

EXHIBIT Z

Case No. 1:14-cv-00857-TSC-DAR



CONFIDENTIAL

Transcript of James R. Fruchterman

Date: September 8, 2015

Case: American Educational Research Assoc., Inc., et al -v-
Public.Resource.Org., Inc.

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN EDUCATIONAL RESEARCH
ASSOCIATION, INC., ET AL.,
PLAINTIFF,
vs. No. 1:14-CV-00857-TSC-DAR
PUBLIC.RESOURCE.ORG, INC.,
DEFENDANT.

VIDEOTAPED DEPOSITION OF
JAMES R. FRUCHTERMAN
CONFIDENTIAL
Tuesday, September 8, 2015

Reported By:
KATHLEEN WILKINS, CSR #10068, RPR-RMR-CRR-CCRR-CLR

1 VIDEOTAPED DEPOSITION OF JAMES R. FRUCHTERMAN

2 BE IT REMEMBERED that on Tuesday,
3 September 8, 2015, commencing at the hour of
4 9:21 a.m. thereof, at FENWICK & WEST, LLP, 801
5 California Street, Mountain View, California,
6 before me, Kathleen A. Wilkins,
7 RPR-RMR-CRR-CCRR-CLR, a Certified Shorthand
8 Reporter, in and for the State of California,
9 personally appeared JAMES R. FRUCHTERMAN, a
10 witness in the above-entitled court and cause,
11 who, being by me first duly sworn, was thereupon
12 examined as a witness in said action.

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STEVE PATAPOFF, VIDEOGRAPHER

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1 September 8, 2015 9:21 A.M.

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

3 THE VIDEOGRAPHER: Good morning. Here 09:16:23
4 begins Tape No. 1 in the video deposition of 09:20:44
5 James Fruchterman in the matter of American 09:20:47
6 Educational Research Association, Incorporated, et 09:20:49
7 al., versus Public.Resource.Org, Incorporated, in 09:20:53
8 the U.S. District Court of the District of 09:21:00
9 Columbia, Case Number 1:14-CV-00857-TSC-DAR. 09:21:02

10 Today's date is September 8th, 2015. 09:21:12
11 Time on the video monitor is 9:21 a.m. The 09:21:15
12 videographer today is Steve Patapoff representing 09:21:18
13 Planet Depos. The video deposition is taking 09:21:21
14 place at Fenwick & West, 801 California Street, 09:21:23
15 Mountain View, California. 09:21:26

16 Would counsel please voice-identify 09:21:29
17 themselves and state whom they represent. 09:21:31

18 MR. HUDIS: Jonathan Hudis, 09:21:35
19 Quarles & Brady, LLP, for plaintiffs. 09:21:36

20 MS. CAPPAERT: Katherine Cappaert from 09:21:41
21 Oblon, LLP, for plaintiffs. 09:21:46

22 MR. KAPLAN: Sebastian Kaplan, 09:21:48
23 Fenwick & West, LLP, for defendant 09:21:49
24 Public.Resource.Org, Incorporated. 09:21:52

25 THE VIDEOGRAPHER: Court reporter today 09:21:56

1	is Kathleen Wilkins representing Planet Depos.	09:21:56
2	Would the reporter please swear in the	09:21:59
3	witness.	09:22:01
4	JAMES R. FRUCHTERMAN,	09:22:11
5	having been duly sworn,	09:22:11
6	was examined and testified as follows:	09:22:11
7	EXAMINATION BY MR. HUDIS	09:22:10
8	BY MR. HUDIS:	09:22:11
9	Q. Good morning, sir. Would you state your	09:22:13
10	full name and address for the record.	09:22:15
11	A. James Robert Fruchterman, Jr.	09:22:18
12	1850 Middlefield Road, Palo Alto, California.	09:22:20
13	Q. And is that your business address or	09:22:26
14	your home address?	09:22:28
15	A. My home address.	09:22:30
16	Q. Could I have your business address,	09:22:31
17	please.	09:22:33
18	A. My business address is 4780 California	09:22:33
19	Avenue, Palo Alto, California.	09:22:36
20	Q. Mr. Fruchterman, I am here -- my name is	09:22:39
21	Jonathan Hudis, representing the plaintiffs in an	09:22:41
22	action in which you've been designated as an	09:22:45
23	expert witness.	09:22:47
24	My colleague, Katherine Cappaert, is	09:22:48
25	here with me and will be working with me during	09:22:50

29

1 as you sit here today? 09:47:43

2 A. Oh, many ideas. Microfluidics, math and 09:47:46

3 science simulation software, more pattern 09:47:57

4 recognition companies, but none of these reached 09:48:06

5 the point of where I was actually employed, 09:48:10

6 because they never got started. 09:48:13

7 Q. Could you define for us microfluidics? 09:48:14

8 A. It's a semiconductor-based technology 09:48:18

9 for moving gases or fluids rather than electrical 09:48:22

10 current, but under the control of electrical 09:48:28

11 signals. 09:48:32

12 Q. Any other notable projects in your 09:48:41

13 working background that you haven't told us about? 09:48:44

14 MR. KAPLAN: Objection. Vague. 09:48:47

15 THE WITNESS: I taught night school, in 09:48:49

16 computer programming. I crawled under houses as 09:48:51

17 part of helping homeowners understand more of 09:48:59

18 their earthquake risks. But those were back in 09:49:03

19 the early '80s, when I was trying to get my first 09:49:08

20 company really going. 09:49:11

21 BY MR. HUDIS: 09:49:14

22 Q. Since it's a fair part of your expert's 09:49:20

23 report, Mr. Fruchterman, in simple terms could you 09:49:24

24 please define what is "optical character 09:49:28

25 recognition" and what does it do? 09:49:31

30

1 A. So optical character recognition is the 09:49:36
2 process of having a machine recognizing letters 09:49:41
3 and words, generally from documents, though it can 09:49:44
4 be from other objects, and translating those into 09:49:49
5 the letter or word equivalent so that those things 09:49:53
6 can be processed. 09:49:59

7 So the most common application of 09:50:00
8 optical character recognition is scanning, let's 09:50:03
9 say, a page of a document and turning it into a 09:50:07
10 word processor file that is the equivalent of what 09:50:09
11 you would have done if you had typed it in, but 09:50:14
12 the machine, instead, had it scanned and then took 09:50:16
13 the picture of the page and turned it into the 09:50:19
14 text of the page. 09:50:23

15 Q. So for the remainder of this deposition, 09:50:25
16 if I use the initials "OCR," we'll understand that 09:50:28
17 to mean "optical character recognition"? 09:50:32

18 A. Yes. 09:50:35

19 Q. Is OCR a common method of creating 09:50:36
20 searchable digital copies of texts? 09:50:39

21 MR. KAPLAN: Objection. Competence. 09:50:47

22 Vague. 09:50:52

23 THE WITNESS: It is the most common form 09:50:55
24 when the source document is in physical or solely 09:50:56
25 image-based form, but it's probably not the most 09:51:02

1 common.

09:51:07

2 BY MR. HUDIS:

09:51:07

3 Q. What is the most common?

09:51:07

4 A. Having digitally created content that
5 stays digital and then is searched.

09:51:09

6 Q. So, for example --

09:51:13

7 MR. KAPLAN: Can I just interject. For
8 the court reporter, you had my objection as
9 "compound." It was "competence." I just wanted
10 to make sure we had that on the record.

09:51:14

09:51:16

09:51:17

09:51:21

11 BY MR. HUDIS:

09:51:50

12 Q. So, for example, Mr. Fruchterman, a
13 document created in Microsoft Word would be a
14 method of creating searchable digital text?

09:51:50

09:51:52

09:51:58

15 MR. KAPLAN: Objection. Incomplete
16 hypothetical. Vague.

09:52:01

09:52:02

17 THE WITNESS: It would be a great source
18 document to put into a system that analyzed
19 documents for full text. I'm not sure -- could
20 you repeat the question.

09:52:06

09:52:07

09:52:12

09:52:18

21 BY MR. HUDIS:

09:52:19

22 Q. Yes.

09:52:20

23 So, for example, a document created in
24 Microsoft Word would be a method of creating
25 searchable digital text?

09:52:23

09:52:26

09:52:29

121

1 I might want to know pages that mention 12:09:18

2 Constitution and bananas on the same page. 12:09:24

3 Q. All right. So that would be a Boolean 12:09:27
4 search? 12:09:29

5 A. Yes. So there are searches you could 12:09:29
6 do. Those are easier to do on digital content, 12:09:31
7 obviously. But, you know, human beings often do 12:09:34
8 word spotting as well. Skimming. There's 12:09:38
9 skimming that people do. 12:09:41

10 And -- I mean, there are other tasks 12:09:42
11 that people do. I choose to focus on those as the 12:09:47
12 primary ones that encompass what 95 percent or 12:09:51
13 more people would want to do with a given 12:09:55
14 document. 12:09:57

15 Q. And those functional tasks, just to 12:09:57
16 summarize -- I've been listening very carefully -- 12:10:00
17 to obtain the content, to read the content, to use 12:10:03
18 the structure of the document such as by markup or 12:10:06
19 by search, to skim the document and more 12:10:08
20 complicated phrase searches? 12:10:10

21 A. Yeah. 12:10:12

22 MR. KAPLAN: Objection. Misstates 12:10:13
23 testimony. 12:10:14

24 Go ahead. 12:10:15

25 THE WITNESS: More or less, yeah. 12:10:16

122

1 BY MR. HUDIS:

12:10:17

2 Q. Okay. All right. Could Bookshare's
3 members with print disabilities access the content
4 in the TIFF file created by the process you
5 described earlier without having the file undergo
6 an OCR process?

12:10:18

12:10:26

12:10:28

12:10:33

12:10:36

7 MR. KAPLAN: Objection. Incomplete
8 hypothetical. Vague. Lacks foundation.

12:10:39

12:10:42

9 THE WITNESS: They could have a human
10 being read it to them.

12:10:45

12:10:46

11 BY MR. HUDIS:

12:10:54

12 Q. Without intervention by another human
13 being, could Bookshare's members with print
14 disabilities access the TIFF file created as we
15 discussed -- I'm going to rephrase the question.

12:10:56

12:11:00

12:11:05

12:11:08

16 Without human intervention, could
17 Bookshare's members with print disabilities access
18 the content in the TIFF file without having
19 undergone the OCR process?

12:11:15

12:11:17

12:11:19

12:11:23

20 MR. KAPLAN: Objection. Incomplete
21 hypothetical. Vague. Lacks foundation.

12:11:24

12:11:26

22 THE WITNESS: I think the answer is no.
23 They need either OCR or a human to access TIFF
24 images if they're completely blind.

12:11:28

12:11:31

12:11:36

25

123

1 BY MR. HUDIS:

12:11:41

2 Q. Now, what if they are a low-vision
3 reader?

12:11:41

12:11:43

4 MR. KAPLAN: Objection. Incomplete
5 hypothetical. Vague. Lacks foundation.

12:11:44

12:11:46

6 THE WITNESS: Then they could view the
7 TIFF image magnified or otherwise visually
8 processed and read the document.

12:11:48

12:11:52

12:11:56

9 BY MR. HUDIS:

12:11:58

10 Q. What do you mean by "visually
11 processed"?

12:11:59

12:11:59

12 A. An example -- one obvious example is
13 making it bigger. Another one is reversing the
14 contrast so that instead of being black text on a
15 white background, being white text on black
16 background. There are many other visual things
17 that people with low vision benefit from other
18 than those two. Those are the two most common.

12:12:03

12:12:06

12:12:09

12:12:12

12:12:15

12:12:18

12:12:22

19 Q. With the current state of technology as
20 you know it, how accurate is the OCR process in
21 recognizing words on a printed page?

12:12:26

12:12:27

12:12:32

22 MR. KAPLAN: Objection. Vague.

12:12:34

23 THE WITNESS: It's quite good.

12:12:38

24 BY MR. HUDIS:

12:12:39

25 Q. Is there a known error recognition rate?

12:12:39

166

1 BY MR. HUDIS:

01:32:17

2 Q. And that would include what we talked
3 about earlier; that's the storage of the content
4 on your service -- on your servers or, more
5 recently, the Amazon cloud --

01:32:18

01:32:20

01:32:23

01:32:26

6 MR. KAPLAN: Objection.

01:32:29

7 BY MR. HUDIS:

01:32:29

8 Q. -- in a secure manner?

01:32:29

9 MR. KAPLAN: Objection. Misstates
10 testimony. Vague.

01:32:31

01:32:32

11 THE WITNESS: I would differentiate
12 between things that are just the way we operate
13 the service and representations or changes we've
14 made in conversations with the publishers.

01:32:35

01:32:36

01:32:38

01:32:41

15 There are many, many things where we
16 simply say, We're doing it this way, and -- they
17 don't -- the association doesn't have any ability
18 to approve of our activities. It's not their
19 place, as it were.

01:32:44

01:32:45

01:32:50

01:32:53

01:32:57

20 BY MR. HUDIS:

01:32:59

21 Q. Right.

01:32:59

22 A. They're simply a way to effectively
23 converse with the industry association and with
24 the industry. And if they see an issue that they
25 think their members want to hear about, they'll go

01:33:01

01:33:03

01:33:06

01:33:08

167

1 back to their members and talk to them. So it's 01:33:12
2 an efficiency mechanism. 01:33:14

3 But there is a difference between things 01:33:16
4 we just do and things we've explicitly conversed 01:33:17
5 with them and maybe made changes as a result of 01:33:21
6 that conversation. 01:33:23

7 Q. So what I'm concerned about is how you 01:33:24
8 worked with the American -- with the Association 01:33:27
9 of American Publishers to make them comfortable 01:33:30
10 that the Bookshare site would not be subject to 01:33:34
11 abuse. 01:33:37

12 MR. KAPLAN: Objection. Was there a 01:33:40
13 question? 01:33:43

14 MR. HUDIS: Yes. I'll phrase it a 01:33:44
15 different way. 01:33:48

16 Q. In what ways did you work with the 01:33:49
17 Association of American Publishers to ensure 01:33:50
18 that -- to make them comfortable that the 01:33:56
19 Bookshare site would not be the subject of abuse? 01:33:59
20 That people in the sighted community would not be 01:34:03
21 able to download their content without permission, 01:34:06
22 without compensation? 01:34:11

23 MR. KAPLAN: Objection. Argumentative. 01:34:13
24 Vague. 01:34:14

25 THE WITNESS: Okay. So we're now in a 01:34:19

168

1	much narrower area, and I'd say the	01:34:21
2	representations in our seven-point digital rights	01:34:25
3	management plan were the primary mechanism that we	01:34:32
4	dealt with that particular concern of the	01:34:37
5	publishing industry.	01:34:40
6	BY MR. HUDIS:	01:34:41
7	Q. Okay. The last sentence on that page,	01:34:46
8	page 15 of Exhibit 55, it says:	01:34:49
9	"With the extensive input	01:34:51
10	from consumers, authors,	01:34:54
11	publishers and leading	01:34:56
12	organizations, we have created a	01:34:57
13	model for Bookshare that can be	01:34:59
14	supported by a broad array of	01:35:01
15	interests."	01:35:04
16	What model is this passage talking	01:35:05
17	about?	01:35:08
18	MR. KAPLAN: Objection. Lacks	01:35:09
19	foundation.	01:35:10
20	THE WITNESS: The Bookshare operational	01:35:14
21	model.	01:35:17
22	BY MR. HUDIS:	01:35:21
23	Q. How would you describe the Bookshare	01:35:21
24	operational model?	01:35:22
25	A. A package of technologies and policies	01:35:24

169

1	and legal agreements and product features and -- I	01:35:27
2	mean, you know, it's a -- these things combined	01:35:33
3	create a service that delivers a value to people	01:35:38
4	with disabilities in a way that gets support from	01:35:46
5	these different stakeholders.	01:35:48
6	Q. Including the publishing industry?	01:35:53
7	A. Yes.	01:35:55
8	Q. Could we turn to page 16 of Exhibit 55.	01:35:57
9	Under copyright information, it says:	01:36:00
10	"Bookshare is an online	01:36:02
11	library that provides accessible	01:36:04
12	eBooks to people with print	01:36:06
13	disabilities. Bookshare meets the	01:36:07
14	requirements of the Chafee	01:36:09
15	Amendment which permits an	01:36:09
16	authorized entity like Benetech to	01:36:12
17	make books available to people	01:36:14
18	with print disabilities provided	01:36:16
19	that copies may not be reproduced	01:36:17
20	or distributed in a format other	01:36:19
21	than a specialized format	01:36:21
22	exclusively for use by blind or	01:36:23
23	other persons with disabilities.	01:36:25
24	Must bear a notice that any	01:36:27
25	further reproduction or	01:36:32

170

1	distribution in a format other	01:36:33
2	than a specialized format is an	01:36:35
3	infringement. Must include a	01:36:37
4	copyright notice identifying the	01:36:39
5	copyright owner and the date of	01:36:43
6	the original publication.	01:36:45
7	'Specialized formats' means	01:36:46
8	Braille, audio or digital text	01:36:50
9	which is exclusively intended for	01:36:53
10	use by blind or other persons with	01:36:54
11	disabilities."	01:36:56
12	All right. So I've read this passage,	01:36:59
13	Mr. Fruchterman.	01:37:01
14	A. Right.	01:37:01
15	Q. Does this accurately describe the	01:37:01
16	overall way that Benetech makes reading materials	01:37:03
17	available to its members?	01:37:07
18	MR. KAPLAN: Objection. Vague.	01:37:08
19	Misleading.	01:37:09
20	THE WITNESS: I think that these bullet	01:37:14
21	points that you just read recapitulate the	01:37:16
22	provisions of the Chafee Amendment, which is the	01:37:19
23	primary copyright exception that we use for making	01:37:23
24	copyright material to people with qualifying	01:37:26
25	disabilities inside the United States.	01:37:28

171

1 BY MR. HUDIS:

01:37:31

2 Q. If we could go to page 17 of Exhibit 55.

01:37:31

3 What is the purpose of this page on

01:37:36

4 Bookshare's web site?

01:37:38

5 MR. KAPLAN: Objection. Vague. Lacks

01:37:40

6 foundation.

01:37:41

7 THE WITNESS: This is part of our,

01:37:44

8 essentially, frequently asked questions, and it's

01:37:45

9 entitled "Digital Millennium Copyright Act."

01:37:49

10 And so as a -- and I'm not a lawyer, but

01:37:54

11 my understanding is is someone who provides access

01:37:58

12 to copyrighted material online, we are required to

01:38:02

13 have a DMCA agent to accept notices that there is

01:38:06

14 content on our web site that infringes the

01:38:12

15 copyright of others.

01:38:14

16 We frequently get DMCA notices from

01:38:17

17 authors or their agents or publishers saying, We

01:38:23

18 searched the web. This copyright work is on your

01:38:26

19 web site. Take it down.

01:38:29

20 And this is both explaining the DMCA

01:38:30

21 notice process at some level, as well as the, more

01:38:36

22 or less, if you don't know what the Chafee

01:38:40

23 Amendment is, you should look it up because we're

01:38:42

24 allowed to have it.

01:38:47

25 But I'm summarizing this in very direct

01:38:48

1	terms, because it's very rare for someone to issue	01:38:54
2	us a DMCA notice that results in us actually	01:38:56
3	taking down the work because it's usually legally	01:39:01
4	permitted under the copyright amendment.	01:39:04
5	BY MR. HUDIS:	01:39:05
6	Q. The Chafee Amendment to the copyright?	01:39:06
7	A. The Chafee Amendment. Or often a	01:39:07
8	license from the author's publisher who gave us	01:39:10
9	the content, but the author and their agent	01:39:12
10	weren't aware this was one of the nice things that	01:39:14
11	their publisher did for their entire catalog of	01:39:17
12	books, not just that author.	01:39:21
13	Q. Mr. Fruchterman, could we turn to page	01:39:23
14	18 of Exhibit 55.	01:39:25
15	Is this text on page 18 Bookshare's	01:39:34
16	digital rights plan -- digital rights management	01:39:40
17	plan?	01:39:46
18	A. This is the current or, let's just say,	01:39:46
19	last month's current -- but I don't believe it's	01:39:49
20	changed since last month -- version of our	01:39:51
21	seven-point digital rights management plan that we	01:39:53
22	have discussed earlier.	01:39:56
23	Q. And what was the purpose of Bookshare	01:39:58
24	implementing this DRM plan?	01:39:59
25	MR. KAPLAN: Objection. Vague. Lacks	01:40:04

173

1 foundation.

01:40:05

2 THE WITNESS: I would say that the
3 purpose of this was to represent to the
4 intellectual property industry, especially
5 publishers, that we were intending to follow the
6 law when it came to use of these materials. So it
7 was created for that original conversation we had
8 with the publishing industry quite a number of
9 years ago.

01:40:11

01:40:12

01:40:17

01:40:19

01:40:22

01:40:25

01:40:27

01:40:31

10 BY MR. HUDIS:

01:40:31

11 Q. And when you say "these materials,"
12 that's the copyrighted materials on the Bookshare
13 web site?

01:40:32

01:40:34

01:40:36

14 MR. KAPLAN: Objection. Misstates
15 testimony.

01:40:39

01:40:40

16 THE WITNESS: Yes.

01:40:42

17 BY MR. HUDIS:

01:40:43

18 Q. Could we turn to page 19.

01:40:43

19 A. Mh-hmm.

01:40:46

20 Q. What's the purpose of this sign-up page?
21 That's page 19 of Exhibit 55.

01:40:46

01:40:52

22 MR. KAPLAN: Objection. Vague. Lacks
23 foundation.

01:40:54

01:40:55

24 THE WITNESS: This is a screen shot that
25 appears to be of the individual sign-up for

01:41:15

01:41:16

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1	Bookshare that is collecting data about a	01:41:22
2	potential user in order to start the process of	01:41:24
3	becoming a Bookshare member.	01:41:29
4	BY MR. HUDIS:	01:41:32
5	Q. And at the bottom it says -- it has a	01:41:32
6	check box, and then you would sign your name or	01:41:34
7	its equivalent.	01:41:36
8	Do you see at the bottom?	01:41:38
9	A. Yes.	01:41:39
10	Q. And by doing so you're agreeing to the	01:41:39
11	terms and conditions of the Bookshare web site.	01:41:42
12	Do you see that?	01:41:44
13	MR. KAPLAN: Objection. Is the -- the	01:41:45
14	question is whether or not he sees that check box?	01:41:49
15	MR. HUDIS: Counsel, good.	01:41:53
16	Q. Is the purpose of this check box to have	01:41:55
17	the user acknowledge that he or she is agreeing to	01:42:02
18	the terms and conditions of the Bookshare web	01:42:04
19	site?	01:42:07
20	MR. KAPLAN: Objection. Vague. Lacks	01:42:08
21	foundation.	01:42:09
22	MR. HUDIS: Thank you, Counsel.	01:42:10
23	THE WITNESS: Yes. I believe that that	01:42:13
24	check box and the filling in of your name	01:42:14
25	indicates that you're agreeing to the terms and	01:42:17

199

1	technique still in wide use today.	02:19:04
2	The Perkins Brailler and Braille	02:19:06
3	printing presses are important	02:19:10
4	tools for professionals to use to	02:19:11
5	create Braille books. And	02:19:16
6	human-narrated books are widely	02:19:17
7	available on audio cassettes."	02:19:20
8	We've replaced audio cassettes at this	02:19:23
9	point with technology, but the rest of it, are	02:19:25
10	these still document transformation methods in use	02:19:31
11	today?	02:19:33
12	MR. KAPLAN: Objection.	02:19:34
13	BY MR. HUDIS:	02:19:34
14	Q. All right. And that -- and the ones	02:19:34
15	that I'm pointing to are having the sighted person	02:19:35
16	read aloud, the Perkins Brailler and a Braille	02:19:39
17	printing press.	02:19:42
18	MR. KAPLAN: Objection. Vague.	02:19:46
19	THE WITNESS: All of these are still in	02:19:48
20	use today.	02:19:49
21	BY MR. HUDIS:	02:19:50
22	Q. Now, the next paragraph, it says:	02:19:55
23	"Technology in use today has	02:19:56
24	greatly expanded the options	02:19:58
25	available for accessible reading	02:19:59

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1	and lessened the need to have a	02:20:01
2	sighted person intervene in the	02:20:03
3	process. We now have Braille	02:20:04
4	transcription software, personal	02:20:06
5	Braille embossers, refreshable	02:20:08
6	electronic Braille displays for	02:20:11
7	audio. We have computer	02:20:13
8	synthesized voices to speak aloud	02:20:15
9	digital text, also known as text	02:20:19
10	to speech or TTS."	02:20:21
11	My question is, are these technologies	02:20:23
12	still in use today as nonhuman intervention	02:20:26
13	methods for the print-disabled to access printed	02:20:30
14	material?	02:20:36
15	MR. KAPLAN: Objection. Vague and	02:20:37
16	confusing.	02:20:38
17	THE WITNESS: Yes.	02:20:41
18	BY MR. HUDIS:	02:20:42
19	Q. The next sentence says:	02:20:47
20	"With reading systems that	02:20:49
21	use optical character recognition,	02:20:50
22	or OCR, we can provide access to	02:20:52
23	Braille, audio and customized	02:20:56
24	visual displays directly from the	02:20:58
25	printed page."	02:21:00

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1	Why is this important?	02:21:01
2	MR. KAPLAN: Objection. Vague.	02:21:02
3	THE WITNESS: Because we want to turn	02:21:11
4	inaccessible print books into forms where disabled	02:21:13
5	people can access them using OCR.	02:21:16
6	BY MR. HUDIS:	02:21:21
7	Q. Could we turn to page 557 of Exhibit 58.	02:21:21
8	At the bottom of page 50 -- 557 to the	02:21:34
9	top of 558 it says:	02:21:37
10	"Authors and publishers of	02:21:39
11	books are concerned about piracy	02:21:41
12	and worry about making books	02:21:43
13	easily available in electronic	02:21:45
14	form, although they rarely object	02:21:47
15	to access for people with	02:21:49
16	disabilities."	02:21:50
17	Do you believe this is still true?	02:21:51
18	MR. KAPLAN: Objection. Vague.	02:21:54
19	THE WITNESS: Yes.	02:22:10
20	BY MR. HUDIS:	02:22:11
21	Q. Mr. Fruchterman, could we turn to page	02:22:23
22	558.	02:22:25
23	A. Yes.	02:22:27
24	MR. KAPLAN: We were there.	02:22:29
25	MR. HUDIS: We were there. Okay. Thank	02:22:30

202

1 you.

02:22:31

2 Q. I would like to direct your attention to
3 the middle of the page, where it starts "however."

02:22:39

02:22:40

4 A. Yes.

02:22:45

5 Q. All right. It says:

02:22:46

6 "However, the image cannot be
7 directly used to generate Braille
8 or synthetic voice output."

02:22:47

02:22:49

02:22:51

9 Why is that?

02:22:54

10 MR. KAPLAN: Objection. Vague. Lacks
11 foundation. Incomplete hypothetical.

02:22:55

02:22:56

12 THE WITNESS: You need to convert the
13 inaccessible image into a text file in OCR.

02:23:04

02:23:05

14 BY MR. HUDIS:

02:23:14

15 Q. Mr. Fruchterman, could you turn to page
16 560 of Exhibit 58.

02:23:24

02:23:26

17 This paragraph at the bottom of page 560
18 talks about the image processing steps of -- in
19 OCR. And it talks about despeckling, orienting
20 and straightening the page, recognition of
21 specialty fine characteristics and recognition of
22 a character or glyph.

02:23:40

02:23:46

02:23:49

02:23:55

02:23:57

02:24:01

23 Are those the --

02:24:02

24 MR. KAPLAN: You're talking about the
25 last full paragraph, not the last paragraph?

02:24:05

02:24:05

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1	What is the DAISY standard?	02:26:50
2	A. The DAISY standard is a standard for	02:26:58
3	delivering accessible books to people with	02:27:01
4	disabilities.	02:27:05
5	Q. Is that standard still in use today?	02:27:06
6	A. It is.	02:27:11
7	Q. By whom?	02:27:11
8	MR. KAPLAN: Objection. Lacks	02:27:14
9	foundation. Vague.	02:27:14
10	THE WITNESS: The DAISY consortium is	02:27:17
11	essentially the leading libraries for people with	02:27:21
12	print-disabilities, and I believe almost all of	02:27:25
13	the DAISY members' libraries use the DAISY format	02:27:27
14	as part of their system of delivering accessible	02:27:32
15	books to their disabled patrons.	02:27:35
16	BY MR. HUDIS:	02:27:37
17	Q. Is this a proprietary format?	02:27:37
18	MR. KAPLAN: Objection. Vague.	02:27:41
19	Confusing.	02:27:41
20	MR. HUDIS: I'll ask -- I'll reask the	02:27:42
21	question.	02:27:44
22	Q. Is DAISY a proprietary format by the	02:27:44
23	participating libraries in the consortium?	02:27:47
24	MR. KAPLAN: Objection. Vague.	02:27:50
25	Confusing.	02:27:50

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1	THE WITNESS: My understanding is the	02:27:55
2	DAISY format is shared widely so that anyone can	02:27:57
3	use the standard and it is not proprietary to the	02:28:01
4	members.	02:28:04
5	BY MR. HUDIS:	02:28:04
6	Q. Does this technology require use of a	02:28:04
7	PDF file?	02:28:07
8	MR. KAPLAN: Objection. Vague and	02:28:11
9	confusing.	02:28:13
10	THE WITNESS: It's the antithesis of a	02:28:14
11	PDF file.	02:28:16
12	BY MR. HUDIS:	02:28:19
13	Q. Okay. And why do you say that?	02:28:20
14	A. Because PDFs are frequently not	02:28:22
15	accessible in the form that they present	02:28:25
16	themselves.	02:28:27
17	Q. Without OCR technology?	02:28:28
18	A. That's --	02:28:31
19	MR. KAPLAN: Objection. Vague.	02:28:31
20	THE WITNESS: That's one of the problems	02:28:32
21	with PDFs. Yes.	02:28:34
22	BY MR. HUDIS:	02:28:35
23	Q. All right. So does -- does the DAISY	02:28:36
24	technology require use of an OCR-processed PDF	02:28:38
25	file?	02:28:42

1	MR. KAPLAN: Objection. Vague and	02:28:44
2	confusing.	02:28:45
3	THE WITNESS: No.	02:28:46
4	BY MR. HUDIS:	02:28:49
5	Q. What is required for use of DAISY	02:28:49
6	technology?	02:28:51
7	MR. KAPLAN: Objection. Vague.	02:28:53
8	THE WITNESS: Well, the DAISY standard	02:28:57
9	is a format for digitally delivering typically	02:29:01
10	books, but could be other kinds of documents. It	02:29:05
11	encompasses digital text, structure, audio, video,	02:29:08
12	pictures, tactile graphics.	02:29:12
13	And so a DAISY book might contain one or	02:29:17
14	all of those different elements without respect to	02:29:21
15	how it was created or how it will get used. It's	02:29:27
16	just a file format.	02:29:31
17	BY MR. HUDIS:	02:29:32
18	Q. And --	02:29:32
19	MR. KAPLAN: Can we, when you're done	02:29:33
20	with this line of questioning, take a very short	02:29:34
21	break?	02:29:37
22	MR. HUDIS: Yes.	02:29:37
23	MR. KAPLAN: Thank you.	02:29:38
24	BY MR. HUDIS:	02:29:39
25	Q. And DAISY -- DAISY-processed texts can	02:29:39

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1	the screen aloud.	04:13:47
2	Q. All right. And is that example of text	04:13:49
3	to speech?	04:13:52
4	MR. KAPLAN: Objection. Vague.	04:13:54
5	THE WITNESS: Different users use their	04:13:56
6	screen reader with different forms of information.	04:13:58
7	The most common is text to speech. But, for	04:14:04
8	example, a deaf/blind person uses a screen reader	04:14:06
9	with a Braille display, and the text is -- that's	04:14:11
10	on the screen is presented on the Braille display.	04:14:15
11	BY MR. HUDIS:	04:14:18
12	Q. And, again, so that -- if it's a blind	04:14:20
13	and deaf person, it would be a tactile Braille?	04:14:22
14	A. All Braille is tactile. Or at least all	04:14:26
15	sensible uses of Braille are tactile, though there	04:14:33
16	are sighted people who can read Braille visually,	04:14:38
17	so ...	04:14:42
18	Q. I'd like to know if you recognize these	04:14:43
19	as brand names of screen reader technology.	04:14:45
20	JAWS from Freedom Scientific?	04:14:48
21	A. Yes.	04:14:50
22	Q. Window-Eyes from GW Micro?	04:14:52
23	A. Yes.	04:14:54
24	Q. Okay. Dolphin SuperNova from Dolphin	04:14:55
25	Computer Access?	04:14:59

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1	A.	Yes.	04:15:00
2	Q.	System Access from Serotek?	04:15:00
3	A.	Yes.	04:15:02
4	Q.	ZoomText from Ai Squared?	04:15:04
5	A.	ZoomText is a combination screen reader,	04:15:08
6		but most people think of it as a screen	04:15:10
7		magnification product.	04:15:13
8	Q.	And NVDA open source screen reader.	04:15:14
9	A.	Yes.	04:15:17
10	Q.	Would screen reader technology work with	04:15:21
11		an image-only PDF document?	04:15:24
12		MR. KAPLAN: Objection. Incomplete	04:15:29
13		hypothetical. Vague.	04:15:31
14		THE WITNESS: Some do. Some screeners	04:15:32
15		also have image magnification as well as screen	04:15:33
16		reading. So you can make it big or change the	04:15:37
17		contrast by reversing the contrast or changing the	04:15:40
18		colors, so -- but that would be not the typical	04:15:43
19		use.	04:15:50
20		BY MR. HUDIS:	04:15:50
21	Q.	What is the typical use of screen reader	04:15:51
22		technology?	04:15:53
23		MR. KAPLAN: Objection. Vague.	04:15:53
24		Confusing.	04:15:54
25		THE WITNESS: Generally, to read what's	04:15:56

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1	on the screen aloud in words.	04:15:57
2	BY MR. HUDIS:	04:15:59
3	Q. So text to speech?	04:15:59
4	A. Yes.	04:16:00
5	Q. So would screen reader technology for	04:16:01
6	text to speak -- text to speech work with an	04:16:04
7	image-only PDF document?	04:16:12
8	MR. KAPLAN: Objection. Incomplete	04:16:16
9	hypothetical. Vague.	04:16:17
10	THE WITNESS: No.	04:16:19
11	BY MR. HUDIS:	04:16:22
12	Q. Mr. Fruchterman, please turn to page 4	04:16:33
13	of your report. And I'm focusing in on the first	04:16:35
14	full paragraph of that page. The paragraph starts	04:16:40
15	"For the purpose of this report."	04:16:46
16	Do you see that?	04:16:49
17	A. Mh-hmm.	04:16:49
18	Q. And the second sentence says:	04:16:50
19	"Based on the information the	04:16:51
20	screen reader can glean from the	04:16:52
21	pages displayed on the screen, can	04:16:55
22	a blind person locate the standard	04:16:57
23	and read it."	04:17:00
24	In this context, what did you mean by	04:17:01
25	"locate the standard"?	04:17:03

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1 A. In this context, I was focusing on web 04:17:07
2 searches. 04:17:10

3 Q. And in this context, what did you mean 04:17:17
4 by "read the standard"? 04:17:19

5 A. Basically, read it aloud, generally, 04:17:29
6 would be the most common use. 04:17:31

7 Q. Which, if the person was blind, could 04:17:37
8 not do? 04:17:39

9 MR. KAPLAN: Objection. Vague and 04:17:40
10 confusing. 04:17:41

11 THE WITNESS: Well, if they located a 04:17:54
12 text version of the standard, they certainly could 04:17:56
13 read it aloud. 04:17:59

14 BY MR. HUDIS: 04:18:01

15 Q. They'd need assistive technology to do 04:18:02
16 so? 04:18:05

17 A. Yes. But when -- when I use the term 04:18:08
18 "can a blind person read it," I'm presuming that 04:18:10
19 they're using technology to read it as opposed to 04:18:16
20 something else. 04:18:22

21 Q. And when you say "use technology," what 04:18:23
22 did you mean? 04:18:25

23 MR. KAPLAN: Objection. Vague. 04:18:27

24 THE WITNESS: Okay. Taking a step back. 04:18:29
25

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1	BY MR. KAPLAN:	05:16:35
2	Q. So let's take that one at a time.	05:16:35
3	So you checked for adds?	05:16:37
4	A. Well, I examined the document, and I'm	05:16:39
5	talking about errors I observed as opposed to	05:16:41
6	errors I didn't observe. So if I had seen an add,	05:16:44
7	I would have been seeing it. I don't know.	05:16:47
8	Q. So --	05:16:50
9	A. I was looking for errors.	05:16:51
10	Q. Right. So my first question is, did you	05:16:52
11	check for adds errors?	05:16:55
12	MR. KAPLAN: Objection. Vague.	05:16:58
13	THE WITNESS: If I -- if an add had been	05:16:59
14	there and I had been looking at it, I would have	05:17:01
15	been checking for them, yes. But --	05:17:03
16	BY MR. KAPLAN:	05:17:05
17	Q. And you didn't find any?	05:17:06
18	A. I didn't see any adds.	05:17:07
19	Q. And did you check the entire 212 pages	05:17:08
20	of the document for adds errors?	05:17:11
21	A. No.	05:17:13
22	Q. So now we're at page 10, at the bottom	05:17:22
23	of page -- of Exhibit 64, your expert's report.	05:17:24
24	A. Yes.	05:17:28
25	Q. After you OCR-processed select pages	05:17:29

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1	from the image-only PDF file of the 1999 standards	05:17:32
2	given to you by defense counsel, you used the	05:17:35
3	Window-Eyes software tool to read text aloud and	05:17:39
4	to conduct full-text searches by keyword?	05:17:43
5	A. Right.	05:17:47
6	Q. All right. Now, Mr. Fruchterman, you	05:17:48
7	could not use the Window-Eyes software tool to	05:17:51
8	read text of the 1999 standards aloud or to	05:17:54
9	conduct full-text searches by keyword before the	05:17:58
10	PDF pages were OCR processed.	05:18:01
11	MR. KAPLAN: Objection. Vague.	05:18:04
12	Compound.	05:18:05
13	THE WITNESS: You're making a statement.	05:18:10
14	What's the question?	05:18:10
15	BY MR. KAPLAN:	05:18:13
16	Q. All right. I will ask the question a	05:18:13
17	different way.	05:18:14
18	Could you use the Window-Eyes software	05:18:16
19	tool to read the text of the 1999 standards aloud	05:18:18
20	before the PDF pages were OCR processed?	05:18:22
21	MR. KAPLAN: Objection. Vague.	05:18:25
22	Confusing.	05:18:26
23	THE WITNESS: No.	05:18:30
24	BY MR. KAPLAN:	05:18:30
25	Q. Could you use the Window-Eyes software	05:18:31

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1	to conduct full-text searches by keyword before	05:18:34
2	the PDF pages were OCR processed?	05:18:37
3	MR. KAPLAN: Objection. Vague and	05:18:41
4	confusing.	05:18:41
5	THE WITNESS: No.	05:18:46
6	BY MR. KAPLAN:	05:18:46
7	Q. And, in fact, Mr. Fruchterman, you could	05:18:53
8	not use any screen reader software tool to read	05:18:54
9	the text of the 1999 standards aloud before the	05:18:57
10	PDF pages were OCR processed?	05:19:01
11	MR. KAPLAN: Objection. Vague and	05:19:04
12	confusing.	05:19:05
13	THE WITNESS: That's correct. But some	05:19:09
14	screen readers have OCR software built in and	05:19:10
15	would be able to do that process inside the screen	05:19:13
16	reader. But I did not do that process inside the	05:19:15
17	screen reader. I did it in a separate product.	05:19:18
18	BY MR. KAPLAN:	05:19:21
19	Q. And you could not use a screen reader	05:19:21
20	software tool to conduct full-text searches by	05:19:23
21	keyword before the PDF pages were OCR processed?	05:19:26
22	MR. KAPLAN: Objection. Vague and	05:19:31
23	confusing.	05:19:32
24	THE WITNESS: Correct.	05:19:33
25		

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1 BY MR. KAPLAN:

05:19:33

2 Q. Let's turn to pages 11 and 12 of your
3 report. And I'm focusing on the textual material
4 in your report, Mr. Fruchterman, under the title
5 "The Archive.Org Version of the 1999 Standards."

05:19:39

05:19:42

05:19:50

05:19:53

6 A. Yes.

05:19:57

7 Q. Now, it's true you were -- it's true you
8 were told by a representative of the Internet
9 Archive that an electronic text or txt version of
10 the '99 standards was hosted on the Internet
11 Archive web site at one time?

05:19:59

05:20:09

05:20:11

05:20:15

05:20:18

12 A. Yes.

05:20:20

13 Q. You did not attempt to locate a
14 historical version of the Internet Archive web
15 site to determine whether an electronic text
16 version of the 1999 standards was previously
17 hosted on Internet Archive?

05:20:21

05:20:24

05:20:26

05:20:29

05:20:32

18 MR. KAPLAN: Objection. Vague and
19 confusing.

05:20:34

05:20:40

20 THE WITNESS: Not beyond doing a Google
21 search, which I don't believe turned it up for me.
22 But it might have if I kept going in the results.

05:20:41

05:20:43

05:20:45

23 BY MR. HUDIS:

05:20:47

24 Q. But if you did, you didn't document it
25 in your report.

05:20:48

05:20:50

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1	Q.	I'm sorry. It's late.	05:27:02
2		Mr. Fruchterman --	05:27:04
3	A.	Yes.	05:27:04
4	Q.	-- if you could turn to page 7 of your	05:27:04
5		expert's report, Exhibit 64.	05:27:07
6		MR. KAPLAN: That one almost slipped	05:27:10
7		past me.	05:27:10
8		(Reporter interruption.)	05:27:10
9		MR. HUDIS: Sure. What he said was I	05:27:11
10		blew past him.	05:27:20
11		MR. KAPLAN: Yes.	05:27:22
12		BY MR. HUDIS:	05:27:22
13	Q.	Are you there, Mr. Fruchterman?	05:27:23
14	A.	I am.	05:27:24
15	Q.	Thank you.	05:27:25
16		As part -- now, looking at page 7, the	05:27:26
17		top paragraph of your expert's report, as part of	05:27:29
18		your accessibility review for the purposes of your	05:27:34
19		expert's report, you reviewed the	05:27:35
20		Public.Resource.Org web site?	05:27:38
21		MR. KAPLAN: Objection. Vague.	05:27:41
22		THE WITNESS: Yes.	05:27:44
23		BY MR. HUDIS:	05:27:46
24	Q.	Did you observe on Public.Resource's web	05:27:46
25		site any place where Public.Resource held itself	05:27:49

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1	out as making the materials posted on its site	05:27:51
2	accessible to the blind or print-disabled?	05:27:55
3	MR. KAPLAN: Objection. Vague.	05:27:59
4	THE WITNESS: I did not.	05:28:02
5	BY MR. HUDIS:	05:28:03
6	Q. Except for a placeholder noting the	05:28:04
7	voluntary takedown of the 1999 standards, you	05:28:05
8	could not locate this document on the	05:28:12
9	Public.Resource web site, correct?	05:28:14
10	MR. KAPLAN: Objection. Vague.	05:28:17
11	THE WITNESS: Correct.	05:28:18
12	BY MR. HUDIS:	05:28:18
13	Q. However, you did search for and access	05:28:18
14	other standards posted on the Public.Resource web	05:28:20
15	site?	05:28:22
16	MR. KAPLAN: Objection. Vague.	05:28:24
17	THE WITNESS: Correct.	05:28:26
18	BY MR. HUDIS:	05:28:27
19	Q. Mr. Malamud -- I did it again. My	05:28:29
20	apologies.	05:28:32
21	Mr. Fruchterman, there were no sign-up	05:28:34
22	procedures in order for an Internet user to access	05:28:36
23	the content on the Public.Resource web site,	05:28:38
24	correct?	05:28:41
25	MR. KAPLAN: Objection. Vague. Calls	05:28:41

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1	for speculation. Lacks foundation.	05:28:43
2	THE WITNESS: Correct.	05:28:46
3	BY MR. HUDIS:	05:28:46
4	Q. During your review of Public.Resource's	05:28:51
5	web site, you were able to access standards	05:28:53
6	produced by other companies, such as the NFPA,	05:28:56
7	without restriction?	05:29:01
8	MR. KAPLAN: Objection. Vague.	05:29:04
9	THE WITNESS: Yes.	05:29:08
10	BY MR. HUDIS:	05:29:08
11	Q. There were no requirements that a user	05:29:10
12	be visually impaired to access these other	05:29:11
13	standards documents on Public.Resource's web site?	05:29:15
14	MR. KAPLAN: Objection. Vague.	05:29:19
15	THE WITNESS: Correct.	05:29:20
16	BY MR. HUDIS:	05:29:20
17	Q. Mr. Fruchterman, for the next series of	05:29:32
18	questions, I would like you to pull out	05:29:34
19	Exhibit 60, which was your supplemental	05:29:36
20	declaration from the HathiTrust litigation.	05:29:40
21	A. Okay.	05:29:42
22	Q. And I'd also like you to pull out	05:29:43
23	Exhibit 55, which is the materials we reviewed	05:29:47
24	from the Bookshare web site.	05:29:52
25	A. Good. Do I get to put the rest of them	05:29:59

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1	away?	05:30:02
2	Q. Soon.	05:30:02
3	A. Or are these the only two I need to have	05:30:03
4	out now?	05:30:05
5	Q. Those are the only two you have to have	05:30:07
6	out now.	05:30:09
7	A. Okay. I have those two documents in	05:30:18
8	front of me, Exhibit 55 and 60.	05:30:19
9	Q. Okay. So I would like to focus your	05:30:25
10	attention on -- in the supplemental declaration,	05:30:25
11	Exhibit 60, to pages 2 and 3, where you talk about	05:30:28
12	the digital rights management plan.	05:30:33
13	A. Yes.	05:30:37
14	Q. Okay. And similarly, an explanation of	05:30:38
15	the DRM plan on page 18 of Exhibit 55. And that's	05:30:43
16	the Bookshare web site.	05:31:04
17	A. Okay.	05:31:13
18	Q. During your review of Public.Resource's	05:31:13
19	web site, how did their web site compare with the	05:31:16
20	Bookshare web site in terms of employing a digital	05:31:20
21	rights management or DRM plan to protect the	05:31:23
22	digital copies of standards posted on	05:31:27
23	Public.Resource's web site from unauthorized	05:31:30
24	copying?	05:31:35
25	MR. KAPLAN: Objection. Vague. Calls	05:31:35

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1	for a legal conclusion. Confusing.	05:31:36
2	THE WITNESS: I didn't find a DRM plan	05:31:43
3	in evidence on the Public.Resource.Org site.	05:31:45
4	MR. HUDIS: I'd like to take a break for	05:31:52
5	five minutes.	05:33:18
6	THE VIDEOGRAPHER: Going off the record	05:33:19
7	at 5:33.	05:33:20
8	(Whereupon, a recess was taken.)	05:33:27
9	THE VIDEOGRAPHER: Back on the record at	05:39:35
10	5:39.	05:39:37
11	BY MR. HUDIS:	05:39:38
12	Q. Mr. Fruchterman, when you examined	05:39:40
13	Public.Resource's web site, you noticed a number	05:39:44
14	of standards that were hosted on that web site?	05:39:48
15	A. Correct.	05:39:58
16	MR. KAPLAN: Objection. Vague. Asked	05:39:59
17	and answered.	05:40:00
18	BY MR. HUDIS:	05:40:00
19	Q. Did you notice any restrictions on the	05:40:01
20	ability of an Internet user to copy any of the	05:40:02
21	standards that you saw on Public.Resource's web	05:40:11
22	site?	05:40:13
23	MR. KAPLAN: Objection. Vague.	05:40:14
24	THE WITNESS: No.	05:40:17
25		

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1	BY MR. HUDIS:	05:40:17
2	Q. Did you notice any restrictions on the	05:40:19
3	ability of an Internet user to download any of the	05:40:20
4	standards hosted on the Public.Resource's web	05:40:28
5	site?	05:40:31
6	MR. KAPLAN: Objection. Vague.	05:40:31
7	THE WITNESS: No.	05:40:32
8	BY MR. HUDIS:	05:40:32
9	Q. Did you notice any restrictions on the	05:40:32
10	ability of an Internet user to print any of the	05:40:35
11	standards hosted on the Public.Resource web site?	05:40:37
12	MR. KAPLAN: Objection. Vague.	05:40:40
13	THE WITNESS: No.	05:40:41
14	MR. HUDIS: Thank you, Mr. Fruchterman.	05:40:43
15	That's all I have.	05:40:43
16	THE WITNESS: Okay. Thank you.	05:40:46
17	MR. KAPLAN: I have no questions at this	05:40:52
18	time.	05:40:53
19	THE WITNESS: Okay. Oh, that's right.	05:40:53
20	You get a chance, huh.	05:40:54
21	THE VIDEOGRAPHER: This marks the end of	05:40:56
22	the deposition of James Fruchterman. Going off	05:40:56
23	the record at 5:41.	05:40:59
24	(Whereupon, the deposition concluded	05:41:00
25	at 5:41 p.m.)	05:41:00