

EXHIBIT 57

1 UNITED STATES DISTRICT COURT
 2 for the
 3 DISTRICT OF COLUMBIA

4 AMERICAN EDUCATIONAL)
 5 RESEARCH ASSOC., INC.,)
 6 et al.)
 7 Plaintiffs)
 8) Civil Action No.:
 9 v.) 1:14-cv-00857-TSC
 10)
 11 PUBLIC.RESOURCE.ORG, INC.,)
 12 Defendant.)

13
 14 San Francisco, California
 15 Tuesday, December 2, 2014

16 Videotaped deposition of CHRISTOPHER BUTLER,
 17 a witness herein, called for examination by counsel
 18 for Plaintiffs in the above-entitled matter, the
 19 witness having been by me first duly sworn, taken
 20 at the offices of Harvey Siskind, LLP, Four
 21 Embarcadero Center, 39th Floor, San Francisco,
 22 California at 9:10 a.m., on Tuesday, December 2,
 23 2014, and the proceedings being taken down by
 24 Stenotype by CINDY TUGAW, RPR, CSR and transcribed
 25 under her direction.

Page 2

1 APPEARANCES:
 2
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 24
 25 ALSO PRESENT: Sean McGrath, Video Operator

Page 3

1 C O N T E N T S
 2 THE WITNESS PAGE
 3 CHRISTOPHER BUTLER
 4 Examination by Mr. Hudis 5
 5
 6 E X H I B I T S
 7 EXHIBIT NO. PAGE
 8 Exhibit 1 Subpoena to Testify at a 7
 9 Deposition in a Civil Action
 10 Exhibit 2 Subpoena to Produce Documents, 15
 11 Information, or Objects or to Permit
 12 Inspection of Premises in a Civil Action
 13 Exhibit 3 Internet Archive Bios 23
 14 Exhibit 4 Internet Archive About IA 31
 15 Exhibit 5 Terms of Use 10 March 2001 41
 16 Exhibit 6 Web pages for AERA57 57
 17 Exhibit 7 Item History for 63
 18 gov.law.aera.standards.1999
 19 Exhibit 8 30 pages of task logs 67
 20 Exhibit 9 Log for task 315793300 112
 21 Exhibit 10 Internet Archive Error 120
 22 Exhibit 11 Mac Terminal screen capture page 124
 23 Exhibit 12 12/19/2013 E-mail from Carl Malamud 132
 24 to Christopher Butler with attachments
 25 ---o0o---

Page 4

1 VIDEO OPERATOR: Good morning. We're on
 2 the video record, ladies and gentlemen, at 9:10
 3 a.m. I am Sean McGrath from Alderson Court
 4 Reporting in Washington, DC. The phone number is
 5 (202) 289-2260.
 6 This is a matter pending before the United
 7 States District Court for the District of Columbia,
 8 in the case captioned, American Educational
 9 Research Association, Incorporated, et al., versus
 10 Public.Resource.Org, Inc., Case No.
 11 1:14-cv-00857-TSC.
 12 This is the beginning of disk 1, volume 1
 13 of the deposition of Chris Butler on December 2nd,
 14 2014. We're located at Four Embarcadero Center,
 15 San Francisco, California. This is taken on behalf
 16 of the plaintiffs.
 17 Counsel, would you please identify
 18 yourselves, starting with the questioning attorney.
 19 MR. HUDIS: Jonathan Hudis, representing
 20 plaintiffs.
 21 MS.LU: Kathleen Lu, Fenwick & West, for
 22 defendant Public Resource.
 23 MS. AHMAD: Stephanie Ahmad, Greenberg
 24 Traurig, for non-party Internet Archive.
 25 VIDEO OPERATOR: Will the court reporter

Page 5

1 please swear in the witness and then you can
 2 proceed.
 3 CHRISTOPHER BUTLER,
 4 being first duly affirmed by the Certified
 5 Shorthand Reporter to tell the truth, the whole
 6 truth, and nothing but the truth, testified as
 7 follows:
 8 EXAMINATION BY MR. HUDIS
 9 MR. HUDIS:
 10 Q. Sir, if I could have your full name and
 11 address for the record.
 12 A. Christopher Scott Butler. And my address
 13 is 152 Caine Avenue, Caine is spelled C-a-i-n-e, in
 14 San Francisco, California 94112.
 15 Q. Mr. Butler, have you been deposed before?
 16 A. Yes.
 17 Q. In what kinds of matters?
 18 A. In matters relating to archived records of
 19 websites that Internet Archive has preserved and
 20 maintained on its site. I was deposed as a third
 21 party.
 22 Q. And how many such times have you been
 23 deposed in that capacity?
 24 A. If I remember correctly, it's five times.
 25 Q. Other than those five times being deposed

Page 6

1 in the nature of what you just described, have you
 2 been deposed at all in any other cases?
 3 A. Yes, yes. I've been deposed in the case
 4 Davydiuk, D-a-v-y-d-i-u-k, versus Internet Archive
 5 and Internet Archive Canada relating to a copyright
 6 infringement case against Internet Archive.
 7 Q. Did that relate to the posting of certain
 8 materials on Internet Archive's website?
 9 A. It did.
 10 Q. Have you told me all the types of matters
 11 in which you've been deposed before?
 12 A. Yes.
 13 Q. So altogether about six times?
 14 A. Yes.
 15 Q. Since you've been deposed before,
 16 Mr. Butler, I'll make my rules of the road brief.
 17 Do you understand that if any question I
 18 pose to you is unclear to you or you didn't hear
 19 it, you can ask me to repeat or rephrase it?
 20 A. Yes.
 21 Q. Do you understand that all of your answers
 22 to my questions have to be verbal?
 23 A. Yes.
 24 Q. Do you understand that if you would like
 25 to take a break during the deposition, you may do

Page 7

1 so?
 2 A. Yes.
 3 Q. The only exception is if I have a question
 4 pending, you must answer the question before you
 5 take the break or speak with your attorney.
 6 A. Yes.
 7 Q. Is there any reason, such as you're taking
 8 medication, illness, any other reason why you can't
 9 testify completely, accurately and truthfully
 10 today?
 11 A. No.
 12 (Plaintiffs' Exhibit 1 marked for
 13 identification.)
 14 MR. HUDIS:
 15 Q. Mr. Butler, I will now show you what's
 16 been marked as Exhibit 1, and it is a subpoena to
 17 testify at a deposition.
 18 Have you seen this subpoena before?
 19 A. Yes.
 20 Q. When for the first time did you see the
 21 subpoena in front of you?
 22 A. I saw the subpoena when it was served to
 23 Internet Archive in late October.
 24 Q. If you could turn to the fourth and fifth
 25 pages, there is a list of deposition topics.

Page 8

1 What, if anything, did you do to prepare
 2 to testify on the topics listed on the fourth and
 3 fifth pages of the deposition subpoena of
 4 Exhibit 1?
 5 MS. LU: Just to be clear for the record,
 6 since the pages aren't numbered, we're talking
 7 about the page starting with Exhibit A?
 8 MR. HUDIS: Exhibit A to deposition
 9 Exhibit 1, correct. Thank you.
 10 THE WITNESS: To prepare for the
 11 deposition, I, upon receipt of the subpoena,
 12 immediately identified and spoke with the staff who
 13 may have had communication with Public Resource or
 14 the standard organizations. I asked them to not
 15 delete any of their e-mail and to search for
 16 strings relating to these organizations and the
 17 standards document specified and to alert me if
 18 they found any matches for -- for those strings.
 19 I also spoke with my attorneys at
 20 Greenberg Traurig.
 21 MR. HUDIS:
 22 Q. Other than speaking with your attorneys,
 23 who did you speak with at Internet Archive?
 24 A. I spoke with Brewster Kahle,
 25 Q. Spell his last name.

Page 9

1 A. B-r-e-w-s-t-e-r, K-a-h-l-e.
 2 Q. And who is he?
 3 A. He's a founder of Internet Archive.
 4 Q. And what was the nature of that
 5 discussion?
 6 A. It was to alert him of the subpoena, and
 7 also the scope of the subpoena, and to ask him to
 8 search his e-mail.
 9 Q. Did he search his e-mail?
 10 A. Yes.
 11 Q. What did he find?
 12 A. He did not find any correspondence with
 13 these organizations relating to the standards.
 14 Q. When you say the organizations, there's
 15 three plaintiffs in this lawsuit. And I'll say,
 16 just so we have a working definition, I'll say
 17 their full names, and then I will say their
 18 acronyms.
 19 So the first plaintiff is American
 20 Educational Research Association, Inc., they're
 21 known as AERA; the American Psychological
 22 Association, Inc., they're known as APA; and the
 23 National Council on Measurement in Education, Inc.,
 24 and they're known as NCME.
 25 Do we understand each other?

Page 10

1 A. That's right.
 2 Q. So after speaking with Mr. Kahle, he did
 3 not find any correspondence exchanged with any of
 4 AERA, APA or NCME?
 5 A. Correct.
 6 Q. Did he find any correspondence exchanged
 7 with Public.Resource.Org, Inc., which we will refer
 8 to as Public Resource?
 9 A. Yes.
 10 Q. What did he find?
 11 A. He found e-mails between himself and Carl
 12 Malamud.
 13 Q. All right. Have those e-mails been
 14 produced to us?
 15 A. No.
 16 Q. Okay. And why is that?
 17 A. Those e-mails did not mention and did not
 18 have any relation to the 1999 standards.
 19 Q. Okay. So we understand the 1999
 20 standards, I actually have the book with me, and
 21 I'll read the title into the record. It's the
 22 Standards for Educational and Psychological
 23 Testing, bearing a copyright of 1999.
 24 Do you understand, Mr. Butler, that we
 25 will refer to that book as the 1999 standards

Page 11

1 during this deposition?
 2 A. Yes, I do.
 3 MS. LU: Are we entering that as an
 4 exhibit?
 5 MR. HUDIS: No, no.
 6 Q. So all the e-mails that Mr. Kahle
 7 exchanged with Mr. Malamud did not mention the
 8 1999 standards?
 9 A. Correct.
 10 Q. Did they mention any of the plaintiffs in
 11 this lawsuit?
 12 A. No.
 13 Q. Do you remember what those e-mails had to
 14 do with?
 15 MS. LU: Objection, relevance.
 16 THE WITNESS: There were many e-mails
 17 relating to -- to a broad number of topics. I
 18 don't remember any specific offhand.
 19 MR. HUDIS:
 20 Q. Did any of those e-mails, to the best of
 21 your recollection, have to do generally with
 22 uploading by Public Resource standards or codes to
 23 Internet Archive's website?
 24 MS. AHMAD: Objection --
 25 MS. LU: Objection, vague and ambiguous.

Page 12

1 I'm sorry.
 2 MS. AHMAD: Objection, outside the scope
 3 of the deposition topics.
 4 THE WITNESS: No, we did not find any
 5 e-mails that related to the uploading of standards.
 6 MR. HUDIS:
 7 Q. Did you speak to anyone else, Mr. Butler,
 8 to prepare for this deposition other than Mr. Kahle
 9 or your counsel?
 10 MS. LU: Objection, misstates prior
 11 testimony.
 12 MR. HUDIS: Okay.
 13 Q. Did you speak to anyone else to prepare
 14 for your deposition today?
 15 A. I spoke with Alexis Rossi who's our
 16 director of collections.
 17 Q. And how do you spell Rossi?
 18 A. R-o-s-s-i.
 19 Q. And what was the nature of that
 20 conversation or conversations?
 21 A. I asked her to search her e-mail account
 22 for any communication responsive to the subpoena.
 23 Q. Did she find any?
 24 A. No.
 25 Q. Did you speak with anyone else to prepare

Page 13

1 for this deposition?
 2 A. No.
 3 Q. So, other than your counsel, the total
 4 number of people that you spoke with to prepare for
 5 your deposition were Mr. Kahle and Ms. Rossi?
 6 A. Correct.
 7 Q. To prepare for your deposition, did you
 8 speak with anyone at Public Resource?
 9 A. No.
 10 Q. To prepare for you deposition, did you
 11 speak with anyone who is part of Public Resource's
 12 legal team? Law firms?
 13 A. We spoke with Corynne McSherry from the
 14 Electronic Frontier Foundation to --
 15 Q. And what was -- all right. Go ahead.
 16 A. And alerted her of the fact that we had
 17 received the subpoena.
 18 Q. And did you discuss anything else with
 19 Ms. McSherry?
 20 MS. LU: I'm going to --
 21 MS. AHMAD: I want to object on the basis
 22 of privilege.
 23 MR. HUDIS: Privilege between whom?
 24 MS. LU: If I understand this correctly,
 25 and I think you probably know this better than I

Page 14

1 do, I believe that there -- the communication
 2 between Mr. Butler and Corynne McSherry is the
 3 subject of privilege.
 4 MR. HUDIS: On what grounds? How is it --
 5 how is it privileged?
 6 MS. LU: I think it's attorney-client.
 7 MS. AHMAD: It's attorney-client
 8 privileged.
 9 MR. HUDIS:
 10 Q. So you're saying Corynne McSherry and EFF
 11 are Internet Archive's attorneys?
 12 A. That's correct.
 13 Q. For what purpose? Because you're being
 14 represented today, and for the purposes of the
 15 subpoena, by Greenberg Traurig, so --
 16 MS. LU: I think that what EFF has
 17 represented Internet Archive on itself is a subject
 18 of privilege unless it's a public matter, and I
 19 know there are some public matters. But I don't
 20 know off the top of my head what they are.
 21 MS. AHMAD: Right. So Greenberg Traurig
 22 is representing Internet Archive for the purpose of
 23 the subpoena, but prior to that, Internet Archive
 24 was represented by -- or still are, but the
 25 communications between them are privileged.

Page 15

1 MS. LU: My understanding is that EFF has
 2 represented Internet Archive on occasion through
 3 the years, though I don't know the specifics of
 4 which matters, and I don't know which matters are
 5 public.
 6 MR. HUDIS: Okay. So let's confine
 7 ourselves to your preparation for this deposition
 8 and the deposition subpoena.
 9 Q. Other than alerting Ms. McSherry about the
 10 fact that Internet Archive received plaintiffs'
 11 subpoena, did you have any other discussions with
 12 Ms. McSherry to prepare for this deposition?
 13 A. No.
 14 MR. HUDIS: Mark this one.
 15 (Plaintiffs' Exhibit 2 marked for
 16 identification.)
 17 MR. HUDIS: Just for the record, the
 18 deposition subpoena has been marked already as
 19 Exhibit 1, and the document subpoena addressed to
 20 Internet Archive has just been marked as Exhibit 2.
 21 Q. Mr. Butler, I now show you what's been
 22 marked as deposition Exhibit 2 and ask if you've
 23 seen this document before.
 24 A. Yes.
 25 Q. When for the first time did you see the

Page 16

1 document subpoena of Exhibit 2?
 2 A. When it was served to Internet Archive in
 3 late October.
 4 Q. What, if anything, did you do to assist
 5 Internet Archive in complying with the document
 6 subpoena as to the categories of materials listed
 7 on the fifth and sixth pages of the subpoena?
 8 And so we're clear, for the record, that
 9 would be the fifth and sixth pages of the subpoena
 10 which is -- and the document demand starts on the
 11 second page of Exhibit A to Exhibit 2.
 12 So I'll repeat the question, Mr. Butler.
 13 What, if anything, did you do to assist
 14 Internet Archive in complying with the document
 15 subpoena?
 16 A. I asked Mr. Kahle and Ms. Rossi to search
 17 their e-mail accounts, as I mentioned.
 18 Q. Uh-huh.
 19 A. I searched my own e-mail account. I
 20 searched our general incoming e-mail account,
 21 info@archive.org. And I also searched an e-mail
 22 account that's used to correspond with -- with
 23 folks who have sent e-mails to info@archive.org to
 24 which e-mails may be passed along called
 25 inforeply@archive.org.

Page 17

1 I also searched physical files when we
 2 have all of our physical records relating to
 3 take-down requests.
 4 Q. Let's take your search areas one at a
 5 time.
 6 In complying with the subpoena, did you
 7 find anything in your own e-mail store?
 8 A. Yes, I did.
 9 Q. And what did you find?
 10 A. I found an e-mail from Carl Malamud
 11 relating to the 1999 standards.
 12 Q. Was this just one e-mail or many e-mails?
 13 A. It was one e-mail.
 14 Q. Do you remember the nature of that e-mail?
 15 A. It -- it addressed the 1999 standards. I
 16 don't recall the exact content of the e-mail.
 17 Q. And in searching the e-mail box
 18 info@archive.org, did you find any responsive
 19 documents?
 20 A. No.
 21 Q. When you searched the mailbox
 22 inforeply@archive.org, did you find any documents?
 23 A. No.
 24 Q. When you searched your physical files, did
 25 you find any documents?

Page 18

1 A. No.

2 Q. Besides these e-mails boxes and your

3 physical files, did you conduct any other searches

4 to comply with the document subpoena?

5 A. No.

6 Q. Do you remember what documents were

7 collected for production?

8 A. Yes, the -- the e-mail that I had received

9 from Carl Malamud --

10 Q. Uh-huh.

11 A. -- found in my own e-mail account.

12 Q. Uh-huh.

13 A. We also supplied documents from our site,

14 archive.org.

15 Q. Uh-huh.

16 A. One document was called the item history

17 for the 1999 standards.

18 Q. Uh-huh.

19 A. It lists all of the technical tasks

20 submitted and logged for the item. And we also

21 submitted detailed technical logs for each

22 individual task.

23 Q. Uh-huh. So that was -- so that was also

24 part of your search? You searched for these logs?

25 A. That's correct. Yes.

Page 19

1 Q. What else did you search for?

2 A. We also searched for the number of -- for

3 our record of downloads for the item.

4 Q. And what do you mean by "downloads"?

5 A. Downloads in the context of our site,

6 meaning a count of the number of unique

7 IP addresses -- allow me to start over.

8 A count of the number of accesses of the

9 item's pages by an IP address where multiple

10 accesses from the same IP address in a day as

11 defined by UTC time are counted as only one

12 download.

13 Q. When you say "IP address," that's Internet

14 protocol address?

15 A. Correct.

16 Q. And what do you mean by "access"?

17 A. I mean that there was an HTTP request for

18 the -- for one of the item's pages that was

19 fulfilled by archive.org.

20 Q. So I have to ask this again, Mr. Butler,

21 because I do not want to put words in your mouth.

22 When you say you have a count of the

23 number of downloads, if you were explaining that to

24 me who has much less knowledge of Internet parlance

25 than you ever do, what does that mean? What does

Page 20

1 that count of downloads mean?

2 A. The count of downloads means --

3 MS. LU: Objection, argumentative.

4 MR. HUDIS: Okay.

5 Q. You may answer.

6 A. As I understand it, the count of downloads

7 means any time that a computer with a unique

8 IP address or a server or any -- it could be an

9 automated program, it could be a crawler from

10 Google, and we actually understand that a great

11 many of the hits that we record are very likely

12 from automated programs, not from individuals.

13 So it would -- it would count requests

14 submitted from those IP addresses that were then

15 served by Internet Archive where we returned the --

16 the file information that they requested in a given

17 URL. And it would also count individual accesses,

18 individual requests that were fulfilled from

19 individuals using computers as well.

20 We don't have a way to determine

21 whether -- which -- we don't have a way to

22 determine what percentage of the download count

23 that we obtained for this item would have been

24 submitted by an automated program or an individual.

25 Q. In the context of download, does that mean

Page 21

1 call up a web page to view or to take material on a

2 web page and copy it onto another computer?

3 A. It could be either one. So there are

4 texts files that might be displayed in a browser,

5 PDF files that might be displayed in a browser but

6 are not necessarily downloaded by the browser to

7 the default folder on the local machine.

8 Q. So your download count does not

9 distinguish between a mere view versus a copying of

10 material onto another computer?

11 MS. LU: Objection, vague and ambiguous.

12 MR. HUDIS:

13 Q. Do you understand the question? I can

14 rephrase if you wish.

15 A. If you would, please.

16 Q. Sure. So the download count, does it

17 distinguish between the merely viewing a web page

18 versus taking the content on the web page and

19 count -- and copying it to another computer?

20 MS. LU: Objection, vague and ambiguous.

21 MR. HUDIS:

22 Q. Do you understand the question?

23 A. No, I'm not certain there -- there may be

24 browser cache or --

25 Q. Uh-huh.

Page 22

1 A. -- recording of a file for temporary
 2 purposes versus downloading of a file to someone's
 3 hard drive for -- for use until it's actively
 4 deleted.
 5 Q. So you have no way of determining whether
 6 it's a cache copy or taking a file from one place
 7 to another copy? I'm purposely not using the term
 8 "download."
 9 MS. LU: Objection, vague and ambiguous.
 10 MR. HUDIS: Right, right.
 11 Q. So please distinguish for me the follow --
 12 what terms you would use for the following things.
 13 I see something on a website and all I
 14 want to do is see it. What do you call that?
 15 A. Viewing a page.
 16 Q. Viewing. Okay.
 17 I see something on a website and I want to
 18 make a copy of it from where I see it on the
 19 website to the hard drive on my computer. What do
 20 you call that?
 21 MS. LU: Objection, vague and ambiguous.
 22 MR. HUDIS:
 23 Q. I see a file located on a web page and I
 24 want to make a copy of it and put it on my hard
 25 drive. What do you call that?

Page 23

1 MS. LU: Objection, vague and ambiguous.
 2 MR. HUDIS:
 3 Q. You may answer.
 4 A. So as I understand, the term "download"
 5 can be used the multiple ways.
 6 Q. Right.
 7 A. And so in -- in some user's mind, the
 8 process you described could be defined as
 9 downloading.
 10 Q. Uh-huh.
 11 A. However, our -- our recorded number which
 12 we formally refer to as a download count does not
 13 distinguish between viewing and downloading in this
 14 instance for specific file -- for certain file
 15 types.
 16 MR. HUDIS: Off the record.
 17 VIDEO OPERATOR: Just a second. The time
 18 is 9:37 a.m., and we are off the record.
 19 (Discussion off the record.)
 20 (Plaintiffs' Exhibit 3 marked for
 21 identification.)
 22 VIDEO OPERATOR: The time is 9:39 a.m.,
 23 and we are on the record.
 24 MR. HUDIS:
 25 Q. Mr. Butler, have you described for me all

Page 24

1 of the ways that Internet Archive searched and
 2 collected documents to comply with the document
 3 subpoena on Exhibit 2?
 4 A. Yes.
 5 Q. Mr. Butler, I now show you what has been
 6 marked as deposition Exhibit 3.
 7 Do you recognize at the bottom of the page
 8 your own line biography?
 9 A. Yes.
 10 Q. And it says here you have twin degrees in
 11 Environmental Science and Film Studies.
 12 A. That's correct.
 13 Q. Are those Bachelor's or Master's degrees?
 14 A. Bachelor's degrees.
 15 Q. What's the highest level of your
 16 education?
 17 A. Bachelor's degree.
 18 Q. In these two -- in these two subject
 19 matters on your bio?
 20 A. Yes.
 21 Q. When did you receive these degrees?
 22 A. 2002.
 23 Q. And did you have a double major?
 24 A. Yes.
 25 Q. Did you have a minor?

Page 25

1 A. No.
 2 Q. Did you have a concentration while in
 3 school?
 4 A. Within Environmental Science, I had a
 5 concentration in Social Sciences.
 6 Q. Do you have any other degrees or
 7 certificates from formal study?
 8 A. No.
 9 Q. What, if any, background do you have in
 10 computer programming, either by education or work
 11 history?
 12 A. I have none via formal education. Through
 13 my work at Internet Archive, I have worked around
 14 programmers and developers.
 15 Q. What do you mean by "work around"?
 16 A. I've worked as part of the Internet
 17 Archive team in the same office space with
 18 programmers and developers. I have worked with
 19 them on various questions of user support and
 20 issues of taking material down when appropriate.
 21 Q. When you say "taking down," you mean from
 22 Internet Archive's website?
 23 A. Correct.
 24 Q. Have you done any computer programming
 25 yourself?

Page 26

1 A. No.

2 Q. Have you taken any courses whatsoever on

3 computer programming?

4 A. No.

5 Q. Have you taken -- scratch the question.

6 Have you received informal training from

7 anyone at Internet Archive in computer programming?

8 A. I've received informal explanations from

9 time to time, various types of codes, mostly

10 related to HTML, or JavaScript, a composition of

11 web pages. I've also received some informal

12 instruction about submitting a query from a command

13 line interface.

14 MR. HUDIS: Could you repeat his answer.

15 Submitting a query from --

16 (Record read by Reporter.)

17 MR. HUDIS:

18 Q. So these informal explanations, would that

19 qualify you to program in either HTML, Java or web

20 page composition?

21 A. No.

22 Q. Now, when you say submitting a query to a

23 command line interface, where do you do that?

24 A. I -- in these instances, I did that from

25 the Mac Terminal application.

Page 27

1 Q. And that's at Internet Archive?

2 A. That's on a Mac computer located at

3 Internet Archive.

4 Q. And it's hooked into Internet Archive's

5 computer systems?

6 A. Yes.

7 Q. And do you know what software is used to

8 submit that query command?

9 MS. LU: Objection, vague and ambiguous.

10 MR. HUDIS:

11 Q. How do you submit a query command line?

12 MS. LU: Objection, vague and ambiguous.

13 MR. HUDIS:

14 Q. You may answer.

15 A. The command was dictated to me by -- by

16 the engineer.

17 MS. LU: And objection also, relevance.

18 MR. HUDIS:

19 Q. An Internet Archive engineer?

20 A. Correct.

21 Q. Did you use -- did you get such dictation

22 to run the searches to comply with plaintiffs'

23 document subpoena?

24 A. Yes, in order to search for our records of

25 the download count, one of the Internet Archive

Page 28

1 engineers dictated the query to me so I could

2 search for it as he sat next to me.

3 Q. Who was the engineer?

4 A. His name was Ralph Muehlen.

5 Q. Spell his last name.

6 A. M-u-e-h-l-e-n.

7 Q. And do you -- when you were entering this

8 command into the Mac Terminal, do you know what

9 software you were using?

10 A. I was using a Mac operating system.

11 Q. Any particular software on the Mac

12 operating system?

13 A. Within the Mac operating system, I was

14 using the application Terminal. Terminal is the

15 name of the application.

16 Q. And so with Terminal, in this instance,

17 dictated by Mr. Muehlen, you entered in a command

18 and it gave you back information?

19 A. That's correct.

20 Q. Mr. Butler, when did you first become

21 employed by Internet Archive?

22 A. In February of 2009.

23 Q. What was your position then?

24 A. Office manager.

25 Q. Is that the position you still hold today?

Page 29

1 A. Yes.

2 Q. What are your duties and responsibilities

3 at Internet Archive as an office manager?

4 A. Some of them are clerical and relate to

5 office functions and managing our team of

6 administrative assistants.

7 Q. To do what?

8 A. To -- to perform reception duties,

9 inventory duties, purchasing duties, office

10 maintenance duties.

11 Q. What other responsibilities do you have as

12 office manager at Internet Archive?

13 A. I am primary point of contact for

14 take-down requests and requests for information

15 from law enforcement and attorneys.

16 Q. And when you say you're the point of

17 contact for take-down requests, is that a request

18 to take down material from Internet Archive's

19 website?

20 A. That's correct.

21 Q. What do you do?

22 A. I receive the take-down request, review

23 it. If it meets our basic criteria for -- for

24 something that should be taken down, I will process

25 that and take down the material. And if -- and

Page 30

1 follow up with any necessary communication
 2 thereafter.
 3 Q. And so if a take-down request meets
 4 certain criteria, what criteria would that be?
 5 MS. LU: Objection as to relevance.
 6 MR. HUDIS:
 7 Q. You may answer.
 8 A. Sure. I hadn't understood that the scope
 9 of the subpoena would include this information.
 10 but there can be take-down requests on -- on
 11 various grounds, so the criteria would be specific
 12 to -- to sometimes even the particular case, but
 13 the most basic example is a complaint of -- of
 14 copyright infringement brought to our attention on
 15 the site.
 16 And we would ask for a take-down notice
 17 with the standard information requested as outlined
 18 in the Digital Millennium Copyright Act. And if it
 19 meets that criteria, we will typically take down
 20 the item, notify both the uploading party and the
 21 requesting party.
 22 Q. And what about your being the point of
 23 contact for information requests from attorneys?
 24 MS. LU: Objection as to relevance.
 25 MR. HUDIS:

Page 31

1 Q. You may answer.
 2 A. The most common example of that is an
 3 attorney who is interested in using archived
 4 material from our web archive in one of their cases
 5 and would like to have those records authenticated
 6 by Internet Archive.
 7 Q. And as point of contact, you were also
 8 part of Internet Archive's compliance with document
 9 subpoenas such as the one we served on Internet
 10 Archive?
 11 A. That's correct.
 12 Q. Have you told me all of your
 13 responsibilities as office manager for Internet
 14 Archive?
 15 A. Yes.
 16 MR. HUDIS: Off the record.
 17 VIDEO OPERATOR: The time is 9:51 a.m.,
 18 and we are off the record.
 19 (Discussion off the record.)
 20 VIDEO OPERATOR: The time is 9:52 a.m.,
 21 and we are on the record.
 22 (Plaintiffs' Exhibit 4 marked for
 23 identification.)
 24 MR. HUDIS:
 25 Q. Mr. Butler, what is the Internet Archive?

Page 32

1 A. Internet Archive is a nonprofit
 2 organization. We are attempting to maintain a
 3 digital library online at our website, archive.org.
 4 We preserve many types of media and make much of
 5 that media available in digital format via our
 6 website, archive.org, and also openlibrary.org.
 7 Q. Mr. Butler, do you recognize what I now
 8 have marked as deposition Exhibit 4 as a portion of
 9 Internet Archive's website?
 10 A. Yes.
 11 Q. And it's the About page?
 12 A. Yes.
 13 Q. And the first paragraph up at the top
 14 right beneath "About the Internet Archive," it
 15 says, "The Internet Archive is a 501(c) non-profit
 16 that was founded to build an Internet library. Its
 17 purposes include offering permanent access for
 18 researchers, historians, scholars, people with
 19 disabilities, and the general public to historical
 20 collections that exist in digital format.
 21 Do you see that?
 22 A. Yes.
 23 Q. Is that an accurate description of
 24 Internet Archive's mission and business?
 25 A. Yes.

Page 33

1 Q. And it says below that, in the end of the
 2 second paragraph, "the Internet Archive includes
 3 text, audio, moving pictures" -- "moving images,
 4 and software as well as archived web pages in our
 5 collections."
 6 Do you see that?
 7 A. Yes.
 8 Q. And that's a part of the business of
 9 Internet Archive?
 10 A. Yes.
 11 Q. All right. If you would go to Page 5 of 5
 12 of Exhibit 4, please. It's the last page of the
 13 exhibit.
 14 Do you see the descriptive text under
 15 where it says, "Storage"?
 16 A. Yes.
 17 Q. And it says, "Storing the Archive's
 18 collections involves parsing, indexing, and
 19 physically encoding the data. With the Internet
 20 collections growing at exponential rates, this task
 21 poses an ongoing challenge."
 22 Is this part of the business of Internet
 23 Archive storage as it's described here?
 24 A. Yes.
 25 Q. And then immediately below that, there is

Page 34

1 a descriptive text under the title, "Preservation,"
 2 do you see that?
 3 A. Yes.
 4 Q. And it says there, "Preservation is the
 5 ongoing test of permanently protecting stored
 6 resources from damage or destruction. The main
 7 issues are guarding against the consequences of
 8 accidents and data degradation and maintaining the
 9 accessibility of data as formats become obsolete."
 10 Is that part of the mission and business
 11 of Internet Archive?
 12 A. Yes.
 13 Q. Mr. Butler, what is an Internet library?
 14 A. From our standpoint, as I understand
 15 Internet library, it would be an organization that
 16 offers library services, including access to -- to
 17 the types of resources on Internet Archive texts,
 18 movies, audio, software, information and artwork
 19 and literature and scientific data. It makes it
 20 available for the public benefit.
 21 Q. Have you completely described what you
 22 believe to be an Internet library?
 23 A. That's -- that's my definition in a
 24 nutshell.
 25 Q. At the Internet Archive, what is a

Page 35

1 collection?
 2 A. A collection is roughly defined as a set
 3 of posted items. An item would be defined as a
 4 page beginning with archive.org/details and ending
 5 in an identifier. It would be assigned a media
 6 type such as text, movie, audio. Multiple files
 7 could be uploaded to that page. It would be
 8 assigned a title. And perhaps other metadata
 9 submitted by the uploader of the item.
 10 A collection would be a list of items that
 11 is associated with a separate landing page, its own
 12 summary page where a visitor could -- can see
 13 summary information about that list of items. It's
 14 often organized around a theme.
 15 Some of the functions of a collection
 16 include being able to search within just that list
 17 of items, being able to sort those items, for
 18 example, sorting them by title, alphabetically or
 19 by author.
 20 A collection is generally set up for any
 21 archive.com user who contacts Internet Archive.
 22 And generally we ask that they have uploaded
 23 50 items to the site already that we can then form
 24 into a collection and assign a collection page.
 25 Q. Have you described the entirety of what

Page 36

1 you believe is a collection?
 2 MS. LU: Objection, argumentative.
 3 MR. HUDIS:
 4 Q. Did you leave anything out?
 5 A. I don't think of anything offhand.
 6 Q. How does Internet Archive build an
 7 Internet library?
 8 A. Through multiple ways. Our web archive is
 9 collected both by Internet Archive and by outside
 10 organizations that donate data to Internet Archive.
 11 Q. Let's take that separately.
 12 A. Okay.
 13 Q. What part of building Internet Archive's
 14 library is done by Internet Archive itself?
 15 A. Much of the web archive is -- is crawled
 16 and collected by Internet Archive directly.
 17 Q. So that we have a good record, what do you
 18 mean by "crawled and collected"?
 19 A. I mean that automated programs operated by
 20 Internet Archive visit web pages and store web
 21 files that are transmitted to Internet Archive by
 22 the web servers that they visit. That information
 23 is then processed in such a way that it's rendered
 24 searchable and browseable by visitors to the
 25 website.

Page 37

1 Q. And the searchable and browseable
 2 functions, that's done by Internet Archive's web
 3 engineers?
 4 A. Correct.
 5 Q. And I believe the other way you said that
 6 Internet Archive builds Internet library is by
 7 donations of content by outside organizations?
 8 A. Correct.
 9 Q. How does that work?
 10 A. So in the instance of the web archive
 11 organizations, the biggest one of which is Alexa
 12 Internet, who regularly perform web crawling, would
 13 donate bulk data of historical web files to
 14 Internet Archive to be incorporated into the
 15 Wayback Machine.
 16 Q. And are there other organizations that
 17 donate content to the Internet Archive?
 18 MS. LU: Objection, misstates prior
 19 testimony.
 20 MR. HUDIS:
 21 Q. Are there any other organizations that
 22 donate content to the Internet Archive?
 23 A. Yes. So private individuals and
 24 institutions may establish a user account with
 25 archive.org and post material in the movies, texts,

Page 38

1 audio and software collections.
 2 Q. How many individuals or organizations have
 3 established user accounts for uploading purposes to
 4 Internet Archive? Tens, hundreds, thousands, tens
 5 of thousands?
 6 A. At a minimum, thousands, perhaps tens of
 7 thousands, perhaps hundreds of thousands.
 8 MS. LU: I'll object that this is outside
 9 the scope of the deposition topics.
 10 MR. HUDIS: I would disagree, Counsel.
 11 Q. You may go. Are you finished with your
 12 answer?
 13 A. I am.
 14 Q. Have you described all the ways that
 15 Internet Archive builds its collections or builds
 16 its libraries, to be correct?
 17 A. Internet Archive may also digitize text
 18 materials or other materials.
 19 Q. Is this printed text materials?
 20 A. Yes.
 21 Q. You may go on.
 22 A. Yes. Typically, those are supplied by
 23 libraries and state agencies.
 24 Q. So the three ways that Internet Archive
 25 can build a library is Internet Archive's own

Page 39

1 crawling and archiving, donations by outside
 2 organizations, and digitization of text materials
 3 donated by libraries and state agencies, correct?
 4 MS. LU: Objection, misstates prior
 5 testimony.
 6 MR. HUDIS: I disagree.
 7 Q. Go on. You may answer.
 8 A. I would also add that private individuals
 9 can digitize materials themselves and upload them
 10 to our service.
 11 Q. Have you told me all the different ways
 12 that Internet Archive can build its libraries?
 13 A. Again, I think that's -- that's a fair
 14 nutshell description. I don't think of anything
 15 specific to add.
 16 Q. So we have some definitions of terms, what
 17 does it mean to post content to a website?
 18 MS. LU: Objection to the extent it calls
 19 for expert testimony.
 20 MR. HUDIS:
 21 Q. Do you understand the question?
 22 A. Yes. In the basic sense, I understand it
 23 to -- to be something that an individual or an
 24 automated program does to -- to transmit content to
 25 a website.

Page 40

1 Q. Is that otherwise known as uploading?
 2 A. I think that the two terms are used
 3 interchangeably a lot.
 4 MS. AHMAD: Can we take a break?
 5 MR. HUDIS: Yes.
 6 VIDEO OPERATOR: The time is 10:04 a.m.,
 7 and we are off the record.
 8 (Brief recess.)
 9 VIDEO OPERATOR: The time is 10:11 a.m.,
 10 and we are on the record.
 11 MR. HUDIS:
 12 Q. Mr. Butler, just so we have a frame of
 13 reference, individuals not employed by Internet
 14 Archive are allowed to post content to Internet
 15 Archive's website?
 16 A. That's correct.
 17 Q. And I believe we discussed people who have
 18 such posting or uploading access could be anywhere
 19 in the thousands to hundreds of thousands?
 20 A. Correct.
 21 Q. And why are these nonemployee individuals
 22 allowed to post content to Internet Archive's
 23 website?
 24 MS. AHMAD: Objection, outside the scope
 25 of the deposition topics.

Page 41

1 MR. HUDIS:
 2 Q. You may answer.
 3 A. One of the reasons why is to enable
 4 sharing of information and to -- to expand the
 5 amount of materials that's available for public use
 6 and sharing at archive.org.
 7 MR. HUDIS: Off the record.
 8 VIDEO OPERATOR: The time is 10:12 a.m.,
 9 and we are off the record.
 10 (Discussion off the record.)
 11 (Plaintiffs' Exhibit 5 marked for
 12 identification.)
 13 VIDEO OPERATOR: The time is 10:13 a.m.
 14 We are on the record.
 15 MR. HUDIS: We've now marked as Exhibit 5
 16 a document which says at the top, "Terms of Use
 17 10 March 2001," bearing production numbers IA-AERA
 18 38 through 40.
 19 Counsel for Internet Archive, can you
 20 stipulate this is a business record of your client?
 21 MS. AHMAD: Yes.
 22 MR. HUDIS: Any objections, Ms. Lu?
 23 MS. LU: No objection.
 24 MR. HUDIS:
 25 Q. Mr. Butler, do you recognize this document

Page 42

1 of Exhibit 5?
 2 A. Yes.
 3 Q. What is it?
 4 A. This is the Internet Archive's terms of
 5 use.
 6 Q. And to what activity associated with
 7 Internet Archive are these terms of use applied?
 8 MS. LU: Objection, vague and ambiguous.
 9 MR. HUDIS:
 10 Q. You may answer if you understand the
 11 question.
 12 A. Use of the website both by individuals who
 13 establish an account and also by users who visit
 14 the website without establishing an account.
 15 Q. So if I understand your answer, and if I'm
 16 wrong, correct me, if I'm an individual or an
 17 outside organization, not employed with Internet
 18 Archive, who wants to post content to Internet
 19 Archive's website, I would have to comply with
 20 these terms of use, is that correct?
 21 A. Yes.
 22 MS. LU: Objection, misstates prior
 23 testimony.
 24 MR. HUDIS:
 25 Q. You may answer.

Page 43

1 A. Yes, any -- any individual or institution
 2 who -- who uses Internet Archive's website as a
 3 visitor agrees to these terms of use.
 4 MR. HUDIS:
 5 Q. Did you participate in writing these terms
 6 of use?
 7 A. No.
 8 Q. Who participated in writing these terms of
 9 use?
 10 MS. LU: Objection, lack of personal
 11 knowledge.
 12 MR. HUDIS:
 13 Q. If you know.
 14 A. I don't know.
 15 Q. And the date of these terms of use says
 16 10 March, 2001. Do you see that?
 17 A. Yes.
 18 Q. To the best of your knowledge, are these
 19 terms of use still in effect today?
 20 A. Yes.
 21 Q. Were these terms of use, to the best of
 22 your knowledge, in effect between 2012 and 2014?
 23 A. Yes.
 24 Q. Must individuals not employed with
 25 Internet Archive or outside organizations agree to

Page 44

1 these terms of use of Exhibit 5 before they're
 2 allowed to post content to Internet Archive's
 3 website?
 4 A. Yes.
 5 Q. Why?
 6 MS. LU: Objection, lack of personal
 7 knowledge.
 8 MR. HUDIS:
 9 Q. If you know.
 10 A. I'm not the one who made that decision,
 11 and I -- I haven't spoken to those who did to --
 12 and, therefore, wouldn't -- wouldn't know exactly
 13 why that determination was made.
 14 Q. How are nonemployee individuals and
 15 outside companies or organizations made to comply
 16 with these terms of use before they're allowed to
 17 post content?
 18 Is it a click-wrap? Is it a shrink-wrap?
 19 What is it?
 20 MS. LU: Objection, vague and ambiguous
 21 and compound.
 22 MR. HUDIS: All right. I will reask the
 23 question.
 24 Q. In what form are nonemployee individuals
 25 or outside companies mandated to comply with these

Page 45

1 terms of use before they're allowed to post content
 2 to Internet Archive's website?
 3 MS. LU: Objection, vague and ambiguous.
 4 MR. HUDIS:
 5 Q. You may answer.
 6 A. Upon signing up for an account, an
 7 individual is presented with a check box that
 8 indicates that they've read and agreed to these
 9 terms of use.
 10 Q. And they have to click on that before they
 11 can go on to post?
 12 MS. LU: Vague and ambiguous.
 13 MR. HUDIS:
 14 Q. You may answer.
 15 A. That is correct.
 16 Q. What type of oversight, if any, does
 17 Internet Archive have over these outside
 18 nonemployee individuals who publish content to
 19 Internet Archive's website?
 20 MS. LU: Objection --
 21 MS. AHMAD: Objection, vague and
 22 ambiguous.
 23 MS. LU: And argumentative.
 24 MR. HUDIS: Okay.
 25 Q. When an outside individual or company

Page 46

1 publishes content to Internet Archive's website, do
 2 you monitor the content before it's posted?
 3 MS. LU: Objection, assumes facts not in
 4 evidence.
 5 MR. HUDIS:
 6 Q. You may answer.
 7 MS. LU: Vague and ambiguous.
 8 THE WITNESS: A general user account's
 9 posts are not reviewed prior to their -- their
 10 being posted and automatically processed by the
 11 archive.org website.
 12 MR. HUDIS:
 13 Q. Is the content reviewed by Internet
 14 Archive after posting?
 15 A. The content is not reviewed unless it's
 16 brought to our specific attention.
 17 Q. By whom?
 18 A. It may be brought to our attention by any
 19 number of individuals. It could be somebody who
 20 e-mailed us to our info@archive.org e-mail address.
 21 It could be somebody who called about the -- the
 22 material. Typically, it's a user of the website.
 23 Occasionally, it may be someone who has a complaint
 24 about the material.
 25 Q. Does Internet Archive have a policy, if

Page 47

1 any, about monitoring outside uploaded content to
 2 its website?
 3 MS. LU: Objection, vague and ambiguous.
 4 MR. HUDIS:
 5 Q. You may answer.
 6 A. I'm not aware of any policy.
 7 Q. What is the process by which a nonemployee
 8 individual would post content onto Internet
 9 Archive's website?
 10 MS. LU: Objection, lacks personal
 11 knowledge.
 12 THE WITNESS: Generally, their user
 13 account would be used to -- to upload material.
 14 They would have an opportunity to submit files and
 15 metadata pertaining to those files to be posted on
 16 one of our standard details pages.
 17 MR. HUDIS:
 18 Q. And before they start the process of
 19 uploading to a details page, they have to log in?
 20 A. That's correct.
 21 Q. And they have a user name and password?
 22 A. That's correct.
 23 Q. And that would have to be authenticated by
 24 Internet Archive before they could proceed with the
 25 upload?

Page 48

1 A. Yes.
 2 Q. When the material -- once the material is
 3 uploaded, is there any formatting of the material
 4 done in order for it to reside on Internet
 5 Archive's website?
 6 MS. LU: Objection, vague and ambiguous.
 7 MR. HUDIS:
 8 Q. You may answer.
 9 A. Can you define "formatting"?
 10 Q. Yes. To put it in a form such that it can
 11 be viewed on Internet Archive's website.
 12 MS. LU: Objection, vague and ambiguous.
 13 THE WITNESS: Certain file types may
 14 automatically trigger the system to create
 15 derivative file formats. For instance, a text
 16 document may be supplied in a PDF format, and the
 17 system may automatically generate other formats of
 18 that text, including an EPUB file. E-P-U-B is the
 19 spelling. A format called DjVu. D-j-V-u-is the
 20 file extension. Also, a plain text file.
 21 MR. HUDIS:
 22 Q. And is that formatting done automatically
 23 by Internet Archive's computer systems?
 24 A. It is.
 25 Q. So that we have a basic working definition

Page 49

1 so I don't have to completely define this over and
 2 over again, I'm going to refer to a submitter as an
 3 outside, nonemployee person or organization. Okay?
 4 A. Okay.
 5 Q. All right. Does Internet Archive process
 6 documents after they are posted by a submitter?
 7 MS. LU: Objection, vague and ambiguous.
 8 MR. HUDIS:
 9 Q. You may answer.
 10 A. If creating derivative file formats and
 11 arranging the item -- the submitted files so that
 12 they may be viewed on a web page along with the
 13 submitted metadata is considered processing, those
 14 are things that the Internet Archive's website
 15 performs.
 16 Q. You just anticipated my next question.
 17 And that process is done automatically?
 18 A. That's correct.
 19 Q. So we have a working definition, what is a
 20 URL?
 21 A. A URL is the address that corresponds to a
 22 web page. It may correspond to a web page.
 23 Technically it, as I understand it, it generally
 24 corresponds to a location on a web server.
 25 Q. Does Internet Archive control the URL name

Page 50

1 and location structure of materials posted to its
 2 website by submitters?
 3 MS. LU: Objection, vague and ambiguous.
 4 THE WITNESS: Can you reread the question,
 5 please?
 6 MR. HUDIS:
 7 Q. Does Internet Archive control the URL name
 8 or location structure of materials posted to
 9 Internet Archive's website by submitters?
 10 MS. LU: Objection, lack of personal
 11 knowledge.
 12 MS. AHMAD: Objection, vague as to
 13 "control."
 14 MR. HUDIS: Q. I'll give you an example
 15 of what I mean.
 16 In our subpoena of Exhibit 1, deposition
 17 subpoena, Exhibit A-1 to deposition Exhibit 1, has
 18 a URL associated with the posting of the
 19 1999 standards to Internet Archive's website and it
 20 reads as follows --
 21 MS. LU: What page are you on, Jonathan?
 22 I'm afraid this might be a little
 23 confusing for the record.
 24 MR. HUDIS: And I will read the URL into
 25 the record: <https://archive.org/details/gov.law>.

Page 51

1 aera.standards.1999."
 2 Q. Mr. Butler, when the material posted to
 3 Internet Archive's website on Exhibit A-1 of
 4 deposition Exhibit 1 was put there, who created the
 5 name of this URL at the bottom left-hand corner?
 6 MS. LU: Objection, vague and ambiguous
 7 and lack of personal knowledge.
 8 THE WITNESS: The prefix
 9 "archive.org/details" is the default URL prefix
 10 assigned by the archive.org website. The following
 11 text is what we call the identifier. That is
 12 something that is submitted by the submitter.
 13 MR. HUDIS:
 14 Q. Mr. Butler, to the best of your knowledge,
 15 what is Public.Resource.Org, Inc., which I will
 16 refer to for the rest of this deposition as Public
 17 Resource?
 18 MS. LU: Objection, lack of personal
 19 knowledge.
 20 MR. HUDIS:
 21 Q. You may answer to the extent you know.
 22 A. What I know about Public.Resource.Org is
 23 that it makes available government documents to the
 24 public, and that's part of its mission.
 25 Q. And how do you know about Public Resource?

Page 52

1 A. I know about Public.Resource.Org through
 2 their posting of material on archive.org.
 3 Q. That's the other name of Internet
 4 Archive's website?
 5 A. That's correct.
 6 Q. What else, if anything, do you know about
 7 Public Resource?
 8 MS. AHMAD: Objection, vague and
 9 ambiguous.
 10 MR. HUDIS:
 11 Q. Other than its posting of what you call
 12 government documents on internetarchive.org's
 13 website, what else, if anything, do you know about
 14 Public Resource?
 15 A. I believe that that -- that generally
 16 covers what I know about Public Resource.
 17 Q. Do you know Carl Malamud?
 18 A. Yes.
 19 Q. How do you know him?
 20 A. I've met him on brief occasion when he was
 21 at Internet Archive.
 22 Q. And why did Carl Malamud visit Internet
 23 Archive?
 24 MS. LU: Objection, lack of personal
 25 knowledge.

Page 53

1 THE WITNESS: The instance when I met him,
 2 he was speaking at a public function that Internet
 3 Archive was hosting. It was a memorial service for
 4 Aaron Swartz.
 5 MR. HUDIS:
 6 Q. Who was Aaron Swartz?
 7 MS. LU: Objection, relevance.
 8 THE WITNESS: Aaron Swartz was a public
 9 figure and former employee of Internet Archive.
 10 MR. HUDIS:
 11 Q. Other than speaking at this memorial
 12 function, do you remember any other times that
 13 Mr. Malamud visited Internet Archive when you were
 14 present?
 15 A. Yes. Perhaps a total of four or five
 16 times.
 17 Q. What were the purpose of those visits?
 18 A. I don't know.
 19 Q. Did he make any speeches other than the
 20 one at the memorial service?
 21 MS. LU: Objection, lack of personal
 22 knowledge.
 23 THE WITNESS: I'm not aware of any.
 24 MR. HUDIS:
 25 Q. Do you know what the nature of his

Page 54

1 meetings at Internet Archive was those other four
 2 or five times?
 3 A. No.
 4 Q. What else do you know about Mr. Malamud?
 5 MS. AHMAD: Objection, outside the scope
 6 of the deposition topics.
 7 MR. HUDIS:
 8 Q. You may answer.
 9 A. I know he's involved with Public Resource.
 10 Q. That was my next question.
 11 What, if anything, do you know about
 12 Mr. Malamud's relationship to Public Resource?
 13 A. As I understand it, he -- he's very
 14 central at Public Resource. I don't know his exact
 15 title and responsibilities at the organization.
 16 Q. Is that the extent of your knowledge of
 17 the relationship between Mr. Malamud and Public
 18 Resource?
 19 A. Yes.
 20 Q. Is Public Resource allowed to post content
 21 to Internet Archive's website?
 22 A. Yes.
 23 Q. Is Carl Malamud allowed to post content
 24 into Internet Archive's website?
 25 A. Yes.

Page 55

1 MS. LU: Objection, vague and ambiguous.
 2 MR. HUDIS:
 3 Q. When was Public Resource given access to
 4 publish content to Internet Archive's website?
 5 MS. LU: Vague and ambiguous.
 6 THE WITNESS: I don't know.
 7 MR. HUDIS:
 8 Q. When was Carl Malamud given access to post
 9 content to Internet Archive's website?
 10 MS. LU: Lack of personal knowledge, vague
 11 and ambiguous.
 12 MR. HUDIS:
 13 Q. You may answer.
 14 A. I don't know.
 15 Q. Is there a formal agreement between
 16 Internet Archive and Public Resource that
 17 memorializes, if there is one, posting rights to
 18 the Internet Archive website?
 19 MS. LU: Objection, lack of personal
 20 knowledge, assumes facts not in evidence.
 21 MR. HUDIS:
 22 Q. You may answer.
 23 A. If a -- if a user account was set up
 24 through the -- through the site and our terms of
 25 use were agreed to, then our terms of use would

Page 56

1 fall under that description. I'm not aware of any
 2 other agreements.
 3 Q. Do you know whether the terms of use were
 4 agreed to by Public Resource or Carl Malamud or
 5 both?
 6 MS. LU: Objection, lack of personal
 7 knowledge, assumes facts not in evidence.
 8 MR. HUDIS:
 9 Q. You may answer if you know.
 10 A. I don't know.
 11 Q. Other than the terms of use of Exhibit 5,
 12 you said there was no formal agreement between
 13 Public Resource or Carl Malamud and Internet
 14 Archive for posting rights.
 15 Was there any informal agreement?
 16 MS. LU: Objection, misstates prior
 17 testimony.
 18 MR. HUDIS:
 19 Q. You may answer.
 20 A. Can you define "posting rights"?
 21 Q. Permission to upload content to Internet
 22 Archive's website.
 23 A. I'm not aware of any.
 24 MR. HUDIS: Off the record.
 25 VIDEO OPERATOR: The time is 10:33 a.m.

Page 57

1 We are off the record.
 2 (Discussion off the record.)
 3 (Plaintiffs' Exhibit 6 marked for
 4 identification.)
 5 VIDEO OPERATOR: The time is 10:41 a.m.
 6 We are on the record.
 7 Mr. HUDIS: I've now marked as Exhibit 6 a
 8 web page with different views which I will discuss
 9 with the witness in a moment. It's a total of
 10 eight pages.
 11 Q. Mr. Butler, what we did -- it's on the
 12 date stamped up in the upper left-hand corner,
 13 March 14, 2014.
 14 The way that we understand the material
 15 which we call the 1999 standards was uploaded to
 16 Internet Archive's website. The material in this
 17 frame here, showing the witness, has the ability so
 18 that electronically you read it like a book.
 19 So we took a first shot of the web page
 20 with the first page of the '99 standards, and then
 21 the second page which is the front cover of the
 22 '99 standards, and then we took another shot,
 23 screenshot, of the inside cover and copyright page,
 24 and then finally the table of contents.
 25 Do you see that?

Page 58

1 A. Yes.
 2 Q. So these are, in fact, different shots of
 3 the same page with different turns, electronically,
 4 of the book.
 5 Do you understand that?
 6 A. I understand.
 7 Q. Okay. So --
 8 MS. AHMAD: Yes. So you should answer
 9 questions about this exhibit assuming that that
 10 description is accurate.
 11 THE WITNESS: I understand.
 12 MR. HUDIS:
 13 Q. Mr. Butler, do you recognize Exhibit 6 as
 14 a web page from Internet Archive's website that
 15 existed at one time?
 16 MS. LU: Objection, lack of personal
 17 knowledge.
 18 THE WITNESS: This has the layout of an
 19 Internet Archive details page. I recognize it as
 20 the layout and design of an Internet Archive
 21 details page.
 22 MR. HUDIS:
 23 Q. Do you know what material is posted on
 24 this web page of Exhibit 6?
 25 MS. LU: Objection, lack of personal

Page 59

1 knowledge.
 2 THE WITNESS: I see a title for the
 3 material.
 4 MR. HUDIS:
 5 Q. What title is that?
 6 A. The title is "AERA: Standard for
 7 Educational and Psychological Testing," and then
 8 there's a date in parentheses following that,
 9 "1999."
 10 Q. According to this exhibit, the bottom of
 11 the second page, who posted the 1999 standards to
 12 this web page?
 13 MS. LU: Objection, lack of personal
 14 knowledge.
 15 THE WITNESS: On the -- on the second
 16 page, I see a metadata tag entitled, "Credits" that
 17 reads "Uploaded by Public.Resource.Org."
 18 As I understand the function of our
 19 website, the submitter would have submitted that
 20 tag and the text displayed beside it, reading
 21 "Uploaded by Public.Resource.Org."
 22 MR. HUDIS: Counsel, can you stipulate
 23 that Exhibit 6 is a business record of Internet
 24 Archive that existed at one time, at least on
 25 March 14th, 2014?

Page 60

1 MS. AHMAD: No, I can't.
 2 MR. HUDIS:
 3 Q. On the second page of Exhibit 6, it says,
 4 "Identifier-access."
 5 Do you see that?
 6 A. Yes.
 7 Q. Based upon your knowledge of an Internet
 8 Archive details page, who created this identifier
 9 access string?
 10 MS. LU: Objection, vague and ambiguous,
 11 lack of personal knowledge.
 12 MR. HUDIS:
 13 Q. You may answer.
 14 A. I don't know. I don't know whether a
 15 submitter would have created that or whether the
 16 Internet Archive's automated processes created it.
 17 Q. To the best of your knowledge it's one or
 18 the other?
 19 MS. LU: Objection, lack of personal
 20 knowledge.
 21 THE WITNESS: To the best of my knowledge,
 22 it would either have been performed by Internet
 23 Archive's automated processes or an account holder
 24 with requisite permission to edit this item's
 25 metadata.

Page 61

1 MR. HUDIS:
 2 Q. To the best of your knowledge, if you
 3 could look on Page 1, beneath the -- beneath the
 4 frame containing the 1999 standards, who wrote the
 5 text under where it says, "Description"?
 6 MS. LU: Objection, lack of personal
 7 knowledge.
 8 THE WITNESS: The service requires a
 9 description to be provided by the submitter at the
 10 time of upload. That information may subsequently
 11 be edited by an account that has permissions to do
 12 so.
 13 MR. HUDIS:
 14 Q. And in this context, that account would
 15 have been by Public.Resource.Org?
 16 MS. LU: Objection, lack of personal
 17 knowledge and argumentative.
 18 THE WITNESS: Sorry, could you repeat the
 19 question, please?
 20 MR. HUDIS:
 21 Q. Yes, yes.
 22 Is it correct to say that the text on this
 23 web page of Exhibit 6, beneath the frame containing
 24 the 1999 standards, was provided by the submitter?
 25 MS. LU: Objection, lack of personal

Page 62

1 knowledge, vague and ambiguous.
 2 THE WITNESS: In the instance of the item
 3 with this identifier, our records show that the
 4 description was provided by the submitter.
 5 MR. HUDIS:
 6 Q. Who was the submitter, to the best of your
 7 knowledge, looking at this exhibit?
 8 MS. LU: Objection, lack of personal
 9 knowledge, vague and ambiguous.
 10 THE WITNESS: Our records list an account,
 11 a user account, as the submitter for this -- for
 12 the item with this identifier.
 13 MR. HUDIS:
 14 Q. And do you know whose account that is?
 15 MS. LU: Objection, lack of personal
 16 knowledge, vague and ambiguous.
 17 THE WITNESS: The -- I know that the user
 18 account is associated with an e-mail address which
 19 is carl@media.org.
 20 MR. HUDIS:
 21 Q. Do you know whether carl@media.org is Carl
 22 Malamud's e-mail address?
 23 MS. LU: Objection, lack of personal
 24 knowledge.
 25 THE WITNESS: I recognize that e-mail

Page 63

1 address as Carl Malamud's e-mail address.
 2 MR. HUDIS:
 3 Q. At the bottom of Page 1 of Exhibit 6, it
 4 says, "Downloaded 1,113 times."
 5 What does that downloaded number reflect?
 6 MS. LU: Objection, lack of personal
 7 knowledge.
 8 THE WITNESS: That number, the -- the
 9 downloaded number?
 10 MR. HUDIS:
 11 Q. Yes.
 12 A. Is the same as the download account to
 13 which we referred earlier today.
 14 MR. HUDIS: Off the record.
 15 VIDEO OPERATOR: The time is 10:50 a.m.,
 16 and we are off the record.
 17 (Discussion off the record.)
 18 (Plaintiffs' Exhibit 7 marked for
 19 identification.)
 20 VIDEO OPERATOR: The time is 10:52 a.m.,
 21 and we are on the record.
 22 MR. HUDIS:
 23 Q. I've marked as deposition Exhibit 7 a
 24 document that is a single page entitled, "Item
 25 History for gov.law.aera.standards.1999."

Page 64

1 MS. LU: Can you say that again?
 2 MR. HUDIS: Okay, I'll do it again.
 3 MS. LU: Jonathan, if you could repeat the
 4 Bates number on that.
 5 MR. HUDIS: Sure. I'll do both.
 6 It's a document that's named at the top,
 7 "Item History for gov.law.aera.standards.1999."
 8 Bears production number IA-AERA-036.
 9 Q. Mr. Butler, I'll show you again what's
 10 been marked as Exhibit 2 which is the document
 11 subpoena. Please look at items 1 through 4 for a
 12 minute.
 13 A. Okay.
 14 Q. Thank you, Mr. Butler.
 15 In order to comply with the document
 16 subpoena, or Exhibit 2, who at Internet Archive
 17 searched your company's records to determine how
 18 the 1999 standards were posted to the Internet
 19 Archive's website?
 20 MS. LU: Objection, assumes facts not in
 21 evidence and argumentative.
 22 MR. HUDIS:
 23 Q. You may answer.
 24 A. Would you read that for me, please?
 25 Q. Sure. In order to comply with our

Page 65

1 document subpoena of Exhibit 2, you've read items 1
 2 through 4.
 3 Who at Internet Archive searched your
 4 company's records to determine how the
 5 1999 standards were posted to your company's
 6 website?
 7 A. I did.
 8 Q. Mr. Butler, I now show you Exhibit 7 and
 9 ask you if you recognize the document.
 10 A. Yes.
 11 Q. What is it?
 12 A. This document is a history showing a
 13 summary of all of the technical tasks submitted for
 14 the item with the identifier gov.law.aera.
 15 standards.1999.
 16 Q. And how is the results of that search in
 17 any way related to the content of Exhibit 6?
 18 MS. LU: Objection, lack of personal
 19 knowledge.
 20 THE WITNESS: This is Exhibit 6?
 21 MR. HUDIS: Yes.
 22 MS. LU: Let the record reflect the
 23 witness was pointing to what I believe is Page 2 of
 24 8 of Exhibit 6.
 25 MR. HUDIS: Yes. It's my copy.

Page 66

1 THE WITNESS: And would you repeat
 2 question, please?
 3 MR. HUDIS:
 4 Q. Yes. And I will state it a different way.
 5 Is Exhibit 7 the results of a search to
 6 determine who posted the content on the web page of
 7 Exhibit 6?
 8 MS. LU: Objection, lack of personal
 9 knowledge.
 10 THE WITNESS: The Exhibit 7 is a result of
 11 a search to determine who posted the item
 12 associated with the URL listed on the printout for
 13 Exhibit 6.
 14 MR. HUDIS:
 15 Q. And what was the results of that search?
 16 MS. LU: Objection, vague and ambiguous.
 17 THE WITNESS: One document located was
 18 the -- the item history that is Exhibit 7.
 19 MR. HUDIS: Counsel for Internet Archive,
 20 can you stipulate that Exhibit 7 is a business
 21 record of Internet Archive?
 22 MS. AHMAD: Yes.
 23 MS. LU: No objection.
 24 MR. HUDIS: No objection, okay.
 25 Q. And you performed the search, the results

Page 67

1 of which are reflected as Exhibit 7?
 2 A. Yes, I -- I clicked the link to get to
 3 this history page.
 4 MR. HUDIS: Off the record.
 5 VIDEO OPERATOR: The time is 10:57 a.m.,
 6 and we are off the record.
 7 (Discussion off the record.)
 8 (Plaintiffs' Exhibit 8 marked for
 9 identification.)
 10 VIDEO OPERATOR: The time is 10:59 a.m.,
 11 and we are on the record.
 12 MR. HUDIS: I now mark as Exhibit 8 a
 13 multipage document bearing the production numbers
 14 IA-AERA 5 through 34.
 15 MS. LU: And I'll just state for the
 16 record that it appears to me that this is actually
 17 several documents that were produced consecutively
 18 and now are entered as one exhibit together. Is
 19 that --
 20 MR. HUDIS: That is correct, Counsel.
 21 Q. Mr. Butler, do you recognize the
 22 collection of documents now marked as Exhibit 8?
 23 A. Yes.
 24 Q. What are they?
 25 A. These documents are the logs for -- for

Page 68

1 the tasks that are summarized in the item history.
 2 They represent the technical tasks submitted for
 3 the item with identifier gov.law.aera.standards
 4 .1999.
 5 Q. Is it correct to say that the search
 6 summary of Exhibit 7 resulted in retrieval of the
 7 logs of Exhibit 8?
 8 MS. LU: Objection, vague and ambiguous.
 9 THE WITNESS: I was able to access the
 10 logs of Exhibit 8 through hyperlinks that were
 11 available on the page for Exhibit 7.
 12 MR. HUDIS: Counsel, can you stipulate
 13 that Exhibit 8 is a collection of the business
 14 records of Internet Archive?
 15 MS. AHMAD: Yes.
 16 MR. HUDIS: Any objection, Counsel?
 17 MS. LU: No objection.
 18 MR. HUDIS:
 19 Q. Mr. Butler, how does -- how long does
 20 Internet Archive maintain logs of the type shown in
 21 Exhibit 8?
 22 MS. LU: Objection, lack of personal
 23 knowledge.
 24 THE WITNESS: As a general practice, these
 25 logs are not deleted unless the item itself is

Page 69

1 deleted.
 2 MR. HUDIS:
 3 Q. And when you say "the item itself," what
 4 do you mean?
 5 MS. LU: Objection, vague and ambiguous.
 6 MR. HUDIS:
 7 Q. Do you mean the item of Exhibit 6?
 8 MS. LU: Objection, vague and ambiguous,
 9 argumentative.
 10 THE WITNESS: By "item," I mean the -- the
 11 collection of files and metadata that are posted
 12 associated with a URL archive.org/details/ the
 13 identifier.
 14 MR. HUDIS:
 15 Q. And you were able to retrieve these logs
 16 of Exhibit 8 associated with the identifier
 17 gov.law.aera.standards.1999?
 18 A. That's correct.
 19 Q. So the item has not yet been deleted from
 20 Internet Archive's website?
 21 MS. LU: Objection, vague and ambiguous.
 22 MR. HUDIS:
 23 Q. You may answer.
 24 A. That's correct.
 25 Q. From where did you gather the logs of

Page 70

1 Exhibit 8?
 2 A. The logs of Exhibit 8 were gathered from
 3 Internet Archive's servers that serve the site
 4 archive.org.
 5 Q. Who at Internet Archive maintains those
 6 servers?
 7 MS. LU: Objection, lack of personal
 8 knowledge.
 9 MR. HUDIS:
 10 Q. If you know.
 11 A. Internet Archive's engineers maintain
 12 those servers.
 13 Q. Who has access to those servers?
 14 MS. LU: Objection, lack of personal
 15 knowledge.
 16 THE WITNESS: Internet Archive's
 17 engineers.
 18 MR. HUDIS:
 19 Q. Internet engineers?
 20 MS. LU: Objection.
 21 MR. HUDIS:
 22 Q. What type of engineers have access to
 23 these servers?
 24 MS. LU: Objection, lack of personal
 25 knowledge, and vague and ambiguous.

Page 71

1 MR. HUDIS:
 2 Q. You may answer.
 3 A. Internet Archive's Petabox team is the
 4 name of the team.
 5 Q. Could you spell Petabox?
 6 A. Yes. P-e-t-a-b-o-x.
 7 Q. And who comprises Internet Archive's
 8 Petabox team?
 9 A. Several engineers who work with data
 10 clusters, physical hardware and also support the --
 11 the back end of Internet Archive, of the
 12 archive.org website.
 13 Q. So, generally, the Petabox team is
 14 comprised of computer hardware and software
 15 engineers?
 16 A. That's correct.
 17 Q. What tool was used to extract these logs
 18 of Exhibit 8?
 19 MS. LU: Objection, lack of personal
 20 knowledge.
 21 THE WITNESS: I obtained these records
 22 through the web browser Firefox.
 23 MR. HUDIS:
 24 Q. And through the Firefox web browser, did
 25 you use the Mac Terminal application?

Page 72

1 MS. LU: Objection, incomprehensible.
 2 Misstates prior testimony. Facts not in evidence.
 3 MR. HUDIS:
 4 Q. Besides the Firefox web browser, what
 5 other tools, if any, did you use to procure the
 6 logs of Exhibit 8?
 7 MS. LU: Objection, lack of personal
 8 knowledge.
 9 THE WITNESS: The -- I used the Firefox
 10 web browser with the site archive.org to -- to
 11 obtain these -- these records from archive.org's
 12 records of the task history of the item.
 13 MR. HUDIS:
 14 Q. And the task history is Exhibit 7?
 15 A. Yes, the -- the summary is Exhibit 7 and
 16 then the specific tasks are Exhibit 8.
 17 Q. Now, in Exhibit 7, it says, "submitter
 18 carl@media.org."
 19 You associate that -- that e-mail address
 20 with Carl Malamud?
 21 A. Yes.
 22 Q. Looking at the logs of Exhibit 8, at the
 23 top of each grouping of pages, first grouping is
 24 three pages, the second grouping is thirteen pages,
 25 the third grouping is two pages, the fourth

Page 73

1 grouping is three pages, the fifth grouping is two
 2 pages, the sixth grouping is five pages, and the
 3 final grouping is two pages.
 4 Each one of them has a task ID at the
 5 upper left-hand corner. Do you see that?
 6 A. Yes.
 7 Q. How did you determine which tasks to
 8 search for?
 9 MS. LU: Objection, misstates prior
 10 testimony.
 11 THE WITNESS: I obtained the task -- the
 12 task logs by selecting the hyperlink for each task
 13 under "task id" on Exhibit 7.
 14 MR. HUDIS:
 15 Q. Now, each of these documents of Exhibit 8
 16 includes a line that states, "submitter
 17 carl@media.org."
 18 This is the e-mail associated with Carl
 19 Malamud?
 20 A. Yes.
 21 Q. And Mr. Malamud has access to Internet
 22 Archive's system by a user name and password?
 23 MS. LU: Objection, lack of personal
 24 knowledge.
 25 THE WITNESS: Yes, I understand this

Page 74

1 account to be associated with Carl Malamud.
 2 MR. HUDIS:
 3 Q. And he accesses Internet Archive's systems
 4 for upload purposes by a user name and password?
 5 MS. LU: Objection, lack of personal
 6 knowledge, calls for speculation.
 7 THE WITNESS: Would you say the question
 8 one more time, please?
 9 MR. HUDIS: Yes.
 10 Q. How does Mr. Malamud gain access to
 11 Internet Archive's systems to submit a post?
 12 MS. LU: Objection, lack of personal
 13 knowledge, calls for speculation.
 14 THE WITNESS: In the instance of this
 15 item, it would be through the use of -- this item
 16 was submitted through the user account associated
 17 with carl@media.org and was used by submission
 18 of -- and gained access by submission of the e-mail
 19 address and log-in credentials.
 20 Q. What are log-in credentials?
 21 A. Log-in credential would be an e-mail
 22 address and password.
 23 Q. Did Internet Archive monitor the materials
 24 posted to its servers as reflected by these logs of
 25 Exhibit 8?

Page 75

1 MS. LU: Objection, vague and ambiguous,
 2 lack of personal knowledge.
 3 MR. HUDIS:
 4 Q. You may answer.
 5 A. One more time, please.
 6 Q. Yes. Did Internet Archive monitor the
 7 materials posted to its servers as reflected by
 8 these logs of Exhibit 8?
 9 A. To the best of my knowledge, no person
 10 working on behalf of Internet Archive monitored --
 11 personally reviewed the processes at work for each
 12 one of these tasks.
 13 Q. And after the material was posted, did
 14 Internet Archive exercise any quality control of
 15 the materials once submitted?
 16 MS. LU: Objection, lack of personal
 17 knowledge. And vague and ambiguous.
 18 THE WITNESS: To the best of my knowledge,
 19 no.
 20 MR. HUDIS:
 21 Q. And according to Exhibit 8, when did you
 22 search for these logs?
 23 A. According to Exhibit 8, the search was
 24 performed on October 30th, 2014 at 9:40:49 Pacific
 25 time.

Page 76

1 Q. Thank you for a precise answer.
 2 A. You're welcome.
 3 Q. What are the dates of these logs?
 4 MS. LU: Objection, vague and ambiguous.
 5 MR. HUDIS: All right.
 6 Q. Can you tell from Exhibit 8 the dates of
 7 these logs on Exhibit 8?
 8 MS. LU: Objection, vague and ambiguous.
 9 MR. HUDIS: Okay.
 10 Q. Do you want to go through them one at a
 11 time?
 12 A. There's a -- there's a line at the
 13 beginning of each log that reads, "Task started at"
 14 that has a record -- has Internet Archive's record
 15 of the time of submission for each task.
 16 Q. And then at the end of each log is there a
 17 time of finish?
 18 A. Yes.
 19 Q. So, the first task, 107010707, what time
 20 was this task started?
 21 MS. LU: Objection, lack of personal
 22 knowledge.
 23 THE WITNESS: The task log states the task
 24 was started on May 26, 2012 at 11:48 a.m. Pacific
 25 time.

Page 77

1 MR. HUDIS:
 2 Q. Let's go to task No. 107010788. That's on
 3 Page -- production Page 8.
 4 What time was this task started?
 5 MS. LU: Objection, lack of personal
 6 knowledge.
 7 THE WITNESS: I can only state that our
 8 record -- our record states that the task was
 9 started at the same date, May 26th, 2012, at
 10 11:48 a.m. Pacific time.
 11 MR. HUDIS:
 12 Q. And if we go to production Page 21 of
 13 Exhibit 8, when was task 107019567 started?
 14 MS. LU: Objection, lack of personal
 15 knowledge.
 16 THE WITNESS: Again, I only have the
 17 record created by our system. That record states
 18 the task was started at -- on the same date,
 19 May 26th, 2012, at, let's see, 1:07 Pacific time.
 20 1:07 p.m.
 21 MR. HUDIS:
 22 Q. And if you could turn to page --
 23 production Page 23 of Exhibit 8, what time was task
 24 107034141 started?
 25 MS. LU: Objection, lack of personal

Page 78

1 knowledge.
 2 THE WITNESS: The task log reads that the
 3 task started on the same date, May 26th, 2012, at
 4 4:46 p.m. Pacific time.
 5 MR. HUDIS:
 6 Q. Mr. Butler, please turn to Page 26 of
 7 Exhibit 8.
 8 What time was task 107040689 started?
 9 MS. LU: Objection, lack of personal
 10 knowledge.
 11 THE WITNESS: The task log states that the
 12 task was started on May 27th, 2012, at 6:43 p.m.
 13 Pacific time.
 14 MR. HUDIS:
 15 Q. Mr. Butler, please turn to Page 28 of
 16 Exhibit 8.
 17 Task No. 107040792, according to your
 18 records, when did this task start?
 19 MS. LU: Objection, lack of personal
 20 knowledge.
 21 THE WITNESS: The task log reads that the
 22 task started on May 27th, 2012 at 6:43 p.m. Pacific
 23 time.
 24 MR. HUDIS:
 25 Q. Mr. Butler, please turn to Page 33 of

Page 79

1 Exhibit 8.
 2 What time did Task ID 107040809 start?
 3 MS. LU: Objection, lack of personal
 4 knowledge.
 5 THE WITNESS: The task log reads that the
 6 task started at -- on May 27th, 2012 at 6:44 p.m.
 7 Pacific time.
 8 MS. AHMAD: Let's take a break.
 9 MR. HUDIS: Yes.
 10 VIDEO OPERATOR: This marks the end of
 11 volume 1, disk 1 in the deposition of Chris Butler.
 12 the time is 11:16 a.m. We're off the record.
 13 (Brief recess.)
 14 VIDEO OPERATOR: This marks the beginning
 15 of volume 1, disk 2 in the deposition of Chris
 16 Butler. The time is 11:24 a.m., and we are on the
 17 record.
 18 MR. HUDIS:
 19 Q. Mr. Butler, each of these logs of
 20 Exhibit 8 reflects a process of content submission
 21 by Mr. Malamud or somebody using his credentials?
 22 MS. LU: Objection, lack of personal
 23 knowledge, and misstates prior testimony.
 24 MR. HUDIS:
 25 Q. You may answer.

Page 80

1 A. What was the question again, please?
 2 MR. HUDIS:
 3 Q. Yes. Do the logs of Exhibit 8 reflect the
 4 activity of submitting content to Internet
 5 Archive's website by Carl Malamud or somebody using
 6 his log-in credentials?
 7 MS. LU: Objection, lack of personal
 8 knowledge, assumes facts not in evidence.
 9 THE WITNESS: The -- these records --
 10 MR. HUDIS: Of Exhibit 8.
 11 THE WITNESS: -- of Exhibit 8 reflect the
 12 tasks submitted for -- for this item.
 13 MR. HUDIS:
 14 Q. What item is that?
 15 A. The item is gov.law.aera.standards.1999.
 16 Q. Uh-huh.
 17 A. The record of the submitter in -- in these
 18 logs is the account associated with the e-mail
 19 address carl@media.org.
 20 Q. Which you associate with Carl Malamud?
 21 MS. LU: Objection, misstates prior
 22 testimony.
 23 THE WITNESS: I associate the e-mail
 24 address carl@media.org with Carl Malamud.
 25 MR. HUDIS:

Page 81

1 Q. And each of these logs reflect processes
 2 that were performed on May 26th and May 27th of
 3 2012?
 4 MS. LU: Objection, lack of personal
 5 knowledge.
 6 THE WITNESS: The question one more time,
 7 please.
 8 MR. HUDIS: Yes.
 9 Q. Each of these logs reflects processes that
 10 were performed on May 26th and May 27th, 2012?
 11 A. The logs list the dates that these were
 12 performed as May 27th -- May 26th and May 27th of
 13 2012.
 14 Q. Each of these documents of Exhibit 8 is a
 15 log that resulted from a command being run on
 16 Internet Archive's web servers?
 17 MS. LU: Objection, lack of personal
 18 knowledge.
 19 THE WITNESS: The question one more time,
 20 please.
 21 MR. HUDIS: Yes.
 22 Q. Each of these documents of Exhibit 8 is a
 23 log that resulted from a command being run on
 24 Internet Archive's servers?
 25 MS. LU: And also add, vague and ambiguous

Page 82

1 objection.
 2 THE WITNESS: This is the Internet
 3 Archive's log of the -- of the tasks submitted,
 4 including commands submitted to Internet Archive's
 5 website for the identifier previously mentioned.
 6 MR. HUDIS:
 7 Q. And each of these logs has a command line
 8 that is reflected by the line [cmd] right arrow, do
 9 you see that?
 10 MS. LU: Counsel, sorry, where are you,
 11 on which page of which --
 12 MR. HUDIS: According to Page 5 of
 13 Exhibit 8, the command line.
 14 MS. LU: I think, for the record, you're
 15 talking about [cmd] two equal signs and then
 16 greater than symbol?
 17 MR. HUDIS: Yes, which I define as right
 18 arrow.
 19 Q. Do you see that?
 20 A. Yes.
 21 Q. And if you go back to Exhibit 7, the
 22 different commands that were performed starting
 23 from the bottom are archive.php, derive.php,
 24 bup.php, again twice archive.php, derive.php and
 25 bup.php.

Page 83

1 Do you see that?
 2 A. Yes.
 3 Q. And we will leave for later the last one
 4 at the top, says, "make_dark." We'll leave that
 5 for later.
 6 Each of these commands has a "php" file
 7 extension. Do you know what a "php" is?
 8 MS. LU: Objection, lack of personal
 9 knowledge.
 10 THE WITNESS: I don't know what "php"
 11 stands for. It's an extension that I've seen
 12 associated with -- with web pages.
 13 MR. HUDIS:
 14 Q. Is it a scripting language, to the best of
 15 your knowledge?
 16 MS. LU: Objection, lack of personal
 17 knowledge.
 18 THE WITNESS: I don't know.
 19 MR. HUDIS:
 20 Q. Do you know where the php files are
 21 stored?
 22 MS. LU: Objection, lack of personal
 23 knowledge, vague and ambiguous.
 24 THE WITNESS: No.
 25 MR. HUDIS:

Page 84

1 Q. Do you know who wrote the php scripts?
 2 MS. LU: Objection, lack of personal
 3 knowledge.
 4 THE WITNESS: No.
 5 MR. HUDIS:
 6 Q. Do you know if the php file extensions
 7 were Carl Malamud's scripts?
 8 MS. LU: Objection, lack of personal
 9 knowledge, and vague and ambiguous.
 10 THE WITNESS: I know that -- that these
 11 commands that you see listed in the command
 12 column --
 13 MR. HUDIS: The witness is pointing --
 14 THE WITNESS: -- on Exhibit 7 and also
 15 listed by the bracketed command tag by the right
 16 arrow previously mentioned are generic commands
 17 that are associated with many, many items. They
 18 are very common commands and functions of the
 19 archive.org website.
 20 MR. HUDIS:
 21 Q. Looking at Exhibit 7, you see there is a
 22 column that says "args," do you see that?
 23 A. Yes.
 24 Q. Do you know whether that stands for
 25 arguments?

Page 85

1 MS. LU: Objection, lack of personal
 2 knowledge.
 3 THE WITNESS: No.
 4 MR. HUDIS:
 5 Q. Do you know what arguments were supplied
 6 for each of the commands for each of these logs so
 7 that -- so that the process described in the log
 8 would run?
 9 MS. LU: Objection, lack of personal
 10 knowledge, and vague and ambiguous.
 11 THE WITNESS: There are records of -- of
 12 information associated with the term "args" in
 13 each -- in each task log.
 14 MR. HUDIS:
 15 Q. So, for example, looking at Exhibit 7,
 16 does the submission of the argument
 17 "done=delsrc&from_url=ry" -- excuse me, "rsyn..."
 18 enable archive.php to run?
 19 MS. LU: Objection, lack of personal
 20 knowledge.
 21 THE WITNESS: I don't know that that's
 22 what enables archive.php to run.
 23 MR. HUDIS:
 24 Q. Looking at Exhibit 7, do you know what
 25 each of these commands do?

Page 86

1 MS. LU: Objection, lack of personal
 2 knowledge, and vague and ambiguous.
 3 THE WITNESS: I have a general
 4 understanding of the function of each of these
 5 commands.
 6 MR. HUDIS:
 7 Q. What does the archive.php command do?
 8 A. Archive.php is associated with the
 9 submission of files or information by a user to be
 10 incorporated into the item and displayed, made
 11 available with that item.
 12 Q. Do you know why the archive.php command
 13 was run three times?
 14 MS. LU: Objection, lack of personal
 15 knowledge. And objection, assumes facts not in
 16 evidence.
 17 THE WITNESS: Generally, the first
 18 archive.php is associated with the submission of --
 19 of a -- a file relating to a work that is a text or
 20 movie or audio recording. It also contains
 21 metadata that needs to be submitted with the
 22 initiating task for an item.
 23 Subsequent archive.php commands may
 24 correspond to the submission of further files --
 25 excuse me, further files for information to be

Page 87

1 incorporated with the item.
 2 MR. HUDIS:
 3 Q. Do you know what the derive.php file does?
 4 MS. LU: Objection, lack of personal
 5 knowledge.
 6 THE WITNESS: Derive.php is associated
 7 with the creation of derivative file formats that
 8 the archive.org website automatically generates
 9 from the original file and -- and presents on the
 10 item -- on the item's details page.
 11 MR. HUDIS:
 12 Q. On the website?
 13 A. On archive.org.
 14 Q. What does the bup.php command do?
 15 MS. LU: Objection, lack of personal
 16 knowledge.
 17 THE WITNESS: "Bup" is associated with
 18 creation of a backup of -- of the files, of the
 19 item's files, as Internet Archive uses two copies,
 20 creates and maintains two copies of a file in case
 21 one server has issue that prevent those files from
 22 being available.
 23 MR. HUDIS:
 24 Q. Do you know why the backup.php command was
 25 run twice?

Page 88

1 MS. LU: Objection, lack of personal
 2 knowledge. And assumes facts not in evidence.
 3 THE WITNESS: The backup.php command is
 4 typically run after a change is made to an item,
 5 and it is the updating of the backup copy.
 6 MR. HUDIS:
 7 Q. Mr. Butler, all of the logs produced by
 8 Internet Archive which are now reflected in
 9 Exhibit A have the identifier gov.law.area
 10 .standards.1999. What is this?
 11 MS. LU: Objection, lack of personal
 12 knowledge, and misdescribes the documents.
 13 THE WITNESS: The question is asking what
 14 the identifier is?
 15 MR. HUDIS:
 16 Q. Yes.
 17 A. The identifier is a string of characters
 18 that is submitted with an item by the submitter
 19 that is unique to the item and then is incorporated
 20 into the URL for the public page for the item.
 21 MR. HUDIS:
 22 Q. And that in this instance is reflected in
 23 Exhibit 6?
 24 MS. LU: Objection, vague and ambiguous.
 25 THE WITNESS: The same identifier listed

Page 89

1 for the tasks on Exhibit 8 appears in the URL at
 2 the bottom of the printouts for Exhibit 6.
 3 MR. HUDIS:
 4 Q. So if Mr. Malamud was the submitter in
 5 this case, was it Mr. Malamud who named this
 6 particular identifier "gov.law.aera.standards
 7 .1999"?
 8 MS. LU: Objection, lack of personal
 9 knowledge, calls for speculation.
 10 THE WITNESS: The records of the task log
 11 state that the identifier submitted for this item
 12 by the submitter is gov.law.aera.standards.1999.
 13 MR. HUDIS:
 14 Q. In each of the logs of Exhibit 8, there is
 15 a line that says, "server."
 16 Do you see that?
 17 A. I see a line that begins with "server."
 18 Q. All right. And then it follows with
 19 "ia600500.us.archive.org."
 20 What is this identifier?
 21 MS. LU: Objection.
 22 MR. HUDIS: Next to -- sorry, next to
 23 "server"?
 24 MS. LU: Objection, lack of personal
 25 knowledge, vague and ambiguous.

Page 90

1 THE WITNESS: The string of characters
 2 next to "server" is the location of a server
 3 maintained by Internet Archive that has a server
 4 name of "ia600500."
 5 MR. HUDIS:
 6 Q. Do you know what is stored on this
 7 particular server? The one you just named,
 8 "ia600500"?
 9 MS. LU: Objection, lack of personal
 10 knowledge and misstates prior testimony.
 11 THE WITNESS: Generally, servers
 12 referenced in task logs store information posted to
 13 archive.org's website.
 14 MR. HUDIS:
 15 Q. And if you notice, the server name for
 16 task 107010707 is different from the server of the
 17 task 107010788.
 18 Do you see that?
 19 MS. LU: Objection, vague and ambiguous.
 20 THE WITNESS: Yes, I see a different
 21 server name for these two tasks.
 22 MR. HUDIS:
 23 Q. What's -- if you know, what is the
 24 difference between the server from the task
 25 107010707 and the server of task 107010788?

Page 91

1 MS. LU: Objection, lack of personal
 2 knowledge, assumes facts not in evidence.
 3 THE WITNESS: I don't know of a
 4 substantial difference between these two servers.
 5 MR. HUDIS:
 6 Q. So if I were to go through the rest of the
 7 logs of Exhibit 8 and there were different named
 8 servers, you would not know the difference from one
 9 server to the next?
 10 MS. LU: Objection, assumes facts not in
 11 evidence.
 12 THE WITNESS: Correct.
 13 MR. HUDIS:
 14 Q. Mr. Butler, let's go back to Exhibit 6,
 15 and that's the 1999 standards posted to Internet
 16 Archive's website.
 17 MS. LU: Objection, misstates prior
 18 testimony.
 19 MR. HUDIS:
 20 Q. Do the logs of Exhibit 8 reflect Carl
 21 Malamud or someone with his log-on credentials
 22 posting the 1999 standards to Internet Archive's
 23 website?
 24 MS. LU: Objection, lack of personal
 25 knowledge, calls for speculation, and misstates

Page 92

1 prior testimony. And argumentative.
 2 THE WITNESS: The logs in Exhibit 8 have a
 3 recorded submitter of carl@media.org for the item
 4 with the identifier gov.law.aera.standards.1999.
 5 This is the same identifier that is listed at the
 6 bottom of the printout for Exhibit 6.
 7 MR. HUDIS:
 8 Q. When the 1999 standards were posted to
 9 Internet Archive's website in May of 2012, were any
 10 other materials posted with them?
 11 MS. LU: Objection, lack of personal
 12 knowledge and relevance.
 13 THE WITNESS: Can you define "materials"?
 14 MR. HUDIS:
 15 Q. Metadata.
 16 A. The -- the task log indicates that a file
 17 named "aera.standards.1999.pdf_meta.text" was
 18 submitted. It also indicates that a file named
 19 "gov.law.aera.standards.1999_meta.xml" was created.
 20 Typically, these are associated with the submission
 21 of metadata from a submitter.
 22 Q. For what purpose?
 23 MS. LU: Objection, lack of personal
 24 knowledge, calls for speculation.
 25 THE WITNESS: Generally, the -- the

Page 93

1 metadata is submitted to archive.org and displayed.
 2 Sometimes it has -- it has informational value for
 3 the item. An example would be the submission of a
 4 title for an item or an author.
 5 MR. HUDIS:
 6 Q. So, for example, on Exhibit 6, it says,
 7 "Author: American Educational Research
 8 Association."
 9 Is that the type of metadata you were
 10 talking about?
 11 MS. LU: Objection, lack of personal
 12 knowledge.
 13 THE WITNESS: Yes, that would be an
 14 example of metadata that would typically be
 15 submitted by a submitter to be -- to be displayed,
 16 along with a posted item.
 17 MR. HUDIS:
 18 Q. Did any Internet Archive employees have
 19 any participation in posting the 1999 standards or
 20 associated metadata to Internet Archive's website?
 21 A. One more time, please.
 22 Q. Sure. Did any Internet Archive employees
 23 have any participation in posting the
 24 1999 standards or associated metadata to Internet
 25 Archive's website?

Page 94

1 A. To the lack [sic] of my knowledge, no
 2 Internet Archive employee directly participated in
 3 the posting of this item to archive.org.
 4 Q. What involvement, if any, did Internet
 5 Archive have in the posting of the 1999 standards
 6 or associated metadata to Internet Archive's
 7 website?
 8 MS. LU: Objection, vague and ambiguous.
 9 THE WITNESS: The Internet Archive
 10 website, according to this task log, appears to
 11 have run standard automated processes responsive to
 12 commands submitted by a submitter.
 13 MR. HUDIS:
 14 Q. Once posted by Mr. Malamud, where on
 15 Internet Archive's website could the 1999 standards
 16 be found? I'm talking about the URL.
 17 MS. LU: Objection, assumes facts not in
 18 evidence.
 19 THE WITNESS: The -- the URL associated
 20 with this identifier would be archive.org/details/
 21 gov.law.aera.standards.1999.
 22 MR. HUDIS:
 23 Q. Was the uploaded metadata also posted to
 24 this same URL?
 25 MS. LU: Objection, lack of personal

Page 95

1 knowledge.
 2 THE WITNESS: It seems that a metadata
 3 file was created and associated with the item. I
 4 don't see any signs of -- of error in that process
 5 from looking at these logs.
 6 MR. HUDIS: So let's go through each one
 7 of the logs one at a time.
 8 Q. What is happening -- this is in
 9 Exhibit 8 -- in the log of task 107010707?
 10 MS. LU: Objection, lack personal
 11 knowledge, and vague and ambiguous. It calls for a
 12 narrative.
 13 THE WITNESS: Can you be more specific --
 14 MR. HUDIS: Yes.
 15 THE WITNESS: -- with the question?
 16 MR. HUDIS:
 17 Q. What function is being recorded by the log
 18 of 107010707?
 19 MS. LU: Same objections.
 20 THE WITNESS: The log is associated with
 21 an archive.php command which I understand to relate
 22 to the submission of files and/or metadata.
 23 MR. HUDIS:
 24 Q. Now, you see below the definition of the
 25 task, it says, "Getting file(s) from," and it gives

Page 96

1 you a very long URL which starts with "rsync."
 2 Do you see that?
 3 A. Sorry, this is near the bottom of the
 4 first page?
 5 Q. Yes.
 6 MR. HUDIS: May I point to the witness,
 7 Counsel?
 8 MS. AHMAD: Yes.
 9 MR. HUDIS:
 10 Q. So you see "Getting file(s)" and "Getting
 11 file(s)"?
 12 MS. LU: Objection, lack of personal
 13 knowledge.
 14 THE WITNESS: I see -- I see where the log
 15 says, "Getting file(s)."
 16 MR. HUDIS:
 17 Q. Now, is that the URL from which the
 18 document was uploaded?
 19 MS. LU: Objection, lack of personal
 20 knowledge.
 21 THE WITNESS: This is a URL associated
 22 with a submission of information to archive.org for
 23 posting with the item.
 24 MR. HUDIS:
 25 Q. And the item, the first item is

Page 97

1 1,825 bytes, do you see that?
 2 MS. LU: Objection, lack of personal
 3 knowledge.
 4 THE WITNESS: I see a line that it states
 5 that 1,825 bytes received.
 6 MR. HUDIS:
 7 Q. And the second "Getting file" then results
 8 in a receipt of --
 9 A. I see a line that states that 1,000,493 --
 10 excuse me -- 14,934,120 bytes received.
 11 Q. Does the log say received from where?
 12 MS. LU: Objection, lack of personal
 13 knowledge.
 14 THE WITNESS: The notes indicating the --
 15 or stating the receipts of this amount of
 16 information directly -- directly follow tasks
 17 stating that files are being retrieved from the
 18 long URL following the term "rsync."
 19 MR. HUDIS:
 20 Q. Could you please turn to Page --
 21 production Page 6 of Exhibit 8, the next page.
 22 Now, you see towards the middle, it says,
 23 "Now synchronizing item to the backup server."
 24 Do you see that?
 25 A. Yes.

Page 98

1 Q. At how many locations are the
 2 1999 standards stored within Internet Archive, if
 3 know?
 4 MS. LU: Objection, lack of personal
 5 knowledge, assumes facts not in evidence.
 6 THE WITNESS: Generally, items submitted
 7 to archive.org are stored on two different servers.
 8 MR. HUDIS:
 9 Q. For what purpose?
 10 MS. LU: Objection, lack of personal
 11 knowledge.
 12 THE WITNESS: As -- as I had stated
 13 earlier, Internet Archive uses paired storage in
 14 the instance that one server becomes inaccessible.
 15 MR. HUDIS:
 16 Q. Now, lower down on the same page,
 17 production Page 6 of Exhibit 8, it says, "Deleting
 18 from hd.www37," et cetera, et cetera,
 19 "us.archive.org."
 20 Why are these files being deleted?
 21 MS. LU: Objection, lack of personal
 22 knowledge, and assumes facts not in evidence.
 23 THE WITNESS: I don't know exactly what
 24 files are being deleted pursuant to this line.
 25 MR. HUDIS: Let's turn to production

Page 99

1 Page 8 of Exhibit 8. And we're now on the 13-page
 2 task with the ID 107010788.
 3 Q. What task is this log reflecting?
 4 MS. AHMAD: Objection, lack of personal
 5 knowledge.
 6 THE WITNESS: This log is associated with
 7 task No. 107010788. This task ID is associated
 8 with a derive.php command both in the task log and
 9 in the item history.
 10 MR. HUDIS:
 11 Q. And what function is being performed
 12 according to this log which has a derive.php
 13 command?
 14 MS. LU: Objection, lack of personal
 15 knowledge, assumes facts not in evidence.
 16 THE WITNESS: Derive.php is associated
 17 with the automated creation of derivative file
 18 formats by the archive.org website.
 19 MR. HUDIS:
 20 Q. Do you know what the BookOp module does?
 21 MS. LU: Objection, lack of personal
 22 knowledge.
 23 THE WITNESS: No, I don't know what that
 24 specific -- I don't know what the BookOp module
 25 does.

Page 100

1 MR. HUDIS: Could we turn to production
 2 Page 10 of Exhibit 8.
 3 Q. Do you see towards the top of the page, it
 4 says, "Heuristic Resolution Analysis"?
 5 A. Yes.
 6 Q. And underneath it, it says, "number of
 7 pages in PDF: 211"?
 8 A. Yes.
 9 Q. Is this the PDF file corresponding to the
 10 uploaded 1999 standards?
 11 MS. LU: Objection, lack of personal
 12 knowledge.
 13 THE WITNESS: This task appears to be
 14 being performed on a file named "aera.standards
 15 .1999.pdf." The initial task for this item with
 16 task No. 107010707 states that this file was
 17 submitted to the item by the submitter.
 18 MR. HUDIS:
 19 Q. And my question from Page 10, Exhibit 8,
 20 task 107010788 is, what was the size of that PDF
 21 file?
 22 MS. LU: Objection, lack of personal
 23 knowledge.
 24 THE WITNESS: The task history has a
 25 reading that says that the PDF file has 211 pages.

Page 101

1 MR. HUDIS:
 2 Q. And if you could turn to Page 11 --
 3 production Page 11 of Exhibit 8, do you know what
 4 is happening where it says formatting gifs?
 5 MS. LU: Objection, lack of personal
 6 knowledge.
 7 THE WITNESS: As clarification, the log
 8 states "forming gifs."
 9 MR. HUDIS: Thank you, "forming gifs."
 10 Thank you.
 11 THE WITNESS: This appears to be the
 12 generation of random images taken from a submitted
 13 text which are then displayed alongside the item.
 14 This is a standard process performed for texts that
 15 are posted to archive.org.
 16 MR. HUDIS:
 17 Q. Do you know what the AnimatedGIFT --
 18 excuse me, the AnimatedGIF, G-I-F, module does?
 19 MS. LU: Objection, lack of personal
 20 knowledge.
 21 THE WITNESS: AnimatedGIF module creates
 22 random images from a submitted text to be displayed
 23 alongside a posted text to archive.org.
 24 MR. HUDIS:
 25 Q. And what is the function of these random

Page 102

1 images?
 2 MS. LU: Objection, lack of personal
 3 knowledge.
 4 THE WITNESS: The random images, as I
 5 understand it, are generated to -- to provide an
 6 example of pages that may exist in a text.
 7 MR. HUDIS:
 8 Q. And do you know what the AbbyXML module
 9 does?
 10 MS. LU: Objection, lack of personal
 11 knowledge.
 12 THE WITNESS: As I understand it, the
 13 AbbyXML module plays a role in generating a text
 14 file, a plain text file, of a submitted text.
 15 MR. HUDIS:
 16 Q. Mr. Butler, could you turn to Page 13 of
 17 Exhibit 8. At the bottom, it says, DjvuXML module.
 18 Do you know what this module does?
 19 MS. LU: Objection, lack of personal
 20 knowledge.
 21 THE WITNESS: As I understand it, this
 22 module creates a derivative of the initially
 23 submitted text in a -- that functions with a
 24 special reader called a DjVu reader or deja vu
 25 reader.

Page 103

1 MR. HUDIS:
 2 Q. Do you know what a DjVu reader does?
 3 MS. LU: Objection, lack of personal
 4 knowledge.
 5 THE WITNESS: The extent of my knowledge
 6 is that a -- a reader will display a -- a DjVu text
 7 for -- for display for a user.
 8 MR. HUDIS:
 9 Q. On a website?
 10 MS. LU: Objection, lack of personal
 11 knowledge.
 12 THE WITNESS: I'm afraid I don't recall if
 13 it's used within a browser or if it's -- if it is
 14 used as a stand-alone application.
 15 MR. HUDIS:
 16 Q. Looking at Exhibit 6, the top third of the
 17 page, the 1999 standards were within a framed
 18 document which I told you basically turns the
 19 pages.
 20 Do you know what kind of reader this is?
 21 MS. LU: Objection, lack of personal
 22 knowledge, and assumes facts not in evidence.
 23 THE WITNESS: Yes, this is the Internet
 24 Archive's BookReader application.
 25 MR. HUDIS:

Page 104

1 Q. And is that created by the DjVu module or
 2 the BookOp module, or do you not know?
 3 MS. LU: Objection, lack of personal knowledge
 4 and compound.
 5 THE WITNESS: I know that it's not created
 6 by the DjVu module. I don't know whether are not
 7 the BookOp module plays a role in that.
 8 MR. HUDIS:
 9 Q. Do you know what the EPUB module does?
 10 MS. LU: Objection, lack of personal
 11 knowledge.
 12 THE WITNESS: Generally, the EPUB module
 13 creates another derivative format that is a -- a
 14 .epub file, e-p-u-b.
 15 MR. HUDIS:
 16 Q. And what does that do?
 17 MS. LU: Objection, lack of personal
 18 knowledge. Vague and ambiguous.
 19 MS. AHMAD: For the record, we're on
 20 Page 14 now?
 21 MR. HUDIS: Page 15 -- excuse me. Yes, we
 22 are on Page 14 of Exhibit 8. Thank you.
 23 THE WITNESS: I'm sorry, the question was?
 24 MR. HUDIS: Yes.
 25 Q. Do you know what the EPUB file does once

Page 105

1 created by the EPUB module?
 2 A. An EPUB file is a file format that is
 3 associated with an electronic text and must be read
 4 by software that's specifically designed to display
 5 an EPUB file.
 6 Q. Do you know what TOC module does? This is
 7 on Page 15 of Exhibit 8.
 8 MS. LU: Objection, lack of personal
 9 knowledge.
 10 THE WITNESS: No.
 11 MR. HUDIS:
 12 Q. Do you know what a scandataXML module
 13 does?
 14 MS. LU: Objection, lack of personal
 15 knowledge.
 16 THE WITNESS: No.
 17 MR. HUDIS:
 18 Q. Do you know what a PDF module does? And
 19 that's on page 16 of Exhibit 8.
 20 MS. LU: Objection, lack of personal
 21 knowledge.
 22 THE WITNESS: PDF module creates a
 23 derivative file of an initial file. It may create
 24 a black and white PDF that's smaller in size than
 25 any initial PDF that had been submitted.

Page 106

1 MR. HUDIS:
 2 Q. Do you know what a HackPDF does?
 3 MS. LU: Objection, lack of personal
 4 knowledge.
 5 THE WITNESS: No.
 6 MR. HUDIS: Excuse me, HackPDF module.
 7 Q. And the answer is no?
 8 A. No.
 9 Q. Could you turn to Page -- production
 10 Page 20 of Exhibit 8. This is the last page of
 11 task 107010788.
 12 Do you know why each of these files on
 13 Page 20 of Exhibit 8 are being autocleaned?
 14 MS. LU: Objection, lack of personal
 15 knowledge, and assumes facts not in evidence.
 16 THE WITNESS: No, I don't know.
 17 MR. HUDIS:
 18 Q. Could you go to the next task, please,
 19 production Page 21 of Exhibit 8. This is now
 20 starting task 107019567. And being performed here,
 21 according to this log, is the backup command?
 22 MS. LU: Objection, lack of personal
 23 knowledge, assumes facts not in evidence.
 24 THE WITNESS: The command associated with
 25 this task is bup.php, which I understand to be

Page 107

1 associated with the creation of a backup of an
 2 item.
 3 MR. HUDIS:
 4 Q. And the back -- and the item being backed
 5 up is gov.law.aera.standards.1999?
 6 A. The identifier listed on this task in this
 7 task history is that identifier.
 8 Q. And this was, as we discussed before,
 9 placing the item on a backup server to make sure,
 10 if one server is not accessible, another server
 11 could be accessible at Internet Archive?
 12 MS. LU: Objection, lack of personal
 13 knowledge, and assumes facts not in evidence.
 14 THE WITNESS: That is the operation that's
 15 associated with the bup.php command.
 16 MR. HUDIS:
 17 Q. Could we go to Page 23 of Exhibit 8. This
 18 is now starting the task 107034141.
 19 What task is being performed here?
 20 MS. LU: Objection, lack of personal
 21 knowledge.
 22 THE WITNESS: The command associated
 23 listed on this task log is archive.php which is
 24 associated with the submission of files or metadata
 25 for an item.

Page 108

1 MR. HUDIS:
 2 Q. So this was the submission of metadata in
 3 this task?
 4 MS. LU: Objection, lack of personal
 5 knowledge.
 6 THE WITNESS: The task -- the task log
 7 states that it was an archive -- states that it was
 8 an archive.php command which is associated with the
 9 submission of -- of metadata or files.
 10 MR. HUDIS:
 11 Q. Could you turn to Page -- production
 12 Page 24 of Exhibit 8. And there are warning
 13 messages at the bottom of this page. It says
 14 "Warning: Possible DNS Spoofing Detected!"
 15 "Warning: Remote Host Identification has Changed!"
 16 It is possible that someone is doing something
 17 nasty!"
 18 Do you know what the purpose of these
 19 warnings are?
 20 MS. LU: Objection, lack of personal
 21 knowledge.
 22 THE WITNESS: No, I don't.
 23 MR. HUDIS:
 24 Q. Please turn to production Page 26 of
 25 Exhibit 8. This is now starting task

Page 109

1 No. 107040689.
 2 And is this another archive.php command
 3 being performed here?
 4 MS. LU: Objection, lack of personal
 5 knowledge.
 6 THE WITNESS: The command associated -- or
 7 the command listed on this task log is a command
 8 archive.php.
 9 MR. HUDIS:
 10 Q. Do you know what function is being
 11 performed in this task?
 12 MS. LU: Objection, lack of personal
 13 knowledge.
 14 THE WITNESS: Archive.php, again, is
 15 associated with the submission of files or metadata
 16 for an item.
 17 MR. HUDIS:
 18 Q. And, again, the item is gov.law.aera
 19 .standards.1999?
 20 A. The identifier listed in these task logs
 21 is that identifier.
 22 Q. And, again, we see on Page 27 of Exhibit 8
 23 the same warnings. And you don't know what those
 24 warnings are about?
 25 A. That's correct.

Page 110

1 Q. Could we please turn to Page 28 of
 2 Exhibit 8. This starts task 107040792.
 3 And the derive.php command is being
 4 performed here?
 5 MS. LU: Objection, lack of personal
 6 knowledge.
 7 THE WITNESS: The command listed on this
 8 task log for this task is derive.php.
 9 MR. HUDIS:
 10 Q. In this specific log, do you know what is
 11 happening here?
 12 MS. LU: Objection, lack of personal
 13 knowledge, vague and ambiguous.
 14 THE WITNESS: Generally, a -- an
 15 archive.php task may trigger a derive task to
 16 update the derivative files after any change has
 17 been made to the initially submitted metadata or
 18 file.
 19 MR. HUDIS:
 20 Q. Could we turn to Page 31 of Exhibit 8.
 21 At the bottom of that page, do you know
 22 why the files are being autocleaned?
 23 MS. LU: Objection, lack of personal
 24 knowledge, assumes facts not in evidence.
 25 THE WITNESS: No.

Page 111

1 MR. HUDIS:
 2 Q. Could we turn now to Page 33 of Exhibit 8.
 3 This is the final task and it is identified with
 4 107040809.
 5 Do you know what task is being performed
 6 here, bup.php?
 7 MS. LU: Objection, lack of personal
 8 knowledge.
 9 THE WITNESS: The command listed on this
 10 task log is bup.php. This is associated with the
 11 creation of a backup file -- backup copies of the
 12 file for the item.
 13 MR. HUDIS:
 14 Q. And the item being backed up here is
 15 gov.law.aera.standards.1999?
 16 MS. LU: Objection, lack of personal
 17 knowledge, assumes facts not in evidence.
 18 THE WITNESS: That is the identifier that
 19 is listed on this task log.
 20 MR. HUDIS:
 21 Q. And this is a backup task log?
 22 MS. LU: Objection, lack of personal
 23 knowledge, assumes facts not in evidence, and
 24 argumentative.
 25 THE WITNESS: The command listed for this

Page 112

1 task log is bup.php which is a backup task.
 2 MR. HUDIS: Off the record.
 3 VIDEO OPERATOR: The time 12:12 p.m. We
 4 are off the record.
 5 (Brief recess.)
 6 (Plaintiffs' Exhibit 9 marked for
 7 identification.)
 8 VIDEO OPERATOR: The time is 12:20 p.m.,
 9 and we are on the record.
 10 MR. HUDIS:
 11 Q. Mr. Butler, I'd like you to refer back to
 12 Exhibit 7. And you see at the very top, there's a
 13 command that says, "make_dark.php."
 14 Do you see that?
 15 A. Yes.
 16 Q. What does the make_dark command do?
 17 MS. LU: Objection, lack of personal
 18 knowledge.
 19 THE WITNESS: Make_dark takes down files
 20 from public access.
 21 MR. HUDIS:
 22 Q. I'd like you to now look at what has been
 23 marked as Exhibit 9.
 24 What is this one-page exhibit?
 25 A. This exhibit is a log for a task

Page 113

1 associated with the item with identifier
 2 gov.law.aera.standards.1999.
 3 Q. And what is the command being run as
 4 reflected in this log of Exhibit 9 which bears task
 5 ID 315793300?
 6 A. The command listed in this task log is
 7 make_dark.php.
 8 Q. When we looked at the commands and tasks
 9 of Exhibit 8, you saw that the commands were being
 10 run on multiple servers, correct?
 11 MS. LU: Objection, lack of personal
 12 knowledge, and assumes facts not in evidence.
 13 THE WITNESS: I saw that there were
 14 different server addresses listed in -- throughout
 15 the task -- throughout the various tasks associated
 16 with this item.
 17 MR. HUDIS:
 18 Q. And the task of Exhibit 9, 315793300, on
 19 how many servers was this task run?
 20 MS. LU: Objection, lack of personal
 21 knowledge, assumes facts not in evidence, vague and
 22 ambiguous.
 23 MR. HUDIS:
 24 Q. According to this tag, there is one server
 25 identified. Do you see it?

Page 114

1 MS. LU: Objection, lack of personal
 2 knowledge, assumes facts not in evidence, and
 3 argumentative.
 4 MR. HUDIS:
 5 Q. And you see that the server is ia600500?
 6 MS. LU: Objection, vague and ambiguous.
 7 MR. HUDIS:
 8 Q. You may answer.
 9 A. I see that an address for a server is
 10 listed in this task log with the server name of
 11 ia600500.
 12 Q. Do you see any other servers listed on
 13 this log of Exhibit 9?
 14 A. I see a listing associated with a backup
 15 server near the bottom with server address
 16 ia700500.us.archive.org.
 17 Q. So do you know if the make_dark command
 18 was being run, according this log, on one server or
 19 two?
 20 MS. LU: Objection, lack of personal
 21 knowledge, and vague and ambiguous. And assumes
 22 facts not in evidence.
 23 THE WITNESS: The item -- the task log
 24 states that the item is being synchronized to the
 25 backup server. I would associate that with the --

Page 115

1 with the performing of the changes made to the
 2 primary server also being made to the backup
 3 server.
 4 MR. HUDIS:
 5 Q. Based upon your reading of Exhibit 8,
 6 which were the upload logs, do you know on how many
 7 servers the item gov.law.aera.standards.1999 were
 8 uploaded to, within Internet Archive?
 9 MS. LU: Objection, lack of personal
 10 knowledge, misstates prior testimony, assumes facts
 11 not in evidence, and vague and ambiguous.
 12 THE WITNESS: I don't know for certain how
 13 many servers this may have -- the files and
 14 metadata may have resided on. I know generally
 15 archive.org items reside on a primary server and a
 16 backup server at any given time.
 17 MR. HUDIS:
 18 Q. And, according to the make_dark command of
 19 Exhibit 9, task 315793300, the make_dark command
 20 was associated with server ia600500 and
 21 synchronized to server ia700500, is that correct?
 22 MS. LU: Objection, lack of personal
 23 knowledge.
 24 THE WITNESS: The -- the task log states
 25 that the servers upon which this command was

Page 116

1 performed are server named ia600500 and backup
 2 server named ia700500.
 3 MR. HUDIS:
 4 Q. Even though the make_dark command was
 5 performed on these two servers, could Internet
 6 Archive's employees still access the 1999 standards
 7 on those two servers?
 8 MS. LU: Objection, lack of personal
 9 knowledge, and assumes facts not in evidence.
 10 THE WITNESS: I know that, via the
 11 archive.org interface, the standards are not
 12 accessible to -- to Internet Archive employees and
 13 the public. I don't know for certain if there
 14 would be a way to -- to access the standards via
 15 another method.
 16 MR. HUDIS:
 17 Q. After the make_dark command was performed,
 18 is the file still located on Internet Archive's
 19 primary and backup servers? And that's -- that's
 20 the file identified by gov.law.aera .standards
 21 .1999.
 22 MS. LU: Objection, lack of personal
 23 knowledge.
 24 THE WITNESS: I don't know with respect to
 25 this particular item. Generally speaking, an item

Page 117

1 that has been made dark still resides on the
 2 servers.
 3 MR. HUDIS:
 4 Q. If you notice within Exhibit 9, this task
 5 315793300, there is a comment.
 6 Do you see that?
 7 MR. HUDIS: Counsel, permission to point
 8 to the witness?
 9 MS. AHMAD: Yes.
 10 THE WITNESS: I see a -- a comment tag
 11 listed in the -- the task log.
 12 MR. HUDIS:
 13 Q. And what does the comment say after the
 14 tag?
 15 A. Comment says, "pending outcome of
 16 litigation."
 17 Q. Do you know who wrote that comment?
 18 MS. LU: Objection, lack of personal
 19 knowledge.
 20 THE WITNESS: The comment is associated
 21 with a submitter carl@media.org.
 22 MR. HUDIS:
 23 Q. Do you know whether counsel was involved
 24 in the writing of this comment on this task of
 25 Exhibit 9?

Page 118

1 MS. LU: Objection, lack of personal
 2 knowledge, and vague and ambiguous as to "counsel."
 3 THE WITNESS: No, I don't know.
 4 MR. HUDIS:
 5 Q. Do you know whether inserting a comment of
 6 this type, "pending outcome of litigation," is a --
 7 sorry, is an approved technique for making content
 8 dark from an Internet Archive server?
 9 MS. LU: Objection, lack of personal
 10 knowledge.
 11 MR. HUDIS: Sure.
 12 MS. LU: And vague and ambiguous.
 13 MR. HUDIS: All right. I'll reask the
 14 question.
 15 Q. Is inserting a comment of this type,
 16 "pending outcome of litigation," an approved
 17 technique for removing content from an Internet
 18 Archive server?
 19 MS. LU: Objection, vague and ambiguous,
 20 assumes facts not in evidence, and lack of personal
 21 knowledge.
 22 MR. HUDIS:
 23 Q. Do you understand the question?
 24 A. I'll say that the -- a submission of a
 25 comment is something that can be done and is not

Page 119

1 atypical when an item is made dark.
 2 Q. Is not typical or is not atypical?
 3 A. Is not atypical. Is fairly commonly done.
 4 Q. Thank you for the clarification.
 5 MR. HUDIS: Counsel, can we stipulate that
 6 Exhibit 9 is a business record of Internet Archive?
 7 MS. AHMAD: Yes, we can.
 8 MR. HUDIS: Any objection, Counsel?
 9 MS. LU: No objection.
 10 MR. HUDIS:
 11 Q. So looking again at Exhibit 7 and 9, the
 12 search associated with gov.law.aera.standards.1999
 13 is reflected in Exhibit 7 and includes the
 14 make_dark command, correct?
 15 MS. LU: Objection, vague and ambiguous.
 16 THE WITNESS: The -- the records of the
 17 task history lists a command of make_dark.php for
 18 task ID 315793300. This is also the task ID that's
 19 listed for the final task or the task at the top of
 20 the list on the item history page, Exhibit 7.
 21 MR. HUDIS: In the last answer the witness
 22 gave, let the record reflect that he was referring
 23 to Exhibits 9 and 7.
 24 Off the record.
 25 VIDEO OPERATOR: The time is 12:33 p.m.

Page 120

1 and we are off the record.
 2 (Discussion off the record.)
 3 (Plaintiffs' Exhibit 10 marked for
 4 identification.)
 5 VIDEO OPERATOR: The time is 12:34 and we
 6 are on the record.
 7 MR. HUDIS:
 8 Q. Mr. Butler, I now put in front of you a
 9 document marked as Exhibit 10. It's a one-page
 10 document. And it says at the top, "Internet
 11 Archive Error," and it's dated June 30, 2014.
 12 I'd like you to compare the URL printed on
 13 Exhibit 6 and the URL printed on Exhibit 10.
 14 Are they the same?
 15 A. Yes, they are the same.
 16 Q. Now, you notice on Exhibit 6, content is
 17 there?
 18 MS. LU: Objection, vague and ambiguous.
 19 MR. HUDIS:
 20 Q. Is there content shown on Exhibit 6 at the
 21 URL shown at the bottom?
 22 MS. LU: Objection, vague and ambiguous.
 23 THE WITNESS: Exhibit 6 shows the standard
 24 design and layout for an archive.org details page
 25 for a text item.

Page 121

1 MR. HUDIS:
 2 Q. And the text item is gov.law.aera
 3 .standards.1999?
 4 MS. LU: Objection, lack of personal
 5 knowledge.
 6 THE WITNESS: That is the identifier
 7 listed in the URL at the bottom of the printout for
 8 Exhibit 6.
 9 MR. HUDIS:
 10 Q. And it's also listed in the identifier
 11 access on Page 2 of Exhibit 6?
 12 A. That identifier is also listed under the
 13 identifier access listing on Exhibit 6.
 14 Q. Now, if you notice in Exhibit 10, the
 15 content is gone.
 16 MS. LU: Objection, vague and ambiguous,
 17 argumentative.
 18 THE WITNESS: On Exhibit 10, I see the
 19 standard placeholder message that indicates an item
 20 is not available.
 21 MR. HUDIS:
 22 Q. So my question, if Exhibit 6 was printed
 23 on March 14, 2014, and Exhibit 10 was printed on
 24 June 30, 2014, and they both have the same URL,
 25 what happened between March and June such that the

Page 122

1 content on Exhibit 6 was there and then the content
 2 in Exhibit 10 is gone?
 3 MS. LU: Objection --
 4 MR. HUDIS:
 5 Q. Replaced by the placeholder?
 6 MS. LU: Objection, assumes facts not in
 7 evidence, and calls for speculation.
 8 THE WITNESS: Typically, when the
 9 placeholder message is displayed on a page that
 10 previously displayed a live item, it is an
 11 indication that the item has been taken down.
 12 MR. HUDIS:
 13 Q. And is that the result of a make_dark
 14 command?
 15 MS. LU: Objection, lack of personal
 16 knowledge.
 17 THE WITNESS: It can be the result of a
 18 make_dark command. Uh -- it can be the result of a
 19 make_dark command.
 20 MR. HUDIS:
 21 Q. Do you know whether the change of the live
 22 content of Exhibit 6 and then the placeholder that
 23 says this item is not available of Exhibit 10
 24 resulted from the make_dark command shown in log
 25 315793300 of Exhibit 9?

Page 123

1 MS. LU: Objection, vague and ambiguous,
 2 assumes facts not in evidence and lack of personal
 3 knowledge.
 4 THE WITNESS: I can state that this is the
 5 message and this is how I would expect the page to
 6 appear following the submission of a make_dark
 7 command for a live item.
 8 MR. HUDIS: Note that the witness is
 9 pointing to Exhibit 10.
 10 Q. On Exhibit 10, who, if you know, inserted
 11 the language "The item is not available due to
 12 issues with the item's content"?
 13 MS. AHMAD: Objection, outside the scope
 14 of the deposition topics.
 15 MR. HUDIS: I would disagree with that.
 16 MS. LU: And lack of personal knowledge.
 17 MR. HUDIS: I would disagree with that,
 18 Counsel. Public Resource's counsel can assert her
 19 objections.
 20 So I'll reask the question subject to all
 21 objections.
 22 Q. Do you know who inserted the language in
 23 Exhibit 10, "The item is not available due to
 24 issues with the item's content"?
 25 THE WITNESS: This is a placeholder

Page 124

1 message that was determined years ago. I don't
 2 know who drafted that message and selected it.
 3 It's the general message that is displayed on an
 4 item's page after a make_dark command has been
 5 submitted for that item.
 6 MR. HUDIS: Off the record.
 7 VIDEO OPERATOR: The time is 12:41 p.m.
 8 and we are off the record.
 9 (Discussion off the record.)
 10 (Plaintiffs' Exhibit 11 marked for
 11 identification.)
 12 VIDEO OPERATOR: The time is 12:42 p.m.,
 13 and we are on the record.
 14 MR. HUDIS:
 15 Q. Mr. Butler, once content is taken down
 16 from an Internet Archive web page from public
 17 access, can your company still track the number of
 18 visits to that page while the content was still
 19 there?
 20 MS. LU: Objection, vague and ambiguous.
 21 THE WITNESS: The record that we have
 22 is -- is called a download count and relates to the
 23 number of visits to -- to pages with files for the
 24 item. So it's our -- it's our best record of the
 25 number of HTTP requests from -- from an IP address

Page 125

1 where multiple visits from the same IP address in
 2 the same day have been counted as one download.
 3 MR. HUDIS:
 4 Q. Mr. Butler, have you ever heard of the
 5 term "hit count"?
 6 A. Yes.
 7 Q. What does "hit count" refer to?
 8 A. Hit count --
 9 MS. LU: Objection to the extent it calls
 10 for expert testimony.
 11 MR. HUDIS:
 12 Q. You may answer.
 13 A. Hit count, as I understand it, relates to
 14 the amount of visits to a given web page.
 15 Q. So we've talked about today a number of
 16 views, a number of downloads, correct, to a web
 17 page?
 18 A. Yes.
 19 MS. LU: Objection, misstates prior
 20 testimony.
 21 MR. HUDIS:
 22 Q. You may answer.
 23 A. We've talked about the definition of our
 24 download count number and discussed a little bit
 25 how that relates to downloading and viewing.

Page 126

1 MR. HUDIS:
 2 Q. So your company defines download count.
 3 Does the download count distinguish between an
 4 Internet user's view of a page versus capturing and
 5 copying content to go to another computer?
 6 MS. LU: Objection, vague and ambiguous.
 7 THE WITNESS: The download count does not
 8 distinguish between, for example, a visit to a web
 9 page without, for instance, saving that file
 10 through the -- a browser's downloader or selecting
 11 files' save-as from the browser.
 12 MR. HUDIS:
 13 Q. Does Internet Archive's download count
 14 distinguish between visits from human beings over
 15 the Internet versus Internet crawling robots, or
 16 bots, or uploaders, or internal visits from
 17 Internet Archive processes or staff?
 18 MS. LU: Objection, vague and ambiguous.
 19 THE WITNESS: No. The download count does
 20 not distinguish between all of those different
 21 types of access.
 22 MR. HUDIS:
 23 Q. For the purposes of my next question, I
 24 need your definition of what an IP address is.
 25 A. Okay.

Page 127

1 Q. What is an IP address?
 2 MS. LU: Objection, to the extent it calls
 3 for expert testimony.
 4 THE WITNESS: What I know about an
 5 IP address is that it is a unique number associated
 6 with a computer that is connected to a network.
 7 MR. HUDIS:
 8 Q. Does Internet Archive's download count
 9 include or exclude multiple visits from the same
 10 IP address during a given day?
 11 MS. LU: Objection, vague and ambiguous.
 12 THE WITNESS: During a day, as defined by
 13 UTC time, Internet Archive's systems are designed
 14 to log multiple visits from the same IP -- count,
 15 excuse me, count multiple visits from the same
 16 IP address as only one download.
 17 MR. HUDIS:
 18 Q. Does Internet Archive maintain any records
 19 or other information that would enable it to be
 20 more specific about what is included or excluded
 21 from a download count?
 22 MS. LU: Objection, vague and ambiguous.
 23 THE WITNESS: Can you read the question
 24 again, please?
 25 MR. HUDIS: Yes.

Page 128

1 Q. Does Internet Archive maintain any records
 2 or other information that would enable it to be
 3 more specific about what is included or excluded
 4 from a download count?
 5 MS. LU: Same objection.
 6 THE WITNESS: I'm not aware of any further
 7 information that we would be able to supply.
 8 MR. HUDIS:
 9 Q. How does Internet Archive obtain the
 10 download count of a specific web page after the
 11 uploaded content is removed?
 12 MS. LU: Objection, lack of personal
 13 knowledge, assumes facts not in evidence. Counsel,
 14 if you want to ask him about how someone retrieved
 15 this Exhibit 11, then I would not object to that.
 16 MR. HUDIS:
 17 Q. All right. I'm going to ask you
 18 specifically about Exhibit 11. I'd like to know
 19 generally how the information was obtained.
 20 We've established that a make_dark command
 21 was run for the content of the 1999 standards in
 22 June of 2014, correct?
 23 MS. LU: Objection, misstates prior
 24 testimony, lack of personal knowledge.
 25 MR. HUDIS:

Page 129

1 Q. When was this make_dark command of
 2 Exhibit 9 run?
 3 A. The date listed on the task log for this
 4 task which has a command listed of make_dark.php is
 5 June 11th, 2014.
 6 Q. I've now marked as Exhibit 11 a one-page
 7 document that's in front of you.
 8 What is the date of this document?
 9 A. The date of Exhibit 11 is November 25th,
 10 2014.
 11 Q. What is this document?
 12 A. This document is a screen capture of the
 13 Mac Terminal application. The Terminal was used by
 14 myself to submit a query to archive.org's systems
 15 to obtain archive.org's records for the download
 16 count for the item with identifier gov.law.aera
 17 .standards.1999.
 18 Q. The make_dark command of Exhibit 9
 19 associated with that identifier was run in June of
 20 2014, correct?
 21 A. The task log lists that date -- the task
 22 log associated with the make_dark command lists
 23 that date.
 24 Q. And the same identifier you got at a
 25 download -- a set of download information on

Page 130

1 November 25th, 2014, according to Exhibit 11,
 2 correct?
 3 MS. LU: Objection, vague and ambiguous.
 4 THE WITNESS: Sorry, one more time,
 5 please.
 6 MR. HUDIS: Yes.
 7 Q. We established that make_dark command for
 8 gov.law.aera.standards.1999 was run in June of
 9 2014, correct?
 10 MS. LU: Objection, lack of personal
 11 knowledge.
 12 THE WITNESS: The task logs list that
 13 date.
 14 MR. HUDIS:
 15 Q. So you got download information for the
 16 same identifier on November 25th, 2014, correct?
 17 MS. LU: Objection, vague and ambiguous.
 18 THE WITNESS: I ran a query for Internet
 19 Archive's download count for that same identifier.
 20 MR. HUDIS:
 21 Q. So I now ask the same question that I
 22 asked before.
 23 How does Internet Archive obtain a
 24 download count for a specific Internet Archive web
 25 page after the uploaded content has been removed?

Page 131

1 MS. LU: Objection, lack of personal
 2 knowledge, misstates prior testimony, and assumes
 3 facts not in evidence, and vague and ambiguous.
 4 THE WITNESS: A SQL query can be run on
 5 Internet Archive's system to obtain a metadata
 6 value that has been associated with this item and
 7 generated by archive.org.
 8 MR. HUDIS:
 9 Q. And the item again is gov.law.aera
 10 .standards.1999?
 11 A. That's correct.
 12 Q. And according to your search and the
 13 results that came back on Exhibit 11, how many
 14 downloads are reflected for this item while live
 15 content was up on the web page associated with
 16 gov.law.aera.standards.1999?
 17 MS. LU: Objection, vague and ambiguous,
 18 assumes facts not in evidence, lack of personal
 19 knowledge.
 20 THE WITNESS: The download count of record
 21 from the archive.org system for the identifier that
 22 you read is 1,290.
 23 MR. HUDIS: Counsel, will you stipulate
 24 that Exhibit 11 is a business record of Internet
 25 Archive?

Page 132

1 MS. AHMAD: Yes.
 2 MR. HUDIS: Any objections?
 3 MS. LU: No objections.
 4 (Plaintiffs' Exhibit 12 marked for
 5 identification.)
 6 MR. HUDIS: I'm going to have to make a
 7 quick copy.
 8 VIDEO OPERATOR: Do you want to go off?
 9 MR. HUDIS: Yes, please.
 10 VIDEO OPERATOR: The time is 12:54 p.m.,
 11 and we're off the record.
 12 (Brief recess.)
 13 VIDEO OPERATOR: The time is 12:58 p.m.,
 14 and we're on the record.
 15 MR. HUDIS:
 16 Q. Mr. Butler, all of my following questions
 17 are all relative to the 1999 standards.
 18 Do we understand each other for purposes
 19 of these questions?
 20 A. Yes.
 21 Q. Between May of 2012 and June of 2014, have
 22 you ever communicated with Carl Malamud?
 23 A. I have received e-mail from Carl Malamud.
 24 Q. So that was my next question.
 25 Mr. Malamud initiated the communication?

Page 133

1 A. Yes.
 2 Q. And how did he make that contact? By
 3 e-mail?
 4 A. Yes.
 5 Q. Besides that one e-mail, on the subject of
 6 the 1999 standards, did you have any other exchange
 7 of communications with Mr. Malamud?
 8 MS. LU: Objection, relevance.
 9 MR. HUDIS:
 10 Q. You may answer.
 11 A. No.
 12 Q. Are you aware of anyone else from Internet
 13 Archive communicating with Mr. Malamud regarding
 14 the 1999 standards between May of 2012 and June of
 15 2014?
 16 A. No.
 17 Q. Do you remember the purpose of
 18 Mr. Malamud's communication with you regarding the
 19 1999 standards?
 20 MS. LU: Objection, vague and ambiguous.
 21 MR. HUDIS:
 22 Q. You may answer.
 23 A. Mr. Malamud sent me an e-mail with an
 24 attachment relating to a take-down request that he
 25 had received relating to the standards.

Page 134

1 Q. I now place in front of you what has been
 2 marked as Exhibit 12 and ask if you recognize the
 3 collection of documents.
 4 For the record, Exhibit 12 bears
 5 production numbers IA-AERA 1 through 4.
 6 A. Yes, I recognize these documents.
 7 Q. Was Exhibit 12 produced to us in response
 8 to our document subpoena?
 9 A. Yes.
 10 Q. And copied on this e-mail is Brewster
 11 Kahle, and you said he is the founder of Internet
 12 Archive?
 13 MS. LU: Objection, lack of personal
 14 knowledge and compound.
 15 MR. HUDIS: All right. Let's take them
 16 one at a time.
 17 Q. Is Mr. Kahle copied on the e-mail from
 18 Mr. Malamud to you dated December 19th, 2013?
 19 A. Brewster Kahle's name is listed by the
 20 cc field.
 21 Q. And who is Mr. Kahle?
 22 A. Mr. Kahle is the founder of Internet
 23 Archive.
 24 Q. And do you know what the initials "SDO"
 25 means?

Page 135

1 A. No.
 2 Q. Did you ever ask Mr. Malamud what "SDO"
 3 means?
 4 A. No.
 5 Q. Are you familiar with the term "standards
 6 organization"?
 7 A. Yes.
 8 Q. Is SDO an acronym for standards
 9 organization?
 10 MS. LU: Objection, lack of personal
 11 knowledge.
 12 THE WITNESS: It seems to me that it is.
 13 I don't know for certain.
 14 MR. HUDIS:
 15 Q. Do you know why Mr. Malamud sent you this
 16 e-mail of Exhibit 12?
 17 MS. LU: Objection, lack of personal
 18 knowledge.
 19 THE WITNESS: I know that Mr. Malamud sent
 20 me this e-mail with the take-down requests he'd
 21 received and his response to the -- to the
 22 take-down request, and that it was pertinent to --
 23 to something posted on archive.org.
 24 MR. HUDIS:
 25 Q. Just so we're clear, the e-mail that

Page 136

1 Mr. Malamud sent to you on December 19th, 2013, did
 2 it relate to a take-down request of material on
 3 Public Resource's website or on Internet Archive's
 4 website?
 5 MS. LU: Objection, lack of personal
 6 knowledge.
 7 THE WITNESS: As I read the e-mail that
 8 was forwarded by Carl from aera.net, I see only a
 9 listing relating to the website law.resource.org.
 10 MR. HUDIS:
 11 Q. That's not a website maintained by
 12 Internet Archive, is it?
 13 A. It's not.
 14 Q. Has Mr. Malamud sent you e-mails similar
 15 to the one in Exhibit 12 before?
 16 MS. LU: Objection as to relevance.
 17 THE WITNESS: Can you define "similar."
 18 MR. HUDIS: Yes.
 19 Q. Complaints by other standards
 20 organizations to take down posted material.
 21 A. Yes.
 22 Q. How many times?
 23 A. Approximately, five or six.
 24 Q. Since December 19th, 2013, has Mr. Malamud
 25 sent you similar e-mails to the one in Exhibit 12?

Page 137

1 MS. LU: Objection, vague and ambiguous,
 2 and relevance.
 3 THE WITNESS: Would you repeat the
 4 question, please?
 5 MR. HUDIS: Yes.
 6 Q. Since December 2013, has Mr. Malamud sent
 7 you e-mails similar to the one shown in Exhibit 12?
 8 MS. LU: Same objection.
 9 THE WITNESS: I don't recall if
 10 Mr. Malamud has sent us an e-mail since that date
 11 relating to take-down requests from standard
 12 organizations.
 13 MR. HUDIS:
 14 Q. Did you, Mr. Butler, discuss the posting
 15 of the 1999 standards to Internet Archive's website
 16 at any time after you received this letter of
 17 Exhibit 12?
 18 MS. LU: Objection, vague and ambiguous.
 19 THE WITNESS: The question again was --
 20 MR. HUDIS: Yes.
 21 Could you repeat the question?
 22 (Record read by Reporter.)
 23 MR. HUDIS: With Mr. Malamud.
 24 THE WITNESS: We only notified -- Internet
 25 Archive only notified Mr. Malamud that we had

Page 138

1 received the subpoena issued to us for this case.
 2 MR. HUDIS:
 3 Q. So you had a conversation with Mr. Malamud
 4 that you received my client's subpoena?
 5 MS. LU: Objection, assumes facts not in
 6 evidence and misstates prior testimony.
 7 THE WITNESS: A phone conversation
 8 occurred with Mr. Malamud to advise him that we had
 9 received the subpoena.
 10 MR. HUDIS:
 11 Q. What did he say to you during that phone
 12 conversation?
 13 A. He -- he said that he -- he understood and
 14 that he -- that he hoped it wouldn't be a big
 15 burden for Internet Archive.
 16 Q. Have you told me the entirety of that
 17 conversation between you and Mr. Malamud?
 18 A. I've told you the -- the entirety of the
 19 substance of the communication.
 20 Q. Did you leave out any details?
 21 A. No.
 22 Q. Since receiving this e-mail of Exhibit 12
 23 from Mr. Malamud, did you discuss with him
 24 disabling public access of the 1999 standards from
 25 Internet Archive's website?

Page 139

1 A. No.
 2 Q. Other than Exhibit 12, has Internet
 3 Archive exchanged any other correspondence with
 4 Mr. Malamud or Public Resource regarding the
 5 posting of the 1999 standards to Internet Archive's
 6 website or the disabling of public access to the
 7 1999 standards on Internet Archive's website?
 8 A. I can say Internet Archive performed a
 9 search and discussed with those members of Internet
 10 Archive's staff we understood may have communicated
 11 with Mr. Malamud upon receiving the -- the
 12 subpoenas, and that we did not delete any
 13 information after having received that subpoena,
 14 and performed a search of the e-mail accounts and
 15 the physical files.
 16 And this e-mail received from Mr. Malamud
 17 is the only record of communication that was found
 18 from that search.
 19 Q. And that's the e-mail of Exhibit 12?
 20 A. That's right.
 21 Q. Does Internet Archive maintain any phone
 22 logs of its conversations with the outside public?
 23 A. Our phone system -- our phone system may
 24 have that. I don't know.
 25 Q. Well, other than the fact that the call

Page 140

1 was made, I'm talking about the substance of the
 2 call.
 3 Does Internet Archive maintain any call
 4 logs of the substance of calls it has with outside
 5 individuals or companies?
 6 A. No.
 7 MR. HUDIS: That's all I have for this
 8 witness. I do keep the deposition open as a result
 9 of the deposition subpoena. And unless we can come
 10 to some understanding with Public Resource's
 11 counsel, we may need to have a second deposition of
 12 Internet Archive.
 13 MS. LU: And I'll object that we had
 14 discussed the subpoena -- stipulation as to certain
 15 matters before this deposition took place, and
 16 counsel for plaintiffs withdrew that stipulation in
 17 favor of this deposition today. And we would
 18 object to any re- -- any second deposition of
 19 Internet Archive.
 20 MR. HUDIS: My recollection is that while
 21 I did have conversations with Internet Archive's
 22 counsel, I have had no such conversations with
 23 Public Resource's counsel on the nature of this
 24 deposition or what it might have contained by way
 25 of stipulation.

Page 141

1 THE REPORTER: Do you want a copy of the
 2 deposition?
 3 MS. LU: I think we'll probably discuss
 4 that off the record afterwards.
 5 Counsel, do you want to reserve 30 days to
 6 make any corrections?
 7 MS. AHMAD: Sure. Yes.
 8 MS. LU: So 30 days after the witness has
 9 an opportunity to review the transcript.
 10 VIDEO OPERATOR: Is that it?
 11 MR. HUDIS: Yes.
 12 VIDEO OPERATOR: This marks the end of
 13 volume 1, disk 2 and for the day, at least,
 14 concludes the deposition of Chris Butler. The time
 15 is 1:10 p.m. and we are off the record.
 16 (Whereupon, the deposition
 17 adjourned at 1:10 o'clock p.m.)
 18 ---o0o---
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<p>A</p> <p>a1 50:17 51:3</p> <p>aaron 53:4,6,8</p> <p>abbyxml 102:8 102:13</p> <p>ability 57:17</p> <p>able 35:16,17 68:9 69:15 128:7</p> <p>aboveentitled 1:18</p> <p>abovenamed 142:14</p> <p>access 19:16 32:17 34:16 40:18 55:3,8 60:9 68:9 70:13,22 73:21 74:10,18 112:20 116:6 116:14 121:11 121:13 124:17 126:21 138:24 139:6</p> <p>accesses 19:8,10 20:17 74:3</p> <p>accessibility 34:9</p> <p>accessible 107:10,11 116:12</p> <p>accidents 34:8</p> <p>account 12:21 16:19,20,22 18:11 37:24 42:13,14 45:6 47:13 55:23 60:23 61:11,14 62:10,11,14,18 63:12 74:1,16 80:18</p> <p>accounts 16:17 38:3 46:8 139:14</p> <p>accurate 32:23</p>	<p>58:10 142:5</p> <p>accurately 7:9</p> <p>acronym 135:8</p> <p>acronyms 9:18</p> <p>act 30:18</p> <p>action 1:8 3:9,12</p> <p>actively 22:3</p> <p>activity 42:6 80:4</p> <p>add 39:8,15 81:25</p> <p>additions 142:6</p> <p>address 5:11,12 19:9,10,13,14 20:8 46:20 49:21 62:18,22 63:1,1 72:19 74:19,22 80:19 80:24 114:9,15 124:25 125:1 126:24 127:1,5 127:10,16</p> <p>addressed 15:19 17:15</p> <p>addresses 19:7 20:14 113:14</p> <p>adjourned 141:17</p> <p>administer 143:5</p> <p>administrative 29:6</p> <p>advise 138:8</p> <p>aera 3:18 9:21 10:4 51:1 59:6 63:25 64:7 65:14 68:3 69:17 80:15 89:6,12 92:4 92:17,19 94:21 100:14 107:5 109:18 111:15 113:2 115:7 116:20 119:12 121:2 129:16</p>	<p>130:8 131:9,16 136:8</p> <p>aera 57 3:16</p> <p>affirmed 5:4</p> <p>afraid 50:22 103:12</p> <p>agencies 38:23 39:3</p> <p>ago 124:1</p> <p>agree 43:25</p> <p>agreed 45:8 55:25 56:4</p> <p>agreement 55:15 56:12,15</p> <p>agreements 56:2</p> <p>agrees 43:3</p> <p>ahead 13:15</p> <p>ahmad 2:19 4:23,23 11:24 12:2 13:21 14:7,21 40:4 40:24 41:21 45:21 50:12 52:8 54:5 58:8 60:1 66:22 68:15 79:8 96:8 99:4 104:19 117:9 119:7 123:13 132:1 141:7</p> <p>al 1:6 4:9</p> <p>alderson 4:3</p> <p>alert 8:17 9:6</p> <p>alerted 13:16</p> <p>alerting 15:9</p> <p>alexa 37:11</p> <p>alexandria 2:8</p> <p>alexis 12:15</p> <p>allow 19:7</p> <p>allowed 40:14 40:22 44:2,16 45:1 54:20,23</p> <p>alongside 101:13,23</p> <p>alphabetically</p>	<p>35:18</p> <p>altogether 6:13</p> <p>ambiguous 11:25 21:11,20 22:9,21 23:1 27:9,12 42:8 44:20 45:3,12 45:22 46:7 47:3 48:6,12 49:7 50:3 51:6 52:9 55:1,5,11 60:10 62:1,9 62:16 66:16 68:8 69:5,8,21 70:25 75:1,17 76:4,8 81:25 83:23 84:9 85:10 86:2 88:24 89:25 90:19 94:8 95:11 104:18 110:13 113:22 114:6,21 115:11 118:2 118:12,19 119:15 120:18 120:22 121:16 123:1 124:20 126:6,18 127:11,22 130:3,17 131:3 131:17 133:20 137:1,18</p> <p>american 1:4 4:8 9:19,21 93:7</p> <p>amount 41:5 97:15 125:14</p> <p>analysis 100:4</p> <p>animatedgif 101:18,21</p> <p>animatedgift 101:17</p> <p>answer 7:4 20:5 23:3 26:14</p>	<p>27:14 30:7 31:1 38:12 39:7 41:2 42:10,15,25 45:5,14 46:6 47:5 48:8 49:9 51:21 54:8 55:13,22 56:9 56:19 58:8 60:13 64:23 69:23 71:2 75:4 76:1 79:25 106:7 114:8 119:21 125:12,22 133:10,22</p> <p>answers 6:21</p> <p>anticipated 49:16</p> <p>apa 9:22 10:4</p> <p>appear 123:6</p> <p>appearances 2:1</p> <p>appeared 142:15</p> <p>appears 67:16 89:1 94:10 100:13 101:11</p> <p>application 26:25 28:14,15 71:25 103:14 103:24 129:13</p> <p>applied 42:7</p> <p>appropriate 25:20</p> <p>approved 118:7 118:16</p> <p>approximately 136:23</p> <p>archive 3:13,14 3:21 4:24 5:19 6:4,5,6 7:23 8:23 9:3 14:17 14:22,23 15:2 15:10,20 16:2 16:5,14,21,23</p>
---	--	--	---	--

16:25 17:18,22 18:14 19:19 20:15 24:1 25:13,17 26:7 27:1,3,19,25 28:21 29:3,12 31:4,6,10,14 31:25 32:1,3,6 32:14,15 33:2 33:9,23 34:11 34:17,25 35:4 35:21,21 36:6 36:8,9,10,14 36:15,16,20,21 37:6,10,14,17 37:22,25 38:4 38:15,17,24 39:12 40:14 41:6,19 42:7 42:18 43:25 45:17 46:11,14 46:20,25 47:24 49:5,25 50:7 50:25 51:9,10 52:2,21,23 53:3,9,13 54:1 55:16,18 56:14 58:19,20 59:24 60:8 64:16 65:3 66:19,21 68:14,20 69:12 70:4,5 71:11 71:12 72:10,11 74:23 75:6,10 75:14 82:23,24 84:19 85:18,22 86:7,8,12,18 86:23 87:8,13 87:19 88:8 89:19 90:3,13 93:1,18,22 94:2,3,5,9,20 95:21 96:22 98:2,7,13,19 99:18 101:15	101:23 107:11 107:23 108:7,8 109:2,8,14 110:15 114:16 115:8,15 116:11,12 118:8,18 119:6 120:11,24 124:16 126:17 127:18 128:1,9 129:14,15 130:23,24 131:7,21,25 133:13 134:12 134:23 135:23 136:12 137:25 138:15 139:3,8 139:21 140:3 140:12,19 archived 5:18 31:3 33:4 archives 6:8 11:23 14:11 25:22 27:4 29:18 31:8 32:9,24 33:17 36:13 37:2 38:25 40:15,22 42:4,19 43:2 44:2 45:2,19 46:1 47:9 48:5 48:11,23 49:14 50:9,19 51:3 52:4 54:21,24 55:4,9 56:22 57:16 58:14 60:16,23 64:19 69:20 70:3,11 70:16 71:3,7 73:22 74:3,11 76:14 80:5 81:16,24 82:3 82:4 91:16,22 92:9 93:20,25 94:6,15 103:24	116:6,18 126:13 127:8 127:13 130:19 131:5 136:3 137:15 138:25 139:5,7,10 140:21 archiving 39:1 area 88:9 areas 17:4 arent 8:6 args 84:22 85:12 argument 85:16 argumentative 20:3 36:2 45:23 61:17 64:21 69:9 92:1 111:24 114:3 121:17 arguments 84:25 85:5 arranging 49:11 arrow 82:8,18 84:16 artwork 34:18 asked 8:14 12:21 16:16 130:22 asking 88:13 assert 123:18 assign 35:24 assigned 35:5,8 51:10 assist 16:4,13 assistants 29:6 assoc 1:5 associate 72:19 80:20,23 114:25 associated 35:11 42:6 50:18 62:18 66:12 69:12,16 73:18 74:1,16 80:18 83:12 84:17	85:12 86:8,18 87:6,17 92:20 93:20,24 94:6 94:19 95:3,20 96:21 99:6,7 99:16 105:3 106:24 107:1 107:15,22,24 108:8 109:6,15 111:10 113:1 113:15 114:14 115:20 117:20 119:12 127:5 129:19,22 131:6,15 association 4:9 9:20,22 93:8 assumes 46:3 55:20 56:7 64:20 80:8 86:15 88:2 91:2,10 94:17 98:5,22 99:15 103:22 106:15 106:23 107:13 110:24 111:17 111:23 113:12 113:21 114:2 114:21 115:10 116:9 118:20 122:6 123:2 128:13 131:2 131:18 138:5 assuming 58:9 attach 142:7 attachment 133:24 attachments 3:24 attempting 32:2 attention 30:14 46:16,18 attorney 4:18 7:5 31:3 143:18	attorneyclient 14:6,7 attorneys 8:19 8:22 14:11 29:15 30:23 atypical 119:1,2 119:3 audio 33:3 34:18 35:6 38:1 86:20 authenticated 31:5 47:23 author 35:19 93:4,7 authorized 143:5 autocleaned 106:13 110:22 automated 20:9 20:12,24 36:19 39:24 60:16,23 94:11 99:17 automatically 46:10 48:14,17 48:22 49:17 87:8 available 32:5 34:20 41:5 51:23 68:11 86:11 87:22 121:20 122:23 123:11,23 avenue 5:13 aware 47:6 53:23 56:1,23 128:6 133:12
B				
b 3:6 bachelors 24:13 24:14,17 back 28:18 71:11 82:21 91:14 107:4 112:11 131:13				

backed 107:4 111:14	biggest 37:11	bulk 37:13	52:11 57:15	21:23 23:14
background 25:9	bio 24:19	bup 82:24,25 87:14,17	139:25 140:2,3	30:4 48:13
backup 87:18,24 88:3,5 97:23	biography 24:8	106:25 107:15	called 1:17	115:12 116:13
106:21 107:1,9	bios 3:13	111:6,10 112:1	16:24 18:16	135:13 140:14
111:11,11,21	bit 125:24	burden 138:15	46:21 48:19	certificate 142:1
112:1 114:14	black 105:24	business 32:24	102:24 124:22	142:16
114:25 115:2	book 10:20,25 57:18 58:4	33:8,22 34:10	calls 39:18 74:6	certificates 25:7
115:16 116:1	bookop 99:20,24 104:2,7	41:20 59:23	74:13 89:9	certified 5:4
116:19	bookreader 103:24	66:20 68:13	91:25 92:24	143:3
based 60:7	bots 126:16	119:6 131:24	95:11 122:7	certify 142:3,13
115:5	bottom 24:7	butler 1:16 3:3	125:9 127:2	143:7,17
basic 29:23	51:5 59:10	3:24 4:13 5:3	140:4	cetera 98:18,18
30:13 39:22	63:3 82:23	5:12,15 6:16	canada 6:5	challenge 33:21
48:25	89:2 92:6 96:3	7:15 10:24	cant 7:8 60:1	change 88:4
basically 103:18	102:17 108:13	12:7 14:2	capacity 5:23	110:16 122:21
basis 13:21	110:21 114:15	15:21 16:12	caption 143:19	changed 108:15
bates 64:4	120:21 121:7	19:20 23:25	143:21	changes 115:1
bearing 10:23	box 17:17 45:7	24:5 28:20	captioned 4:8	characters
41:17 67:13	boxes 18:2	31:25 32:7	capture 3:22	88:17 90:1
bears 64:8 113:4 134:4	bracketed 84:15	34:13 40:12	129:12	check 45:7
beginning 4:12	break 6:25 7:5	41:25 51:2,14	capturing 126:4	chris 4:13 79:11
35:4 76:13	40:4 79:8	57:11 58:13	carl 3:23 10:11	79:15 141:14
79:14	brewster 8:24	64:9,14 65:8	17:10 18:9	christopher 1:16
begins 89:17	9:1 134:10,19	67:21 68:19	52:17,22 54:23	3:3,24 5:3,12
behalf 2:3,11,18	brief 6:16 40:8	78:6,15,25	55:8 56:4,13	143:8
4:15 75:10	52:20 79:13	79:11,16,19	62:19,21,21	cindy 1:24 143:3
beings 126:14	112:5 132:12	88:7 91:14	63:1 72:18,20	143:24
believe 14:1	broad 11:17	102:16 112:11	73:17,18 74:1	civil 1:8 3:9,12
34:22 36:1	brought 30:14	120:8 124:15	74:17 80:5,19	143:6
37:5 40:17	46:16,18	125:4 132:16	80:20,24,24	clarification
52:15 65:23	browseable 36:24 37:1	137:14 141:14	84:7 91:20	101:7 119:4
beneath 32:14	browser 21:4,5	143:8	92:3 117:21	clear 8:5 16:8
61:3,3,23	21:6,24 71:22	bytes 97:1,5,10	132:22,23	135:25
benefit 34:20	71:24 72:4,10	<hr/>	136:8	clerical 29:4
best 11:20 43:18	103:13 126:11	C	case 4:8,10 6:3,6	click 45:10
43:21 51:14	browsers 126:10	c 3:1 32:15	30:12 87:20	clicked 67:2
60:17,21 61:2	build 32:16 36:6	cache 21:24 22:6	89:5 138:1	clickwrap 44:18
62:6 75:9,18	38:25 39:12	caine 5:13,13,13	cases 6:2 31:4	client 41:20
83:14 124:24	building 36:13	california 1:14	categories 16:6	clients 138:4
better 13:25	builds 37:6	1:22 2:14,15	cause 143:12,20	clusters 71:10
big 138:14	38:15,15	2:22 4:15 5:14	cc 134:20	cmd 82:8,15
		143:1,4,6	center 1:21 2:21	code 143:6
		call 21:1 22:14	4:14	codes 11:22 26:9
		22:20,25 51:11	central 54:14	collected 18:7
			certain 6:7	24:2 36:9,16

36:18	117:17,20,24	computer 20:7	122:22 123:12	91:12 109:25
collection 35:1,2	118:5,15,25	21:2,10,19	123:24 124:15	113:10 115:21
35:10,15,20,24	commission	22:19 25:10,24	124:18 126:5	119:14 125:16
35:24 36:1	142:25	26:3,7 27:2,5	128:11,21	128:22 129:20
67:22 68:13	common 31:2	48:23 71:14	130:25 131:15	130:2,9,16
69:11 134:3	84:18	126:5 127:6	contents 57:24	131:11 143:15
collections 12:16	commonly 119:3	computers	context 19:5	corrections
32:20 33:5,18	communicated	20:19	20:25 61:14	141:6 142:6
33:20 38:1,15	132:22 139:10	concentration	control 49:25	correctly 5:24
columbia 1:3	communicating	25:2,5	50:7,13 75:14	13:24
4:7	133:13	concludes	conversation	correspond
column 84:12,22	communication	141:14	12:20 138:3,7	16:22 49:22
com 35:21	8:13 12:22	conduct 18:3	138:12,17	86:24
come 140:9	14:1 30:1	confine 15:6	conversations	correspondence
command 26:12	132:25 133:18	confusing 50:23	12:20 139:22	9:12 10:3,6
26:23 27:8,11	138:19 139:17	connected 127:6	140:21,22	139:3
27:15 28:8,17	communicatio...	consecutively	copied 134:10	corresponding
81:15,23 82:7	14:25 133:7	67:17	134:17	100:9
82:13 84:11,15	companies	consequences	copies 87:19,20	corresponds
86:7,12 87:14	44:15,25 140:5	34:7	111:11	49:21,24
87:24 88:3	company 45:25	considered	copy 21:2 22:6,7	corynne 13:13
95:21 99:8,13	124:17 126:2	49:13	22:18,24 65:25	14:2,10
106:21,24	companys 64:17	contact 29:13,17	88:5 132:7	council 9:23
107:15,22	65:4,5	30:23 31:7	141:1	counsel 1:17
108:8 109:2,6	compare 120:12	133:2	copying 21:9,19	4:17 12:9 13:3
109:7,7 110:3	complaint 30:13	contacts 35:21	126:5	38:10 41:19
110:7 111:9,25	46:23	contained	copyright 6:5	59:22 66:19
112:13,16	complaints	140:24	10:23 30:14,18	67:20 68:12,16
113:3,6 114:17	136:19	containing 61:4	57:23	82:10 96:7
115:18,19,25	completely 7:9	61:23	corner 51:5	117:7,23 118:2
116:4,17	34:21 49:1	contains 86:20	57:12 73:5	119:5,8 123:18
119:14,17	compliance 31:8	content 17:16	correct 8:9 10:5	123:18 128:13
122:14,18,19	comply 18:4	21:18 37:7,17	11:9 13:6	131:23 140:11
122:24 123:7	24:2 27:22	37:22 39:17,24	14:12 18:25	140:16,22,23
124:4 128:20	42:19 44:15,25	40:14,22 42:18	19:15 24:12	141:5 143:17
129:1,4,18,22	64:15,25	44:2,17 45:1	25:23 27:20	count 19:6,8,22
130:7	complying 16:5	45:18 46:1,2	28:19 29:20	20:1,2,6,13,17
commands 82:4	16:14 17:6	46:13,15 47:1	31:11 37:4,8	20:22 21:8,16
82:22 83:6	composition	47:8 54:20,23	38:16 39:3	21:19 23:12
84:11,16,18	26:10,20	55:4,9 56:21	40:16,20 42:16	27:25 124:22
85:6,25 86:5	compound	65:17 66:6	42:20 45:15	125:5,7,8,13
86:23 94:12	44:21 104:4	79:20 80:4	47:20,22 49:18	125:24 126:2,3
113:8,9	134:14	118:7,17	52:5 61:22	126:7,13,19
comment 117:5	comprised 71:14	120:16,20	67:20 68:5	127:8,14,15,21
117:10,13,15	comprises 71:7	121:15 122:1,1	69:18,24 71:16	128:4,10

129:16 130:19 130:24 131:20 counted 19:11 125:2 county 142:23 143:2 courses 26:2 court 1:1 4:3,7 4:25 cover 57:21,23 covers 52:16 crawled 36:15 36:18 crawler 20:9 crawling 37:12 39:1 126:15 create 48:14 105:23 created 51:4 60:8,15,16 77:17 92:19 95:3 104:1,5 105:1 creates 87:20 101:21 102:22 104:13 105:22 creating 49:10 creation 87:7,18 99:17 107:1 111:11 credential 74:21 credentials 74:19,20 79:21 80:6 91:21 credits 59:16 criteria 29:23 30:4,4,11,19 csr 1:24 143:25	115:18,19 116:4,17 117:1 118:8 119:1,14 119:17 122:13 122:18,19,24 123:6 124:4 128:20 129:1,4 129:18,22 130:7 data 33:19 34:8 34:9,19 36:10 37:13 71:9 date 43:15 57:12 59:8 77:9,18 78:3 129:3,8,9 129:21,23 130:13 137:10 dated 120:11 134:18 143:22 dates 76:3,6 81:11 davydiuk 6:4,4 day 19:10 125:2 127:10,12 141:13 142:15 143:22 days 141:5,8 dc 4:4 december 1:15 1:22 4:13 134:18 136:1 136:24 137:6 143:22 decision 44:10 default 21:7 51:9 defendant 1:12 2:11 4:22 define 48:9 49:1 56:20 82:17 92:13 136:17 defined 19:11 23:8 35:2,3 127:12 defines 126:2	definition 9:16 34:23 48:25 49:19 95:24 125:23 126:24 definitions 39:16 degradation 34:8 degree 24:17 degrees 24:10 24:13,14,21 25:6 deja 102:24 delete 8:15 139:12 deleted 22:4 68:25 69:1,19 98:20,24 deleting 98:17 delsrc 85:17 demand 16:10 deponent 142:1 142:11 deposed 5:15,20 5:23,25 6:2,3 6:11,15 deposition 1:16 3:9 4:13 6:25 7:17,25 8:3,8 8:11 11:1 12:3 12:8,14 13:1,5 13:7,10 15:7,8 15:12,18,22 24:6 32:8 38:9 40:25 50:16,17 51:4,16 54:6 63:23 79:11,15 123:14 140:8,9 140:11,15,17 140:18,24 141:2,14,16 143:9,19 derivative 48:15 49:10 87:7 99:17 102:22	104:13 105:23 110:16 derive 82:23,24 87:3,6 99:8,12 99:16 110:3,8 110:15 described 6:1 23:8,25 33:23 34:21 35:25 38:14 85:7 description 32:23 39:14 56:1 58:10 61:5,9 62:4 descriptive 33:14 34:1 design 58:20 120:24 designed 105:4 127:13 destruction 34:6 detailed 18:21 details 35:4 47:16,19 50:25 51:9 58:19,21 60:8 69:12 87:10 94:20 120:24 138:20 detected 108:14 determination 44:13 determine 20:20 20:22 64:17 65:4 66:6,11 73:7 determined 124:1 determining 22:5 developers 25:14,18 dictated 27:15 28:1,17 dictation 27:21 didnt 6:18	difference 90:24 91:4,8 different 39:11 57:8 58:2,3 66:4 82:22 90:16,20 91:7 98:7 113:14 126:20 digital 30:18 32:3,5,20 digitization 39:2 digitize 38:17 39:9 direction 1:25 143:14 directly 36:16 94:2 97:16,16 director 12:16 disabilities 32:19 disabling 138:24 139:6 disagree 38:10 39:6 123:15,17 discuss 13:18 57:8 137:14 138:23 141:3 discussed 40:17 107:8 125:24 139:9 140:14 discussion 9:5 23:19 31:19 41:10 57:2 63:17 67:7 120:2 124:9 discussions 15:11 disinterested 143:13 disk 4:12 79:11 79:15 141:13 display 103:6,7 105:4 displayed 21:4,5 59:20 86:10
D				
d 2:19 damage 34:6 dark 83:4 112:13,16,19 113:7 114:17				

<p>93:1,15 101:13 101:22 122:9 122:10 124:3 distinguish 21:9 21:17 22:11 23:13 126:3,8 126:14,20 district 1:1,3 4:7 4:7 djvu 48:19 102:24 103:2,6 104:1,6 djvuis 48:19 djvuxml 102:17 dns 108:14 document 8:17 15:19,23 16:1 16:5,10,14 18:4,16 24:2 27:23 31:8 41:16,25 48:16 63:24 64:6,10 64:15 65:1,9 65:12 66:17 67:13 96:18 103:18 120:9 120:10 129:7,8 129:11,12 134:8 documents 3:10 17:19,22,25 18:6,13 24:2 49:6 51:23 52:12 67:17,22 67:25 73:15 81:14,22 88:12 134:3,6 doing 108:16 donate 36:10 37:13,17,22 donated 39:3 donations 37:7 39:1 dont 11:18 14:19 15:3,4</p>	<p>17:16 20:20,21 36:5 39:14 43:14 49:1 53:18 54:14 55:6,14 56:10 60:14,14 83:10 83:18 85:21 91:3 95:4 98:23 99:23,24 103:12 104:6 106:16 108:22 109:23 115:12 116:13,24 118:3 124:1 135:13 137:9 139:24 double 24:23 download 19:12 20:22,25 21:8 21:16 22:8 23:4,12 27:25 63:12 124:22 125:2,24 126:2 126:3,7,13,19 127:8,16,21 128:4,10 129:15,25,25 130:15,19,24 131:20 downloaded 21:6 63:4,5,9 downloader 126:10 downloading 22:2 23:9,13 125:25 downloads 19:3 19:4,5,23 20:1 20:2,6 125:16 131:14 drafted 124:2 drive 22:3,19,25 due 123:11,23 duke 2:7 duly 1:19 5:4</p>	<p>143:4,10 duties 29:2,8,9,9 29:10 <hr/>E<hr/>e 3:1,6 earlier 63:13 98:13 edit 60:24 edited 61:11 education 9:23 24:16 25:10,12 educational 1:4 4:8 9:20 10:22 59:7 93:7 eff 14:10,16 15:1 effect 43:19,22 eight 57:10 either 21:3 25:10 26:19 60:22 143:18 electronic 13:14 105:3 electronically 57:18 58:3 email 3:23 8:15 9:8,9 12:21 16:17,19,20,21 17:7,10,12,13 17:14,16,17 18:8,11 46:20 62:18,22,25 63:1 72:19 73:18 74:18,21 80:18,23 132:23 133:3,5 133:23 134:10 134:17 135:16 135:20,25 136:7 137:10 138:22 139:14 139:16,19 emailed 46:20 emails 10:11,13 10:17 11:6,13</p>	<p>11:16,20 12:5 16:23,24 17:12 18:2 136:14,25 137:7 embarcadero 1:21 2:21 4:14 employed 28:21 40:13 42:17 43:24 employee 53:9 94:2 employees 93:18 93:22 116:6,12 enable 41:3 85:18 127:19 128:2 enables 85:22 encoding 33:19 enforcement 29:15 engineer 27:16 27:19 28:3 engineers 28:1 37:3 70:11,17 70:19,22 71:9 71:15 entered 28:17 67:18 entering 11:3 28:7 entirety 35:25 138:16,18 entitled 59:16 63:24 environmental 24:11 25:4 epub 48:18,18 104:9,12,14,14 104:25 105:1,2 105:5 equal 82:15 error 3:21 95:4 120:11 esq 2:4,12,19 establish 37:24</p>	<p>42:13 established 38:3 128:20 130:7 establishing 42:14 et 1:6 4:9 98:18 98:18 evidence 46:4 55:20 56:7 64:21 72:2 80:8 86:16 88:2 91:2,11 94:18 98:5,22 99:15 103:22 106:15,23 107:13 110:24 111:17,23 113:12,21 114:2,22 115:11 116:9 118:20 122:7 123:2 128:13 131:3,18 138:6 exact 17:16 54:14 exactly 44:12 98:23 examination 1:17 3:4 5:8 examined 142:3 example 30:13 31:2 35:18 50:14 85:15 93:3,6,14 102:6 126:8 exception 7:3 exchange 133:6 exchanged 10:3 10:6 11:7 139:3 exclude 127:9 excluded 127:20 128:3 excuse 85:17 86:25 97:10</p>
--	--	--	--	---

101:18 104:21 106:6 127:15 executed 142:16 exercise 75:14 exhibit 3:7,8,10 3:13,14,15,16 3:17,19,20,21 3:22,23 7:12 7:16 8:4,7,8,9 11:4 15:15,19 15:20,22 16:1 16:11,11 23:20 24:3,6 31:22 32:8 33:12,13 41:11,15 42:1 44:1 50:16,17 50:17 51:3,4 56:11 57:3,7 58:9,13,24 59:10,23 60:3 61:23 62:7 63:3,18,23 64:10,16 65:1 65:8,17,20,24 66:5,7,10,13 66:18,20 67:1 67:8,12,18,22 68:6,7,10,11 68:13,21 69:7 69:16 70:1,2 71:18 72:6,14 72:15,16,17,22 73:13,15 74:25 75:8,21,23 76:6,7 77:13 77:23 78:7,16 79:1,20 80:3 80:10,11 81:14 81:22 82:13,21 84:14,21 85:15 85:24 88:9,23 89:1,2,14 91:7 91:14,20 92:2 92:6 93:6 95:9 97:21 98:17	99:1 100:2,19 101:3 102:17 103:16 104:22 105:7,19 106:10,13,19 107:17 108:12 108:25 109:22 110:2,20 111:2 112:6,12,23,24 112:25 113:4,9 113:18 114:13 115:5,19 117:4 117:25 119:6 119:11,13,20 120:3,9,13,13 120:16,20,23 121:8,11,13,14 121:18,22,23 122:1,2,22,23 122:25 123:9 123:10,23 124:10 128:15 128:18 129:2,6 129:9,18 130:1 131:13,24 132:4 134:2,4 134:7 135:16 136:15,25 137:7,17 138:22 139:2 139:19 exhibits 119:23 exist 32:20 102:6 existed 58:15 59:24 expand 41:4 expect 123:5 expert 39:19 125:10 127:3 expires 142:25 explaining 19:23 explanations 26:8,18	exponential 33:20 extension 48:20 83:7,11 extensions 84:6 extent 39:18 51:21 54:16 103:5 125:9 127:2 extract 71:17 <hr/> F <hr/> fact 13:16 15:10 58:2 139:25 facts 46:3 55:20 56:7 64:20 72:2 80:8 86:15 88:2 91:2,10 94:17 98:5,22 99:15 103:22 106:15 106:23 107:13 110:24 111:17 111:23 113:12 113:21 114:2 114:22 115:10 116:9 118:20 122:6 123:2 128:13 131:3 131:18 138:5 fair 39:13 fairly 119:3 fall 56:1 familiar 135:5 favor 140:17 february 28:22 feel 142:6 fenwick 2:13 4:21 field 134:20 fifth 7:24 8:3 16:7,9 73:1 figure 53:9 file 20:16 22:1,2 22:6,23 23:14	23:14 48:13,15 48:18,20,20 49:10 83:6 84:6 86:19 87:3,7,9,20 92:16,18 95:3 95:25 96:10,11 96:15 97:7 99:17 100:9,14 100:16,21,25 102:14,14 104:14,25 105:2,2,5,23 105:23 110:18 111:11,12 116:18,20 126:9 files 17:1,24 18:3 21:4,5 35:6 36:21 37:13 47:14,15 49:11 69:11 83:20 86:9,24 86:25 87:18,19 87:21 95:22 97:17 98:20,24 106:12 107:24 108:9 109:15 110:16,22 112:19 115:13 124:23 126:11 139:15 film 24:11 final 73:3 111:3 119:19 finally 57:24 find 9:11,12 10:3,6,10 12:4 12:23 17:7,9 17:18,22,25 finish 76:17 finished 38:11 firefox 71:22,24 72:4,9 firms 13:12	first 1:19 5:4 7:20 9:19 15:25 28:20 32:13 57:19,20 72:23 76:19 86:17 96:4,25 five 5:24,25 53:15 54:2 73:2 136:23 floor 1:21 2:14 folder 21:7 folks 16:23 follow 22:11 30:1 97:16 following 22:12 51:10 59:8 97:18 123:6 132:16 follows 5:7 50:20 89:18 foregoing 142:4 143:9,19 form 35:23 44:24 48:10 formal 25:7,12 55:15 56:12 formally 23:12 format 32:5,20 48:16,19 104:13 105:2 formats 34:9 48:15,17 49:10 87:7 99:18 formatting 48:3 48:9,22 101:4 former 53:9 forming 101:8,9 forwarded 136:8 found 8:18 10:11 17:10 18:11 94:16 139:17 foundation 13:14
---	---	--	--	--

<p>founded 32:16 founder 9:3 134:11,22 four 1:20 2:21 4:14 53:15 54:1 fourth 7:24 8:2 72:25 frame 40:12 57:17 61:4,23 framed 103:17 francisco 1:14 1:21 2:15,22 4:15 5:14 143:2 front 7:21 57:21 120:8 129:7 134:1 frontier 13:14 fulfilled 19:19 20:18 full 5:10 9:17 function 53:2,12 59:18 86:4 95:17 99:11 101:25 109:10 functions 29:5 35:15 37:2 84:18 102:23 further 86:24,25 128:6 143:17</p> <hr/> <p style="text-align: center;">G</p> <p>gain 74:10 gained 74:18 gather 69:25 gathered 70:2 general 16:20 32:19 46:8 68:24 86:3 124:3 generally 11:21 35:20,22 47:12 49:23 52:15 71:13 86:17</p>	<p>90:11 92:25 98:6 104:12 110:14 115:14 116:25 128:19 generate 48:17 generated 102:5 131:7 generates 87:8 generating 102:13 generation 101:12 generic 84:16 gentlemen 4:2 getting 95:25 96:10,10,15 97:7 gif 101:18 gifs 101:4,8,9 give 50:14 given 20:16 55:3 55:8 115:16 125:14 127:10 142:5 gives 95:25 go 13:15 33:11 38:11,21 39:7 45:11 76:10 77:2,12 82:21 91:6,14 95:6 106:18 107:17 126:5 132:8 going 13:20 49:2 128:17 132:6 good 4:1 36:17 google 20:10 gov 3:18 50:25 63:25 64:7 65:14 68:3 69:17 80:15 88:9 89:6,12 92:4,19 94:21 107:5 109:18 111:15 113:2 115:7 116:20</p>	<p>119:12 121:2 129:16 130:8 131:9,16 government 51:23 52:12 great 20:10 greater 82:16 greenberg 2:20 4:23 8:20 14:15,21 grounds 14:4 30:11 grouping 72:23 72:23,24,25 73:1,1,2,3 growing 33:20 guarding 34:7</p> <hr/> <p style="text-align: center;">H</p> <p>h 3:6 hackpdf 106:2,6 hadnt 30:8 happened 121:25 happening 95:8 101:4 110:11 hard 22:3,19,24 hardware 71:10 71:14 harvey 1:20 havent 44:11 hd 98:18 head 14:20 hear 6:18 heard 125:4 hed 135:20 hes 9:3 54:9,13 heuristic 100:4 highest 24:15 historians 32:18 historical 32:19 37:13 history 3:17 18:16 25:11 63:25 64:7</p>	<p>65:12 66:18 67:3 68:1 72:12,14 99:9 100:24 107:7 119:17,20 hit 125:5,7,8,13 hits 20:11 hold 28:25 holder 60:23 hooked 27:4 hoped 138:14 host 108:15 hosting 53:3 html 26:10,19 http 19:17 124:25 https 50:25 hudis 2:4 3:4 4:19,19 5:8,9 7:14 8:8,21 11:5,19 12:6 12:12 13:23 14:4,9 15:6,14 15:17 20:4 21:12,21 22:10 22:22 23:2,16 23:24 26:14,17 27:10,13,18 30:6,25 31:16 31:24 36:3 37:20 38:10 39:6,20 40:5 40:11 41:1,7 41:15,22,24 42:9,24 43:4 43:12 44:8,22 45:4,13,24 46:5,12 47:4 47:17 48:7,21 49:8 50:6,14 50:24 51:13,20 52:10 53:5,10 53:24 54:7 55:2,7,12,21 56:8,18,24</p>	<p>57:7 58:12,22 59:4,22 60:2 60:12 61:1,13 61:20 62:5,13 62:20 63:2,10 63:14,22 64:2 64:5,22 65:21 65:25 66:3,14 66:19,24 67:4 67:12,20 68:12 68:16,18 69:2 69:6,14,22 70:9,18,21 71:1,23 72:3 72:13 73:14 74:2,9 75:3,20 76:5,9 77:1,11 77:21 78:5,14 78:24 79:9,18 79:24 80:2,10 80:13,25 81:8 81:21 82:6,12 82:17 83:13,19 83:25 84:5,13 84:20 85:4,14 85:23 86:6 87:2,11,23 88:6,15,21 89:3,13,22 90:5,14,22 91:5,13,19 92:7,14 93:5 93:17 94:13,22 95:6,14,16,23 96:6,9,16,24 97:6,19 98:8 98:15,25 99:10 99:19 100:1,18 101:1,9,16,24 102:7,15 103:1 103:8,15,25 104:8,15,21,24 105:11,17 106:1,6,17 107:3,16 108:1</p>
---	--	---	---	--

108:10,23	115:21 116:2	im 12:1 13:20	20:12,19 37:23	88:22 98:14
109:9,17 110:9	iaaera 41:17	21:23 22:7	38:2 39:8	126:9
110:19 111:1	67:14 134:5	42:15,16 44:10	40:13,21 42:12	instances 26:24
111:13,20	iaaera036 64:8	47:6 49:2	43:24 44:14,24	institution 43:1
112:2,10,21	id 73:4,13 79:2	50:22 53:23	45:18 46:19	institutions
113:17,23	99:2,7 112:11	56:1,23 94:16	140:5	37:24
114:4,7 115:4	112:22 113:5	103:12 104:23	info 16:21,23	instruction
115:17 116:3	119:18,18	128:6,17 132:6	17:18 46:20	26:12
116:16 117:3,7	120:12 128:18	140:1	infoforeply 16:25	interchangeably
117:12,22	identification	images 33:3	17:22	40:3
118:4,11,13,22	7:13 15:16	101:12,22	informal 26:6,8	interested 31:3
119:5,8,10,21	23:21 31:23	102:1,4	26:11,18 56:15	143:20
120:7,19 121:1	41:12 57:4	immediately	information	interface 26:13
121:9,21 122:4	63:19 67:9	8:12 33:25	3:11 20:16	26:23 116:11
122:12,20	108:15 112:7	inaccessible	28:18 29:14	internal 126:16
123:8,15,17	120:4 124:11	98:14	30:9,17,23	internet 3:13,14
124:6,14 125:3	132:5	include 30:9	34:18 35:13	3:21 4:24 5:19
125:11,21	identified 8:12	32:17 35:16	36:22 41:4	6:4,5,6,8 7:23
126:1,12,22	111:3 113:25	127:9	61:10 85:12	8:23 9:3 11:23
127:7,17,25	116:20	included 127:20	86:9,25 90:12	14:11,17,22,23
128:8,16,25	identifier 35:5	128:3	96:22 97:16	15:2,10,20
130:6,14,20	51:11 60:8	includes 33:2	127:19 128:2,7	16:2,5,14
131:8,23 132:2	62:3,12 65:14	73:16 119:13	128:19 129:25	19:13,24 20:15
132:6,9,15	68:3 69:13,16	including 34:16	130:15 139:13	24:1 25:13,16
133:9,21	82:5 88:9,14	48:18 82:4	informational	25:22 26:7
134:15 135:14	88:17,25 89:6	incoming 16:20	93:2	27:1,3,4,19,25
135:24 136:10	89:11,20 92:4	incomprehens...	infringement	28:21 29:3,12
136:18 137:5	92:5 94:20	72:1	6:6 30:14	29:18 31:6,8,9
137:13,20,23	107:6,7 109:20	incorporated	initial 100:15	31:13,25 32:1
138:2,10 140:7	109:21 111:18	4:9 37:14	105:23,25	32:9,14,15,16
140:20 141:11	113:1 121:6,10	86:10 87:1	initially 102:22	32:24 33:2,9
human 126:14	121:12,13	88:19	110:17	33:19,22 34:11
hundreds 38:4,7	129:16,19,24	indexing 33:18	initials 134:24	34:13,15,17,22
40:19	130:16,19	indicates 45:8	initiated 132:25	34:25 35:21
hyperlink 73:12	131:21	92:16,18	initiating 86:22	36:6,7,9,10,13
hyperlinks	identifieraccess	121:19	inserted 123:10	36:14,16,20,21
68:10	60:4	indicating 97:14	123:22	37:2,6,6,12,14
<hr/>	identify 4:17	indication	inserting 118:5	37:17,22 38:4
I	ill 6:16 9:15,16	122:11	118:15	38:15,17,24,25
ia 3:14	10:21 16:12	individual 18:22	inside 57:23	39:12 40:13,14
ia600500 89:19	38:8 50:14	20:17,18,24	inspection 3:12	40:22 41:19
90:4,8 114:5	64:2,5,9 67:15	39:23 42:16	instance 23:14	42:4,7,17,18
114:11 115:20	118:13,24	43:1 45:7,25	28:16 37:10	43:2,25 44:2
116:1	123:20 140:13	47:8 142:13,14	48:15 53:1	45:2,17,19
ia700500 114:16	illness 7:8	individuals	62:2 74:14	46:1,13,25

47:8,24 48:4	52:12	122:10,11,23	15:4 27:7 28:8	59:1,14 60:7
48:11,23 49:5	inventory 29:9	123:7,11,23	43:13,14 44:9	60:11,17,20,21
49:14,25 50:7	involved 54:9	124:5,24	44:12 51:21,22	61:2,7,17 62:1
50:9,19 51:3	117:23	129:16 131:6,9	51:25 52:1,6	62:7,9,16,24
52:3,21,22	involvement	131:14	52:13,16,17,19	63:7 65:19
53:2,9,13 54:1	94:4	items 19:9,18	53:18,25 54:4	66:9 68:23
54:21,24 55:4	involves 33:18	35:3,10,13,17	54:9,11,14	70:8,15,25
55:9,16,18	ip 19:7,9,10,13	35:17,23 60:24	55:6,14 56:3,9	71:20 72:8
56:13,21 57:16	20:8,14 124:25	64:11 65:1	56:10 58:23	73:24 74:6,13
58:14,19,20	125:1 126:24	84:17 87:10,19	60:14,14 62:14	75:2,9,17,18
59:23 60:7,16	127:1,5,10,14	98:6 115:15	62:17,21 70:10	76:22 77:6,15
60:22 64:16,18	127:16	123:12,24	83:7,10,18,20	78:1,10,20
65:3 66:19,21	issue 87:21	124:4	84:1,6,10,24	79:4,23 80:8
68:14,20 69:20	issued 138:1	ive 6:3 25:16	85:5,21,24	81:5,18 83:9
70:3,5,11,16	issues 25:20	26:8,11 52:20	86:12 87:3,24	83:15,17,23
70:19 71:3,7	34:7 123:12,24	57:7 63:23	90:6,23 91:3,8	84:3,9 85:2,10
71:11 73:21	item 3:17 18:16	83:11 129:6	98:3,23 99:20	85:20 86:2,15
74:3,11,23	18:20 19:3	138:18	99:23,24 101:3	87:5,16 88:2
75:6,10,14	20:23 30:20		101:17 102:8	88:12 89:9,25
76:14 80:4	35:3,9 49:11	J	102:18 103:2	90:10 91:2,25
81:16,24 82:2	62:2,12 63:24	java 26:19	103:20 104:2,5	92:12,24 93:12
82:4 87:19	64:7 65:14	javascript 26:10	104:6,9,25	94:1 95:1,11
88:8 90:3	66:11,18 68:1	jonathan 2:4	105:6,12,18	96:13,20 97:3
91:15,22 92:9	68:3,25 69:3,7	4:19 50:21	106:2,12,16	97:13 98:5,11
93:18,20,22,24	69:10,19 72:12	64:3	108:18 109:10	98:22 99:5,15
94:2,4,6,9,15	74:15,15 80:12	june 120:11	109:23 110:10	99:22 100:12
98:2,13 103:23	80:14,15 86:10	121:24,25	110:21 111:5	100:23 101:6
107:11 115:8	86:11,22 87:1	128:22 129:5	114:17 115:6	101:20 102:3
116:5,12,18	87:10 88:4,18	129:19 130:8	115:12,14	102:11,20
118:8,17 119:6	88:19,20 89:11	132:21 133:14	116:10,13,24	103:4,5,11,22
120:10 124:16	92:3 93:3,4,16		117:17,23	104:3,11,18
126:4,13,15,15	94:3 95:3	K	118:3,5 122:21	105:9,15,21
126:17 127:8	96:23,25,25	kahle 8:24 9:1	123:10,22	106:4,15,23
127:13,18	97:23 99:9	10:2 11:6 12:8	124:2 127:4	107:13,21
128:1,9 130:18	100:15,17	13:5 16:16	128:18 134:24	108:5,21 109:5
130:23,24	101:13 107:2,4	134:11,17,21	135:13,15,19	109:13 110:6
131:5,24	107:9,25	134:22	139:24	110:13,24
133:12 134:11	109:16,18	kahles 134:19	knowledge	111:8,17,23
134:22 136:3	111:12,14	kathleen 2:12	19:24 43:11,18	112:18 113:12
136:12 137:15	113:1,16	4:21	43:22 44:7	113:21 114:2
137:24 138:15	114:23,24	keep 140:8	47:11 50:11	114:21 115:10
138:25 139:2,5	115:7 116:25	kind 103:20	51:7,14,19	115:23 116:9
139:7,8,9,21	116:25 119:1	kinds 5:17	52:25 53:22	116:23 117:19
140:3,12,19,21	119:20 120:25	know 13:25	54:16 55:10,20	118:2,10,21
internetarchive	121:2,19	14:19,20 15:3	56:7 58:17	121:5 122:16

123:3,16	105:8,14,20	lefthand 51:5	llp 1:20 2:6,13	95:5,7 109:20
128:13,24	106:3,14,22	57:12 73:5	2:20	115:6 130:12
130:11 131:2	107:12,20	legal 13:12	local 21:7	139:22 140:4
131:19 134:14	108:4,20 109:4	letter 137:16	located 4:14	long 68:19 96:1
135:11,18	109:12 110:5	level 24:15	22:23 27:2	97:18
136:6	110:12,23	libraries 38:16	66:17 116:18	look 61:3 64:11
known 9:21,22	111:7,16,22	38:23 39:3,12	location 49:24	112:22
9:24 40:1	112:17 113:11	library 32:3,16	50:1,8 90:2	looked 113:8
L	113:20 114:1	34:13,15,16,22	locations 98:1	looking 62:7
lack 43:10 44:6	114:20 115:9	36:7,14 37:6	log 3:20 47:19	72:22 84:21
50:10 51:7,18	115:22 116:8	38:25	76:13,16,23	85:15,24 95:5
52:24 53:21	116:22 117:18	line 24:8 26:13	78:2,11,21	103:16 119:11
55:10,19 56:6	118:1,9,20	26:23 27:11	79:5 81:15,23	lot 40:3
58:16,25 59:13	121:4 122:15	73:16 76:12	82:3 85:7,13	lower 98:16
60:11,19 61:6	123:2,16	82:7,8,13	89:10 92:16	lu 2:12 4:21,21
61:16,25 62:8	128:12,24	89:15,17 97:4	94:10 95:9,17	8:5 11:3,15,25
62:15,23 63:6	130:10 131:1	97:9 98:24	95:20 96:14	12:10 13:20,24
65:18 66:8	131:18 134:13	link 67:2	97:11 99:3,6,8	14:6,16 15:1
68:22 70:7,14	135:10,17	list 7:25 35:10	99:12 101:7	20:3 21:11,20
70:24 71:19	136:5	35:13,16 62:10	106:21 107:23	22:9,21 23:1
72:7 73:23	lacks 47:10	81:11 119:20	108:6 109:7	27:9,12,17
74:5,12 75:2	ladies 4:2	130:12	110:8,10	30:5,24 36:2
75:16 76:21	landing 35:11	listed 8:2 16:6	111:10,19,21	37:18 38:8
77:5,14,25	language 83:14	66:12 84:11,15	112:1,25 113:4	39:4,18 41:22
78:9,19 79:3	123:11,22	88:25 92:5	113:6 114:10	41:23 42:8,22
79:22 80:7	late 7:23 16:3	107:6,23 109:7	114:13,18,23	43:10 44:6,20
81:4,17 83:8	law 3:18 13:12	109:20 110:7	115:24 117:11	45:3,12,20,23
83:16,22 84:2	29:15 50:25	111:9,19,25	122:24 127:14	46:3,7 47:3,10
84:8 85:1,9,19	63:25 64:7	113:6,14	129:3,21,22	48:6,12 49:7
86:1,14 87:4	65:14 68:3	114:10,12	logged 18:20	50:3,10,21
87:15 88:1,11	69:17 80:15	117:11 119:19	login 74:19,20	51:6,18 52:24
89:8,24 90:9	88:9 89:6,12	121:7,10,12	74:21 80:6	53:7,21 55:1,5
91:1,24 92:11	92:4,19 94:21	129:3,4 134:19	logon 91:21	55:10,19 56:6
92:23 93:11	107:5 109:18	listing 114:14	logs 3:19 18:21	56:16 58:16,25
94:1,25 95:10	111:15 113:2	121:13 136:9	18:24 67:25	59:13 60:10,19
96:12,19 97:2	115:7 116:20	lists 18:19	68:7,10,20,25	61:6,16,25
97:12 98:4,10	119:12 121:2	119:17 129:21	69:15,25 70:2	62:8,15,23
98:21 99:4,14	129:16 130:8	129:22	71:17 72:6,22	63:6 64:1,3,20
99:21 100:11	131:9,16 136:9	literature 34:19	73:12 74:24	65:18,22 66:8
100:22 101:5	lawsuit 9:15	litigation 117:16	75:8,22 76:3,7	66:16,23 67:15
101:19 102:2	11:11	118:6,16	79:19 80:3,18	68:8,17,22
102:10,19	layout 58:18,20	little 50:22	81:1,9,11 82:7	69:5,8,21 70:7
103:3,10,21	120:24	125:24	85:6 88:7	70:14,20,24
104:3,10,17	leave 36:4 83:3,4	live 122:10,21	89:14 90:12	71:19 72:1,7
	138:20	123:7 131:14	91:7,20 92:2	73:9,23 74:5

74:12 75:1,16	127:11,22	29:10	134:2	74:17 80:19,24
76:4,8,21 77:5	128:5,12,23	major 24:23	marks 79:10,14	92:3 117:21
77:14,25 78:9	130:3,10,17	making 118:7	141:12	medication 7:8
78:19 79:3,22	131:1,17 132:3	malamud 3:23	masters 24:13	meetings 54:1
80:7,21 81:4	133:8,20	10:12 11:7	matches 8:18	meets 29:23 30:3
81:17,25 82:10	134:13 135:10	17:10 18:9	material 21:1,10	30:19
82:14 83:8,16	135:17 136:5	52:17,22 53:13	25:20 29:18,25	members 139:9
83:22 84:2,8	136:16 137:1,8	54:4,17,23	31:4 37:25	memorial 53:3
85:1,9,19 86:1	137:18 138:5	55:8 56:4,13	46:22,24 47:13	53:11,20
86:14 87:4,15	140:13 141:3,8	72:20 73:19,21	48:2,2,3 51:2	memorializes
88:1,11,24		74:1,10 79:21	52:2 57:14,16	55:17
89:8,21,24	M	80:5,20,24	58:23 59:3	mention 10:17
90:9,19 91:1	m 1:22 4:3 23:18	89:4,5 91:21	75:13 136:2,20	11:7,10
91:10,17,24	23:22 31:17,20	94:14 132:22	materials 6:8	mentioned
92:11,23 93:11	40:6,9 41:8,13	132:23,25	16:6 38:18,18	16:17 82:5
94:8,17,25	56:25 57:5	133:7,13,23	38:19 39:2,9	84:16
95:10,19 96:12	63:15,20 67:5	134:18 135:2	41:5 50:1,8	mere 21:9
96:19 97:2,12	67:10 76:24	135:15,19	74:23 75:7,15	merely 21:17
98:4,10,21	77:10,20 78:4	136:1,14,24	92:10,13	message 121:19
99:14,21	78:12,22 79:6	137:6,10,23,25	matter 1:18 4:6	122:9 123:5
100:11,22	79:12,16 112:3	138:3,8,17,23	14:18	124:1,2,3
101:5,19 102:2	112:8 119:25	139:4,11,16	matters 5:17,18	messages 108:13
102:10,19	124:7,12	malamuds 54:12	6:10 14:19	met 52:20 53:1
103:3,10,21	132:10,13	62:22 63:1	15:4,4 24:19	meta 92:17,19
104:3,10,17	141:15,17	84:7 133:18	140:15	metadata 35:8
105:8,14,20	mac 3:22 26:25	manager 28:24	mccllelland 2:5	47:15 49:13
106:3,14,22	27:2 28:8,10	29:3,12 31:13	mcgrath 2:25	59:16 60:25
107:12,20	28:11,13 71:25	managing 29:5	4:3	69:11 86:21
108:4,20 109:4	129:13	mandated 44:25	mcscherry 13:13	92:15,21 93:1
109:12 110:5	machine 21:7	march 3:15	13:19 14:2,10	93:9,14,20,24
110:12,23	37:15	41:17 43:16	15:9,12	94:6,23 95:2
111:7,16,22	maier 2:5	57:13 59:25	mean 19:4,16,17	95:22 107:24
112:17 113:11	mailbox 17:21	121:23,25	19:25 20:1,25	108:2,9 109:15
113:20 114:1,6	main 34:6	mark 15:14	25:15,21 36:18	110:17 115:14
114:20 115:9	maintain 32:2	67:12	36:19 39:17	131:5
115:22 116:8	68:20 70:11	marked 7:12,16	50:15 69:4,7	method 116:15
116:22 117:18	127:18 128:1	15:15,18,20,22	69:10	middle 97:22
118:1,9,12,19	139:21 140:3	23:20 24:6	meaning 19:6	millennium
119:9,15	maintained 5:20	31:22 32:8	means 20:2,7	30:18
120:18,22	90:3 136:11	41:11,15 57:3	134:25 135:3	mind 23:7
121:4,16 122:3	maintaining	57:7 63:18,23	measurement	minimum 38:6
122:6,15 123:1	34:8	64:10 67:8,22	9:23	minor 24:25
123:16 124:20	maintains 70:5	112:6,23 120:3	media 32:4,5	minute 64:12
125:9,19 126:6	87:20	120:9 124:10	35:5 62:19,21	misdescribes
126:18 127:2	maintenance	129:6 132:4	72:18 73:17	88:12

mission 32:24 34:10 51:24	74:4 90:4,15 90:21 114:10	number 4:4 11:17 13:4	64:20 65:18 66:8,16,23,24	119:8,9,15 120:18,22
misstates 12:10 37:18 39:4	134:19 142:23 named 64:6 89:5	19:2,6,8,23 23:11 46:19	68:8,16,17,22 69:5,8,21 70:7	121:4,16 122:3 122:6,15 123:1
42:22 56:16 72:2 73:9	90:7 91:7 92:17,18	63:5,8,9 64:4,8 100:6 124:17	70:14,20,24 71:19 72:1,7	123:13 124:20 125:9,19 126:6
79:23 80:21 90:10 91:17,25	100:14 116:1,2 143:19,20	124:23,25 125:15,16,24	73:9,23 74:5 74:12 75:1,16	126:18 127:2 127:11,22
115:10 125:19 128:23 131:2	names 9:17 narrative 95:12	127:5 numbered 8:6	76:4,8,21 77:5 77:14,25 78:9	128:5,12,23 130:3,10,17
138:6 module 99:20,24	nasty 108:17 national 9:23	numbers 41:17 67:13 134:5	78:19 79:3,22 80:7,21 81:4	131:1,17 133:8 133:20 134:13
101:18,21 102:8,13,17,18	nature 6:1 9:4 12:19 17:14	nutshell 34:24 39:14	81:17 82:1 83:8,16,22	135:10,17 136:5,16 137:1
102:22 104:1,2 104:6,7,9,12	53:25 140:23 ncme 9:24 10:4	<hr/> O <hr/>	84:2,8 85:1,9 85:19 86:1,14	137:8,18 138:5 objections 41:22
105:1,6,12,18 105:22 106:6	near 96:3 114:15	o 3:1 o 3:25 141:18	86:15 87:4,15 88:1,11,24	95:19 123:19 123:21 132:2,3
moment 57:9 monitor 46:2	necessarily 21:6 necessary 30:1	oaths 143:5 object 13:21	89:8,21,24 90:9,19 91:1	objects 3:11 oblon 2:5
74:23 75:6 monitored 75:10	142:7 need 126:24	38:8 128:15 140:13,18	91:10,17,24 92:11,23 93:11	obsolete 34:9 obtain 72:11
monitoring 47:1 morning 4:1	140:11 needs 86:21	objection 11:15 11:24,25 12:2	94:8,17,25 95:10 96:12,19	128:9 129:15 130:23 131:5
mouth 19:21 movie 35:6	net 136:8 network 127:6	12:10 20:3 21:11,20 22:9	97:2,12 98:4 98:10,21 99:4	obtained 20:23 71:21 73:11
86:20 movies 34:18	neustadt 2:6 nonemployee	22:21 23:1 27:9,12,17	99:14,21 100:11,22	128:19 occasion 15:2
37:25 moving 33:3,3	40:21 44:14,24 45:18 47:7	30:5,24 36:2 37:18 39:4,18	101:5,19 102:2 102:10,19	52:20 occasionally
muehlen 28:4,6 28:17	49:3 nonparty 4:24	40:24 41:23 42:8,22 43:10	103:3,10,21 104:3,10,17	46:23 occurred 138:8
multi 67:13 multiple 19:9	nonprofit 32:1 32:15	44:6,20 45:3 45:20,21 46:3	105:8,14,20 106:3,14,22	oclock 141:17 october 7:23
23:5 35:6 36:8 113:10 125:1	notary 142:20 note 123:8	47:3,10 48:6 48:12 49:7	107:12,20 108:4,20 109:4	16:3 75:24 offering 32:17
127:9,14,15 <hr/> N <hr/>	notes 97:14 notice 30:16	50:3,10,12 51:6,18 52:8	109:12 110:5 110:12,23	offers 34:16 offhand 11:18
n 3:1,1 name 5:10 8:25	90:15 117:4 120:16 121:14	52:24 53:7,21 54:5 55:1,19	111:7,16,22 112:17 113:11	36:5 office 25:17
28:4,5,15 47:21 49:25	notified 137:24 137:25	56:6,16 58:16 58:25 59:13	113:20 114:1,6 114:20 115:9	28:24 29:3,5,9 29:12 31:13
50:7 51:5 52:3 71:4 73:22	notify 30:20 november 129:9	60:10,19 61:6 61:16,25 62:8	115:22 116:8 116:22 117:18	offices 1:20 okay 10:16,19
	130:1,16	62:15,23 63:6	118:1,9,19	12:12 15:6

<p>20:4 22:16 36:12 45:24 49:3,4 58:7 64:2,13 66:24 76:9 126:25 once 48:2 75:15 94:14 104:25 124:15 onepage 112:24 120:9 129:6 ongoing 33:21 34:5 online 32:3 open 140:8 openlibrary 32:6 operated 36:19 operating 28:10 28:12,13 operation 107:14 operator 2:25 4:1,25 23:17 23:22 31:17,20 40:6,9 41:8,13 56:25 57:5 63:15,20 67:5 67:10 79:10,14 112:3,8 119:25 120:5 124:7,12 132:8,10,13 141:10,12 opportunity 47:14 141:9 order 27:24 48:4 64:15,25 org 1:11 4:10 10:7 16:21,23 16:25 17:18,22 18:14 19:19 32:3,6,6 35:4 37:25 41:6 46:11,20 50:25 51:9,10,15,22 52:1,2 59:17</p>	<p>59:21 61:15 62:19,21 69:12 70:4 71:12 72:10,18 73:17 74:17 80:19,24 84:19 87:8,13 89:19 92:3 93:1 94:3,20 96:22 98:7,19 99:18 101:15 101:23 114:16 115:15 116:11 117:21 120:24 131:7,21 135:23 136:9 organization 32:2 34:15 42:17 49:3 54:15 135:6,9 organizations 8:14,16 9:13 9:14 36:10 37:7,11,16,21 38:2 39:2 43:25 44:15 136:20 137:12 organized 35:14 orgs 52:12 72:11 90:13 129:14 129:15 original 87:9 142:8 outcome 117:15 118:6,16 143:20 outlined 30:17 outside 12:2 36:9 37:7 38:8 39:1 40:24 42:17 43:25 44:15,25 45:17 45:25 47:1 49:3 54:5 123:13 139:22 140:4</p>	<p>oversight 45:16</p> <hr/> <p>P</p> <hr/> <p>p 77:20 78:4,12 78:22 79:6 112:3,8 119:25 124:7,12 132:10,13 141:15,17 pacific 75:24 76:24 77:10,19 78:4,13,22 79:7 page 3:2,7,22 8:7 16:11 21:1 21:2,17,18 22:15,23 24:7 26:20 32:11 33:11,12 35:4 35:7,11,12,24 47:19 49:12,22 49:22 50:21 57:8,19,20,21 57:23 58:3,14 58:19,21,24 59:11,12,16 60:3,8 61:3,23 63:3,24 65:23 66:6 67:3 68:11 77:3,3 77:12,22,23 78:6,15,25 82:11,12 87:10 88:20 96:4 97:20,21,21 98:16,17 99:1 100:2,3,19 101:2,3 102:16 103:17 104:20 104:21,22 105:7,19 106:9 106:10,10,13 106:19 107:17 108:11,12,13 108:24 109:22</p>	<p>110:1,20,21 111:2 119:20 120:24 121:11 122:9 123:5 124:4,16,18 125:14,17 126:4,9 128:10 130:25 131:15 pages 3:16,19 7:25 8:3,6 16:7 16:9 19:9,18 26:11 33:4 36:20 47:16 57:10 72:23,24 72:24,25 73:1 73:2,2,3 83:12 100:7,25 102:6 103:19 124:23 paired 98:13 paper 142:8 paragraph 32:13 33:2 parentheses 59:8 parlance 19:24 parsing 33:18 part 13:11 18:24 25:16 31:8 33:8,22 34:10 36:13 51:24 participate 43:5 participated 43:8 94:2 participation 93:19,23 particular 28:11 30:12 89:6 90:7 116:25 parties 143:18 party 5:21 30:20 30:21 passed 16:24 password 47:21 73:22 74:4,22 pdf 21:5 48:16</p>	<p>92:17 100:7,9 100:15,20,25 105:18,22,24 105:25 pending 4:6 7:4 117:15 118:6 118:16 people 13:4 32:18 40:17 percentage 20:22 perform 29:8 37:12 performed 60:22 66:25 75:24 81:2,10 81:12 82:22 99:11 100:14 101:14 106:20 107:19 109:3 109:11 110:4 111:5 116:1,5 116:17 139:8 139:14 performing 115:1 performs 49:15 permanent 32:17 permanently 34:5 permission 56:21 60:24 117:7 permissions 61:11 permit 3:11 person 49:3 75:9 143:13 personal 43:10 44:6 47:10 50:10 51:7,18 52:24 53:21 55:10,19 56:6 58:16,25 59:13</p>
--	--	---	--	---

60:11,19 61:6 61:16,25 62:8 62:15,23 63:6 65:18 66:8 68:22 70:7,14 70:24 71:19 72:7 73:23 74:5,12 75:2 75:16 76:21 77:5,14,25 78:9,19 79:3 79:22 80:7 81:4,17 83:8 83:16,22 84:2 84:8 85:1,9,19 86:1,14 87:4 87:15 88:1,11 89:8,24 90:9 91:1,24 92:11 92:23 93:11 94:25 95:10 96:12,19 97:2 97:12 98:4,10 98:21 99:4,14 99:21 100:11 100:22 101:5 101:19 102:2 102:10,19 103:3,10,21 104:3,10,17 105:8,14,20 106:3,14,22 107:12,20 108:4,20 109:4 109:12 110:5 110:12,23 111:7,16,22 112:17 113:11 113:20 114:1 114:20 115:9 115:22 116:8 116:22 117:18 118:1,9,20 121:4 122:15 123:2,16	128:12,24 130:10 131:1 131:18 134:13 135:10,17 136:5 personally 75:11 pertaining 47:15 pertinent 135:22 petabox 71:3,5,6 71:8,13 phone 4:4 138:7 138:11 139:21 139:23,23 php 82:23,23,24 82:24,24,25 83:6,7,10,20 84:1,6 85:18 85:22 86:7,8 86:12,18,23 87:3,6,14,24 88:3 95:21 99:8,12,16 106:25 107:15 107:23 108:8 109:2,8,14 110:3,8,15 111:6,10 112:1 112:13 113:7 119:17 129:4 physical 17:1,2 17:24 18:3 71:10 139:15 physically 33:19 pictures 33:3 place 22:6 134:1 140:15 placeholder 121:19 122:5,9 122:22 123:25 placing 107:9 plain 48:20 102:14 plaintiff 9:19 plaintiffs 1:7,18 2:3 4:16,20	7:12 9:15 11:10 15:10,15 23:20 27:22 31:22 41:11 57:3 63:18 67:8 112:6 120:3 124:10 132:4 140:16 plays 102:13 104:7 please 4:17 5:1 21:15 22:11 33:12 50:5 61:19 64:11,24 66:2 74:8 75:5 78:6,15,25 80:1 81:7,20 93:21 97:20 106:18 108:24 110:1 127:24 130:5 132:9 137:4 point 29:13,16 30:22 31:7 96:6 117:7 pointing 65:23 84:13 123:9 policy 46:25 47:6 portion 32:8 pose 6:18 poses 33:21 position 28:23 28:25 possible 108:14 108:16 post 37:25 39:17 40:14,22 42:18 44:2,17 45:1 45:11 47:8 54:20,23 55:8 74:11 posted 35:3 46:2 46:10 47:15 49:6 50:1,8	51:2 58:23 59:11 64:18 65:5 66:6,11 69:11 74:24 75:7,13 90:12 91:15 92:8,10 93:16 94:14,23 101:15,23 135:23 136:20 posting 6:7 40:18 46:14 50:18 52:2,11 55:17 56:14,20 91:22 93:19,23 94:3,5 96:23 137:14 139:5 posts 46:9 practice 68:24 precise 76:1 prefix 51:8,9 premises 3:12 preparation 15:7 prepare 8:1,10 12:8,13,25 13:4,7,10 15:12 presence 142:17 present 2:25 53:14 presented 45:7 presents 87:9 preservation 34:1,4 preserve 32:4 preserved 5:19 prevent 87:21 previously 82:5 84:16 122:10 primary 29:13 115:2,15 116:19 printed 38:19 120:12,13 121:22,23	printout 66:12 92:6 121:7 printouts 89:2 prior 12:10 14:23 37:18 39:4 42:22 46:9 56:16 72:2 73:9 79:23 80:21 90:10 91:17 92:1 115:10 125:19 128:23 131:2 138:6 private 37:23 39:8 privilege 13:22 13:23 14:3,18 privileged 14:5 14:8,25 probably 13:25 141:3 procedure 143:6 proceed 5:2 47:24 proceedings 1:23 143:16 process 23:8 29:24 47:7,18 49:5,17 79:20 85:7 95:4 101:14 processed 36:23 46:10 processes 60:16 60:23 75:11 81:1,9 94:11 126:17 processing 49:13 procure 72:5 produce 3:10 produced 10:14 67:17 88:7 134:7 production 18:7
--	---	---	---	---

41:17 64:8 67:13 77:3,12 77:23 97:21 98:17,25 100:1 101:3 106:9,19 108:11,24 134:5 program 20:9 20:24 26:19 39:24 programmers 25:14,18 programming 25:10,24 26:3 26:7 programs 20:12 36:19 protecting 34:5 protocol 19:14 provide 102:5 provided 61:9 61:24 62:4 psychological 9:21 10:22 59:7 public 1:11 4:10 4:22 8:13 10:7 10:8 11:22 13:8,11 14:18 14:19 15:5 32:19 34:20 41:5 51:15,16 51:22,24,25 52:1,7,14,16 53:2,8 54:9,12 54:14,17,20 55:3,16 56:4 56:13 59:17,21 61:15 88:20 112:20 116:13 123:18 124:16 136:3 138:24 139:4,6,22 140:10,23 142:20	publish 45:18 55:4 publishes 46:1 purchasing 29:9 purpose 14:13 14:22 53:17 92:22 98:9 108:18 133:17 purposely 22:7 purposes 14:14 22:2 32:17 38:3 74:4 126:23 132:18 pursuant 98:24 143:5 put 19:21 22:24 48:10 51:4 120:8 <hr/> Q qualify 26:19 quality 75:14 query 26:12,15 26:22 27:8,11 28:1 129:14 130:18 131:4 question 6:17 7:3,4 16:12 21:13,22 26:5 39:21 42:11 44:23 49:16 50:4 54:10 61:19 66:2 74:7 80:1 81:6 81:19 88:13 95:15 100:19 104:23 118:14 118:23 121:22 123:20 126:23 127:23 130:21 132:24 137:4 137:19,21 questioning 4:18 questions 6:22	25:19 58:9 132:16,19 quick 132:7 <hr/> R ralph 28:4 ran 130:18 random 101:12 101:22,25 102:4 rates 33:20 read 10:21 26:16 45:8 50:24 57:18 64:24 65:1 105:3 127:23 131:22 136:7 137:22 142:3 reader 102:24 102:24,25 103:2,6,20 reading 59:20 100:25 115:5 reads 50:20 59:17 76:13 78:2,21 79:5 reask 44:22 118:13 123:20 reason 7:7,8 reasons 41:3 recall 17:16 103:12 137:9 receipt 8:11 97:8 receipts 97:15 receive 24:21 29:22 received 13:17 15:10 18:8 26:6,8,11 97:5 97:10,11 132:23 133:25 135:21 137:16 138:1,4,9 139:13,16	receiving 138:22 139:11 reception 29:8 recess 40:8 79:13 112:5 132:12 recognize 24:7 32:7 41:25 58:13,19 62:25 65:9 67:21 134:2,6 recollection 11:21 140:20 record 4:2 5:11 8:5 10:21 15:17 16:8 19:3 20:11 23:16,18,19,23 26:16 31:16,18 31:19,21 36:17 40:7,10 41:7,9 41:10,14,20 50:23,25 56:24 57:1,2,6 59:23 63:14,16,17,21 65:22 66:21 67:4,6,7,11,16 76:14,14 77:8 77:8,17,17 79:12,17 80:17 82:14 104:19 112:2,4,9 119:6,22,24 120:1,2,6 124:6,8,9,13 124:21,24 131:20,24 132:11,14 134:4 137:22 139:17 141:4 141:15 142:5 recorded 23:11 92:3 95:17 recording 22:1 86:20	records 5:18 17:2 27:24 31:5 62:3,10 64:17 65:4 68:14 71:21 72:11,12 78:18 80:9 85:11 89:10 119:16 127:18 128:1 129:15 refer 10:7,25 23:12 49:2 51:16 112:11 125:7 reference 40:13 referenced 90:12 referred 63:13 referring 119:22 reflect 63:5 65:22 80:3,11 81:1 91:20 119:22 reflected 67:1 74:24 75:7 82:8 88:8,22 113:4 119:13 131:14 reflecting 99:3 reflects 79:20 81:9 regarding 133:13,18 139:4 regularly 37:12 relate 6:7 29:4 95:21 136:2 related 12:5 26:10 65:17 relates 124:22 125:13,25 relating 5:18 6:5 8:16 9:13 11:17 17:2,11 86:19 133:24
---	--	---	---	--

133:25 136:9 137:11 relation 10:18 relationship 54:12,17 relative 132:17 relevance 11:15 27:17 30:5,24 53:7 92:12 133:8 136:16 137:2 remember 5:24 11:13,18 17:14 18:6 53:12 133:17 remote 108:15 removed 128:11 130:25 removing 118:17 rendered 36:23 repeat 6:19 16:12 26:14 61:18 64:3 66:1 137:3,21 rephrase 6:19 21:14 replaced 122:5 reported 143:13 reporter 4:25 5:5 26:16 137:22 141:1 143:4 reporting 4:4 represent 68:2 represented 14:14,17,24 15:2 representing 4:19 14:22 142:13 request 19:17 29:17,22 30:3 133:24 135:22 136:2	requested 20:16 30:17 requesting 30:21 requests 17:3 20:13,18 29:14 29:14,17 30:10 30:23 124:25 135:20 137:11 requires 61:8 requisite 60:24 reread 50:4 research 1:5 4:9 9:20 93:7 researchers 32:18 reserve 141:5 reside 48:4 115:15 resided 115:14 resides 117:1 resolution 100:4 resource 1:11 4:10,22 8:13 10:7,8 11:22 13:8 51:15,17 51:22,25 52:1 52:7,14,16 54:9,12,14,18 54:20 55:3,16 56:4,13 59:17 59:21 61:15 136:9 139:4 resources 13:11 34:6,17 123:18 136:3 140:10 140:23 respect 116:24 response 134:7 135:21 responsibilities 29:2,11 31:13 54:15 responsive 12:22 17:18	94:11 rest 51:16 91:6 result 66:10 122:13,17,18 140:8 resulted 68:6 81:15,23 122:24 results 65:16 66:5,15,25 97:7 131:13 retrieval 68:6 retrieve 69:15 retrieved 97:17 128:14 returned 20:15 review 29:22 141:9 reviewed 46:9 46:13,15 75:11 right 10:1,13 13:15 14:21 22:10,10 23:6 32:14 33:11 44:22 49:5 76:5 82:8,17 84:15 89:18 118:13 128:17 134:15 139:20 rights 55:17 56:14,20 road 6:16 robots 126:15 role 102:13 104:7 rossi 12:15,17 12:18 13:5 16:16 roughly 35:2 rpr 1:24 rsyn 85:17 rsync 96:1 97:18 rules 6:16 run 27:22 81:15 81:23 85:8,18	85:22 86:13 87:25 88:4 94:11 113:3,10 113:19 114:18 128:21 129:2 129:19 130:8 131:4 ry 85:17 <hr/> S <hr/> s 3:1,6 95:25 96:10,11,15 san 1:14,21 2:15 2:22 4:15 5:14 143:2 sat 28:2 saveas 126:11 saving 126:9 saw 7:22 113:9 113:13 saying 14:10 says 24:10 32:15 33:1,15,17 34:4 41:16 43:15 60:3 61:5 63:4 72:17 83:4 84:22 89:15 93:6 95:25 96:15 97:22 98:17 100:4,6 100:25 101:4 102:17 108:13 112:13 117:15 120:10 122:23 scandataxml 105:12 scholars 32:18 school 25:3 science 24:11 25:4 sciences 25:5 scientific 34:19 scope 9:7 12:2 30:8 38:9	40:24 54:5 123:13 scott 5:12 scratch 26:5 screen 3:22 129:12 screenshot 57:23 scripting 83:14 scripts 84:1,7 sdo 134:24 135:2,8 sean 2:25 4:3 search 8:15 9:8 9:9 12:21 16:16 17:4 18:24 19:1 27:24 28:2 35:16 65:16 66:5,11,15,25 68:5 73:8 75:22,23 119:12 131:12 139:9,14,18 searchable 36:24 37:1 searched 16:19 16:20,21 17:1 17:21,24 18:24 19:2 24:1 64:17 65:3 searches 18:3 27:22 searching 17:17 second 16:11 23:17 33:2 57:21 59:11,15 60:3 72:24 97:7 140:11,18 section 143:5 see 7:20 15:25 22:13,14,17,18 22:23 32:21 33:6,14 34:2 35:12 43:16
---	---	---	--	--

57:25 59:2,16 60:5 73:5 77:19 82:9,19 83:1 84:11,21 84:22 89:16,17 90:18,20 95:4 95:24 96:2,10 96:14,14 97:1 97:4,9,22,24 100:3 109:22 112:12,14 113:25 114:5,9 114:12,14 117:6,10 121:18 136:8 seen 7:18 15:23 83:11 selected 124:2 selecting 73:12 126:10 sense 39:22 sent 16:23 133:23 135:15 135:19 136:1 136:14,25 137:6,10 separate 35:11 142:7 separately 36:11 serve 70:3 served 7:22 16:2 20:15 31:9 server 20:8 49:24 87:21 89:15,17,23 90:2,2,3,7,15 90:16,21,24,25 91:9 97:23 98:14 107:9,10 107:10 113:14 113:24 114:5,9 114:10,15,15 114:18,25 115:2,3,15,16 115:20,21	116:1,2 118:8 118:18 servers 36:22 70:3,6,12,13 70:23 74:24 75:7 81:16,24 90:11 91:4,8 98:7 113:10,19 114:12 115:7 115:13,25 116:5,7,19 117:2 service 39:10 53:3,20 61:8 services 34:16 set 35:2,20 55:23 129:25 sharing 41:4,6 sheet 142:7 shorthand 5:5 143:3 shot 57:19,22 shots 58:2 show 7:15 15:21 24:5 62:3 64:9 65:8 showing 57:17 65:12 shown 68:20 120:20,21 122:24 137:7 shows 120:23 shrinkwrap 44:18 sic 94:1 signature 142:11 signing 45:6 signs 82:15 95:4 similar 136:14 136:17,25 137:7 single 63:24 sir 5:10 siskind 1:20	site 5:20 18:13 19:5 30:15 35:23 55:24 70:3 72:10 six 6:13 136:23 sixth 16:7,9 73:2 size 100:20 105:24 smaller 105:24 social 25:5 software 27:7 28:9,11 33:4 34:18 38:1 71:14 105:4 somebody 46:19 46:21 79:21 80:5 someones 22:2 sorry 12:1 61:18 82:10 89:22 96:3 104:23 118:7 130:4 sort 35:17 sorting 35:18 space 25:17 speak 7:5 8:23 12:7,13,25 13:8,11 speaking 8:22 10:2 53:2,11 116:25 special 102:24 specific 11:18 23:14 30:11 39:15 46:16 72:16 95:13 99:24 110:10 127:20 128:3 128:10 130:24 specifically 105:4 128:18 specifics 15:3 specified 8:17 speculation 74:6 74:13 89:9	91:25 92:24 122:7 speeches 53:19 spell 8:25 12:17 28:5 71:5 spelled 5:13 spelling 48:19 spivak 2:5 spoke 8:12,19,24 12:15 13:4,13 spoken 44:11 spoofing 108:14 sql 131:4 staff 8:12 126:17 139:10 stamped 57:12 standalone 103:14 standard 8:14 30:17 47:16 59:6 94:11 101:14 120:23 121:19 137:11 standards 3:18 8:17 9:13 10:18,20,22,25 11:8,22 12:5 17:11,15 18:17 50:19 51:1 57:15,20,22 59:11 61:4,24 63:25 64:7,18 65:5,15 68:3 69:17 80:15 88:10 89:6,12 91:15,22 92:4 92:8,17,19 93:19,24 94:5 94:15,21 98:2 100:10,14 103:17 107:5 109:19 111:15 113:2 115:7 116:6,11,14,20 119:12 121:3	128:21 129:17 130:8 131:10 131:16 132:17 133:6,14,19,25 135:5,8 136:19 137:15 138:24 139:5,7 standpoint 34:14 stands 83:11 84:24 start 19:7 47:18 78:18 79:2 started 76:13,20 76:24 77:4,9 77:13,18,24 78:3,8,12,22 79:6 starting 4:18 8:7 82:22 106:20 107:18 108:25 starts 16:10 96:1 110:2 state 38:23 39:3 66:4 67:15 77:7 89:11 123:4 143:1,4 stated 98:12 states 1:1 4:7 73:16 76:23 77:8,17 78:11 97:4,9 100:16 101:8 108:7,7 114:24 115:24 stating 97:15,17 stenotype 1:24 stephanie 2:19 4:23 stipulate 41:20 59:22 66:20 68:12 119:5 131:23 stipulation 140:14,16,25 storage 33:15,23
--	---	--	--	--

98:13	51:12 59:19	85:5	4:15 26:2,5	65:13 68:1,2
store 17:7 36:20	60:15 61:9,24	supply 128:7	29:24 101:12	72:16 73:7
90:12	62:4,6,11	support 25:19	122:11 124:15	75:12 80:12
stored 34:5	72:17 73:16	71:10	takes 112:19	82:3 89:1
83:21 90:6	80:17 88:18	sure 21:16 30:8	talked 125:15,23	90:21 97:16
98:2,7	89:4,12 92:3	64:5,25 93:22	talking 8:6	113:8,15
storing 33:17	92:21 93:15	107:9 118:11	82:15 93:10	team 13:12
street 2:7,14	94:12 100:17	141:7	94:16 140:1	25:17 29:5
string 60:9	117:21	swartz 53:4,6,8	task 3:19,20	71:3,4,8,13
88:17 90:1	submitters 50:2	swear 5:1	18:22 33:20	technical 18:19
strings 8:16,18	50:9	sworn 1:19	72:12,14 73:4	18:21 65:13
structure 50:1,8	submitting	143:10	73:11,12,12,13	68:2
studies 24:11	26:12,15,22	symbol 82:16	76:13,15,19,20	technically
study 25:7	80:4	synchronized	76:23,23 77:2	49:23
subject 14:3,17	subpoena 3:8,10	114:24 115:21	77:4,8,13,18	technique 118:7
24:18 123:20	7:16,18,21,22	synchronizing	77:23 78:2,3,8	118:17
133:5	8:3,11 9:6,7	97:23	78:11,12,17,18	tell 5:5 76:6
submission	12:22 13:17	system 28:10,12	78:21,22 79:2	temporary 22:1
74:17,18 76:15	14:15,23 15:8	28:13 48:14,17	79:5,6 85:13	tens 38:4,4,6
79:20 85:16	15:11,18,19	73:22 77:17	86:22 89:10	term 22:7 23:4
86:9,18,24	16:1,6,7,9,15	131:5,21	90:12,16,17,24	85:12 97:18
92:20 93:3	17:6 18:4 24:3	139:23,23	90:25 92:16	125:5 135:5
95:22 96:22	27:23 30:9	systems 27:5	94:10 95:9,25	terminal 3:22
107:24 108:2,9	50:16,17 64:11	48:23 74:3,11	99:2,3,7,7,8	26:25 28:8,14
109:15 118:24	64:16 65:1	127:13 129:14	100:13,15,16	28:14,16 71:25
123:6	134:8 138:1,4		100:20,24	129:13,13
submit 27:8,11	138:9 139:13	T	106:11,18,20	terms 3:15 22:12
47:14 74:11	140:9,14	t 3:1,1,6	106:25 107:6,7	39:16 40:2
129:14	subpoenas 31:9	table 57:24	107:18,19,23	41:16 42:4,7
submitted 18:20	139:12	tag 59:16,20	108:3,6,6,25	42:20 43:3,5,8
18:21 20:14,24	subsequent	84:15 113:24	109:7,11,20	43:15,19,21
35:9 49:11,13	86:23	117:10,14	110:2,8,8,15	44:1,16 45:1,9
51:12 59:19	subsequently	take 6:25 7:5	110:15 111:3,5	55:24,25 56:3
65:13 68:2	61:10	17:4 21:1	111:10,19,21	56:11
74:16 75:15	substance	29:18,25 30:19	112:1,1,25	test 34:5
80:12 82:3,4	138:19 140:1,4	36:11 40:4	113:4,6,15,18	testified 5:6
86:21 88:18	substantial 91:4	79:8 134:15	113:19 114:10	testify 3:8 7:9,17
89:11 92:18	suite 2:21	136:20	114:23 115:19	8:2 143:10
93:1,15 94:12	summarized	takedown 17:3	115:24 117:4	testimony 12:11
98:6 100:17	68:1	29:14,17,22	117:11,24	37:19 39:5,19
101:12,22	summary 35:12	30:3,10,16	119:17,18,18	42:23 56:17
102:14,23	35:13 65:13	133:24 135:20	119:19,19	72:2 73:10
105:25 110:17	68:6 72:15	135:22 136:2	129:3,4,21,21	79:23 80:22
124:5	supplied 18:13	137:11	130:12	90:10 91:18
submitter 49:2,6	38:22 48:16	taken 1:19,23	tasks 18:19	92:1 115:10

125:10,20	112:12	54:2 63:4	truth 5:5,6,6	unclear 6:18
127:3 128:24	theyre 9:20,22	86:13 136:22	143:10,10,11	underneath
131:2 138:6	9:24 44:1,16	title 10:21 34:1	truthfully 7:9	100:6
142:5 143:12	45:1	35:8,18 54:15	tuesday 1:15,22	understand 6:17
testing 10:23	theyve 45:8	59:2,5,6 93:4	tugaw 1:24	6:21,24 9:25
59:7	things 22:12	toc 105:6	143:3,24	10:19,24 13:24
text 33:3,14 34:1	49:14	today 7:10 12:14	turn 7:24 77:22	20:6,10 21:13
35:6 38:17,19	think 13:25 14:6	14:14 28:25	78:6,15,25	21:22 23:4
39:2 48:15,18	14:16 36:5	43:19 63:13	97:20 98:25	34:14 39:21,22
48:20 51:11	39:13,14 40:2	125:15 140:17	100:1 101:2	42:10,15 49:23
59:20 61:5,22	82:14 141:3	told 6:10 31:12	102:16 106:9	54:13 57:14
86:19 92:17	third 5:20 72:25	39:11 103:18	108:11,24	58:5,6,11
101:13,22,23	103:16	138:16,18	110:1,20 111:2	59:18 73:25
102:6,13,14,14	thirteen 72:24	tool 71:17	turns 58:3	95:21 102:5,12
102:23 103:6	thousands 38:4	tools 72:5	103:18	102:21 106:25
105:3 120:25	38:5,6,7,7	top 14:20 32:13	twice 82:24	118:23 125:13
121:2	40:19,19	41:16 64:6	87:25	132:18
texts 21:4 34:17	three 9:15 38:24	72:23 83:4	twin 24:10	understanding
37:25 101:14	72:24 73:1	100:3 103:16	two 24:18,18	15:1 86:4
thank 8:9 64:14	86:13	112:12 119:19	40:2 72:25	140:10
76:1 101:9,10	time 7:20 15:25	120:10	73:1,3 82:15	understood 30:8
104:22 119:4	17:5 19:11	topics 7:25 8:2	87:19,20 90:21	138:13 139:10
thats 10:1 14:12	20:7 23:17,22	11:17 12:3	91:4 98:7	unique 19:6
16:22 18:25	26:9,9 31:17	38:9 40:25	114:19 116:5,7	20:7 88:19
19:13 24:12	31:20 40:6,9	54:6 123:14	type 35:6 45:16	127:5
27:1,2 28:19	41:8,13 56:25	total 13:3 53:15	68:20 70:22	united 1:1 4:6
29:20 31:11	57:5 58:15	57:9	93:9 118:6,15	update 110:16
33:8 34:23,23	59:24 61:10	track 124:17	types 6:10 23:15	updating 88:5
37:2 39:13,13	63:15,20 67:5	training 26:6	26:9 32:4	upload 39:9
40:16 41:5	67:10 74:8	transcribed 1:24	34:17 48:13	47:13,25 56:21
47:20,22 49:18	75:5,25 76:11	143:14	126:21	61:10 74:4
51:24 52:3,5	76:15,17,19,25	transcript 141:9	typewriting	115:6
64:6 69:18,24	77:4,10,19,23	142:4,8	143:15	uploaded 35:7
71:16 77:2	78:4,8,13,23	transcription	typical 119:2	35:22 47:1
85:21 91:15	79:2,7,12,16	143:15	typically 30:19	48:3 57:15
105:4,19,24	81:6,19 93:21	transmit 39:24	38:22 46:22	59:17,21 94:23
107:14 109:25	95:7 112:3,8	transmitted	88:4 92:20	96:18 100:10
116:19,19	115:16 119:25	36:21	93:14 122:8	115:8 128:11
119:18 129:7	120:5 124:7,12	traurig 2:20		130:25
131:11 136:11	127:13 130:4	4:24 8:20	U	uploader 35:9
139:19,20	132:10,13	14:15,21	uh 122:18	uploaders
140:7	134:16 137:16	trigger 48:14	uhhuh 16:18	126:16
theme 35:14	141:14	110:15	18:10,12,15,18	uploading 11:22
theres 9:14 59:8	times 5:22,24,25	true 142:4	18:23 21:25	12:5 30:20
76:12,12	6:13 53:12,16	143:15	23:10 80:16	38:3 40:1,18

47:19	49:7 50:3,12	view 21:1,9	143:20	103:9 136:3,4
upper 57:12	51:6 52:8 55:1	126:4	wayback 37:15	136:9,11
73:5	55:5,10 60:10	viewed 48:11	ways 23:5 24:1	137:15 138:25
url 20:17 49:20	62:1,9,16	49:12	36:8 38:14,24	139:6,7
49:21,25 50:7	66:16 68:8	viewing 21:17	39:11	websites 5:19
50:18,24 51:5	69:5,8,21	22:15,16 23:13	web 3:16 21:1,2	welcome 76:2
51:9 66:12	70:25 75:1,17	125:25	21:17,18 22:23	west 2:13 4:21
69:12 85:17	76:4,8 81:25	views 57:8	26:11,19 31:4	weve 41:15
88:20 89:1	83:23 84:9	125:16	33:4 36:8,15	125:15,23
94:16,19,24	85:10 86:2	virginia 2:8	36:20,20,22	128:20
96:1,17,21	88:24 89:25	visit 36:20,22	37:2,10,12,13	whats 7:15
97:18 120:12	90:19 94:8	42:13 52:22	49:12,22,22,24	15:21 24:15
120:13,21	95:11 104:18	126:8	57:8,19 58:14	64:9 90:23
121:7,24	110:13 113:21	visited 53:13	58:24 59:12	whatsoever 26:2
use 3:15 22:3,12	114:6,21	visitor 35:12	61:23 66:6	white 105:24
27:21 41:5,16	115:11 118:2	43:3	71:22,24 72:4	whos 12:15
42:5,7,12,20	118:12,19	visitors 36:24	72:10 81:16	wish 21:14
43:3,6,9,15,19	119:15 120:18	visits 53:17	83:12 124:16	withdrew
43:21 44:1,16	120:22 121:16	124:18,23	125:14,16	140:16
45:1,9 55:25	123:1 124:20	125:1,14	126:8 128:10	withintitled
55:25 56:3,11	126:6,18	126:14,16	130:24 131:15	143:11
71:25 72:5	127:11,22	127:9,14,15	website 6:8	witness 1:17,19
74:15	130:3,17 131:3	volume 4:12	11:23 22:13,17	2:18 3:2 5:1
user 25:19 35:21	131:17 133:20	79:11,15	22:19 25:22	8:10 11:16
37:24 38:3	137:1,18	141:13	29:19 32:3,6,9	12:4 46:8
46:8,22 47:12	value 93:2 131:6	vu 102:24	36:25 39:17,25	47:12 48:13
47:21 55:23	various 25:19		40:15,23 42:12	50:4 51:8 53:1
62:11,17 73:22	26:9 30:11	W	42:14,19 43:2	53:8,23 55:6
74:4,16 86:9	113:15	want 13:21	44:3 45:2,19	57:9,17 58:11
103:7	verbal 6:22	19:21 22:14,17	46:1,11,22	58:18 59:2,15
users 23:7 42:13	versus 4:9 6:4	22:24 76:10	47:2,9 48:5,11	60:21 61:8,18
126:4	21:9,18 22:2	128:14 132:8	49:14 50:2,9	62:2,10,17,25
uses 43:2 87:19	126:4,15	141:1,5	50:19 51:3,10	63:8 65:20,23
98:13	video 2:25 4:1,2	wants 42:18	52:4,13 54:21	66:1,10,17
utc 19:11 127:13	4:25 23:17,22	warning 108:12	54:24 55:4,9	68:9,24 69:10
	31:17,20 40:6	108:14,15	55:18 56:22	70:16 71:21
V	40:9 41:8,13	warnings	57:16 58:14	72:9 73:11,25
v 1:9	56:25 57:5	108:19 109:23	59:19 64:19	74:7,14 75:18
vague 11:25	63:15,20 67:5	109:24	65:6 69:20	76:23 77:7,16
21:11,20 22:9	67:10 79:10,14	washington 4:4	71:12 80:5	78:2,11,21
22:21 23:1	112:3,8 119:25	way 20:20,21	82:5 84:19	79:5 80:9,11
27:9,12 42:8	120:5 124:7,12	22:5 36:23	87:8,12 90:13	80:23 81:6,19
44:20 45:3,12	132:8,10,13	37:5 57:14	91:16,23 92:9	82:2 83:10,18
45:21 46:7	141:10,12	65:17 66:4	93:20,25 94:7	83:24 84:4,10
47:3 48:6,12	videotaped 1:16	116:14 140:24	94:10,15 99:18	84:13,14 85:3

85:11,21 86:3	work 25:10,13	97:5,9 131:22	124:7,12 132:4	119:12 121:3
86:17 87:6,17	25:15 37:9	134:5 141:13	132:10,13	128:21 129:17
88:3,13,25	71:9 75:11	141:15,17	134:2,4,7	130:8 131:10
89:10 90:1,11	86:19	10 1:22 3:15,21	135:16 136:15	131:16 132:17
90:20 91:3,12	worked 25:13	4:2 40:6,9 41:8	136:25 137:7	133:6,14,19
92:2,13,25	25:16,18	41:13,17 43:16	137:17 138:22	137:15 138:24
93:13 94:9,19	working 9:16	56:25 57:5	139:2,19	139:5,7
95:2,13,15,20	48:25 49:19	63:15,20 67:5	120 3:21 97:10	19th 134:18
96:6,14,21	75:10	67:10 100:2,19	124 3:22	136:1,24
97:4,14 98:6	wouldnt 44:12	120:3,9,13	12th 2:14	
98:12,23 99:6	44:12 138:14	121:14,18,23	13 41:13 102:16	<hr/> 2 <hr/>
99:16,23	writing 43:5,8	122:2,23 123:9	132 3:23	2 1:15,22 3:10
100:13,24	117:24	123:10,23	13page 99:1	15:15,20,22
101:7,11,21	wrong 42:16	141:15,17	14 57:13 97:10	16:1,11 24:3
102:4,12,21	wrote 61:4 84:1	107010707	104:20,22	64:10,16 65:1
103:5,12,23	117:17	76:19 90:16,25	121:23	65:23 79:15
104:5,12,23	www 37 98:18	95:9,18 100:16	14cv00857tsc	121:11 141:13
105:10,16,22	<hr/> X <hr/>	107010788 77:2	1:9 4:11	20 106:10,13
106:5,16,24	x 3:6	90:17,25 99:2	14th 59:25	112:8
107:14,22	xml 92:19	99:7 100:20	15 3:10 104:21	2001 3:15 41:17
108:6,22 109:6	<hr/> Y <hr/>	106:11	105:7	43:16
109:14 110:7	years 15:3 124:1	107019567	152 5:13	2002 24:22
110:14,25	youre 7:7 14:10	77:13 106:20	16 79:12 105:19	2009 28:22
111:9,18,25	14:13 29:16	107034141	19 3:23	2012 43:22
112:19 113:13	76:2 82:14	77:24 107:18	1940 2:7	76:24 77:9,19
114:23 115:12	youve 6:11,15	107040689 78:8	1999 3:18 10:18	78:3,12,22
115:24 116:10	15:22 65:1	109:1	10:19,23,25	79:6 81:3,10
116:24 117:8	<hr/> Z <hr/>	107040792	11:8 17:11,15	81:13 92:9
117:10,20	<hr/> 0 <hr/>	78:17 110:2	18:17 50:19	132:21 133:14
118:3 119:16	000 97:9	107040809 79:2	51:1 57:15	2013 3:23
119:21 120:23	04 40:6	111:4	59:9,11 61:4	134:18 136:1
121:6,18 122:8	07 77:19,20	11 3:22 40:9	61:24 63:25	136:24 137:6
122:17 123:4,8	<hr/> 1 <hr/>	76:24 77:10	64:7,18 65:5	2014 1:15,23
123:25 124:21	1 1:9 3:8 4:11,12	79:12,16 101:2	65:15 68:4	4:14 43:22
126:7,19 127:4	4:12 7:12,16	101:3 124:10	69:17 80:15	57:13 59:25
127:12,23	8:4,9 15:19	128:15,18	88:10 89:7,12	75:24 120:11
128:6 130:4,12	50:16,17 51:4	129:6,9 130:1	91:15,22 92:4	121:23,24
130:18 131:4	61:3 63:3,4	131:13,24	92:8,17,19	128:22 129:5
131:20 135:12	64:11 65:1	112 3:20	93:19,24 94:5	129:10,20
135:19 136:7	77:19,20 79:11	113 63:4	94:15,21 98:2	130:1,9,16
136:17 137:3,9	79:11,15 97:1	11th 129:5	100:10,15	132:21 133:15
137:19,24		143:22	103:17 107:5	142:16 143:22
138:7 140:8		12 3:23,23 41:8	109:19 111:15	202 4:5
141:8 143:9,12		112:3,3,8	113:2 115:7	21 77:12 106:19
words 19:21		119:25 120:5	116:6,21	211 100:7,25

<p>22314 2:8 23 3:13 77:23 107:17 24 79:16 108:12 25th 129:9 130:1 130:16 26 76:24 78:6 108:24 26th 77:9,19 78:3 81:2,10 81:12 27 109:22 27th 78:12,22 79:6 81:2,10 81:12,12 28 78:15 110:1 2892260 4:5 290 131:22 2nd 4:13</p> <hr/> <p style="text-align: center;">3</p> <p>3 3:13 23:20 24:6 30 3:19 120:11 121:24 141:5,8 3000 2:21 30th 75:24 31 3:14 110:20 315793300 3:20 113:5,18 115:19 117:5 119:18 122:25 33 56:25 78:25 111:2 119:25 34 67:14 120:5 37 23:18 38 41:18 39 23:22 39th 1:21</p> <hr/> <p style="text-align: center;">4</p> <p>4 3:14 31:22 32:8 33:12 64:11 65:2 78:4 134:5</p>	<p>40 41:18 75:24 41 3:15 57:5 124:7 4133000 2:9 415 2:16,23 42 124:12 43 78:12,22 44 79:6 46 78:4 48 76:24 77:10 4805 143:25 49 75:24 493 97:9</p> <hr/> <p style="text-align: center;">5</p> <p>5 3:4,15 33:11 33:11 41:11,15 42:1 44:1 56:11 67:14 82:12 50 35:23 63:15 501 32:15 51 31:17 52 31:20 63:20 54 132:10 555 2:14 57 3:16 67:5 58 132:13 59 67:10</p> <hr/> <p style="text-align: center;">6</p> <p>6 3:16 57:3,7 58:13,24 59:23 60:3 61:23 63:3 65:17,20 65:24 66:7,13 69:7 78:12,22 79:6 88:23 89:2 91:14 92:6 93:6 97:21 98:17 103:16 120:13 120:16,20,23 121:8,11,13,22 122:1,22</p>	<p>63 3:17 6551303 2:23 67 3:19</p> <hr/> <p style="text-align: center;">7</p> <p>7 3:8,17 63:18 63:23 65:8 66:5,10,18,20 67:1 68:6,11 72:14,15,17 73:13 82:21 84:14,21 85:15 85:24 112:12 119:11,13,20 119:23 703 2:9</p> <hr/> <p style="text-align: center;">8</p> <p>8 3:19 65:24 67:8,12,22 68:7,10,13,21 69:16 70:1,2 71:18 72:6,16 72:22 73:15 74:25 75:8,21 75:23 76:6,7 77:3,13,23 78:7,16 79:1 79:20 80:3,10 80:11 81:14,22 82:13 89:1,14 91:7,20 92:2 95:9 97:21 98:17 99:1,1 100:2,19 101:3 102:17 104:22 105:7,19 106:10,13,19 107:17 108:12 108:25 109:22 110:2,20 111:2 113:9 115:5 8211 143:6 825 97:1,5 8752300 2:16</p>	<p style="text-align: center;">9</p> <hr/> <p>9 1:22 3:20 4:2 23:18,22 31:17 31:20 75:24 112:6,23 113:4 113:18 114:13 115:19 117:4 117:25 119:6 119:11,23 122:25 129:2 129:18 934 97:10 94104 2:15 94111 2:22 94112 5:14 99 57:20,22</p>
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