EXHIBIT 4

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF FLORIDA

DISNEY ENTERPRISES, INC.,

TWENTIETH CENTURY FOX FILM

CORPORATION, UNIVERSAL CITY

STUDIOS PRODUCTIONS LLP,

COLUMBIA PICTURES INDUSTRIES,

INC., AND WARNER BROS.

ENTERTAINMENT, INC.,

Plaintiffs,

vs.

No. 11-20427-Jordan

HOTFILE CORP., ANTON TITOV,

AND DOES 1-10,

Defendants.

HIGHLY CONFIDENTIAL

30(b)(6) Deposition of Warner Bros.

Entertainment, Inc.

by and through DAVID KAPLAN

WEDNESDAY, OCTOBER 12, 2011

LOS ANGELES, CALIFORNIA

ATKINSON-BAKER, INC. COURT REPORTERS (800) 288-3376 www.depo.com

REPORTED BY: JEANINE CURCIONE

CSR NO. 10223, RPR

FILE NO.: A505CAB

	1 430
1	Deposition of DAVID KAPLAN, taken on
2	behalf of Defendant, at 9:37 A.M., Wednesday,
3	October 12, 2011, at 633 West Fifth Street, Suite
4	3500, Los Angeles, California, before Jeanine
5	Curcione, C.S.R. No. 10223, RPR, pursuant to
6	notice.
7	
8	APPEARANCES OF COUNSEL:
9	FOR THE PLAINTIFFS:
10	JENNER & BLOCK, LLP
11	BY: STEVEN FABRIZIO, ESQ. 633 West Fifth Street Suite 3500
12	Los Angeles, California 90071
13	AND
14	MOTION PICTURE ASSOCIATION OF AMERICA, INC. BY: KRISTA S. COONS, ESQ.
15	15301 Ventura Boulevard Building E
16	Sherman Oaks, California 91403
17	FOR THE DEFENDANTS:
18	FARELLA BRAUN & MARTEL, LLP BY: RODERICK M. THOMPSON, ESQ.
19	235 Montgomery Street 17th Floor Russ Building
20	San Francisco, California 94104
21	ALSO PRESENT:
22	EVAN M. ENGSTROM, ESQ.
23	DAN ACKLEY, VIDEOGRAPHER
24	
25	

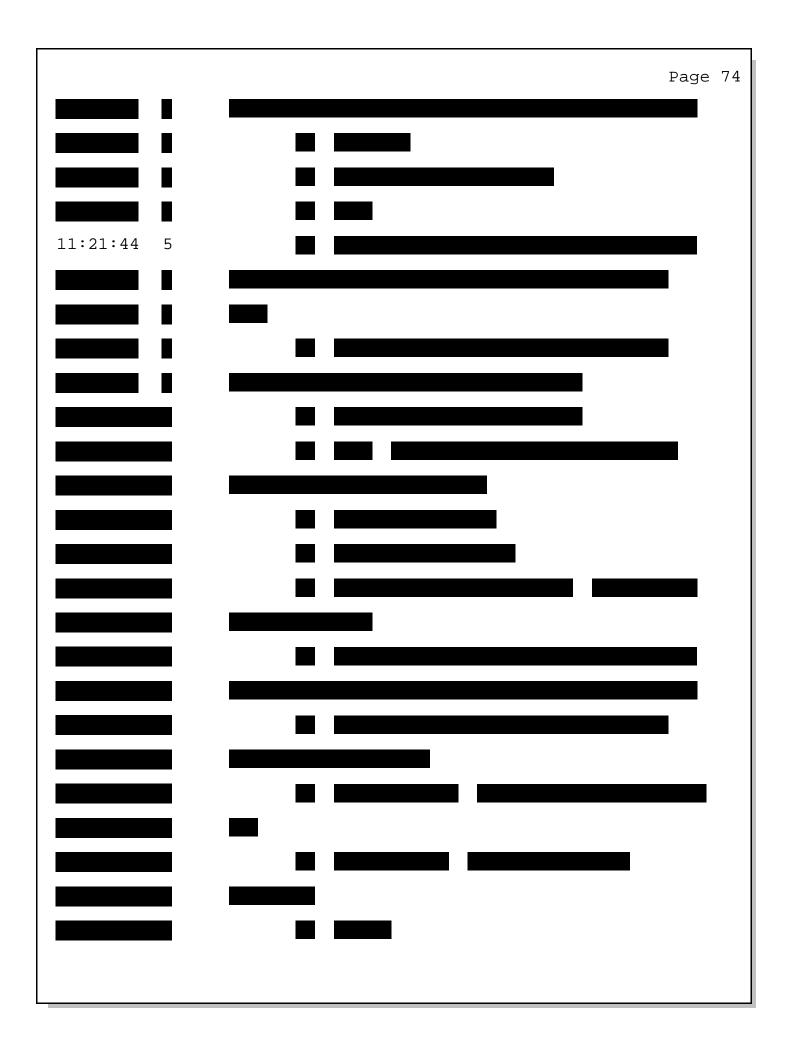
09:50:36 10 Was there also a project within your 09:50:39 11 department whereby Warner would load content onto 09:50:46 12 Hotfile with the purpose of directing potential 09:50:50 13 customers to iTunes? A. I'm not sure I'd call it a project. 09:50:54 14 09:50:58 15 But there was a one time test done in I think 09:51:05 16 May 2010 or around April, May 2010 in connection 09:51:11 17 with an effort to put iTunes -- make Vampire 09:51:20 18 Diaries' episodes available on iTunes in the UK in 09:51:24 19 advance of their terrestrial broadcasts in the UK, 09:51:34 20 free television broadcast in the UK. 09:51:37 21 Q. And that included loading content from 09:51:42 22 Vampire Diaries into Hotfile? 09:51:45 23 MR. FABRIZIO: Objection. Vague. 09:51:46 24 Q. BY MR. THOMPSON: Is that right? 09:51:47 25 A. Not exactly. It included loading

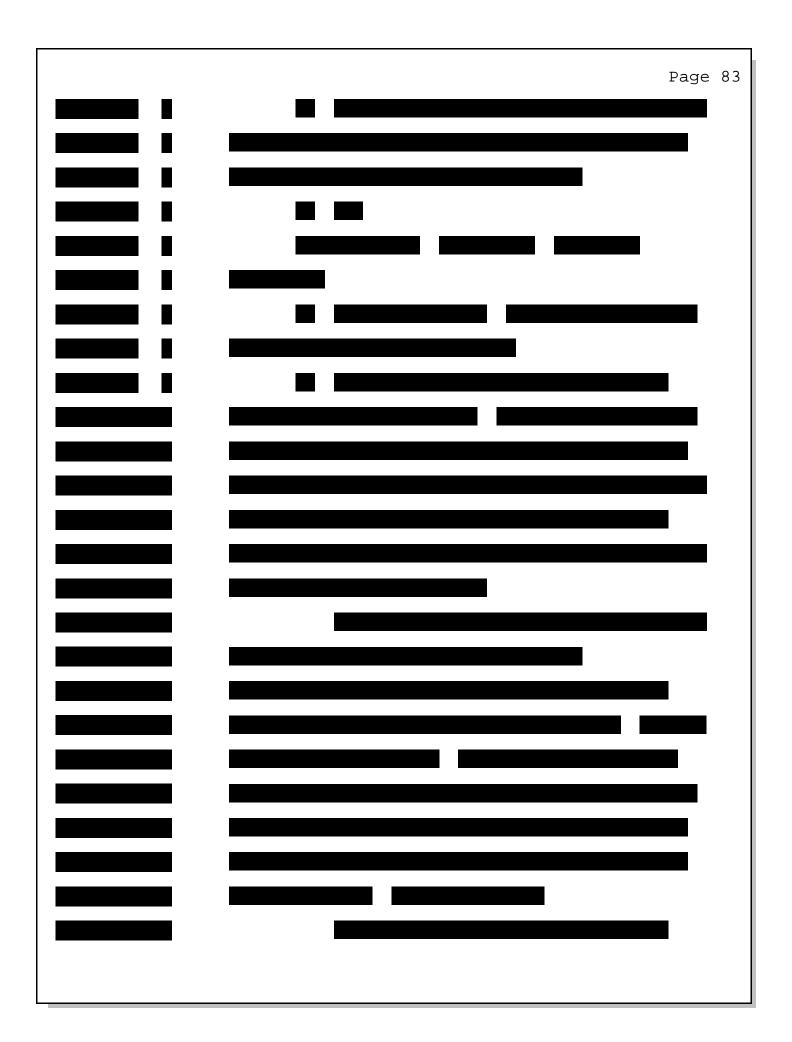
Page 17 portions of episodes of -- I think four episodes 09:51:49 1 of Vampire Diaries onto a couple of different 09:51:52 2 09:51:58 3 cyberlockers, Hotfile being one of them, for about 09:51:58 a three-week period of time.

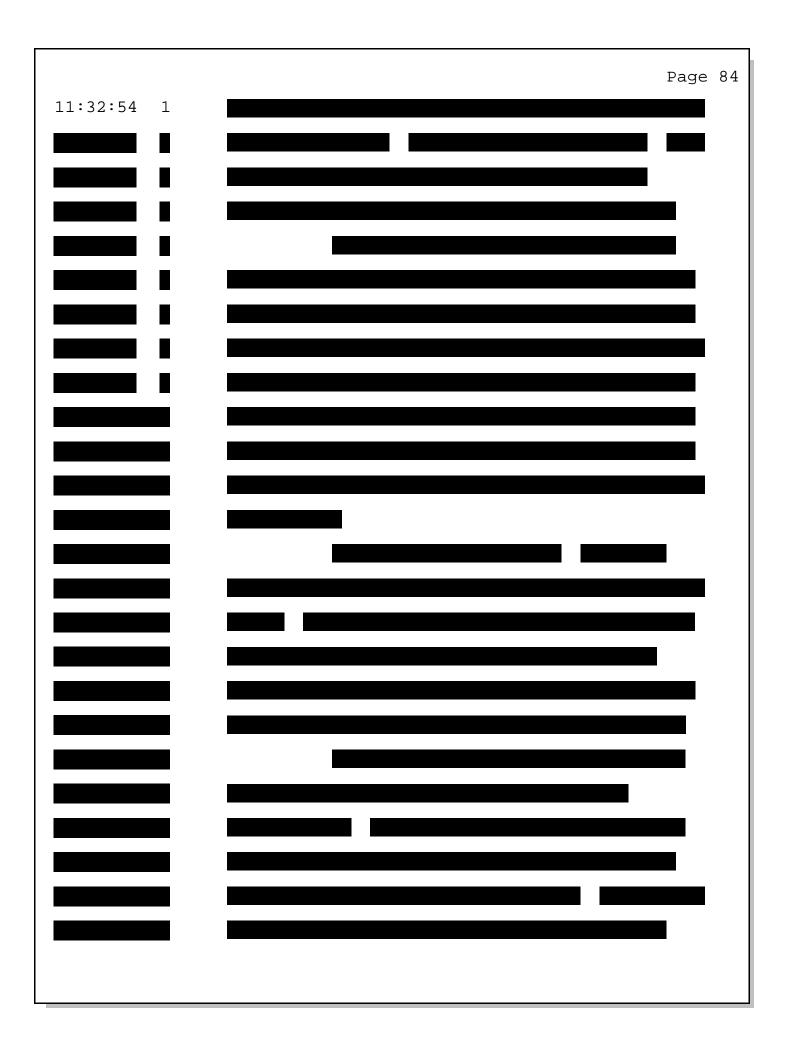
10:24:10 On the subject of premium accounts? 1 Α. Q. And verifying files more quickly with 10:24:12 2 10:24:15 3 premium accounts. 10:24:15 Α. I think so. 10:24:21 Q. Now, it's true, is it not, that with 5 10:24:25 respect to the Hotfile takedown removal tool that 10:24:32 7 is referenced in Exhibit 1 that Warner, in fact, 10:24:36 8 did not verify content before using that tool? 10:24:41 9 MR. FABRIZIO: Objection. Lacks 10:24:42 10 foundation. 10:24:43 11 THE WITNESS: That's not correct. 10:24:46 12 O. BY MR. THOMPSON: Did Warner ever view 10:24:49 13 the content on Hotfile, the actual content, not the words in the URL, before utilizing the Hotfile 10:24:56 14 10:25:01 15 takedown tool? 10:25:04 16 A. I'm going to say no because I'm unaware 10:25:07 17 of any instance. 10:25:08 18 Q. Fair enough. And Warner's practice and procedure is not to have any human being view the 10:25:11 19 10:25:14 20 content before using the tool? 10:25:16 21 I'm going to amend my answer a little 10:25:19 22 bit only because there were instances where we did 10:25:22 23 use these premium accounts for the reasons I just described, so we would have seen in those 10:25:25 24 10:25:27 25 instances that there was a pirated version of

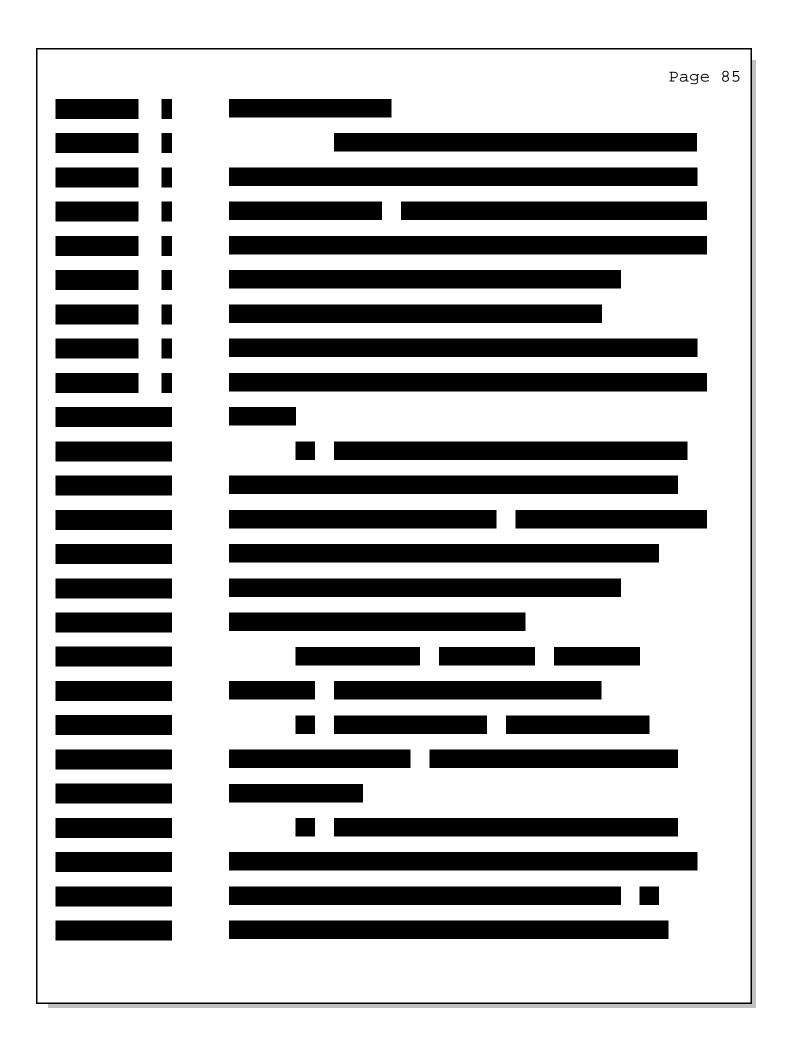
10:25:44 Q. It was Warner's practice and procedure not to have any human review of the content on 10:25:46 6 10:25:49 7 Hotfile before utilizing the Hotfile takedown 10:25:53 8 removal tool? 10:25:54 9 A. By human review you mean downloading 10:25:57 10 the content before the tool was used to send a 10:25:59 11 notice? 10:26:02 12 Q. Downloading or otherwise viewing the 10:26:04 13 content? 10:26:04 14 That's correct.

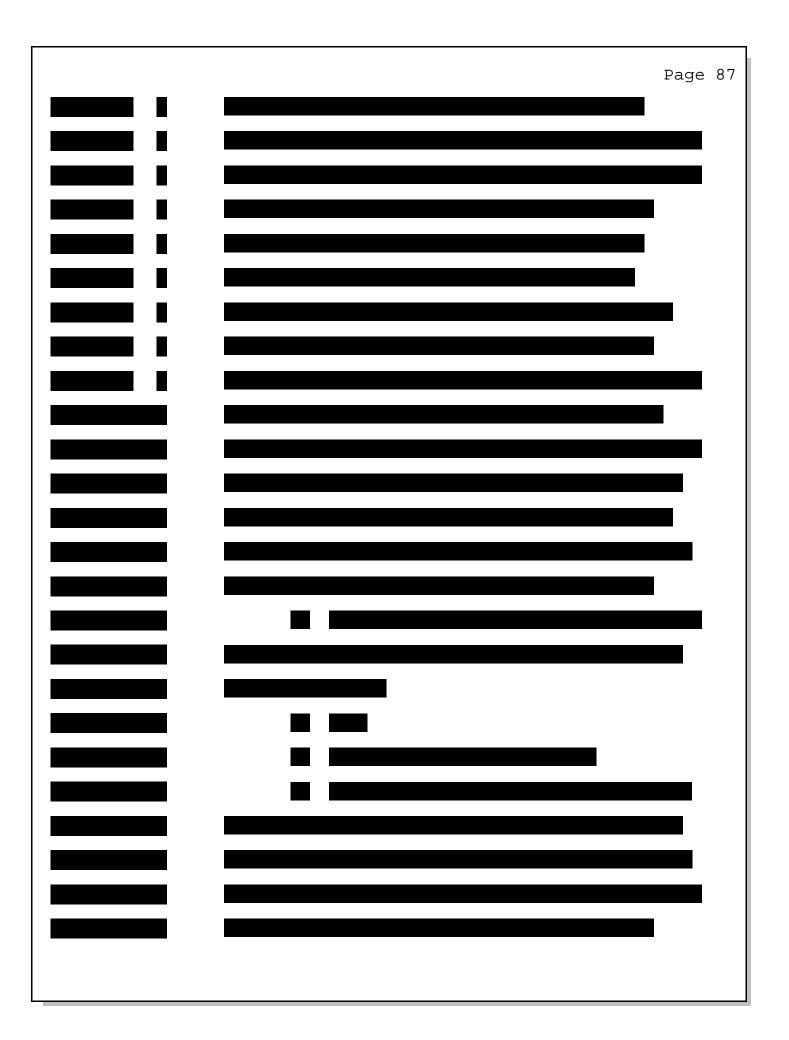
		Page
10:28:26	1	THE WITNESS: Yes.
10:28:28	2	Q. BY MR. THOMPSON: And maybe I made that
10:28:30	3	more complicated than I needed to. It's possible
10:28:32	4	for Warner just to take a fingerprint from a file
10:28:35	5	in Hotfile and confirm by use of that fingerprint
10:28:40	6	that the content is Warner's property?
10:28:43	7	A. No.
10:28:43	8	MR. FABRIZIO: Objection. Lacks foundation
10:28:45	9	and been asked and answered. Just pause and let
10:28:47	10	me object.
10:28:48	11	THE WITNESS: No.
10:28:54	12	Q. BY MR. THOMPSON: Does Warner have to
10:28:55	13	download the file in order to check a fingerprint?
10:28:57	14	A. Yes.
10:29:02	15	Q. And, in fact, Warner's practice and
10:29:04	16	procedure was not to download any file before
10:29:09	17	using the Hotfile takedown tool to delete the
10:29:13	18	file?
10:29:13	19	MR. FABRIZIO: Objection. Asked and
10:29:14	20	answered.
10:29:14	21	THE WITNESS: That's correct.
10:29:22	22	MR. THOMPSON: I'm going to have another
10:29:24	23	document marked now, and I think this one may
10:29:26	24	be we'll hit a few other questions first and
10:29:37	25	come back to that.
10 20 07 .		

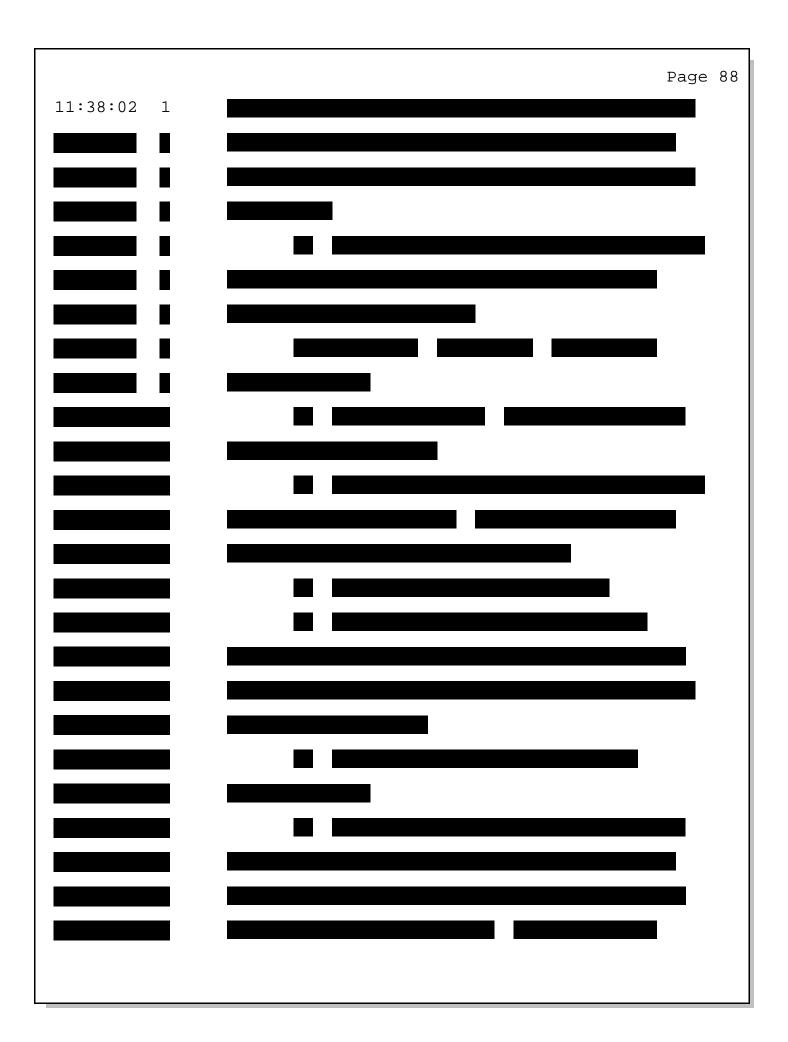












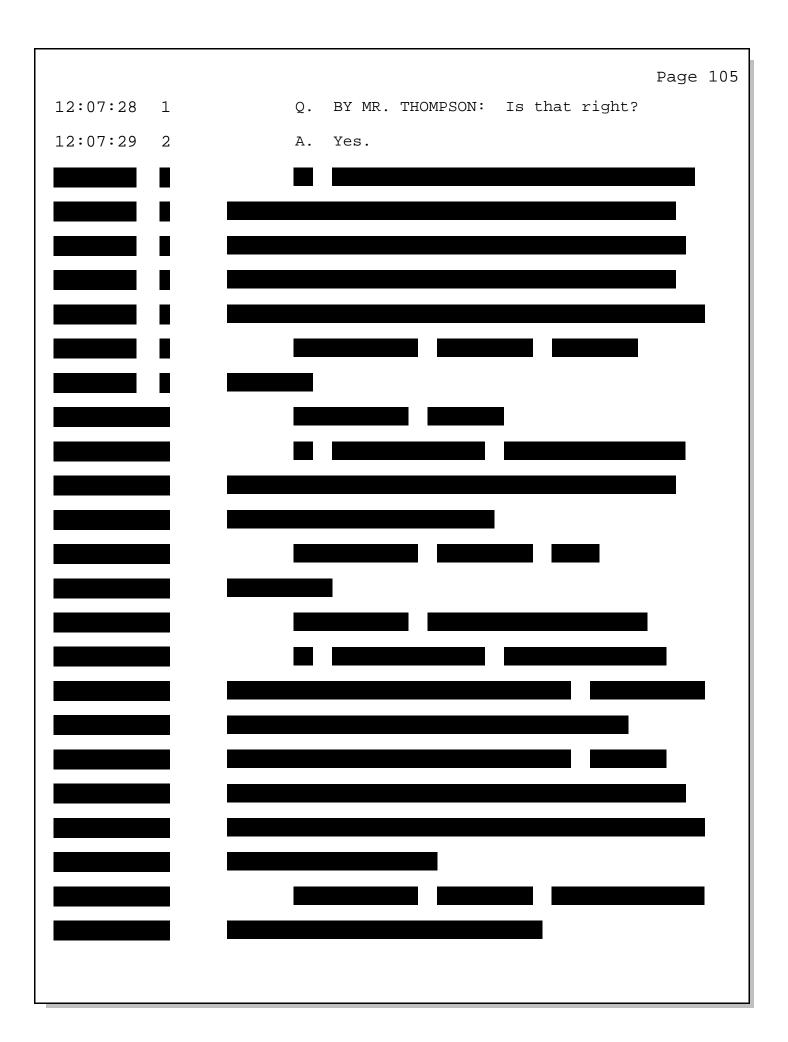
	Page 10
12:02:13 1	this is a screen shot from the Hotfile website and
12:02:18 2	what I wanted you to focus on is the little check
12:02:23 3	box under there's a large blank box in the
12:02:26 4	middle, do you see that?
12:02:27 5	(Exhibit 6 was marked for
12:02:27 6	identification by the Reporter.)
12:02:28 7	THE WITNESS: Yes.
12:02:28 8	Q. BY MR. THOMPSON: And underneath
12:02:29 9	there's a check box and it states, "I certify
12:02:32 10	under penalty penalty of perjury that I am the
12:02:34 11	owner or authorized legal representative of the
12:02:37 12	owner of the copyrights to this material. I have
12:02:42 13	a good faith belief that use of this material is
12:02:46 14	not authorized by the copyright owner, the
12:02:51 15	copyright owners agent or by law. The foregoing
12:02:55 16	information is accurate as to this material."
12:02:58 17	Isn't it true that Warner made this
12:03:00 18	representation to Hotfile every time it used the
12:03:04 19	Hotfile SRA?
12:03:07 20	A. Well, I'm sorry. Are you asking
12:03:09 21	whether or not the the robot clicked the box as
12:03:12 22	part of getting access to the SRA tool?
12:03:18 23	Q. It would have to click the box to use
12:03:19 24	the SRA tool?
12:03:21 25	A. I think so, yes.

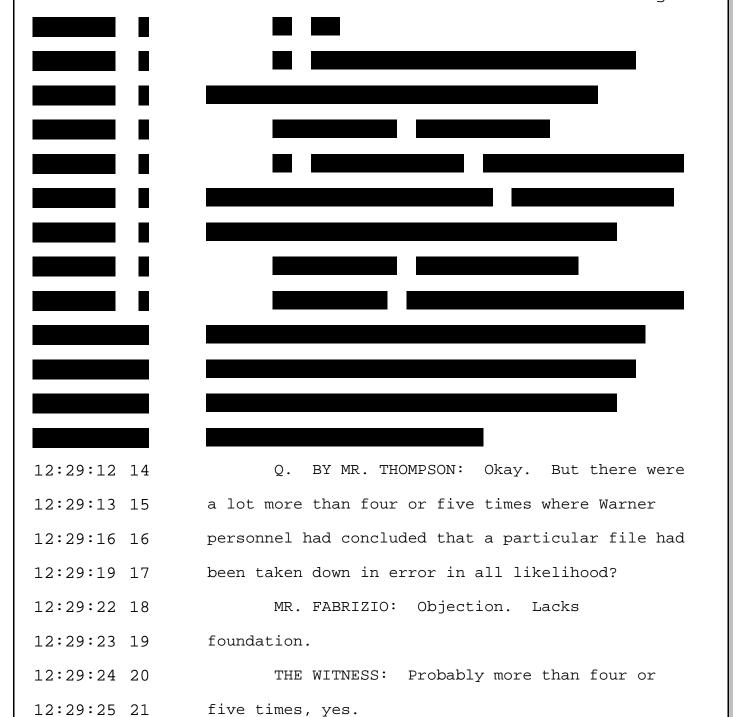
Page 102 12:03:22 1 Q. And Warner knew that was the case; 12:03:23 2 correct? 12:03:24 3 A. Yes. 12:03:25 Q. So Warner knew that every time the 4 12:03:27 5 robot was using the SRA tool, that representation 12:03:31 6 was being made to Hotfile?

12:04:48 THE WITNESS: Well, I think I would put it 12:04:49 3 this way. The -- the statement is based on our 12:04:54 4 faith of the overall system that we developed. Errors are made in any system that's being 12:04:58 5 12:05:00 6 developed. The fact that we took any errors that 12:05:03 7 we discovered and used them to improve the system 12:05:06 8 I think further gave us confidence that the system 12:05:08 9 was one that was the best one that we could 12:05:10 10 create.



Q. BY MR. THOMPSON: Is it Warner's 12:07:13 18 12:07:14 19 position that the representation it made with respect to the SRA tool that we've just read 12:07:16 20 12:07:20 21 cannot be evaluated on a link-by-link basis but 12:07:23 22 must be looked at in the overall picture that you 12:07:26 23 just described? 12:07:26 24 MR. FABRIZIO: Objection. Lacks 12:07:27 25 foundation.





12:29:27 23 Warner take any steps to notify the content owner

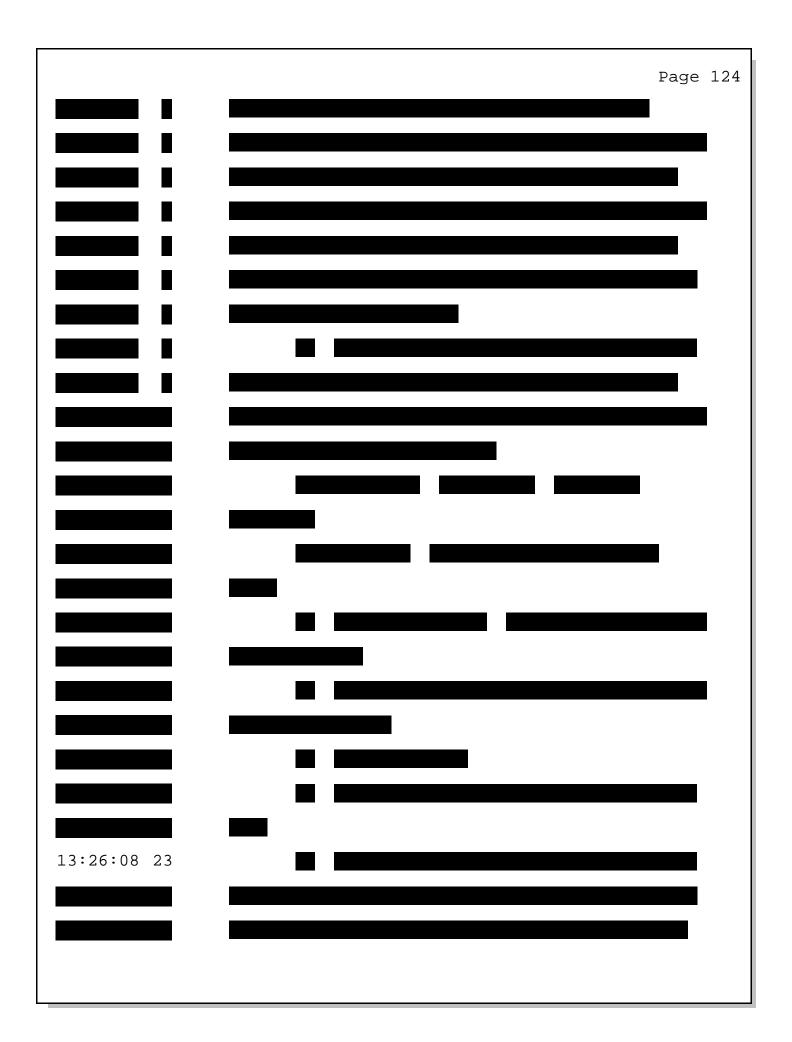
A. No.

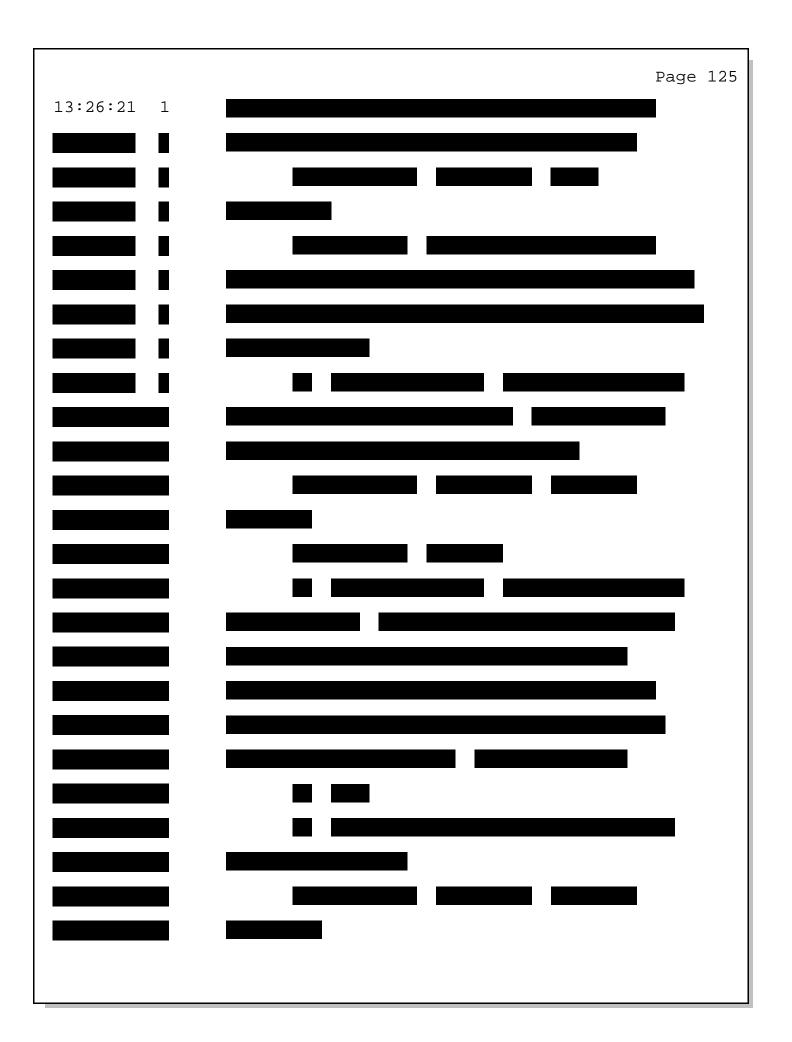
Q. BY MR. THOMPSON: In those times, did

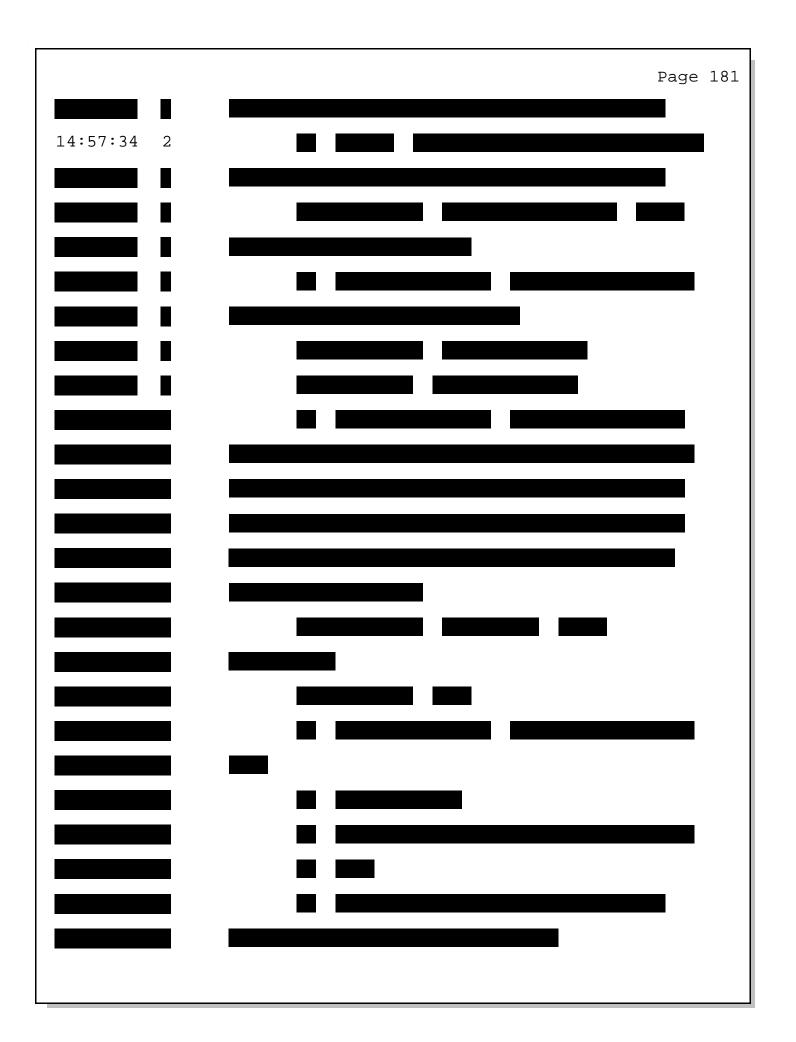
12:29:32 24 of Warner's mistake?

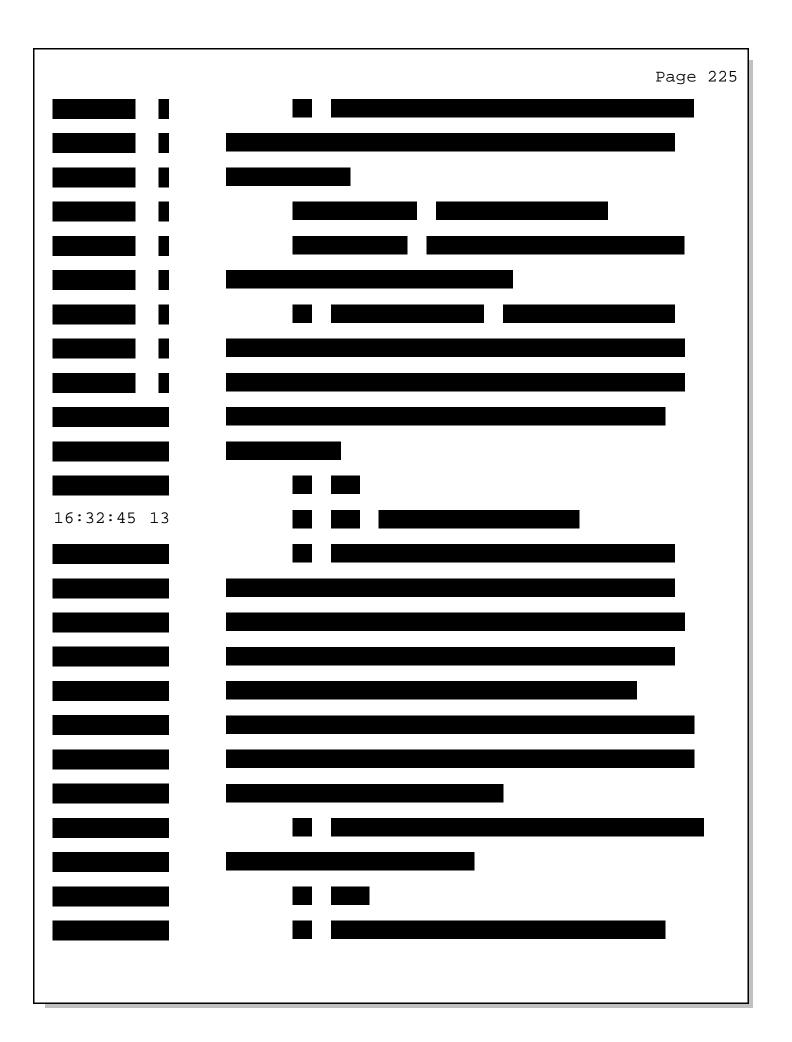
12:29:26 22

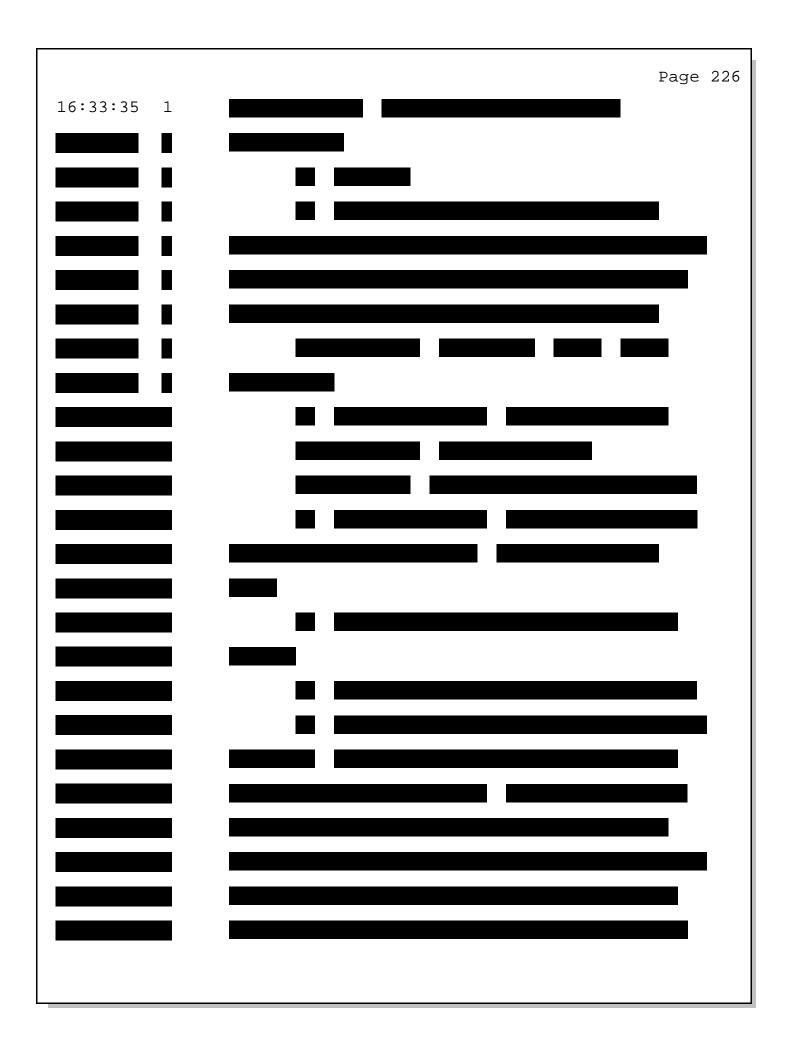
12:29:36 25

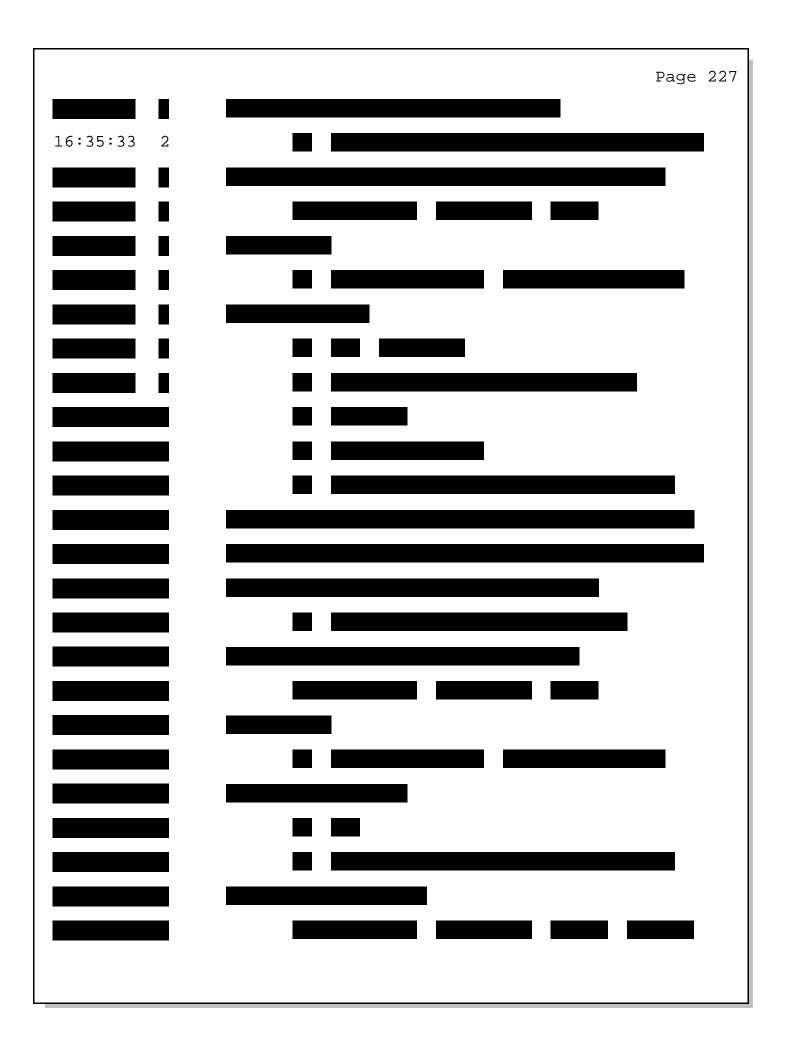


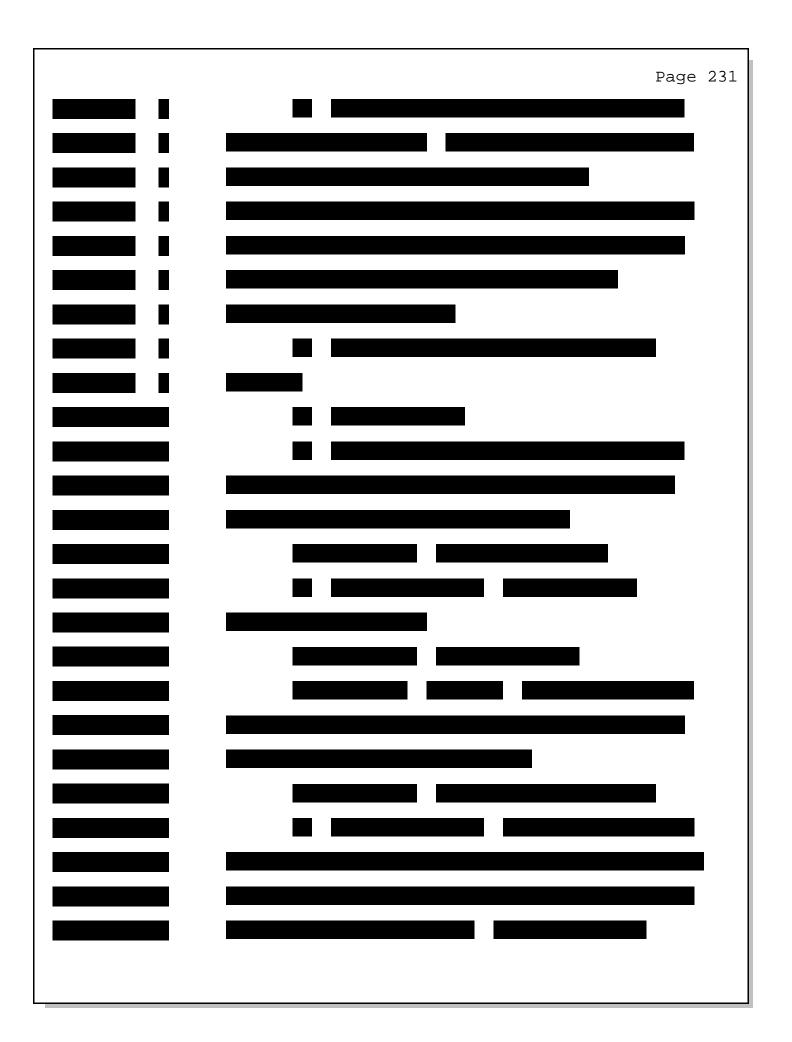


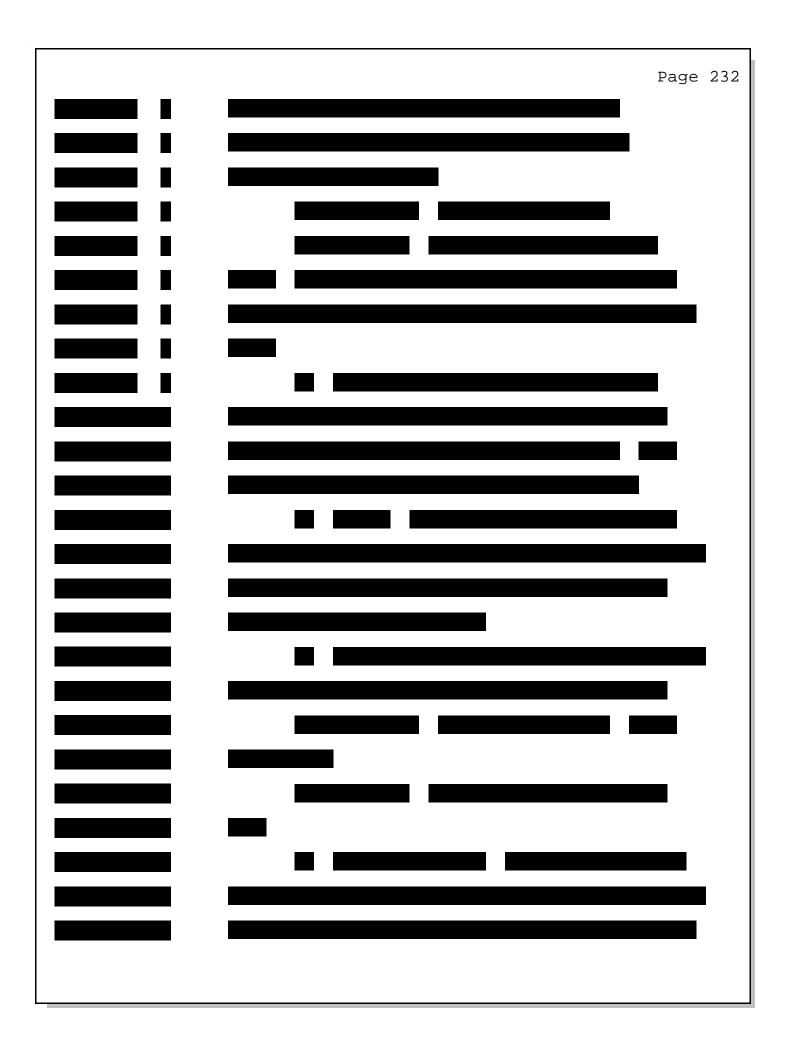


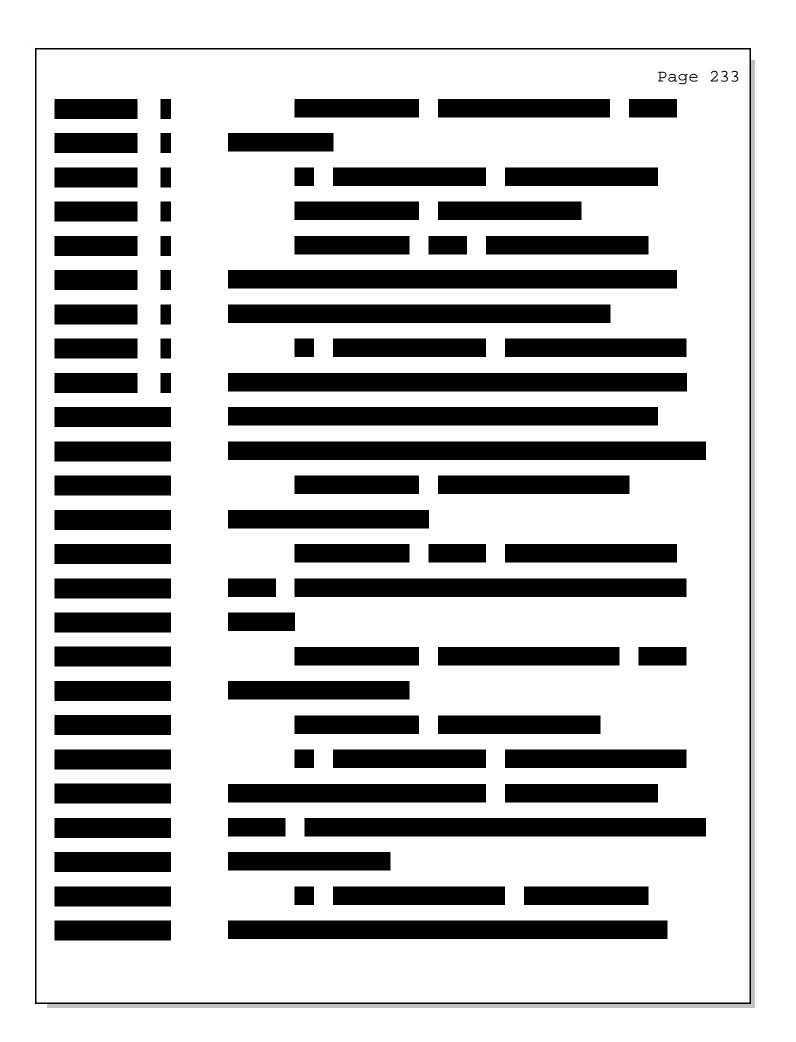


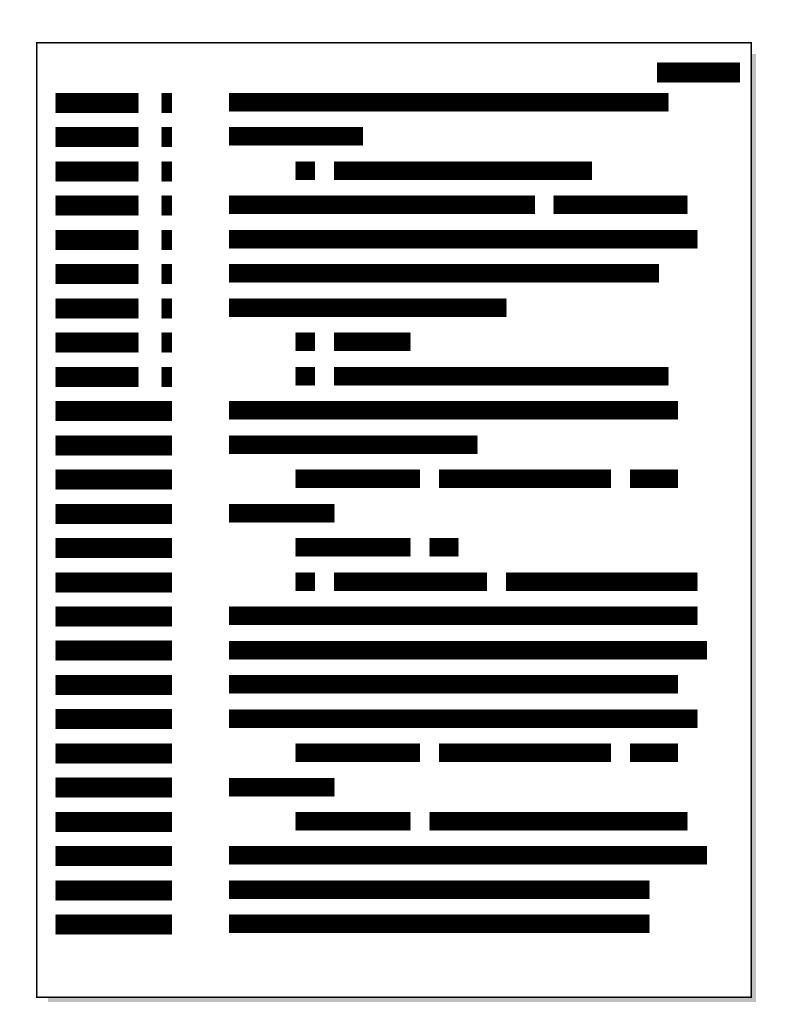


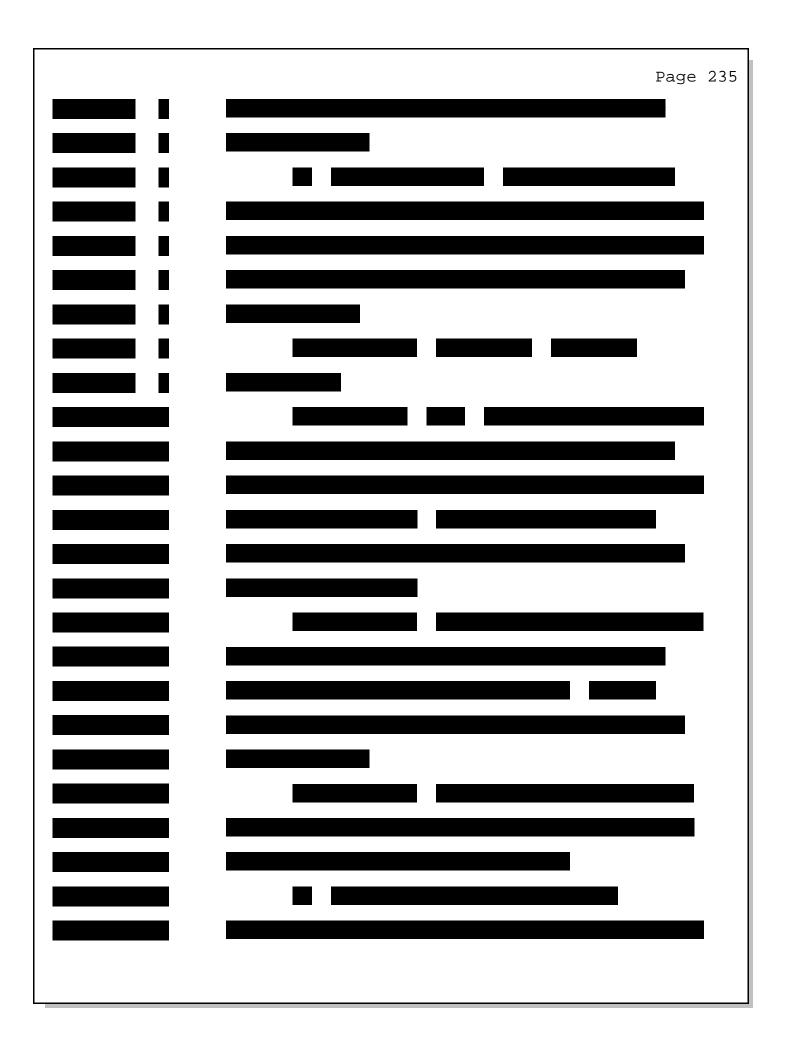


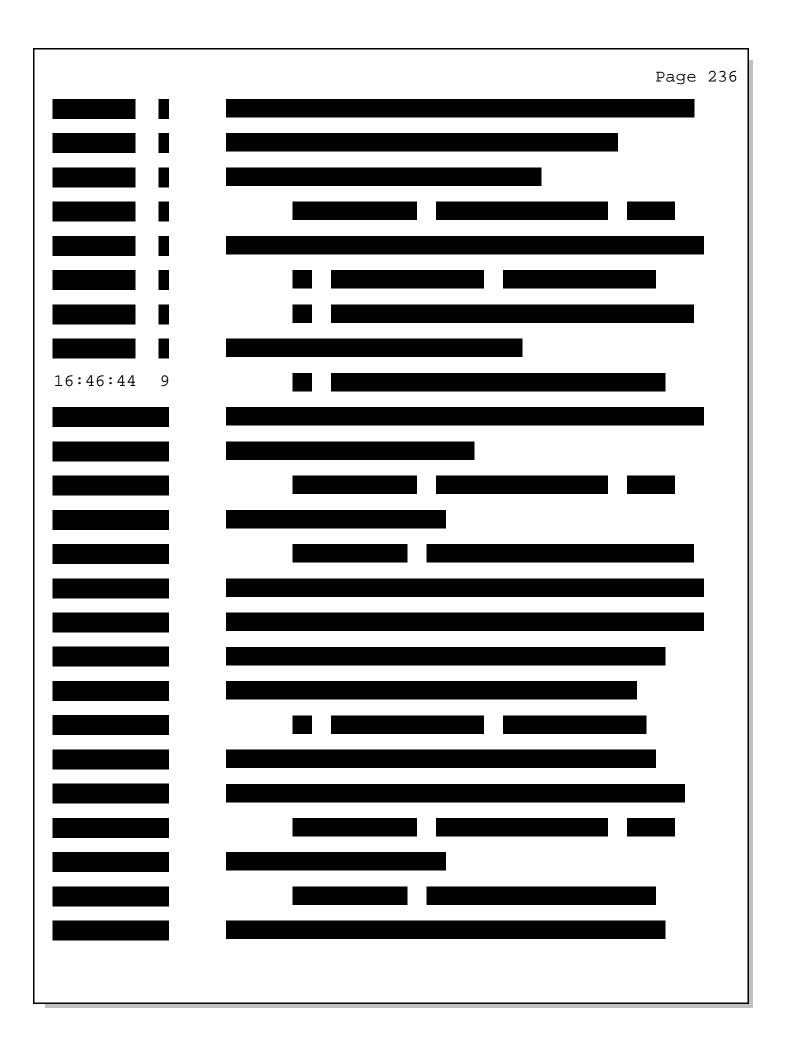










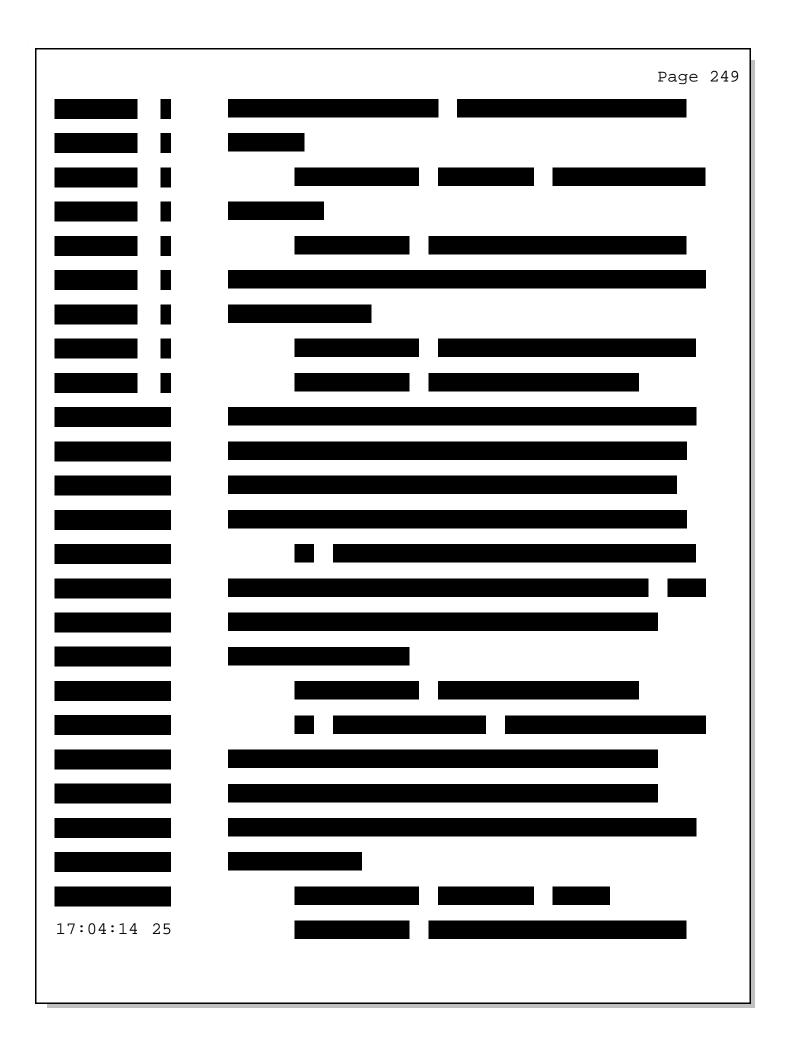


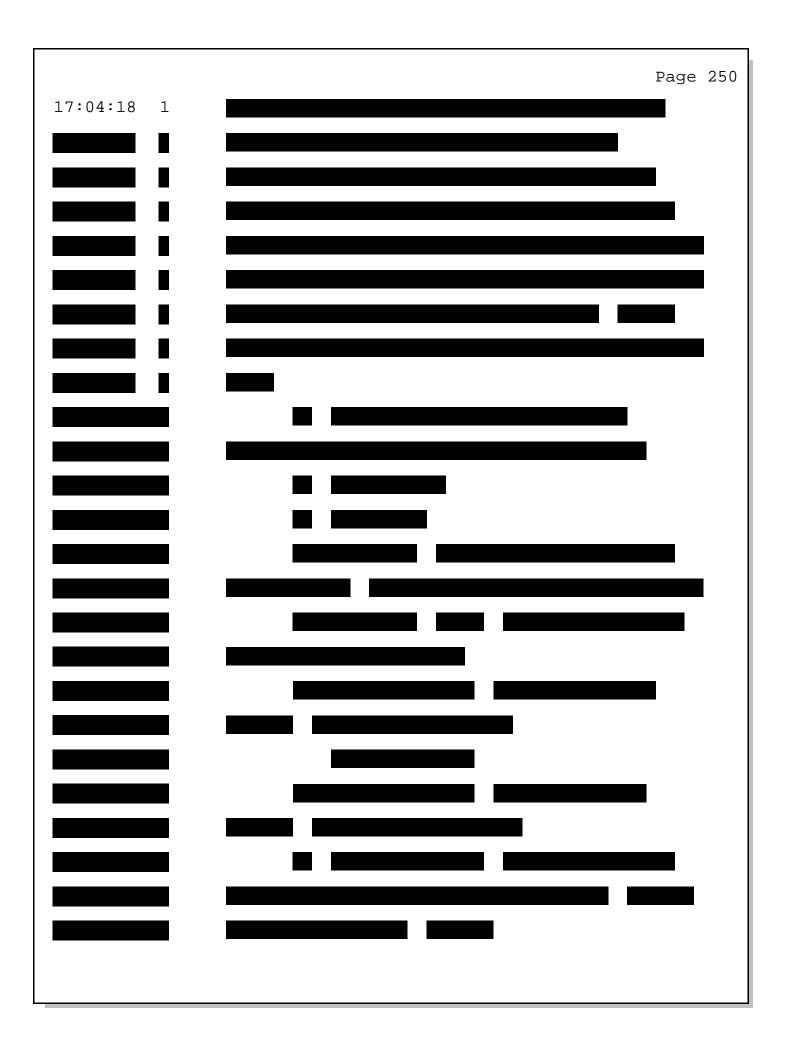


16:58:37 19
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16:59:08 24

16:59:09 25

A. The good faith belief as to any particular file comes from our belief that the system that we're using is one of the best ones that's -- that's available. It's a robust system that is capable of scaling. I've answered this question a couple of different times. But I don't know, I'm trying not to come up with different





1	REPORTER'S CERTIFICATE
2	
3	I, JEANINE CURCIONE, C.S.R. NO. 10223, RPR, in and
4	for the State of California, do hereby certify:
5	That prior to being examined, the witness
6	named in the foregoing deposition was by me duly
7	sworn to testify the truth, the whole truth and
8	nothing but the truth.
9	That said deposition was taken down by me
10	in shorthand at the time and place therein named,
11	and thereafter reduced to typewriting under my
12	direction, and the same is a true, correct and
13	complete transcript of said proceedings.
14	That the witness, before examination, was
15	by me duly sworn to testify the truth, the whole
16	truth, and nothing but the truth, and that the
17	witness reserved the right of signature;
18	I further certify that I am not interested
19	in the event of the action.
20	Witness my hand this 26th day of October,
21	2011.
22	Glanine Cuccine
23	<u> </u>
24	Certified Shorthand Reporter for the
25	State of California