEARS?

5 A NO.

6 Q AND SO WHO, IF NOT YOU -- ARE YOU
7 SUGGESTING -- STRIKE THAT.

8 ARE YOU SUGGESTING THAT MR. PHAM
9 CONTINUED TO HAVE A RESPONSIBILITY TO FILE THE
10 DESIGNATION?

11 A NO.

12 Q SO WHO DID?

13 A ME.

14 Q OKAY. AND DID YOU FILE ONE BEFORE ROUGHLY
15 NOVEMBER OF 2007?

16 A NO.

17 Q SO IT'S THE FIRST ONE FOR BOTH OF THE
18 CORPORATE DEFENDANTS?

19 A YES.

20 Q OKAY. THANK YOU. AND THESE ARE BOTH AGAIN
21 AFTER THE LAWSUIT WAS FILED BY LOUIS VUITTON?

22 A THAT'S CORRECT.

23 Q NOW, YOU ARE DESIGNEE UNDER THAT ACT?

24 A THAT'S CORRECT.

25 Q AND WHAT IS YOUR UNDERSTANDING OF THE

1 REQUIREMENT UNDER THE ACT FOR THE FILING OF THE
2 AGENT NOTIFICATION OF THE TYPE THAT WE'RE LOOKING
3 AT RIGHT NOW?

4 A TO BE HONEST WITH YOU, I DON'T REALLY
5 UNDERSTAND. I JUST KNOW THAT IT'S A PROCESS THAT I
6 NEED TO DO.

7 Q DO YOU HAVE ANY UNDERSTANDING OF THE
8 REQUIREMENT OF THE DIGITAL MILLENNIUM COPYRIGHT ACT
9 TO HAVE A PUBLISHED TERMS OF SERVICE?

10 A I REALLY DON'T UNDERSTAND THAT PARTICULAR LAW
11 PER SE.

12 Q OKAY. DO YOU HAVE ANY UNDERSTANDING OF WHAT
13 THAT LAW REQUIRES IN RESPONSE TO NOTICES OF
14 INFRINGEMENT TRANSMITTED ACCORDING TO ITS TERMS?

15 A I DON'T REALLY UNDERSTAND THAT LAW.

16 Q OKAY. ARE YOU FAMILIAR WITH THE TERM AT ALL
17 OF EXPEDITIOUS REMOVAL?

18 A NO.

19 Q SO YOU DON'T HAVE ANY UNDERSTANDING ABOUT A
20 REQUIREMENT THAT IN RESPONSE TO A NOTICE OF
21 INFRINGEMENT A WEB HOST OR ISP THAT WANTS TO AVAIL
22 ITSELF OF THAT STATUTE MUST EXPEDITIOUSLY REMOVE
23 THE INFRINGING CONTENT THAT IS THE SUBJECT OF THE
24 NOTICE?

25 A I DON'T UNDERSTAND THE LANGUAGE INSIDE OR THE

1 LANGUAGE YOU JUST TALK ABOUT.

2 I'M ONLY DOING THINGS IS WHAT INDUSTRY
3 PEOPLE DO EVERY DAY.

4 Q HAVE YOU ASSIGNED -- OTHER THAN MS. LUK ABOUT
5 WHOM WE HAVE TALKED ABOUT A LITTLE BIT OVER THE
6 LAST COUPLE DAYS, HAVE YOU ASSIGNED ANY
7 RESPONSIBILITY FOR HANDLING THESE INFRINGEMENT
8 NOTICES TO ANYONE ELSE AT EITHER AKANOC OR MANAGED
9 SOLUTIONS GROUP?

10 A AGAIN BEFORE THE SEPARATION? EVEN AFTER THE
11 SEPARATION FOR QUITE SOME TIME WE EVEN HAVE MORE
12 STAFF HANDLING THE BUSINESS. THERE WERE TWO OTHER
13 GENERAL CLERK THAT THEY WERE MORE INTENT TO HANDLE
14 THIS TYPE OF WORK.

15 Q OKAY. I'M SORRY. I'M GETTING A LITTLE
16 CONFUSED AND IF I AM, I'M SURE -- I HOPE I'M NOT
17 THE ONLY ONE SO LET'S TALK ABOUT THE SEPARATION
18 THAT YOU'RE REFERRING TO.

19 YOU HEARD A LITTLE DEPOSITION TESTIMONY
20 ABOUT IT, BUT MAYBE WE CAN CLEAR UP A COUPLE OF
21 THINGS.

22 WHEN MANAGE SOLUTIONS BUSINESS STARTED
23 BUSINESS IN ABOUT WHAT YEAR?

24 A END OF 2003.

25 Q AND AT THAT TIME YOU WERE NOT THE SOLE OWNER?

1 YOU WERE PARTNERS WITH MR. PHAM; CORRECT?

2 A THAT'S CORRECT.

3 Q AND YOU REMAINED PARTNERS WITH MR. PHAM FOR
4 ABOUT A YEAR?

5 A THAT'S CORRECT.

6 Q SO ABOUT UNTIL 2004?

7 A THAT'S RIGHT.

8 Q AND AT THAT POINT MR. PHAM TOOK THE CUSTOMER
9 BASE FOR MANAGED SOLUTIONS AND STARTED MANAGED.COM,
10 AND I THINK WE STARTED TO DISTINGUISH THE TWO
11 COMPANIES HE WOULD BE MANAGED.COM AND YOURS WOULD
12 BE MANAGED SOLUTIONS. COULD WE DO THAT TO THE --

13 A NO, IT WASN'T THAT HE STARTED MANAGED.COM.
14 MANAGED.COM STARTED FROM THE BEGINNING.

15 Q OKAY.

16 A AND MANAGED.COM, IT'S A BRAND NAME IN THE
17 MANAGED SOLUTIONS GROUP AT THE TIME.

18 Q ALL RIGHT. BUT WHEN MR. PHAM SPLIT OFF IN
19 ABOUT 2004, HE SORT OF SEPARATED OUT A PART OF THE
20 MANAGED SOLUTIONS BUSINESS; CORRECT? HE TOOK WITH
21 HIM, AS I RECALL, THE CUSTOMER BASE AND THE
22 OPERATIONS, AT LEAST SOME OF THE OPERATIONAL PARTS
23 OF THE MANAGED SOLUTIONS BUSINESS?

24 A RIGHT.

25 Q AND HE -- HE DIDN'T KEEP DOING BUSINESS UNDER

1 THE NAME MANAGED SOLUTIONS; CORRECT?

2 A HE WAS DOING BUSINESS IN THE MANAGED.COM.

3 Q RIGHT?

4 A BUT WITH A DIFFERENT CORPORATE ENTITY.

5 Q AND WHAT IS THE CORPORATE ENTITY?

6 A I BELIEVE IT WAS SOFTWARE WORKS.

7 Q AND WOULD IT BE MORE CLEAR IF I SAID SOFTWARE
8 WORKS FOR HIM AFTER 2004 AND MANAGED SOLUTIONS FOR
9 THE BUSINESS THAT YOU KEPT?

10 A NO. ACTUALLY ALTHOUGH I KEPT MANAGED.COM
11 DOING BUSINESS UNDER SOFTWARE WORKS BUT STILL FROM
12 THE OUTSIDE PEOPLE SEE MANAGED.COM -- BECAUSE
13 MANAGED.COM, THE WHOLE BUSINESS OPERATION, INTERNET
14 OPERATION, IT'S -- THEY CONTRACT AKANOC OR MANAGED
15 SOLUTIONS GROUP TO OPERATE.

16 Q SO FOR A PERIOD OF TIME AFTER 2004 THE
17 SOFTWARE WORKS BUSINESS CONTINUED TO RELY ON
18 SUPPORT FOR MANAGED SOLUTIONS GROUP OR AKANOC?

19 A THAT'S RIGHT.

20 Q ALL RIGHT. AND SO IF THERE WERE ISSUES
21 REGARDING ABUSE, FOR EXAMPLE, ON EITHER COMPANY'S
22 WEB SITES, THEY WOULD GO ESSENTIALLY TO THE SAME
23 ABUSE ADDRESS THEN?

24 A IF PEOPLE ARE LOOKING FOR INFORMATION ON THE
25 WEB SITE, THEY WOULD SITE ABUSE@MANAGED.COM FIRST.

1 Q AND AGAIN, THERE WAS NEVER A MANAGED SOLUTIONS
2 GROUP WEB SITE DIFFERENT FROM THE MANAGED.COM WEB
3 SITE?

4 A THAT'S CORRECT.

5 Q AND HOW LONG DID THAT CONTINUE?

6 A AS FAR AS MANAGED SOLUTIONS GROUP, INC.,
7 SEPARATE WEB SITE IT NEVER DID HAPPEN. WE NEVER
8 HAD IT.

9 Q AND FOR HOW LONG DID BOTH COMPANIES OPERATE
10 OUT OF THE SAME ABUSE MAILBOX, ABUSE@MANAGED.COM?

11 A PROBABLY IN APRIL 2007.

12 Q SO SOME TIME IN 2007 -- BETWEEN 2004 AND 2007,
13 IF THERE WAS AN ABUSE COMPLAINT THAT WENT TO
14 ABUSE@MANAGED.COM AND IT WENT TO AN ABUSE AT
15 MANAGED GROUP SOLUTIONS WEB SITE, WHAT WAS SUPPOSED
16 TO HAPPEN WITH THAT COMPLAINT?

17 A IF PEOPLE ARE LOOKING FOR MANAGED.COM WEB
18 SITE, THEN THEY WOULD SUBMIT THE ABUSE COMPLAINT TO
19 ABUSE@MANAGED.COM.

20 IF PEOPLE ARE LOOKING FOR ARIN RECORD,
21 THEN IT WOULD SITE ABUSE@MANAGEDSG-INC.COM.

22 Q AND WHEN WAS THAT E-MAIL ADDRESS FIRST
23 PUBLISHED IN THE ARIN RECORD?

24 A 2004, 2004 AFTER THE SEPARATION.

25 Q AND WAS IT PUBLISHED ANYWHERE ELSE? MANAGED

1 GROUP DIDN'T HAVE A WEB SITE SO IT WASN'T PUBLISHED
2 ON A WEB SITE. AND IT WASN'T PUBLISHED WITH THE
3 COPYRIGHT OFFICE, SO IT WASN'T PUBLISHED WITH
4 THE --

5 A THAT'S RIGHT.

6 Q AND THERE'S NOTHING THE AKANOC SOLUTIONS --
7 AKANOC.COM WEB SITE THAT TALKS ABOUT IT; IS THAT
8 CORRECT?

9 A THAT'S RIGHT.

10 Q AND WAS IT ANYWHERE ELSE?

11 A IF I CAN REMEMBER DEFINITELY THAT ARIN RECORD
12 WE HAVE CHANGED -- ANY TYPE OF FORMAL RECORD WE
13 WOULD NEED TO CHANGE WE WOULD CHANGE.

14 Q BUT MANAGE.COM WAS, IN FACT, THE WEB SITE FOR
15 MANAGED SOLUTION GROUP UP UNTIL AT LEAST MR. PHAM
16 UNTIL 2004?

17 A THAT'S CORRECT.

18 Q AND MANAGED SOLUTIONS GROUP HAD NO WEB SITE
19 PRESENCE AFTER THE SEPARATION FROM MANAGE.COM?

20 A NO.

21 Q AND MANAGE.COM, THEIR PLACE OF BUSINESS ALSO
22 MOVED, DID IT NOT? THEY MOVED TO NEW JERSEY I
23 THINK?

24 A I THINK OVER TIMES THEY -- JACK PHAM SOLD THE
25 BUSINESS TO ANOTHER GENTLEMAN NAMED JOHN MEARS OR

1 IN TURN SOLD IT TO WEBHOSTPLUS WHICH IS IN NEW
2 YORK.

3 Q GOOD. WE STILL HAVE EXHIBIT 54 UP.

4 THIS MORNING YOU WERE TALKING ABOUT THE
5 DEFAULT E-MAIL ADDRESS TO WHICH ABUSE COMPLAINTS
6 ARE SENT TO IN THE ON-LINE BUSINESS I THINK YOU
7 SAID; IS THAT CORRECT? I THINK YOU SAID ABUSE AT
8 -- I THINK YOU SAID 80 OR 90 PERCENT ARE YOUR
9 NUMBERS; IS THAT CORRECT?

10 A YES.

11 Q BUT THERE ARE SOME THAT DON'T; CORRECT?

12 A PERSONALLY I HAVEN'T SEEN ANY OTHER LANGUAGE.

13 Q WELL, IF WE LOOK AT EXHIBIT 54. WHAT IS THE
14 E-MAIL ADDRESS TO WHICH COMPLAINTS ARE SUPPOSED TO
15 BE SENT?

16 A THIS IS THE AGENT SO I'M THE DESIGNATED AGENT.

17 Q DO YOU HAVE AN UNDERSTANDING THAT THE AGENT IS
18 TO RECEIVE COMPLAINTS CONCERNING INFRINGEMENT
19 NOTICES?

20 A MY UNDERSTANDING WHEN I FILL OUT THIS FORM IS
21 THAT IF I'M THE AGENT THEN MY E-MAIL ADDRESS NEED
22 TO BE THERE.

23 Q AND SO WE'RE CLEAR THE E-MAIL ADDRESS IS NOT
24 ABUSE@AKANOC.COM. IT'S STEVE AT AKANOC.COM?

25 A THAT IS CORRECT.

1 Q AND DID YOU LOOK AT ANY OTHER DESIGNATIONS
2 BEFORE COMPLETING THESE?

3 A NO.

4 Q WE'VE BEEN TALKING A LITTLE BIT ABOUT EXHIBIT
5 1598, AND I'D LIKE TO DRAW YOUR ATTENTION TO A
6 COUPLE OF DIFFERENT ENTRIES FROM WHAT WE MAY HAVE
7 DISCUSSED EARLIER WITH MR. LOW.

8 WE HEARD ABOUT A COUPLE OF WEB SITES THAT
9 WERE IDENTIFIED IN NOVEMBER OF 2007; CORRECT?
10 LOOKING TO THE BOTTOM OF PAGE 1 AND THEN PAGE 2,
11 PAGE 3, AND PAGE 4, AND PART OF PAGE 5.

12 I WOULD ACTUALLY LIKE TO SPECIFICALLY
13 FOCUS ON PAGE 2. AND I THINK WE ALREADY SAW THE
14 LETTER THAT I SENT TO WHICH SOME OF THESE ENTRIES
15 ARE RESPONSES; IS THAT CORRECT?

16 A YES.

17 Q AND NOW, FOR EXAMPLE, IF WE LOOK AT THE ENTRY
18 FOR ESTARBIZ, THAT INDICATED THAT A NOTICE WAS
19 RECEIVED BY AKANOC OR MANAGED SOLUTIONS, AS THE
20 CASE MAY BE, ON NOVEMBER 26, 2007?

21 A YES.

22 Q AND THAT A NOTICE OF TAKEDOWN WAS SENT ON
23 NOVEMBER 29?

24 A THAT IS CORRECT.

25 Q AND IT DOESN'T INDICATE THAT THERE WAS A

1 FOLLOW-UP UNDERNEATH THAT TO DETERMINE WHETHER THE
2 CITE WAS DISABLED OR ACTIVE OR ANYTHING ELSE.

3 DO YOU REMEMBER IF ANYTHING WAS DONE
4 AFTER NOVEMBER 29TH, 2007 TO ESTABLISH WHETHER OR
5 NOT THAT THE NOTICE YOU HAD SENT HAD COMPLIED WITH
6 THE CUSTOMER HAD BEEN SENT?

7 A I SHOULD HAVE MORE INFORMATION ON THIS, BUT
8 WHEN WE WERE COMPILING ALL OF THIS INFORMATION, WE
9 WERE FOCUSING ON DID WE TAKE ANY ACTIONS TO THIS.

10 Q OKAY. BUT THIS DOES NOT APPEAR TO INDICATE
11 ANY ACTION BETWEEN NOVEMBER 29 AND 1-3-08. THAT'S
12 THE WAY I'M READING IT. I'M JUST --

13 A IT MAY NOT BE ON THIS, BUT IT DOESN'T MEAN
14 THAT THERE WAS NO FURTHER CHECKING OR SOMETHING.

15 Q BUT WHEN YOU WERE COMPILING THIS OR WORKING ON
16 THIS, YOUR OBJECTIVE WAS TO, IN FACT, PUT
17 EVERYTHING DOWN THAT YOU HAD DONE SO YOU COULD
18 DEMONSTRATE HOW MUCH MORE YOU'RE NOW DOING TO
19 ADDRESS OR RESPOND TO THESE KINDS OF INFRINGEMENT
20 CLAIMS. IS THAT NOT THE CASE?

21 A THIS IS FOR PRESENTATION PURPOSE. THIS IS NOT
22 REALLY FOR MY OWN OPERATION PURPOSE.

23 MY OWN OPERATION PURPOSE, IT WOULD BE IN
24 MY E-MAIL LOG WHERE I SEND THE E-MAIL TO THE
25 CUSTOMER AND THEN I CAN EASILY SEARCH IT BY, SEARCH

1 THE RESULT BY THE CUSTOMER REPLY ON THE SAME
2 SUBJECT LINE.

3 Q WELL, I'M SORRY. I'M STILL A LITTLE CONFUSED.
4 IF WE GO ACROSS THE COLUMN ON ESTAR BUSINESS,
5 YOU'LL SEE THAT THERE'S A FURTHER NOTICE ON 3-3-08;
6 ISN'T THAT CORRECT?

7 A THAT'S CORRECT.

8 Q AND IT INDICATES A TAKEDOWN NOTICE WAS SENT ON
9 3-3-08; IS THAT CORRECT?

10 A YES.

11 Q AND THEN IT SAYS A SERVER WAS UNPLUGGED ON
12 3-3-08?

13 A THAT'S CORRECT.

14 Q AND IT SUGGESTS SOMETHING WAS DONE AFTER YOU
15 SENT THE TAKEDOWN NOTICE?

16 A YES.

17 Q AND YOU SAID THE CUSTOMER DIDN'T RESPOND, AND
18 I THINK YOU SAID YOU LIKED THAT BEST BECAUSE IT
19 MADE YOUR JOB EASIER?

20 A YES.

21 Q SO I WOULD INFER FROM THAT YOU SENT THE NOTICE
22 ON 3-3-08, YOU CHECKED IT 12 HOURS LATER AND YOU
23 HADN'T RECEIVED ANY NOTICE FROM THE CUSTOMER AND
24 YOU UNPLUGGED IT?

25 A RIGHT.

1 Q MY QUESTION IS IF YOU PUT ALL OF THESE THINGS
2 IN, WHY DOESN'T IT SAY WHAT YOU DID BETWEEN
3 NOVEMBER 29TH AND JANUARY 3RD, OR DID YOU DO
4 ANYTHING?

5 A I HAVE NO DETAIL OF INFORMATION TO TELL YOU
6 RIGHT NOW.

7 Q ISN'T IT REASONABLE TO CONCLUDE THAT IF THERE
8 WAS SOMETHING IT WOULD BE ON THIS SHEET WHICH THE
9 WHOLE PURPOSE WOULD BE TO SHOW WHAT YOU'RE TRYING
10 TO DO?

11 A NOT EXACTLY. I'M BEING ASKED TO PROVIDE
12 INFORMATION OF WHAT I DID, SO I DID SEND THE NOTICE
13 AND I FOUND THAT BATCH OF THE E-MAILS AND I
14 PROVIDED ALL OF THAT BATCH OF THE E-MAILS WITHOUT
15 GOING FURTHER TO MATCH EVERY SINGLE E-MAIL I SENT
16 OUT WITH THE CUSTOMER RESPONSE.

17 THAT'S ANOTHER SEARCHING BECAUSE I DID IT
18 AT A PARTICULAR TIME. I JUST NEED TO HIGHLIGHT
19 EVERYTHING AND COPY IT TO A FILE, BUT WHEN I NEED
20 TO GO THROUGH IT EVERY SINGLE E-MAIL ENTRY OR TO
21 MATCH WITH CUSTOMER ACTUAL SUPPLY THAT ACTUALLY
22 WORKS. SO IN THIS CASE MAYBE I HAD IT, BUT I
23 DIDN'T PROVIDE THAT INFORMATION.

24 Q NEXT TO IT IS THE JANUARY 3, 2008 DATE WHICH I
25 THINK YOU CHARACTERIZED AS A COMPLAINT FROM LOUIS

1 VUITTON. DO YOU SEE THAT?

2 A THE JANUARY 3.

3 Q 3-2008 IS THE NEXT EVENT INDICATED ON
4 ESTARBIZ?

5 A YES.

6 Q AND I THINK YOU WERE IN COURT WHEN
7 MR. LIVADKIN TESTIFIED THAT THAT WAS NOT, IN FACT,
8 A COMPLAINT BUT THE DATE ON WHICH A REQUEST FOR
9 PRODUCTION WAS PROPOUNDED IN THIS ACTION. WERE YOU
10 NOT IN COURT AT THAT TIME?

11 A COULD YOU RESTATE THAT?

12 Q I THINK YOU WERE IN COURT WHEN MR. LIVADKIN
13 TESTIFIED, NO? MR. LIVADKIN FROM LOUIS VUITTON?
14 WERE YOU IN COURT ON TUESDAY AND WEDNESDAY WHEN
15 MR. LIVADKIN TESTIFIED?

16 A YES.

17 Q OKAY. AND MR. LIVADKIN TESTIFIED THAT THIS
18 WAS NOT ENTIRELY ACCURATE BECAUSE JANUARY 3, 2008
19 WAS NOT A COMPLAINT, IT WAS A DATE IN WHICH LOUIS
20 VUITTON DEMANDED THAT DEFENDANTS PRODUCE DOCUMENTS
21 IN THIS ACTION.

22 SO THE 1-3-08, IT WAS NOT A COMPLAINT, IT
23 WAS, IN FACT, A REQUEST FOR DISCOVERY?

24 A I HAVE NO -- I DON'T EXACTLY KNOW WHY WE HAVE
25 THAT JANUARY 3RD COLUMN, BUT THEY WERE A BUNCH OF

1 THE JANUARY 3RD ENTRIES ON THAT PARTICULAR DAY.

2 SO WE FILED -- WE COMPILED THAT
3 INFORMATION.

4 Q NO, I UNDERSTAND. YOU MAY HAVE GOTTEN ANOTHER
5 LIST OF COMPLAINTS AND IN THE COURSE OF RECEIVING
6 IT DONE SOME FOLLOW-UP ON IT, WHICH IS GREAT.

7 BUT I'M JUST TRYING TO ESTABLISH WHETHER
8 YOU REMEMBER SEEING A COMPLAINT FROM LOUIS VUITTON
9 BECAUSE THAT SEEMS TO BE CONTRADICTIONARY?

10 A WELL, ALL OF THIS INFORMATION ACTUALLY IS I
11 PULLED OUT A LOT FROM MY WORK SHEET. SO THAT WORK
12 SHEET ITSELF MOST LIKELY IS WHEN I RECEIVED A
13 LETTER COMPLAINT, THEN I START DOCUMENTING ALL OF
14 THAT BECAUSE I WOULD NOT BE ABLE TO ATTACH THE
15 ORIGINAL COMPLAINT INTO MY COMPUTER.

16 SO THERE WAS A WORK SHEET OVER THERE,
17 THERE WAS A FILE THAT I KEPT THAT I HAVE EVERY TIME
18 I WENT AND RECEIVED SOMETHING, THEN I DOCUMENTED IT
19 THAT WAY.

20 Q ALL RIGHT. BESIDES THAT IT INDICATES A
21 TAKEDOWN NOTICE WAS SENT ON JANUARY 14TH, '08?

22 A YES.

23 Q AND IT WAS THE NEXT THING DONE WITH THE WEB
24 SITE ESTARBIZ.COM?

25 A MOST LIKELY.

1 Q CAN YOU TESTIFY ABOUT ANYTHING ELSE THAT
2 OCCURRED ON THAT WEB SITE BETWEEN JANUARY 3RD AND
3 JANUARY 14TH?

4 A MOST LIKELY NOT.

5 Q NOW, CAN YOU SAY WHY IT TOOK ALMOST 11 DAYS TO
6 FOLLOW UP ON THE NOTICE THAT YOU SAID YOU RECEIVED
7 ON JANUARY 3RD?

8 A I HAVE NO RECOLLECTION WHATSOEVER ON THE
9 JANUARY 3RD ISSUE RIGHT NOW.

10 Q ALL RIGHT. SO LET ME SEE IF I UNDERSTAND
11 WHERE WE ARE SO FAR. YOU RECEIVED A NOTICE FROM
12 ESTARBIZ.COM ON NOVEMBER 26, 2007. YOU SENT A
13 NOTICE THREE DAYS LATER. YOU GOT SOME FORM OF
14 COMMUNICATION WITH THAT NAME IN IT ON JANUARY 3RD,
15 '08 AND ON JANUARY 14TH YOU RECEIVED A FOLLOW-UP
16 NOTICE AND THAT IS IDENTICAL TO THE ONE YOU
17 RECEIVED ON --

18 A IDENTICAL LETTER MEANING SAME TYPE OF -- OR
19 SAME FORM, BUT IT MIGHT HAVE A DIFFERENT IP ADDRESS
20 WITH DIFFERENT CUSTOMER NAMES ON IT.

21 Q EXCUSE ME. I'M A LITTLE CONFUSED BECAUSE
22 RIGHT BELOW THIS IT SAYS CBYNIKE AND IT HAS A
23 DIFFERENT IP BUT BESIDES ESTARBIZ IT DOESN'T SAY
24 DIFFERENT IP?

25 A I DON'T THINK THAT THIS ONE CAN BE A VERY

1 DETAILED RECORD OF EVERYTHING. THIS IS A SUMMARY
2 OF ALL OF THE E-MAIL THAT I HAVE AND PUT IT ON A
3 SUMMARY SHEET. SO IT'S NOT A DETAILED RECORD OF MY
4 WORK PROCESS.

5 ALL THIS REPRESENTS IS MY E-MAILS AGAINST
6 THIS SUMMARY REPORT.

7 Q BUT YOU'RE TESTIFYING THAT THIS WENT TO A --
8 CONCERNED A DIFFERENT IP, EVEN THOUGH IT DOESN'T
9 SAY SO ON THE SHEET. SO IT'S JUST AN ADMISSION ON
10 THIS SPREADSHEET THAT IT SHOULD BE A DIFFERENT IP.
11 IS THAT YOUR TESTIMONY?

12 A IF WE GO INTO THE E-MAIL ITSELF, IT MAY
13 HAVE -- IT MAY OR MAY NOT HAVE A DIFFERENT IP AND A
14 DIFFERENT CUSTOMER NAME ON IT.

15 Q SO YOU DON'T KNOW AS YOU SIT HERE NOW WHETHER
16 IT WAS CONCERNING A DIFFERENT IP OR NOT?

17 A I AM MORE INTENT TO THINK IT'S A DIFFERENT IP.

18 Q BECAUSE YOU SENT THE SAME NOTICE ON 1114 --
19 I'M SORRY -- THE SAME NOTICE ON JANUARY 14, THAT
20 YOU HAD SENT ON NOVEMBER 29TH?

21 A IT'S THE SAME FORMAT WITH DIFFERENT
22 INFORMATION ON IT.

23 Q NO. BUT I GUESS MY UNDERSTANDING WAS THAT IF
24 YOU HAD A FOLLOWUP AS THIS PURPORTS TO BE THAT YOU
25 TAKE A MORE AGGRESSIVE STANCE IN RESPONSE TO THE

1 FOLLOW UP?

2 A NO. IF IT'S A NEW CUSTOMER HOSTING THIS
3 PARTICULAR WEB SITE ON A DIFFERENT TIME PERIOD,
4 THEN WE WOULD TREAT IT AS A TOTALLY DIFFERENT
5 COMPLAINT TO A DIFFERENT RESELLER OR DIFFERENT
6 CUSTOMER.

7 Q BUT IF IT WAS THE SAME CUSTOMER WHO, IN FACT,
8 HAD NOT RESPONDED TO THE FIRST NOTICE, YOUR SECOND
9 NOTICE WOULD DEMAND MORE IMMEDIATE ACTION AND IF IT
10 DIDN'T OCCUR YOU WOULD UNPLUG IT IMMEDIATELY?

11 A I THINK THE RECORD PROVES THAT I WOULD MOST
12 LIKELY JUST DISABLE THE IP.

13 Q DO YOU REMEMBER HOW MANY NOTICES YOU SENT OUT
14 IN RESPONSE TO THE NOVEMBER 26 LETTER?

15 A IT WAS TWO YEARS AGO. I HAVE NO RECOLLECTION.
16 BUT EVERY TIME WHEN I MAKE A SEARCH ON A BATCH OF
17 THE COMPLAINTS I MORE OR LESS DID A SUMMARY FOR
18 THAT.

19 Q OKAY. SO THIS SHOULD REFLECT ALL OF THE
20 DOMAIN NAMES THAT WERE IN THE NOVEMBER 26 LETTER
21 AND ALL OF THE ACTION THAT YOU TOOK IN RESPONSE TO
22 IT, IS THAT NOT CORRECT?

23 A IT SHOULD.

24 Q NOW, HOW MANY OF THESE WEB SITES -- AND YOU
25 CAN LOOK AT EXHIBIT 1598. DOES THE WITNESS HAVE A

1 HARD COPY OF IT?

2 MR. LOWE: HE MIGHT IN HIS NOTEBOOK.

3 MR. COOMBS: I'M SORRY.

4 MR. LOWE: HE MIGHT IN HIS NOTEBOOK.

5 BY MR. COOMBS:

6 Q YOU MIGHT HAVE A HARD COPY OF IT FROM YOUR
7 COUNSEL IN THE BINDER?

8 A WHICH ONE?

9 Q 1598.

10 A THAT WOULD BE THE SAME LIKE ON THE SCREEN;
11 RIGHT?

12 Q THAT'S CORRECT. ARE YOU FINDING IT?

13 A YES.

14 Q OKAY. WELL, LET'S TRY AND MAKE THIS A LITTLE
15 FASTER. HOW MANY OF THE DOMAIN NAMES THAT WERE
16 LISTED IN THAT LETTER WERE NOT THE SUBJECT OF A
17 TAKEDOWN NOTICE?

18 A HOW CAN I REMEMBER TWO YEARS AGO FOR THIS TYPE
19 OF DETAILS.

20 Q YOU MEAN IT'S NOT REFLECTED ON EXHIBIT 1598?

21 THE COURT: WELL, IF YOU'RE JUST ASKING
22 THE WITNESS TO COUNT ONE COLUMN AND ADD IT UP TO
23 WHERE THERE IS IN ANOTHER COLUMN THE NUMBER OF
24 TAKEDOWNS, IF YOU HAVE DONE THAT MATH, YOU CAN
25 SIMPLY USE THAT AS A PREFERENCE TO THE QUESTION.

1 BY MR. COOMBS:

2 Q LET'S SEE. I COUNT SEVEN DOMAIN NAMES LISTED
3 WHERE THE TAKEDOWN WAS NO TAKEDOWN. IS THAT
4 CONSISTENT WITH YOUR READING OF THIS?

5 THE COURT: WELL, THAT AGAIN ASKS US TO
6 USE TIME FOR THE COUNTING. USE IT AS A PREFACE.
7 LET'S ASSUME THE MATH IS CORRECT AND ASK A QUESTION
8 ABOUT THAT IF YOU WISH.

9 BY MR. COOMBS:

10 Q DO YOU RECALL IN YOUR DEPOSITION TESTIMONY YOU
11 SAID YOU SENT OUT DEMANDS FOR ONLY HALF OF THE
12 DOMAINS LISTED IN NUMBER 7?

13 A PROBABLY.

14 Q BUT ARE ALL OF THE DOMAINS THAT ARE LISTED IN
15 EXHIBIT 7 THE DEMANDS LISTED ON EXHIBIT 1598?

16 A I THINK I'M VERY CONFUSED ON THIS.

17 WE HAVE RECEIVED --

18 THE COURT: JUST A MOMENT. LET HIM
19 CLARIFY THEN IF YOU'RE CONFUSED.

20 BY MR. COOMBS:

21 Q I THINK YOU SAID PROBABLY YOU ONLY SENT OUT
22 LETTERS IN ABOUT 50 PERCENT OF THE DOMAIN NAMES
23 THAT WERE INCLUDED IN THE NOVEMBER 26 DEMAND FROM
24 LOUIS VUITTON; IS THAT CORRECT?

25 A I HAVE NO MEMORY FOR SOMETHING THAT HAPPENED

1 TWO YEARS AGO.

2 Q AND -- BUT YOU BELIEVE THAT EXHIBIT 1598 IS AN
3 ACCURATE REFLECTION OF WHAT HAPPENED AT THAT TIME?

4 A YES.

5 Q AND THERE'S NO OTHER INFORMATION THAT WE CAN
6 LOOK AT TO DETERMINE WHETHER OR NOT YOU, IN FACT,
7 DID SOMETHING DIFFERENT FROM WHAT IS REFLECTED IN
8 EXHIBIT 1598?

9 A YES, AS FAR AS IF I SEND A TAKEDOWN NOTICE TO
10 THE CUSTOMER, THE E-MAIL COPY, IT CAN SUPPORT ALL
11 OF THIS, YES.

12 Q AND OKAY. AND YOU HAVE NO REASON TO DISAGREE
13 WITH ME WHEN I SAY THAT I JUST WALKED THROUGH THIS
14 AND IT APPEARS THAT THERE ARE ONLY SEVEN ON WHICH
15 YOU DID NOT SEND TAKEDOWN NOTICES?

16 A I DID NOT SEND.

17 Q YES.

18 A YES.

19 Q THANK YOU. EARLIER WE WERE TALKING ABOUT
20 ESTARBIZ AND BECAUSE OF THE FACT THAT THE NOTICE IS
21 SENT IN NOVEMBER AND IN JANUARY WERE THE SAME, YOU
22 REASONED THAT THE IP ADDRESS IN JANUARY WAS
23 DIFFERENT EVEN THOUGH IT DOESN'T SHOW THAT ON
24 EXHIBIT 1598. DO YOU REMEMBER THAT?

25 A YES.

1 Q ALL RIGHT. I'D LIKE TO SHOW TWO E-MAILS. I
2 GUESS YOU COULD MARK THEM. THEY WERE TRANSMITTED
3 BY DEFENSE COUNSEL LAST WEEK WHEN WE GOT A FINAL
4 VERSION OF 1598.

5 THE FIRST ONE I GUESS WE WOULD MARK AS
6 1596, AND I'LL PUT IT UP ON THE ELMO IF I CAN
7 MANAGE THAT TECHNOLOGY AND ASK THE WITNESS -- LET
8 ME SEE. HAVE I GOT THAT CENTERED?

9 THE COURT: YOU NEED TO COME IN CLOSE TO
10 IT. IT'S A LITTLE HARD TO READ.

11 BY MR. COOMBS:

12 Q AND ON NOVEMBER 26. THAT'S AN E-MAIL
13 TRANSFERRED TO WANGKIYO@HOTMAIL.COM; IS THAT
14 CORRECT?

15 A YES.

16 Q AND THAT'S NOVEMBER 29, 2007?

17 A YES.

18 Q AND THAT'S CONCERNING IP ADDRESS
19 205.209.140.66. DO YOU SEE THAT?

20 A THAT IS CORRECT.

21 Q OKAY. AND THAT SAYS IT'S POSTING
22 ESTARBIZ.COM?

23 A YES.

24 Q AND THAT'S THE E-MAIL THAT WE WERE TALKING
25 ABOUT EARLIER LISTED ON PAGE 2 OF EXHIBIT 1598?

1 A YES.

2 Q LET'S MARK EXHIBIT NUMBER 1597 THE ONE PAGE
3 E-MAIL. THIS ONE IS ACTUALLY DATED MARCH 3 -- I
4 STAND CORRECTED. WE'LL MARK THIS ONE 598 AND IT'S
5 DATED JANUARY 14, 2008. AND I'LL ASK THE WITNESS
6 IF THAT'S AN E-MAIL FROM AKANOC SOLUTIONS
7 CONCERNING ESTARBIZ.COM?

8 A YES.

9 Q AND IS THAT THE E-MAIL THAT IS REFERRED TO
10 UNDER THIS SECOND COLUMN WHERE TAKEDOWN NOTICE SENT
11 ON 1-14-08 IN EXHIBIT 1598?

12 A YES.

13 Q AND IT IS THE SAME IP ADDRESS, IS IT NOT?

14 A YES.

15 Q AND IT'S STILL WANGKIYO@HOTMAIL.COM?

16 A YES.

17 Q AND WHO IS WANG KIYO?

18 A JUST AN E-MAIL ADDRESS FROM MY DATABASE.

19 Q AND DO YOU KNOW WHAT HIS BUSINESS IS, WHETHER
20 HE'S A WEB HOST OR RESELLER?

21 A HE HAD MULTIPLE SERVERS FROM US. I HAVE NO
22 INFORMATION WHICH ONE IS WHICH.

23 Q AND YOU HAVE NO IDEA WHETHER THE WEB SITES
24 RUNNING ON HIS ARE HIS WEB SITES OR HIS CUSTOMERS
25 OR SOMEONE ELSE?

1 A I HAVE NO IDEA.

2 Q AND WE'LL PUT UP THE NEXT ONE THAT COMES NEXT
3 FROM MARCH 3, '08 AND THIS, TOO, IS A -- IS ANOTHER
4 TAKEDOWN NOTICE -- THAT'S THE TAKEDOWN NOTICE
5 REFERRING TO ESTARBIZ ON 3-3; IS THAT CORRECT?

6 A YES.

7 Q AND IT'S TO MR. WANG KIYO; IS THAT CORRECT?

8 A YES.

9 Q AND IT'S CONCERNING THE SAME DOMAIN NAME
10 ESTARBIZ.COM?

11 A YES.

12 Q AND IT CONCERNS THE SAME --

13 A THIS ONE --

14 Q I DIDN'T MEAN TO INTERRUPT. BUT MY ONLY
15 QUESTION IS THAT IT'S THE SAME IP ADDRESS AS
16 REFLECTED ON THE PREVIOUS EXHIBITS?

17 A YES.

18 Q AND THAT SUGGESTS TO ME AT LEAST THAT THAT WEB
19 SITE WAS IN OPERATION FROM NOVEMBER OF 2007 AND
20 UNTIL MARCH OF 2008. DO YOU HAVE A DIFFERENT
21 CONCLUSION?

22 A CAN YOU PUT THE LAST? THE FIRST THING I SAID
23 IS THAT YOUR SERVER HAS BEEN UNPLUGGED.

24 Q MR. CHEN, I DIDN'T ASK YOU WHAT THE E-MAIL
25 SAID. I ASKED YOU WHETHER THE ESTARBIZ WAS ON THE

1 SAME SERVER WITH THE SAME CUSTOMER FROM NOVEMBER OF
2 2007 UNTIL MARCH OF 2008?

3 A YES.

4 Q NOW, IS MR. WANG KIYO STILL A CUSTOMER OF
5 AKANOC SOLUTIONS?

6 A MAYBE.

7 Q YOU DON'T KNOW?

8 A I DON'T KNOW.

9 Q YOU NEVER TOOK ANY ACTION TO TERMINATE HIM AS
10 A CUSTOMER?

11 A I DON'T HAVE A REASON TO TERMINATE HIM.

12 Q SO IN SPIKE OF THE LITIGATION AND IN SPIKE OF
13 ALL OF THE DEMANDS THAT ARE GOING ON, THIS SITE CAN
14 STAY UP FOR FOUR MONTHS AND THE ONLY THING YOU CAN
15 DO IS UNPLUG THE SERVER. AND DO YOU KNOW WHAT
16 HAPPENED TO THE SERVER AFTER HE UNPLUGGED IT?

17 A AS I PREVIOUSLY SAID, I HAVE NO WAY OF
18 KNOWING. THE ONLY THING I CAN BE IN CONTROL OF IS
19 UNPLUG THE SERVER.

20 Q NOW, LET'S BACK UP FOR A MOMENT AND GO BACK TO
21 PAGE 1 OF 1598 AND THE FIVE WEB SITES THAT WERE
22 LISTED IN THE COMPLAINT WHICH YOU INDICATE HERE WAS
23 SERVED ON YOU ON AUGUST 20TH, 2007. DO YOU SEE
24 THAT?

25 A YES.

1 Q AND JUST SO I'M CLEAR, YOU HAVE NO INFORMATION
2 REGARDING THE STATUS OF APRIL168.COM AT ANY TIME
3 BEFORE AUGUST 20TH, 2007?

4 A I JUST DON'T REMEMBER IT.

5 Q YOU DON'T HAVE ANY EVIDENCE THAT YOU DID
6 ANYTHING IN CONNECTION WITH THE DOMAIN NAME OF
7 AUGUST 20TH, 2007? DO YOU HAVE ANY --

8 THE COURT: YOU INTERRUPTED HIS ANSWER.
9 I WASN'T SURE IF YOU WANTED TO WITHDRAW YOUR
10 QUESTION OR NOT, BUT YOU DID ASK A QUESTION AND HE
11 STARTED TO ANSWER.

12 MR. COOMBS: I'M SORRY. I THOUGHT HE WAS
13 NOT CLEAR ON THE QUESTION, AND SO I WAS TRYING TO
14 REPHRASE.

15 THE WITNESS: IF I HAVE -- IF IT'S IN MY
16 REGULAR BUSINESS OPERATION, I CAN CHECK MY E-MAIL
17 LOG TO SEE WHETHER THE COMPLAINT COMES IN, WHETHER
18 I HAVE FOLDING OF THE COMPLAINT.

19 BY MR. COOMBS:

20 Q I THINK YOU TESTIFIED THAT YOU CHECKED YOUR
21 E-MAIL LOG IN PREPARATION OF EXHIBIT 1598? NO?
22 DID I MISUNDERSTAND THAT?

23 A 1598 IS A SUMMARY REPORT BASED ON A PARTICULAR
24 DATE THAT I RECEIVED INFORMATION AND WHAT I DID TO
25 IT, AND I PULLED ALL OF THE E-MAILS AND THIS IS THE

1 SUMMARY OF ALL OF THE E-MAILS.

2 Q SO AGAIN, MY UNDERSTANDING IS I THINK FROM
3 YOUR TESTIMONY IS THAT 8-20-07 IS THE DATE THAT YOU
4 WERE SERVED WITH THE COMPLAINT IN THIS MATTER; IS
5 THAT CORRECT?

6 A THAT IS CORRECT.

7 Q AND THERE IS NO ENTRY FOR APE168.COM BEFORE
8 AUGUST 20TH, 2007; IS THAT CORRECT?

9 A NO.

10 Q AND THERE'S NO RELATING ACTIVITY RELATING TO
11 ATOZBRAND.COM FROM AUGUST 20TH, 2007; IS THAT
12 CORRECT?

13 A I DON'T KNOW.

14 Q I'M LOOKING AT 1598. IS THERE ANY INDICATIONS
15 THAT AKANOC SOLUTIONS DID ANYTHING IN RESPONSE TO A
16 REPORT OF INFRINGEMENT ON ATOZBRAND.COM AT ANY TIME
17 BEFORE THEY WERE SERVED WITH THE COMPLAINT IN THIS
18 MATTER?

19 A I DON'T KNOW BECAUSE I HAVEN'T SEARCHED.

20 Q IS THERE ANYTHING INDICATED -- OH, I'M SORRY.
21 WHEN YOU PREPARED THIS, YOU WERE ASKED NOT TO
22 SEARCH FOR ANYTHING CONCERNING ANY ACTIVITY BEFORE
23 THE COMPLAINT WAS FILED, IS THAT WHAT I UNDERSTAND?

24 A WHEN I ASKED THIS PARTICULAR INFORMATION, IT
25 STARTED ON THE 8-20 -- 8 -- AUGUST 20, 2007.

1 WE START BUILDING BECAUSE OF THE ENTRIES
2 STARTED -- THE COMPLAINT THAT I HAVE BEEN SERVED,
3 IT'S STARTING BACK THEN SO WE START BUILDING
4 INFORMATION BASED ON THAT.

5 Q SO YOU WERE NOT INTERESTED IN ANY OF THE
6 ACTIVITY WHICH ACTUALLY LED TO THE FILING OF THE
7 COMPLAINT IN THE FIRST PLACE?

8 A I MAY HAVE RESEARCHED THAT IN THE PAST, BUT
9 IT'S NOT FOR THIS PARTICULAR REPORT.

10 Q AND DO YOU HAVE ANY RECOLLECTION OF THE
11 RESULTS OF THE RESEARCH THAT YOU DID IN THE PAST?

12 A I THINK I HAVE SOMETHING.

13 Q AND WHAT IS IT? WHY IS IT NOT HERE?

14 A HOW CAN I REMEMBER TWO YEARS AGO? BUT I DID
15 RESEARCH IT.

16 Q HAVE YOU PRODUCED ANYTHING IN THIS ACTION
17 REFLECTING ANY RESPONSE BY AKANOC OR MANAGED
18 SOLUTIONS GROUP TO ANY LOUIS VUITTON COMPLAINT
19 CONCERNING ANY ONE OF THE FIVE WEB SITES LISTED
20 HERE?

21 A YES.

22 Q AND WHAT WAS THAT?

23 A SOME OF THE E-MAIL IF I CAN FIND, SOME OF THE
24 ACTIONS THAT I THINK IS RELATED TO THE COMPLAINT
25 ITSELF.

1 Q YOU HAVE A SPECIFIC RECOLLECTION OF E-MAILS
2 DESPITE THE SERVER CRASH WE HAD TALKED ABOUT
3 EARLIER?

4 A NO, BECAUSE ANYTHING -- THE E-MAIL RECORD THAT
5 WE HAVE, THE E-MAIL LOG THAT WE HAVE IS JUNE 15TH
6 AND AFTER.

7 AND JUNE 15TH, '07 AND AFTER
8 EVERYTHING -- AND I DID SEARCH THAT PERIOD OF TIME
9 AND THERE IS NOTHING IN IT.

10 Q SO THERE IS NO EVIDENCE, NO E-MAIL TRAFFIC IN
11 PARTICULAR, RELATING TO ANYTHING CONCERNING THESE
12 FIVE WEB SITES BEFORE JUNE OF 2007?

13 A THAT IS CORRECT.

14 Q OKAY. SO WHAT IS THERE REGARDING ACTIVITY
15 BETWEEN JUNE OF 2007 AND AUGUST 20TH, 2007? WHY
16 HAVEN'T WE SEEN IT?

17 A THE ANALYSIS I WAS DOING I THINK IS BASED ON
18 THE EVIDENCE THAT YOU PROVIDE OF CERTAIN COMPLAINTS
19 COMES IN, AND I WAS TRYING TO FIGURE OUT WHAT IS
20 THE IP CHANGE HISTORY BASED ON YOUR COMPLAINT.

21 Q WELL, YOU WERE HERE YESTERDAY WHEN I WAS
22 READING FROM YOUR DEPOSITION TESTIMONY ABOUT ALL OF
23 THE COMPLAINTS THAT LOUIS VUITTON HAD SENT FROM
24 OCTOBER OF 2006 UNTIL APRIL OF 2007 AND IN RESPONSE
25 TO THOSE QUESTIONS YOU SAID YOU HAD NO

1 RECOLLECTION.

2 IS THERE SOME RECOLLECTION THAT YOU HAVE
3 NOW THAT YOU DID NOT HAVE IN YOUR DEPOSITION?

4 A I DON'T BELIEVE I WAS ASKED IN MY DEPOSITION
5 HOW DID I ANALYZE ALL OF THAT COMPLAINT.

6 Q WELL, LET'S START BY MARKING AS EXHIBIT 599 AS
7 PROOF OF SERVICE PREVIOUSLY SERVED AND PART OF THE
8 COURT RECORD IN THIS ACTION AND IT IS A PROOF OF
9 SERVICE OF SUMMONS AND COMPLAINT ON STEVEN CHEN.
10 LET'S SEE IF I CAN GET TO THE RELEVANT PORTION OF
11 THIS. THERE.

12 NOW, DO YOU SEE PARAGRAPH 2 THERE IT SAYS
13 STEVEN CHEN WAS SERVED THERE; IS THAT CORRECT?

14 A YES.

15 Q AND IT SAYS UNDER PARAGRAPH 4 THAT STEVEN CHEN
16 WAS SERVED BY PERSONAL SERVICE. DO YOU SEE THAT?

17 A YES.

18 Q AND, IN FACT, IT SAYS IT WAS ON AUGUST 15TH,
19 NOT THE 30TH. DO YOU SEE THAT?

20 A YES.

21 Q AND NOW, DOES THAT REFRESH YOUR RECOLLECTION
22 AS TO WHEN YOU WERE ACTUALLY SERVED WITH PROCESS IN
23 THIS ACTION?

24 A YES.

25 Q AND YOU WERE SERVED ON THE 15TH?

1 A MAYBE.

2 Q DID YOU DO ANYTHING WITH RESPECT TO THESE FIVE
3 WEB SITES BETWEEN AUGUST 15TH AND AUGUST 20 WHEN
4 YOU SAID YOU FIRST LOOKED TO SEE WHETHER THEY WERE
5 ON AKANOC'S SERVERS?

6 A PROBABLY NOT. I MIGHT BE BUSY ON SOMETHING
7 ELSE.

8 Q SOMETHING THAT IS MORE PRESSING THAN THE --
9 THE COURT: MOVE ON.

10 BY MR. COOMBS:

11 Q THANK YOU. CAN WE PULL UP EXHIBIT 528,
12 PLEASE. BLOW THAT UP A LITTLE BIT.

13 MR. CHEN, IS THAT YOUR E-MAIL
14 STEVE@RACKLOGIC.COM?

15 A THAT'S CORRECT.

16 Q AND WHAT IS THE DATE OF THAT E-MAIL?

17 A AUGUST 8TH.

18 Q SO THAT WAS ACTUALLY A WEEK BEFORE YOU WERE
19 PERSONALLY SERVED; IS THAT NOT CORRECT?

20 A YES.

21 Q AND WHO ARE YOU CORRESPONDING WITH IN THIS
22 E-MAIL STRING?

23 A SECURITY.

24 Q OKAY.

25 A WHICH IS JULIANA.

1 Q ALL RIGHT. AND THIS IS FROM YOU TO JULIANA?

2 A RIGHT.

3 Q AND YOUR TEXT -- YOU WROTE THAT FIRST LINE
4 STUPID LV, RIGHT?

5 A YES.

6 Q AND YOU'RE REFERRING TO APE168?

7 A RIGHT.

8 Q AND THAT'S THE SAME APE168 THAT IS REFLECTED
9 ON THIS THAT YOU SAID YOU FIRST HEARD ABOUT IT
10 AUGUST 1ST, 2007; IS THAT RIGHT?

11 A YES.

12 Q AND THERE'S NOT ANOTHER APE168 WE NEED TO
13 WORRY ABOUT?

14 A NO.

15 Q AND NOW, A LITTLE BIT FURTHER ON JUST BELOW
16 THAT IS AN E-MAIL FROM YOU AND IT'S ADDRESSED TO
17 ZHONGHH@IT5.CN AND CHENDAN@IT5.CN?

18 A YES.

19 Q AND THAT'S TWO E-MAILS?

20 A YES.

21 Q AND IS THAT THE COMPANY THAT WAS FIRST HOSTING
22 APE168 WHEN YOU FIRST HEARD ABOUT THE LAWSUIT THAT
23 WAS FILED AGAINST YOU BY LOUIS VUITTON?

24 A YES.

25 Q SO IF APE168 WAS NOT ON YOUR SERVERS WHEN YOU

1 FIRST HEARD ABOUT IT, WHY WERE YOU WRITING TO YOUR
2 CUSTOMERS FROM YOUR RACKLOGIC E-MAIL ACCOUNT?

3 A I HEARD ABOUT THE LAWSUIT EVEN BEFORE I GOT
4 SERVED AND SO MAYBE THERE WAS AN LV COMPLAINT
5 SOMEWHERE WHICH I DON'T RECALL AND I REACTED.

6 Q AND YOU REACTED BY WRITING TO THE CUSTOMER?

7 A YES.

8 Q SO, IN FACT, AT LEAST AS TO APE168, IT WAS ON
9 YOUR SERVERS WHEN THE COMPLAINT WAS FILED IN THIS
10 ACTION?

11 A YES.

12 Q SO THAT'S A MISTAKE ON THIS 1598?

13 A NO. IT SAYS AUGUST 20TH, 2007. IP IS NOT
14 THERE.

15 Q SO FOR ALL WE KNOW ALL OF THIS WERE THERE WHEN
16 YOU FIRST LEARNED ABOUT THE COMPLAINT IN AUGUST
17 2007?

18 A I DON'T RECALL WHETHER ALL FIVE WERE THERE.

19 Q BEAR WITH ME ONE MOMENT.

20 THE COURT: YOUR GLANCE AT THE CLOCK AND
21 THE PREGNANT PAUSE ALWAYS SUGGESTS TO ME WE SHOULD
22 GET A START ON THE WEEKEND. IT'S ABOUT SEVEN
23 MINUTES TO 4:00, BUT WE'VE HAD A LONG DAY. YOU'RE
24 UNLIKELY TO FINISH THIS WITNESS IF I GIVE YOU A FEW
25 MORE MOMENTS?

1 MR. COOMBS: I THINK THAT'S A SAFE
2 ASSUMPTION.

3 THE COURT: LADIES AND GENTLEMEN, WE'LL
4 BE HERE ON MONDAY AND DOING OTHER MATTERS SO DON'T
5 COME TO SEE ME HERE. TAKE THE TIME OFF. WE'LL SEE
6 YOU BRIGHT AND EARLY ON TUESDAY.

7 CAN YOU EXCUSE ME FOR A MOMENT. I JUST
8 WANT TO CLARIFY WITH THE LAWYERS WHAT WE CAN EXPECT
9 IN TERMS OF THE EVIDENCE.

10 COUNSEL APPROACH.

11 (SIDE-BAR CONFERENCE.)

12 THE COURT: VERY WELL. WE'RE A LITTLE
13 EARLY IN TERMS OF MAKING GOOD ESTIMATES BUT
14 CERTAINLY WE ARE AT LEAST A DAY AHEAD OF OUR
15 SCHEDULE.

16 IN OTHER WORDS, RATHER THAN HAVE THE CASE
17 GO THROUGH THURSDAY, WE SHOULD COMPLETE THE
18 EVIDENCE ON WEDNESDAY.

19 SO TUESDAY AND WEDNESDAY COULD BE
20 PRODUCTIVE DAYS FOR EVIDENCE.

21 IF THAT CHANGES, I'LL LET YOU KNOW. I'M
22 ALWAYS TRYING SO YOU CAN PLAN YOUR OWN LIVES. SO
23 YOU WOULD HAVE THE CASE THEN INSTEAD OF THE CASE
24 BEING ARGUED AND SUBMITTED DURING FRIDAY MORNING
25 AND YOU WOULD BE GETTING IT FRIDAY AFTERNOON, YOU

1 COULD WELL HAVE THE CASE AT SOME POINT ON THURSDAY
2 GIVING YOU ALL DAY ON FRIDAY FOR YOUR DELIBERATIONS
3 AT LEAST TO START.

4 AGAIN, WE DON'T CONTROL YOUR
5 DELIBERATIONS. HAVE A GOOD WEEKEND AND REMEMBER MY
6 ADMONITIONS.

7 (WHEREUPON, THE EVENING RECESS WAS
8 TAKEN.)