Disney Enterprises, Inc. et al v. Hotfile Corp. et al Doc. 390 Att. 3

# EXHIBIT 2

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 11-20427-WILLIAMS/TURNOFF

- - - - - - - - - - - - - - - - - - - - - - - - - - - - - -

DISNEY ENTERPRISES, INC., TWENTIETH CENTURY FOX FILM CORPORATION, UNIVERSAL CITY STUDIOS PRODUCTIONS LLLP, COLUMBIA PICTURES INDUSTRIES, INC., and WARNER BROS. ENTERTAINMENT, INC.,

Plaintiff,

v.

HOTFILE CORP., ANTON TITOV, and DOES 1-10,

Defendants.

HOTFILE CORP.,

Counterclaimant,

v.

WARNER BROS ENTERTAINMENT INC.,

Counterdefendant.

- - - - - - - - - - - - - - - - - - - - - - - - - - - - - -

VOLUME I
H I G H L Y  C O N F I D E N T I A L
(Pursuant to protective order, the following transcript has been designated highly confidential)

30(b)(6) DEPOSITION OF ANTON TITOV
Radisson Blu Hotel
Sofia, Bulgaria
Monday, December 5, 2011
Job Number: 44174

A P P E A R A N C E S

ATTORNEY FOR THE PLAINTIFFS:

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Also present:

Court reporter:

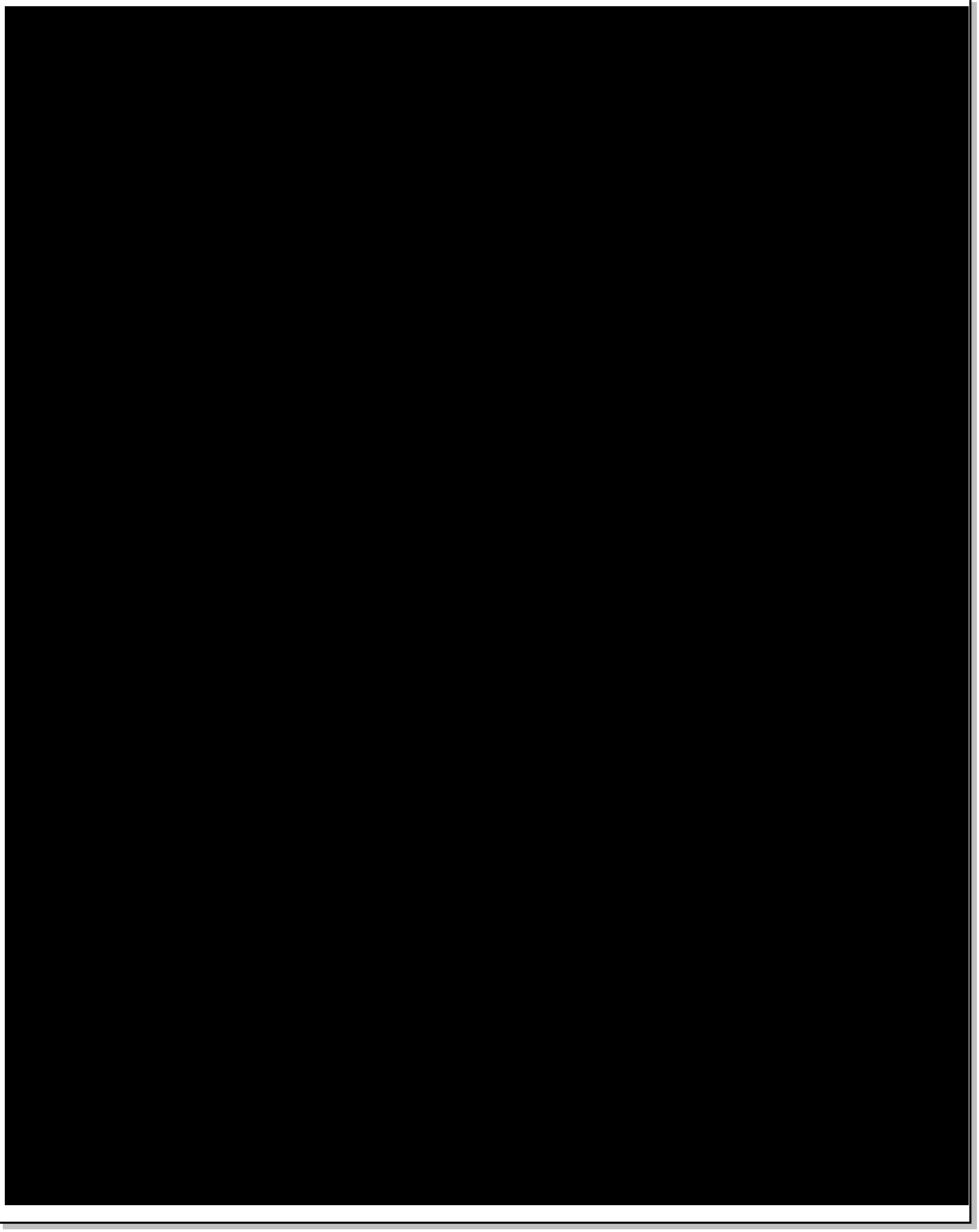
Fiona Farson
TSG Reporting

Videographer:

Simon Rutson
TSG Reporting

Interpreter:

Assist. Prof. Boris Naimushin, Ph.D.



A. Yes.
Q. Okay. From August 2008, again going forward, can you identify the people who were working with you on the development of the Hotfile website?
MR. THOMPSON: Objection, overbroad. Do you mean up to today?
MR. FABRIZIO: Yes.
A. Strictly on developing, it would be Diyan Chuburov.
BY MR. FABRIZIO:
Q. Can you spell, please?
A. D-I-Y-A-N, C-H-U-B-U-R-O-V.
Q. Chuburov: Did I say that right?
A. Yeah.
He was working approximately from the beginning.
Q. Does he still work on the Hotfile website?
A. Yes, he does.
Q. What are the nature of his responsibilities?
MR. THOMPSON: Today?
BY MR. FABRIZIO:
Q. Can you please describe from the inception, and if they've changed, as they've changed through today.
A. He's responsible for programming the website, the actual website of hotfile.com, and internal administrative web pages.
Q. Have those been his duties from the inception?

developing hotfile.com.
Q. Any other companies, beyond RapidShare?
A. RapidShare was market leader, and we would normally compare to them, ourselves to them, but I believe we looked at others too.
Q. What were the others?
A. I think MediaFire.
Q. Did you say MediaFire?
A. MediaFire.
Q. Any others?
A. It's very hard to judge in the time when you've seen anything.
Q. Sure. Let me -- let me suggest a couple of names and you can tell me. Megaupload?
MR. THOMPSON: Just so the question is clear, is there a time?
MR. FABRIZIO: This is in the time they were developing the functionality for Hotfile.
A. We were probably aware of Megaupload, but I don't think we were really looking at Megaupload as an example of functionality or anything else.
BY MR. FABRIZIO:
Q. Okay. So is it fair to say that you principally looked to RapidShare to get ideas for functionality for Hotfile?

A. Yes, pretty fair to say that, yes.
Q. Was there somebody that had responsibility for analyzing the RapidShare functionalities to determine whether some of them might be appropriate for Hotfile?
A. Well, I don't think that anybody was officially given or -- this task, or -- but I would say that Rumen Stoyanov would normally look at the competition.
Q. And what about yourself?
MR. THOMPSON: Objection, vague.
A. Probably, yes, I would.
BY MR. FABRIZIO:
Q. Other than the people you've already identified, is there anybody else that worked with you on Hotfile functionality design?
A. No, I won't say so.
Q. Okay. Turning to another area you identified, which was website design.
A. Yes.
Q. Did you work -- did you personally work on the website design?
A. I'm not a designer. I might fix some small visual things, but I won't say that I'm working on the design.
Q. Okay. Who worked on the design of the Hotfile website?
A. The initial Hotfile design was pretty simple, and I would say that only the logo was developed by an

actual designer; that would be an external contractor. And the rest, to the extent there was design, was done by Diyan, and maybe --

Q. Mr. Chuburov?

A. Yes. And there could be my help there, but I won't say it would be substantial.

Q. Who was the outside contractor that designed the logo, the initial logo?

A. A friend of mine. His name is Nikolai Tenev.

Q. Can you spell, please?

A. N-I-K-O-L-A-I, T-E-N-E-V.

Q. Was Mr. Tenev a designer by trade?

A. Sorry?

Q. Was his business designing things like logos?

A. Yes. He's a web designer.

Q. Okay. You said the initial design was pretty simple. Did there come a time when the site was redesigned?

A. Yes, there was a time.

Q. When was that?

A. I'm afraid that my memories are not very clear in time, but I would say somewhere in the beginning 2010.

Q. Why was the site redesigned?

A. I can't think of a particular reason besides that we wanted to make it looking more professional or attractive and better, generally better.

Q. And you said "we"; who is the "we" in your sentence? Did that include you?
MR. THOMPSON: Objection, compound.
BY MR. FABRIZIO:
Q. Well, let me ask the question this way: Who participated in the decision to redesign the Hotfile website in the beginning of 2010?
A. It was probably me, Rumen Stoyanov and Atanas Vangelov.
Q. Do you, Mr. Stoyanov, and Mr. Vangelov have an understanding as to which responsibilities each of you will take primary -- let me rephrase the question.
Did you, Mr. Stoyanov, and Mr. Vangelov have an allocation of responsibilities among yourselves with regard to the Hotfile system?
MR. THOMPSON: Objection, vague and overbroad.
A. There are some principal understandings, but they're not really hardly defined.
BY MR. FABRIZIO:
Q. What are those understandings?
A. I would generally cover everything that goes on the technical part. Rumen would be normally responsible for finances, and I would say that he's a bit more involved in day-to-day operations. And Atanas Vangelov would be generally -- would generally deal with potential investors, advertising on the site, to the extent we

have it, and some communication, just -- some external contractors, people.

Q. But you said the roles are not particularly -- are not strictly defined? Is that correct?

MR. THOMPSON: Objection, vague.

A. I won't say that they are strictly defined, yes.

BY MR. FABRIZIO:

Q. Do you have any role in the day-to-day operations of the Hotfile website?

MR. THOMPSON: Objection. Overbroad, vague.

A. I wouldn't say day to day, because days can pass -- a lot of days can pass without me doing anything. But I have some, I would say, recurring duties.

BY MR. FABRIZIO:

Q. What are your recurring duties?

A. I am responsible for making the payments to the affiliates every Monday.

Q. Who's paying the affiliates today, as you sit here?

MR. THOMPSON: Objection, assumes facts.

A. Today is a long day.

BY MR. FABRIZIO:

Q. Understand. What other responsibilities do you have that are recurring?

A. I wouldn't say that there is anything. It really depends if I -- I have certain duties to oversee, the

technical part. If I manage to do it in a way that nobody bothers me for a month, it's okay. If something breaks down, I can work every day, but I won't say recurring every day.

Q. Okay. Was there anybody else that works on the web design of the Hotfile site, other than the people you've identified?

A. No.

Q. Okay. You identified general operations as another general area.

A. Yes.

Q. Who were the people that worked on the general operations of the Hotfile system?

MR. THOMPSON: Do you mean currently, or from the beginning?

BY MR. FABRIZIO:

Q. Is there a difference?

A. I would say so, yes.

BY MR. FABRIZIO:

Q. Okay. So let's start at the beginning and then work forward to currently.

A. First I would like to mention that in my understanding, general operations begin when the site becomes public. But before that, I would consider everything development. Does that sound reasonable?

Q. I'm not sure I understood what you just said, so why

don't you say it again.
A. General operations would be -- begin once the site starts operating. Everything else before that is development, in my understanding.
Q. Okay.
A. Do you agree?
Q. That's fair enough.
A. So, from the beginning or almost from the beginning, Andre Ianakov would be responsible for communications with users, and handling DMCA takedown notices.
Q. Is Mr. Ianakov a manager?
MR. THOMPSON: Objection, vague. Calls for a legal conclusion.
BY MR. FABRIZIO:
Q. Let me ask it this way: Does Mr. Ianakov have a title at Hotfile?
A. I don't think anybody at Hotfile really has a title.
Q. Is Mr. Ianakov employed by Hotfile Corporation?
A. He's employed by Blue Ant Ltd., but works -- he does work for Hotfile Corporation, yes.
Q. To your knowledge, does he perform work for any other company?
A. I am not aware of any.
Q. And you said communicates with users and DMCA takedown notices. Does Mr. Ianakov have any other general

operations responsibilities?

A. I don't think anything else would be -- could be defined as his responsibility.

MR. THOMPSON: Mr. Fabrizio, perhaps you should get the spelling, for the record. I think you're pronouncing it a little differently than the witness is.

MR. FABRIZIO: Okay. I have the spelling for Ianakov as I-A-N-A-K-O-V.

A. That's one of the valid spellings.

BY MR. FABRIZIO:

Q. Does anybody else have responsibility for general operations of Hotfile?

A. At a certain point, Stanislav Manov.

Q. And that's S-T-A-N-I-S-L-A-V, M-A-N-O-V?

A. Exactly.

Q. When did Mr. Manov assume responsibilities for general operations?

A. He started helping Andre Ianakov in spring 2010, I believe.

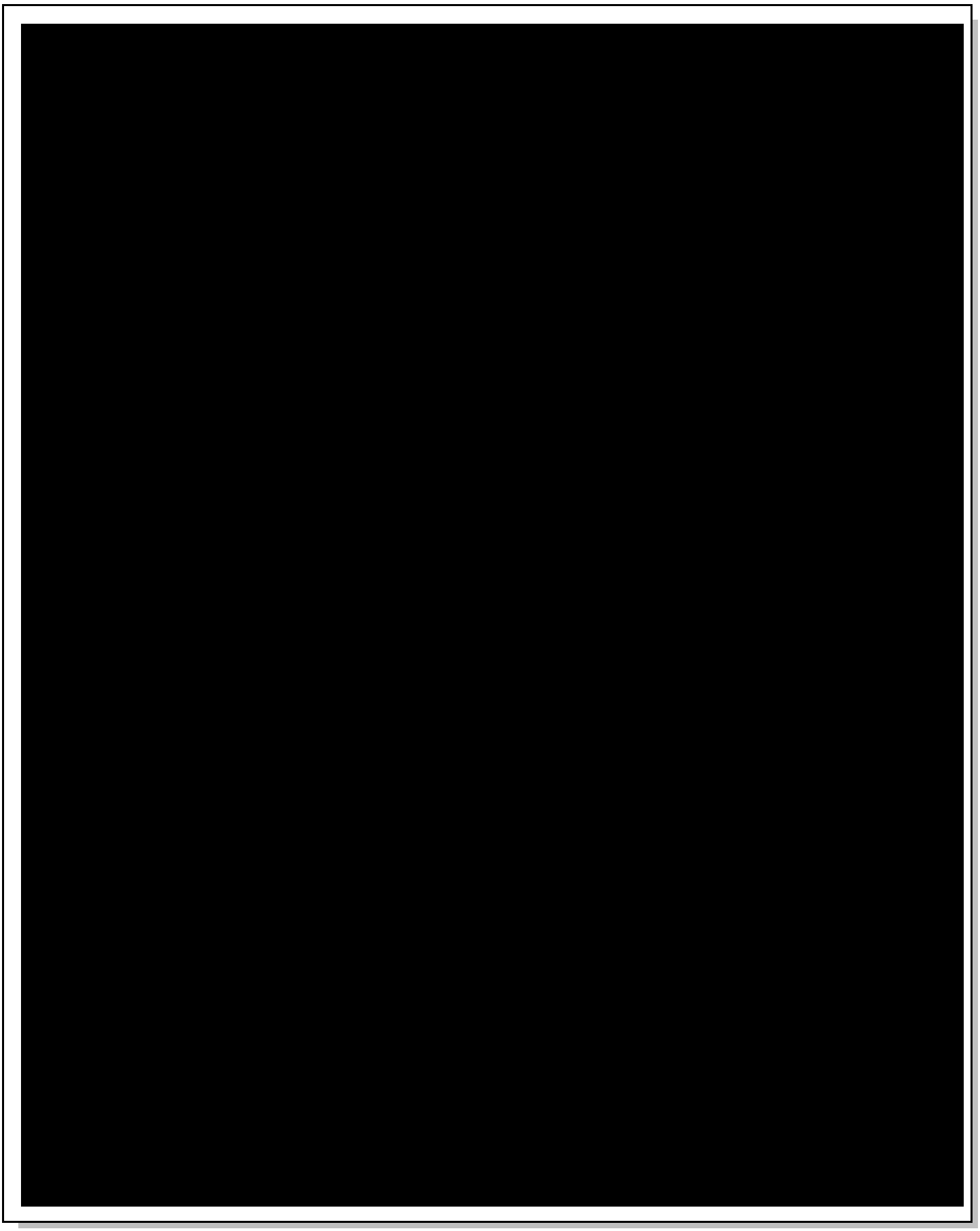
Q. So prior to spring of 2010, it was just Mr. Ianakov handling operations?

A. I'm not sure of what your definition of "operations" is. He was handling communications with users and, again, DMCA takedown notices.

Q. Did Mr. Ianakov report to anybody else?

MR. THOMPSON: Objection, vague.
A. I don't think he -- we have strictly defined reporting structure, but it is my impression that he would normally report to Rumen Stoyanov. And of course technical problems would be reported to me.
BY MR. FABRIZIO:
Q. Professionally, you were Mr. Ianakov's superior?
MR. THOMPSON: Objection, vague and ambiguous.
A. I consider myself superior to Mr. Ianakov.
BY MR. FABRIZIO:
Q. If you gave him instructions about things to do with Hotfile, you would expect him to carry them out because you told him to, correct?
MR. THOMPSON: Objection, overbroad.
A. I would expect so. But to the extent if he thinks that instruction I'm giving him he's considering unimportant, he show choice, he would probably ask if I conferred with Rumen and probably Atanas.
BY MR. FABRIZIO:
Q. Okay. Other than Mr. Ianakov and eventually Mr. Manov, has anybody else worked on the general operations of Hotfile?
MR. THOMPSON: Objection, vague.
A. It really depends what you -- how you define "general operations."

BY MR. FABRIZIO:
Q. Well, how do you define "general operations"?
A. This is my first time defining general operations, but I would say things that had to be done day to day.
Q. All right. With that definition, other than Mr. Ianakov and Manov, was there anybody else?
A. To the extent that Hotfile servers require and required maintenance, and that we would be needing off on provisioning of new servers at first, I was dealing with these tasks. And since Vasil Kolev started working for Hotfile Corp., and the more he -- he started performing most of the these duties.
Q. Okay.
A. And --
Q. Go ahead.
A. And we relied on the data center support or external contractor to perform actual physical server movements, like mounting, replacement, hard drive replacement, and so on.
Q. And who is the person that handled the physical aspects of server replacement or additions?
MR. THOMPSON: Objection, assumes facts.
A. During the periods we would normally use the normal support of the data center, I can't really say any names, but there are probably documents --



contract is with Hotfile Limited?
MR. THOMPSON: Objection, vague.
BY MR. FABRIZIO:
Q. Well, let me ask it this way: Was that an accurate statement, when you made it?
A. It is. It was.
Q. Okay. And is it accurate today?
A. It is.
Q. So Lemuria has a contract with Hotfile Limited to provide web hosting services for the Hotfile website, correct?
A. Lemuria has a contract with Hotfile Limited to the extent that Hotfile Limited -- to the extent that Hotfile Limited is acting on behalf of Hotfile Corp.
(Reporter clarification.)
MR. THOMPSON: "... acting on behalf of Hotfile Corp."
BY MR. FABRIZIO:
Q. And in paragraph 5, what did you mean by a "contract"?
MR. THOMPSON: I object to calling for a legal conclusion.
MR. FABRIZIO: Well, the witness is -- every time I use the term "contract," he expresses a misunderstanding of what I mean. So I want to just get a common understanding.
MR. THOMPSON: Same objection.
You can answer if you understand the question.
A. I understand the question, and beyond the fact that

there is no written contract, I think that -- my understanding was that verbal or other kind of understanding is still a contract.

BY MR. FABRIZIO:

Q. Okay, I just want to confirm: So there is no written contract between Lemuria and Hotfile Limited?

A. I don't know anything about any such contract.

Q. Okay. Did Lemuria and Hotfile Limited reach an agreement under the terms as to which Lemuria would provide web hosting services to Hotfile?

MR. THOMPSON: Objection, vague, calls for a legal conclusion.

A. Since the two companies are doing business, I think it's fair to say that they have reached an agreement.

BY MR. FABRIZIO:

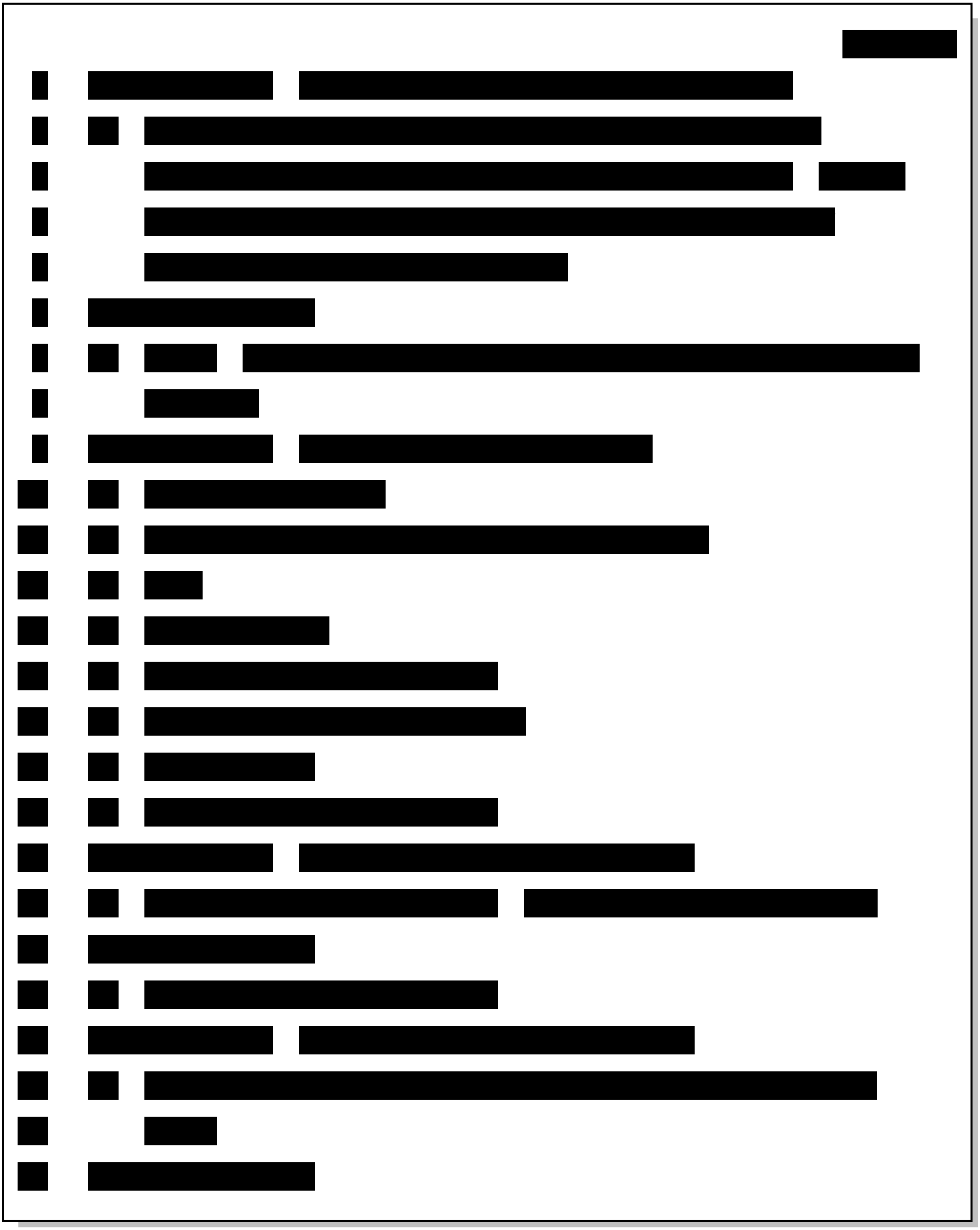
Q. Well, I guess what I'm trying to get at is, was there a point in time when Hotfile Limited and Lemuria sat down and said, "Here's what our agreement is," and specified the terms of their agreement?

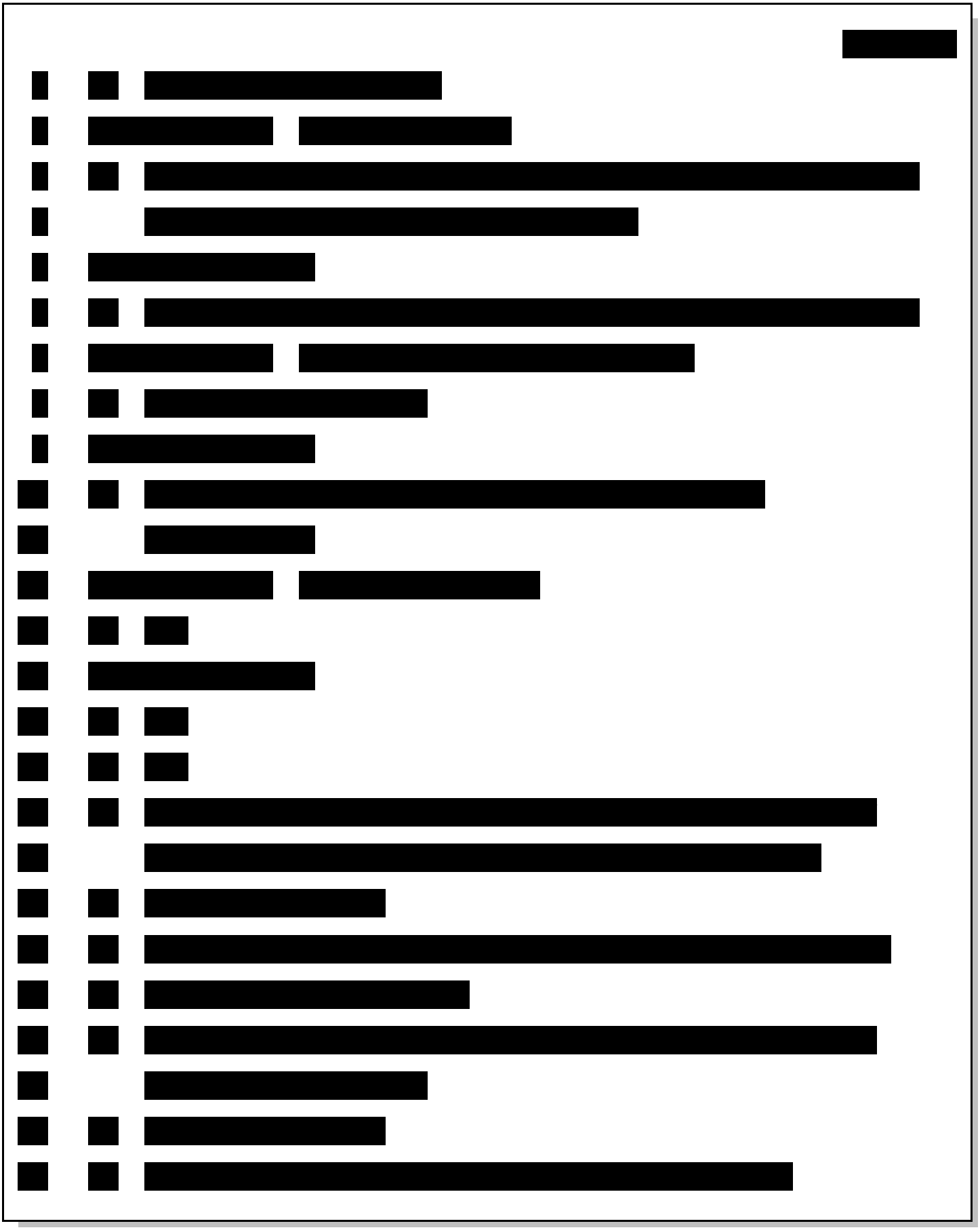
MR. THOMPSON: Objection, vague.

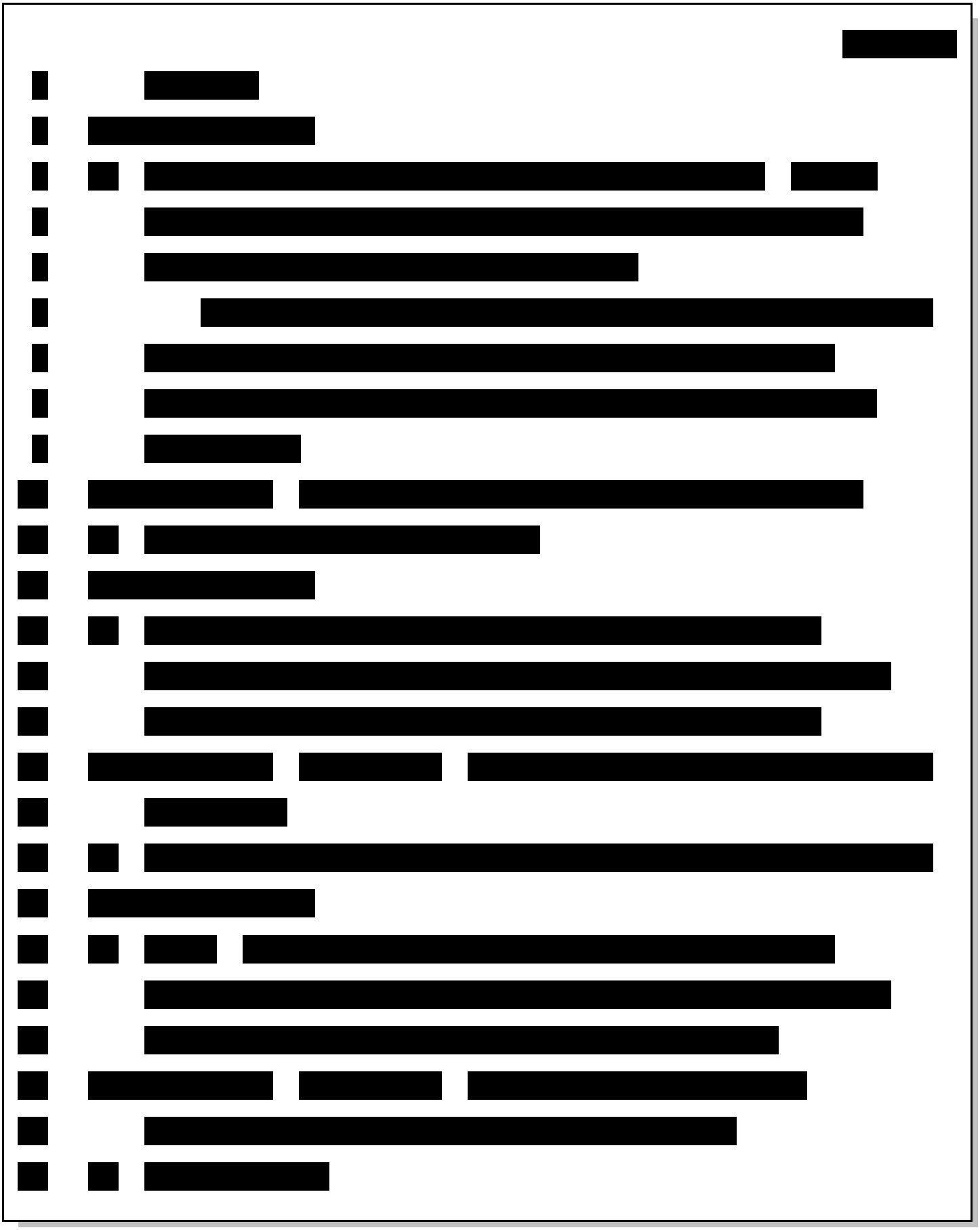
A. It was more like Hotfile Corp defining the terms of agreement and then Hotfile implementing them with their contract with Lemuria.

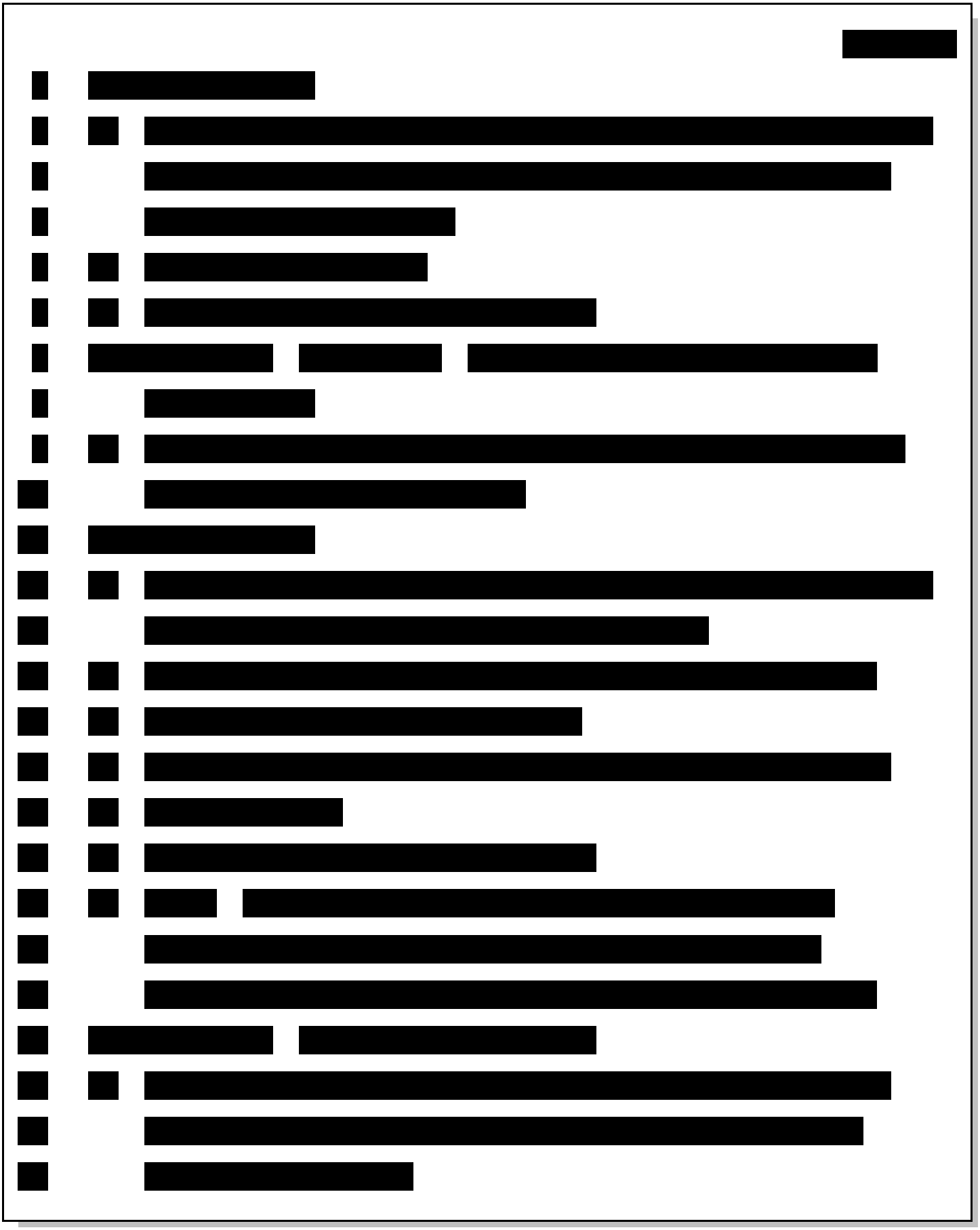
BY MR. FABRIZIO:

Q. I'm not quite sure I understood your answer.









HIGHLY CONFIDENTIAL
CERTIFICATE OF DEPONENT

I, ANTON TITOV, hereby certify that I have read the foregoing pages of my deposition of testimony taken in these proceedings on Monday, December 5, 2011, and, with the exception of the changes listed on the next page and/or corrections, if any, find them to be a true and accurate transcription thereof.

Signed: .....

Name: ANTON TITOV

Date: 1/20/2012

HIGHLY CONFIDENTIAL

E R R A T A

Deposition of ANTON TITOV

| Page/Line No. | Description | Reason for change |
|---|---|---|
| 14:18 | Eitinerum --> Itinerum | Correct transcription |
| 14:20 | EITINERUM --> ITINERUM | Correct transcription |
| 14:21 | internet --> intranet | Correct transcription |
| 14:24 | all in shelves --> online shops | Correct transcription |
| 15:7 | webcasting --> webhosting | Correct transcription |
| 15:10 | webcasting --> webhosting | Correct transcription |
| 18:6 | Ilan --> Elan | Correct transcription |
| 20:9 | Manix: M-A-N-I-X -> Maniax: M-A-N-I-A-X | Correct trans. |
| 35:16 | unimportant --> important | Correct transcription |
| 35:17 | he show choice --> he may choose | Clarify record |
| 37:6 | Stillings --> Stallings | Correct transcription |
| 37:8 | S-T-I-L-L-I-N-G-S --> S-T-A-L-L-I-N-G-S | Correct trans. |
| 38:3 | qualification --> collocation | Correct transcription |
| 39:2 | Equinix bandwith --> Equinix, bandwith | Clarify record |

Signed: .....

Name: ANTON TITOV

Date: .....

HIGHLY CONFIDENTIAL

E R R A T A

Deposition of ANTON TITOV

| Page/Line No. | Description | Reason for change |
|---|---|---|
| 44:1 | IT --> IP | Correct transcription |
| 46:16 | with the grade, --> would degrade | Correct trans. |
| 46:17 | the traffic flows into there from --> when the traffic flows into their network from | Correct transcription |
| 47:3 | We can say any old --> We cannot say we want | Correct trans. |
| 57:23 | costing --> hosting | Correct transcription |
| 61:15 | [redacted] | Correct transcription |
| 65:24 | Konstantin Lucyan --> Constantin Luchian | Correct trans. |
| 77:11 | lemur --> Lima | Correct transcription |
| 89:6 | SA --> Yes | Correct transcription |
| 89:21 | I know what --> I don't know what | Correct trans. |
| 99:11 | Panek --> Penev | Correct transcription |
| 109:23 | Chubarov --> Chuburov | Correct transcription |

Signed: .....

Name: ANTON TITOV

Date: .....

HIGHLY CONFIDENTIAL

E R R A T A

Deposition of ANTON TITOV

| Page/Line No. | Description | Reason for change |
|---|---|---|
| [redacted] | | |
| | | Conform to facts |
| 111:15 | SecPay --> SegPay | Correct transcription |
| 119:5 | Limewire --> Limelight | Correct transcription |
| 119:13 | Limewire --> Limelight | Correct transcription |
| 126:10 | I was there --> I checked | Correct transcription |
| 128:17 | [redacted] | |
| | [redacted] | Correct transcription |
| 128:18 | enforce --> in force | Correct transcription |
| 138:8 | Ignitov --> Ignatov | Correct transcription |
| 138:10 | I-G-N-I-T-O-V --> I-G-N-A-T-O-V | Correct transcription |
| 65:24, 66:3, 66:8, 67:4, 68:3, | Lucyan --> Luchian | Correct trans. |
| 68:16, 70:13, 70:19, 70:21, 71:13, 71:18, 72:3, 72:7, 72:9, | | " |
| 74:3, 75:10, 75:18, 76:4, 76:5, 76:8 | | " |
| 72:17 | Lucyan's --> Luchian's | Correct transcription |

Signed: .....

Name: ANTON TITOV

Date: 11/20/2012

HIGHLY CONFIDENTIAL
CERTIFICATE OF COURT REPORTER

I, Fiona Farson, with TSG Reporting, hereby certify that the testimony of the witness Anton Titov in the foregoing transcript, taken on Monday, December 5, 2011 was reported by me in machine shorthand and was thereafter transcribed by me; and that the foregoing transcript is a true and accurate verbatim record of the said testimony.

I further certify that I am not a relative, employee, counsel or financially involved with any of the parties to the within cause, nor am I an employee or relative of any counsel for the parties, nor am I in any way interested in the outcome of the within cause.

Signed: .....

Fiona Farson

Dated: December 15th, 2011

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 11-20427-WILLIAMS/TURNOFF

- - - - - - - - - - - - - - - - - - - - - - - - - - - -

DISNEY ENTERPRISES, INC., TWENTIETH CENTURY FOX FILM CORPORATION, UNIVERSAL CITY STUDIOS PRODUCTIONS LLLP, COLUMBIA PICTURES INDUSTRIES, INC., and WARNER BROS. ENTERTAINMENT, INC.,

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VOLUME II
H I G H L Y  C O N F I D E N T I A L
(Pursuant to protective order, the following transcript has been designated highly confidential)

30(b)(6) DEPOSITION OF ANTON TITOV
Radisson Blu Hotel
Sofia, Bulgaria
Tuesday, December 6, 2011
AT: 9:10 a.m.
Job No: 44175

A P P E A R A N C E S

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Also present:

Court reporter:

Fiona Farson
TSG Reporting

Videographer:

Simon Rutson
TSG Reporting

Interpreter:

Assist. Prof. Boris Naimushin, Ph.D.

Technical expert:

Kelly Truelove

A. I don't know for a fact, but it's my belief that a compatible statement was there since the beginning.
Q. A comparable statement? What do you consider a comparable statement?
A. A statement that will carry all -- carry on the same substance, I guess.
Q. Right. Currently, today, in its IP policy page, Hotfile informs users that it has a policy to terminate repeat infringing users, correct?
A. I believe so.
Q. Okay. And when did that IP policy page first appear on Hotfile?
A. I think approximately May or June 2010.
Q. Okay. And before May or June of 2010, where did -- where on its website did Hotfile inform users of a policy to terminate repeat infringers?
A. In terms of service, I think.
MR. FABRIZIO: Okay. I'm asking the court reporter to mark as Titov exhibit 31 a printout from Hotfile terms of service. This is printed from archive.org.
Q. And you will undoubtedly recognize from convention, Mr. Titov, that this reflects an archive.org capture as of February 2010.
(Titov exhibit 31 marked for identification.)
BY MR. FABRIZIO:

Q. My question to you, sir, is going to be: Where in those terms of service does Hotfile inform its users of a policy to terminate repeat infringers?

MR. FABRIZIO: For the record, the witness took a pencil and marked on exhibit 31, so the markings on exhibit 31 are the witness's.

Q. It's perfectly okay, Mr. Titov; the record just needs to reflect that.

A. It's a bit slow. I'm not sure if I...

Q. No problem. Are you ready?

A. Yes.

Q. First of all, do you recognize exhibit 31 as a copy of the terms of service for Hotfile that were in existence in early 2010?

A. I don't have any reason to believe that it's not true.

Q. Okay. And where in exhibit 31 do you believe Hotfile informs its users of a policy to terminate repeat infringers?

A. There is a list of rules on the second page, and one of the paragraphs reads:

"Loading, accommodation, sending by way of e-mail, transmission or publication by other means of information, which offends the rights of some party on all patents, trademarks, commercial secrets, copyrights or other property rights."

And a list of things -- the things that the user is not supposed to do.

Q. All right. And where do you believe Hotfile informs its users of a policy to terminate repeat copyright infringers?

A. I believe that after the -- all the rules are listed, there is a language that says "complaints of the persons breaking our rules are accepted here." Or -- "here" is probably a link.

"Each complaint will be considered, and depending on the results, can lead to the deletion of the Client's account without preliminary prevention."

Q. So it's Hotfile's contention that those two provisions in the terms of use inform Hotfile subscribers that Hotfile has a policy of terminating repeat infringers?

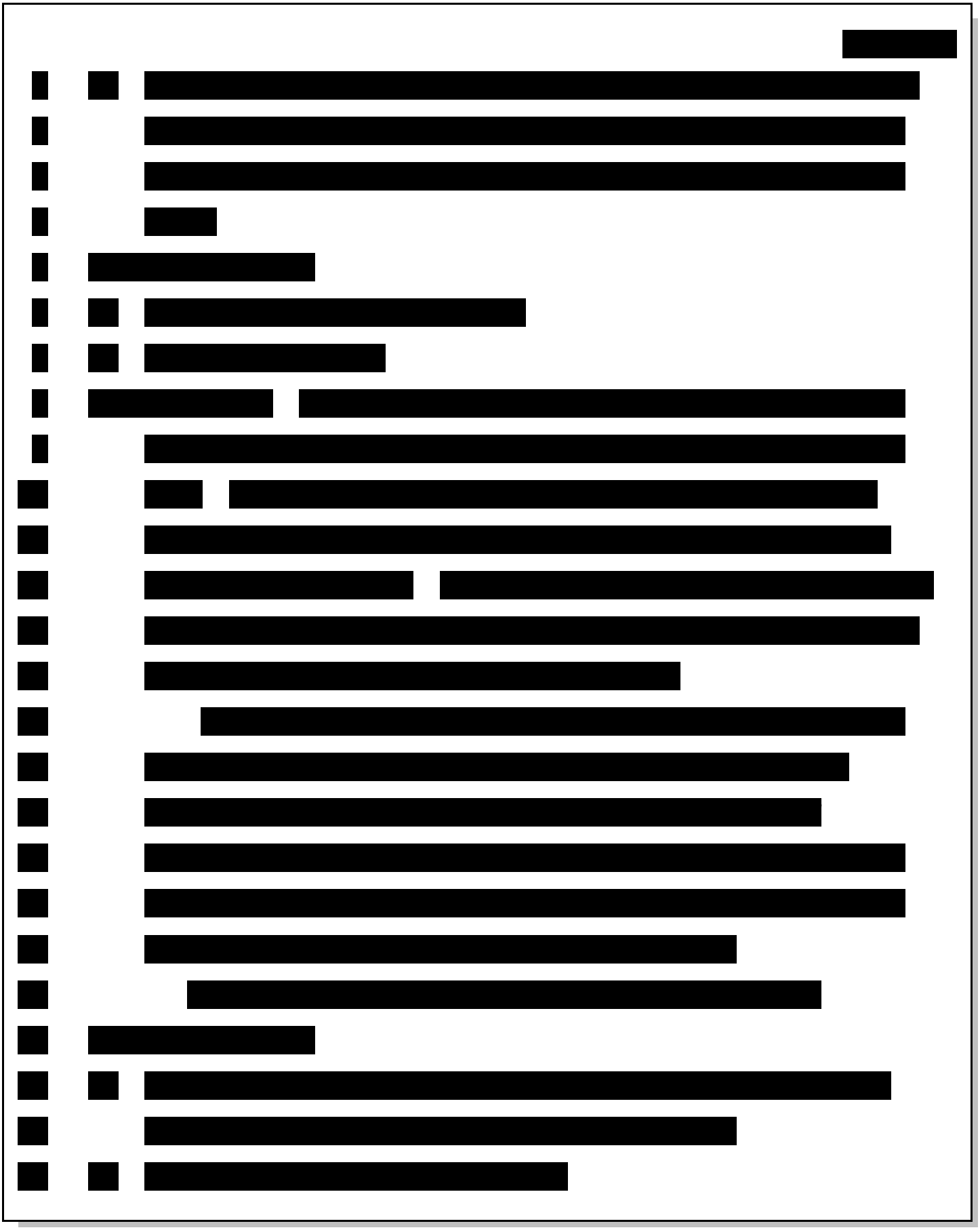
A. I believe so.

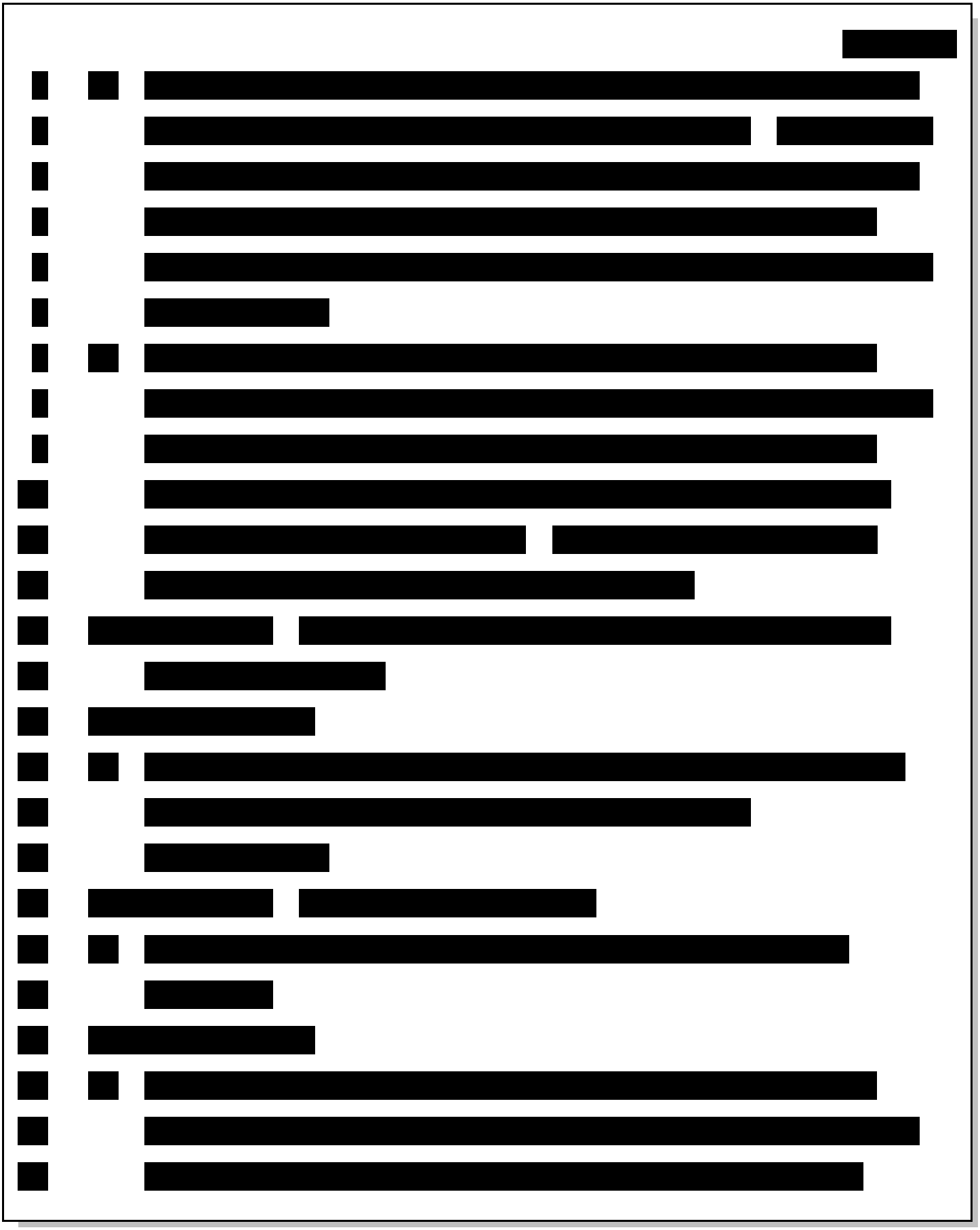
Q. Okay. Is there any other place where you believe Hotfile's -- Hotfile informs users of a policy to terminate repeat infringers, other than the terms of use?

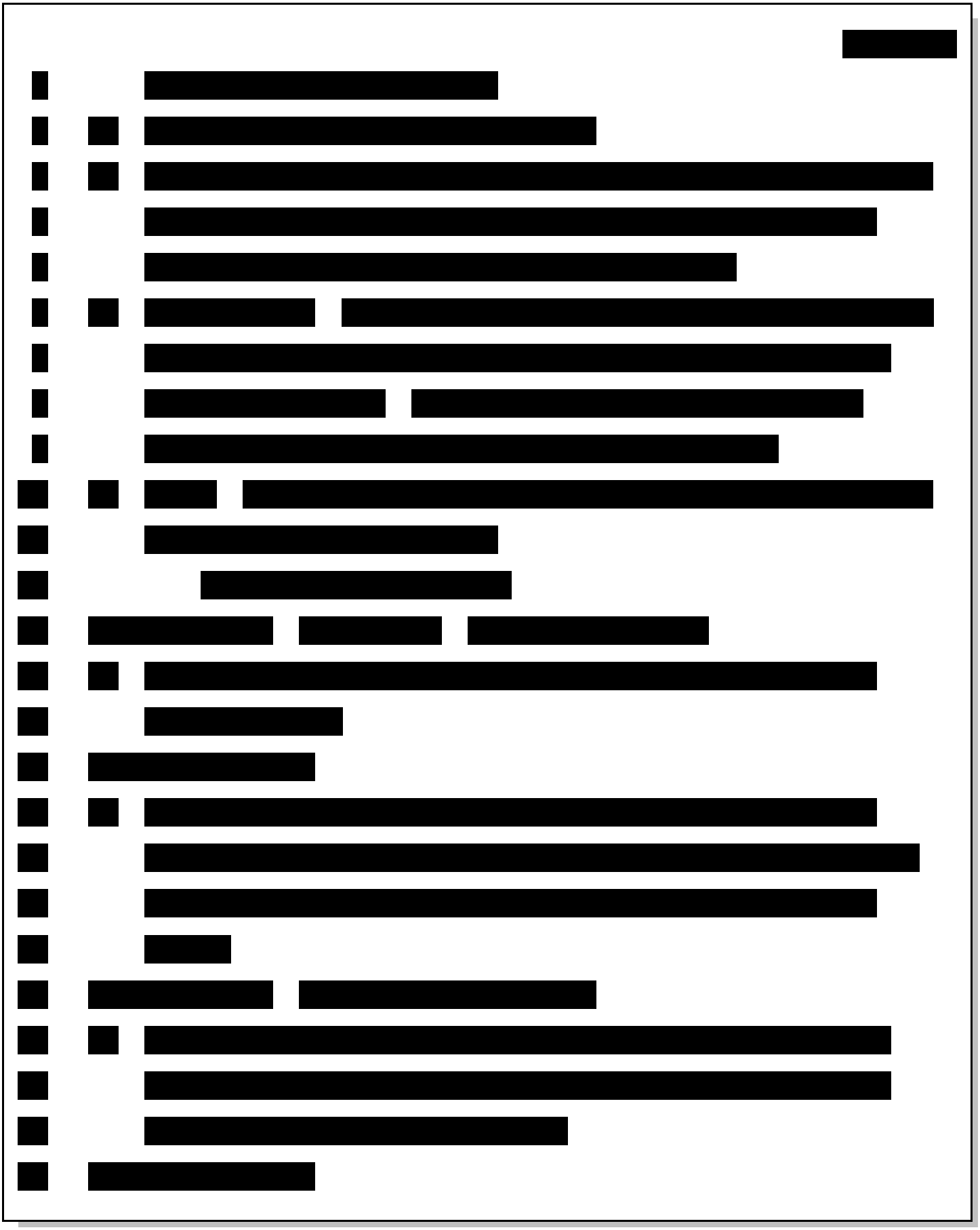
MR. THOMPSON: Vague as to time. Objection.

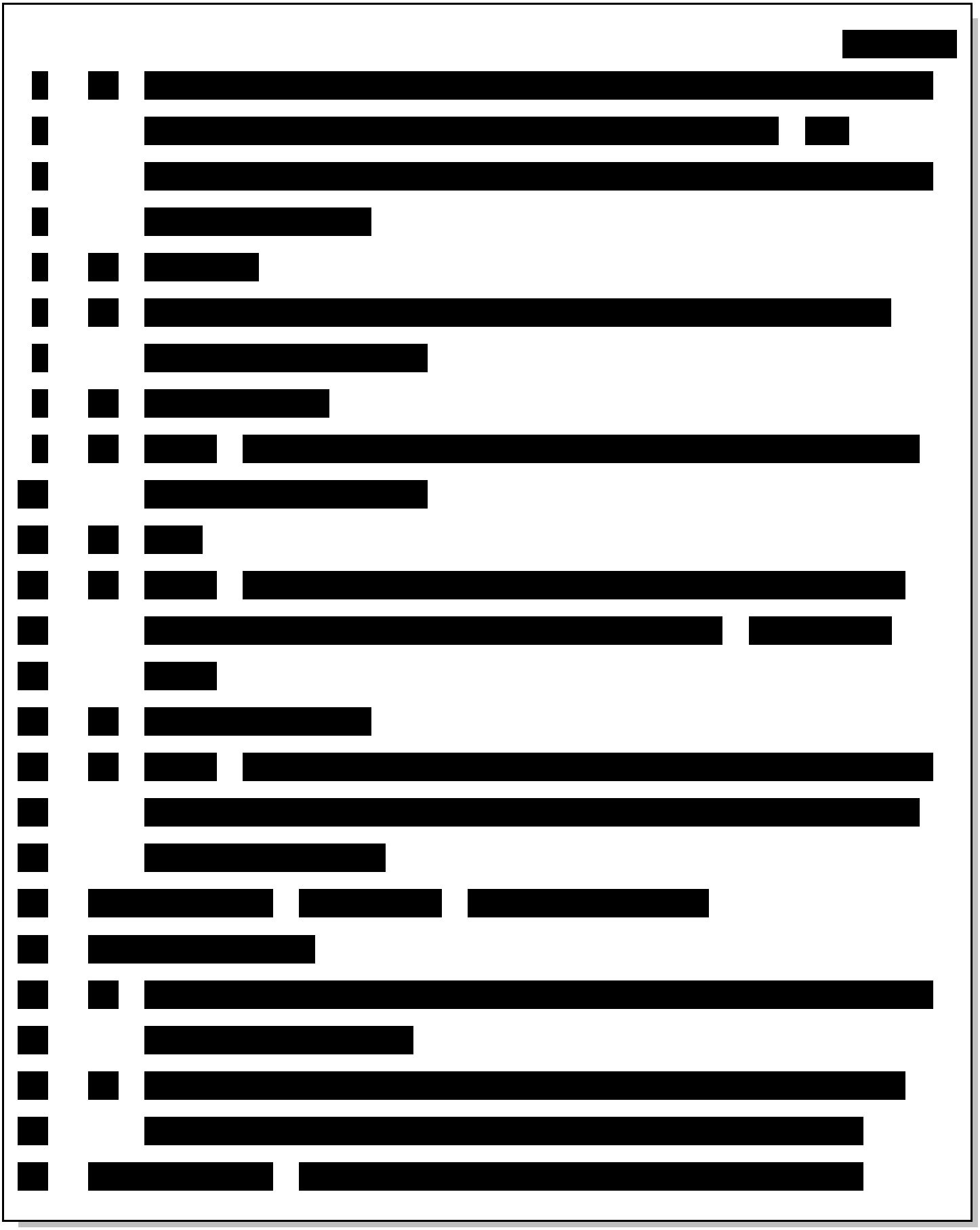
BY MR. FABRIZIO:

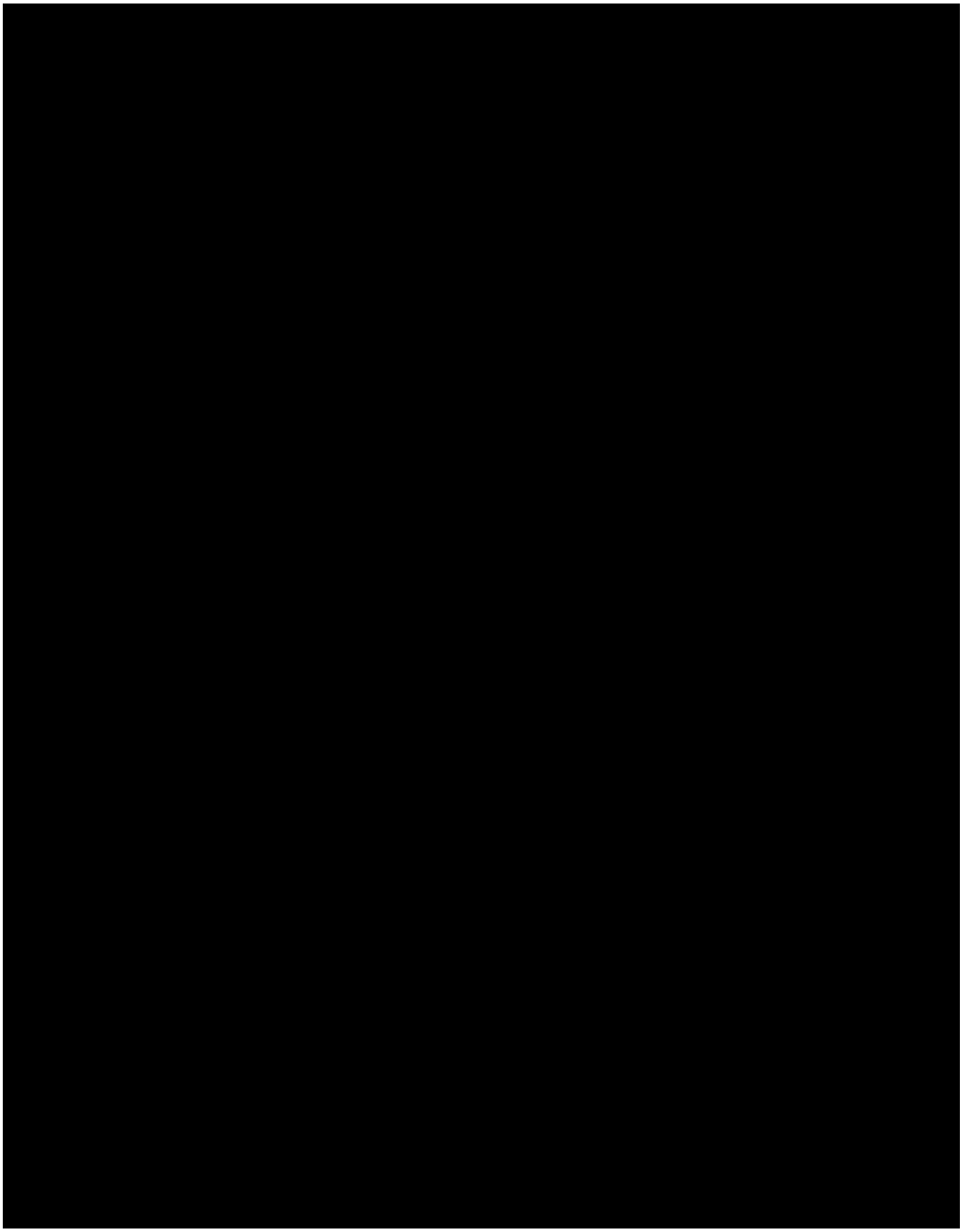
Q. In the period of time prior to Hotfile publishing its IP policy on its website in May or June of 2009, is there any other place, other than the terms of service, where

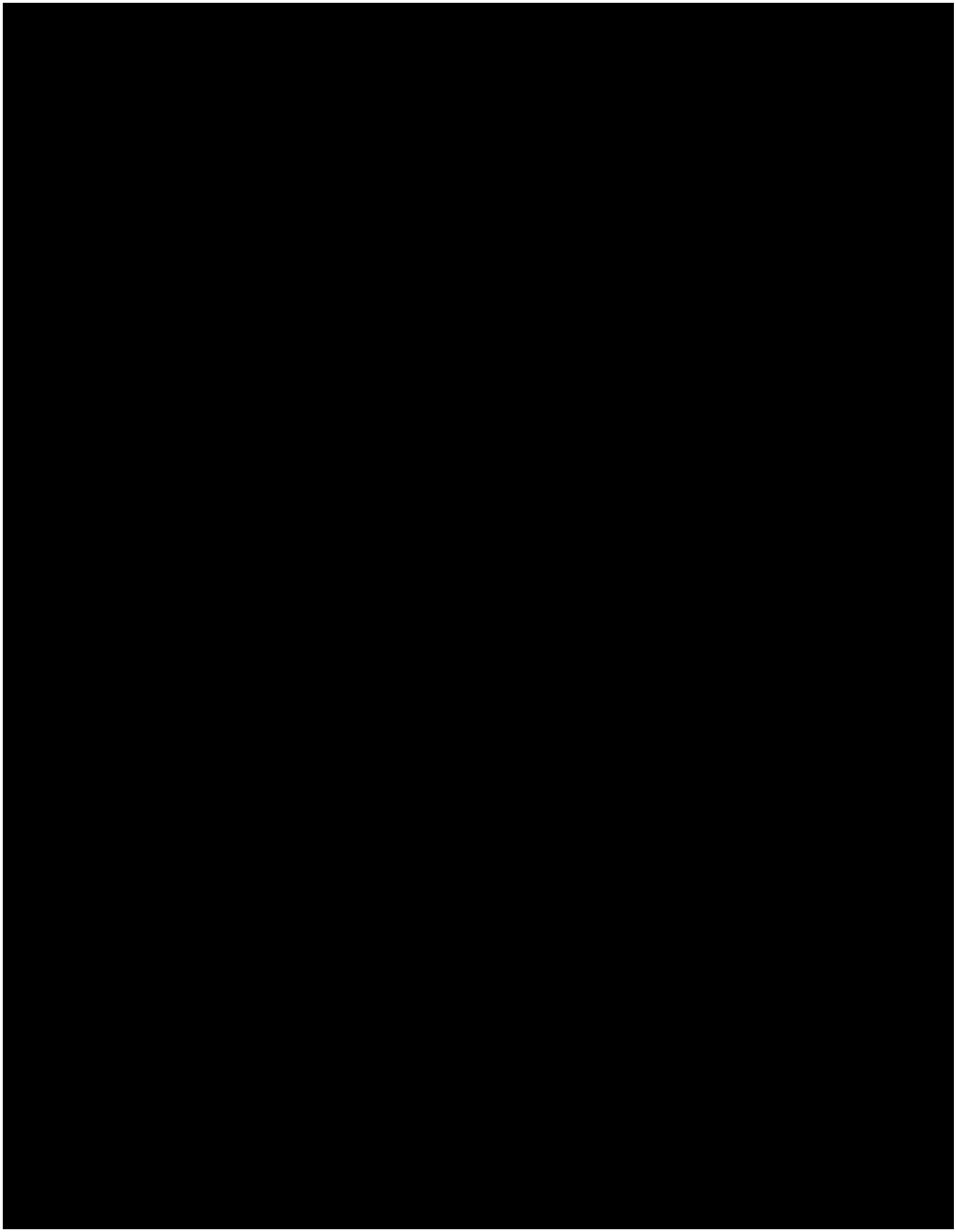


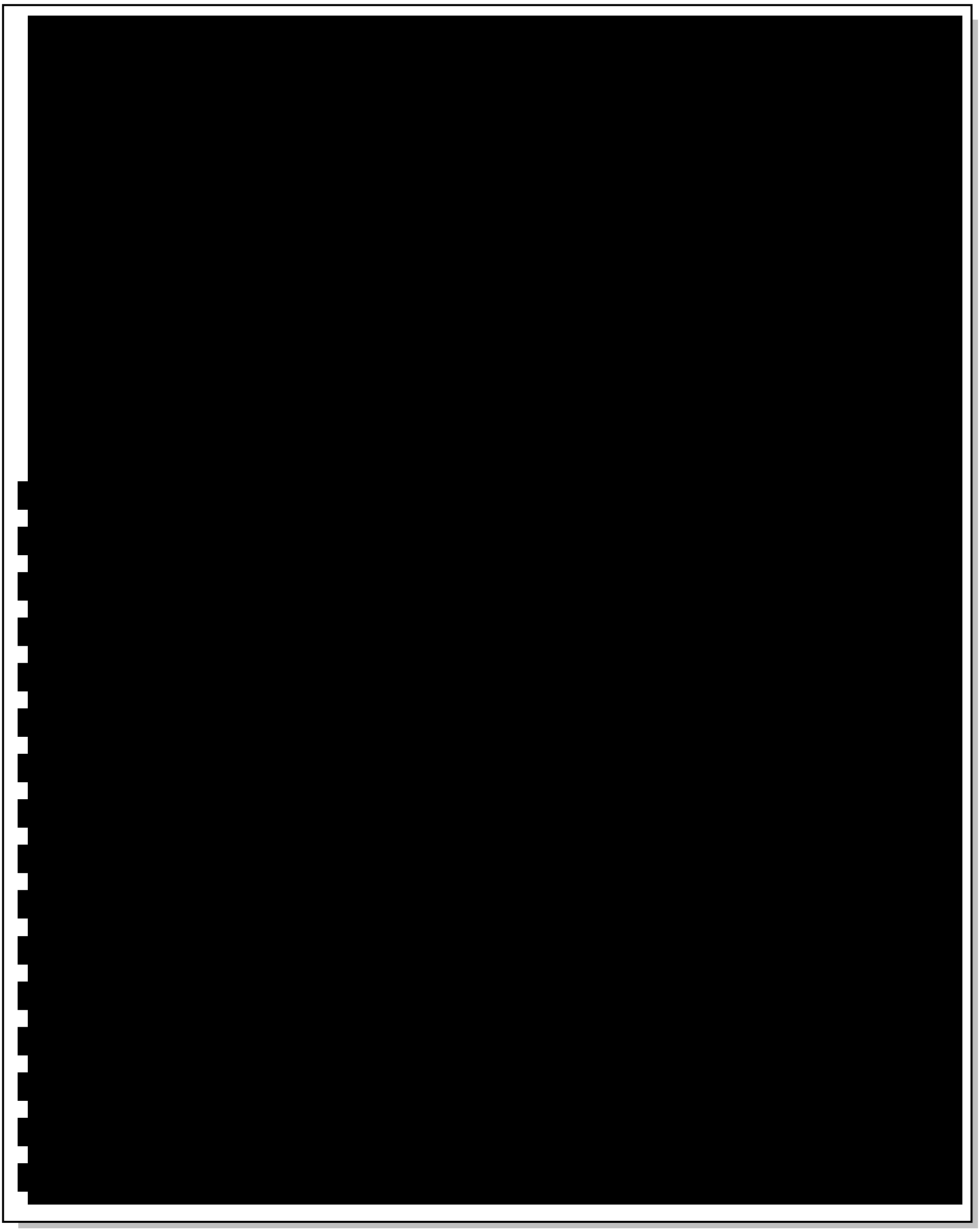


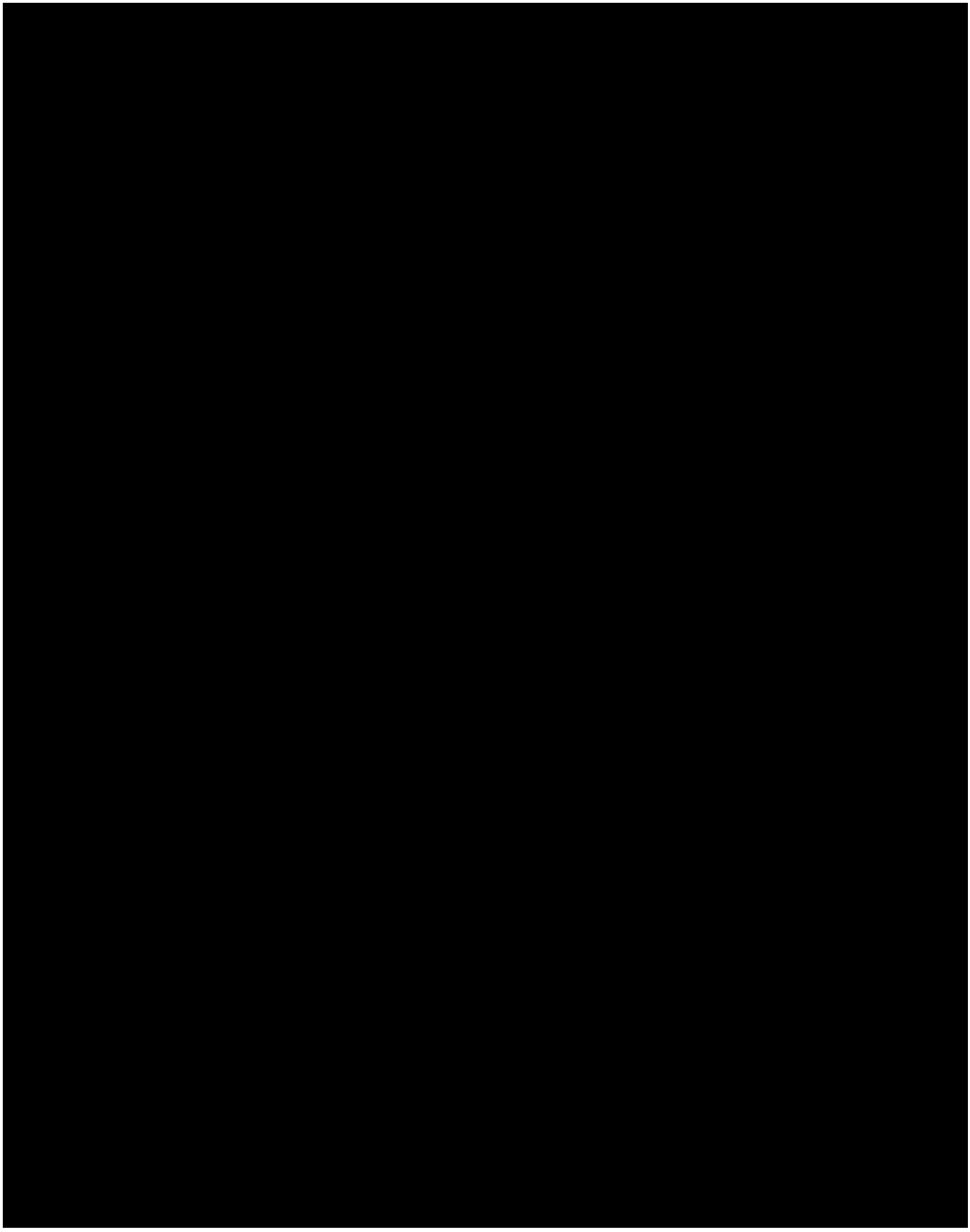


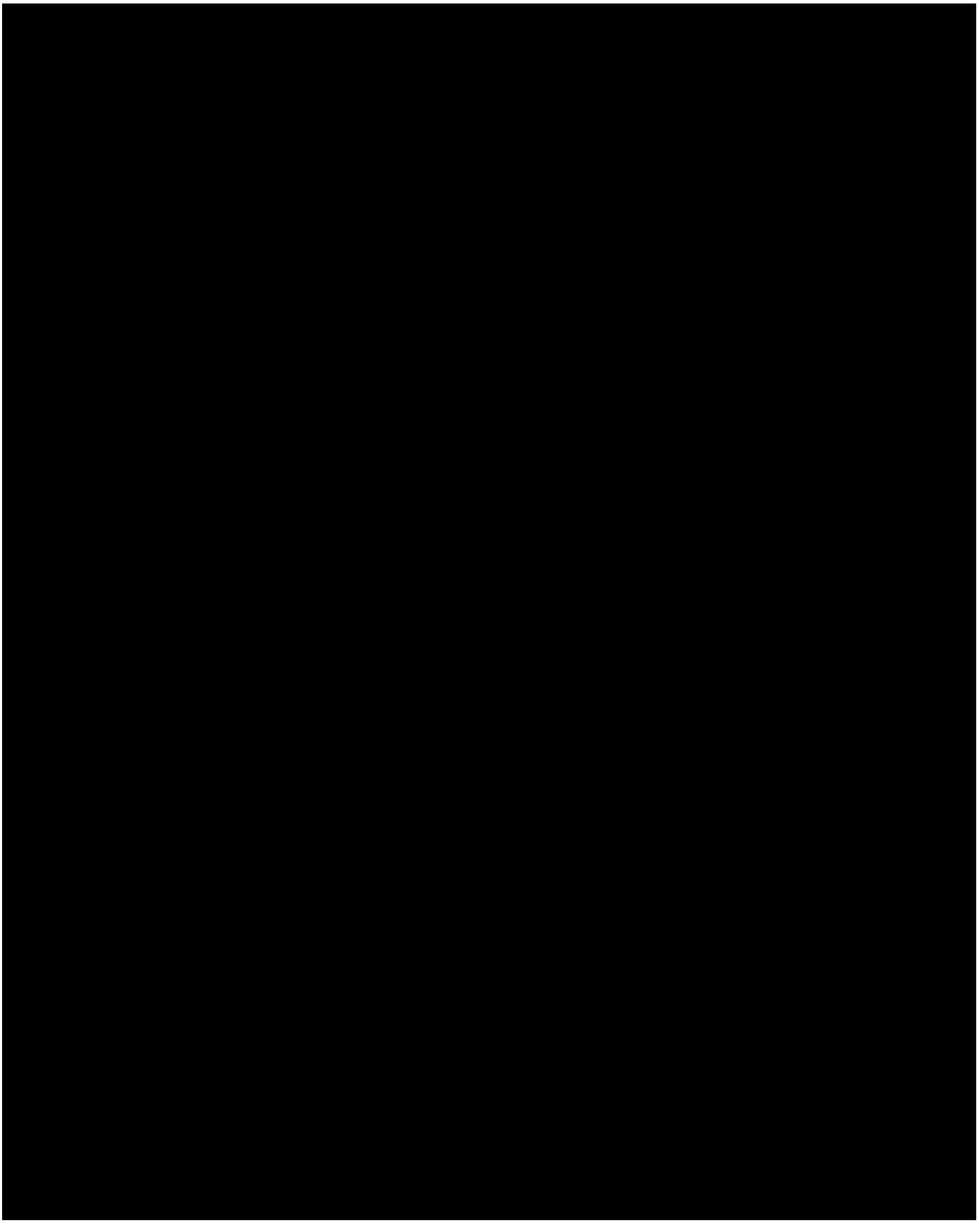


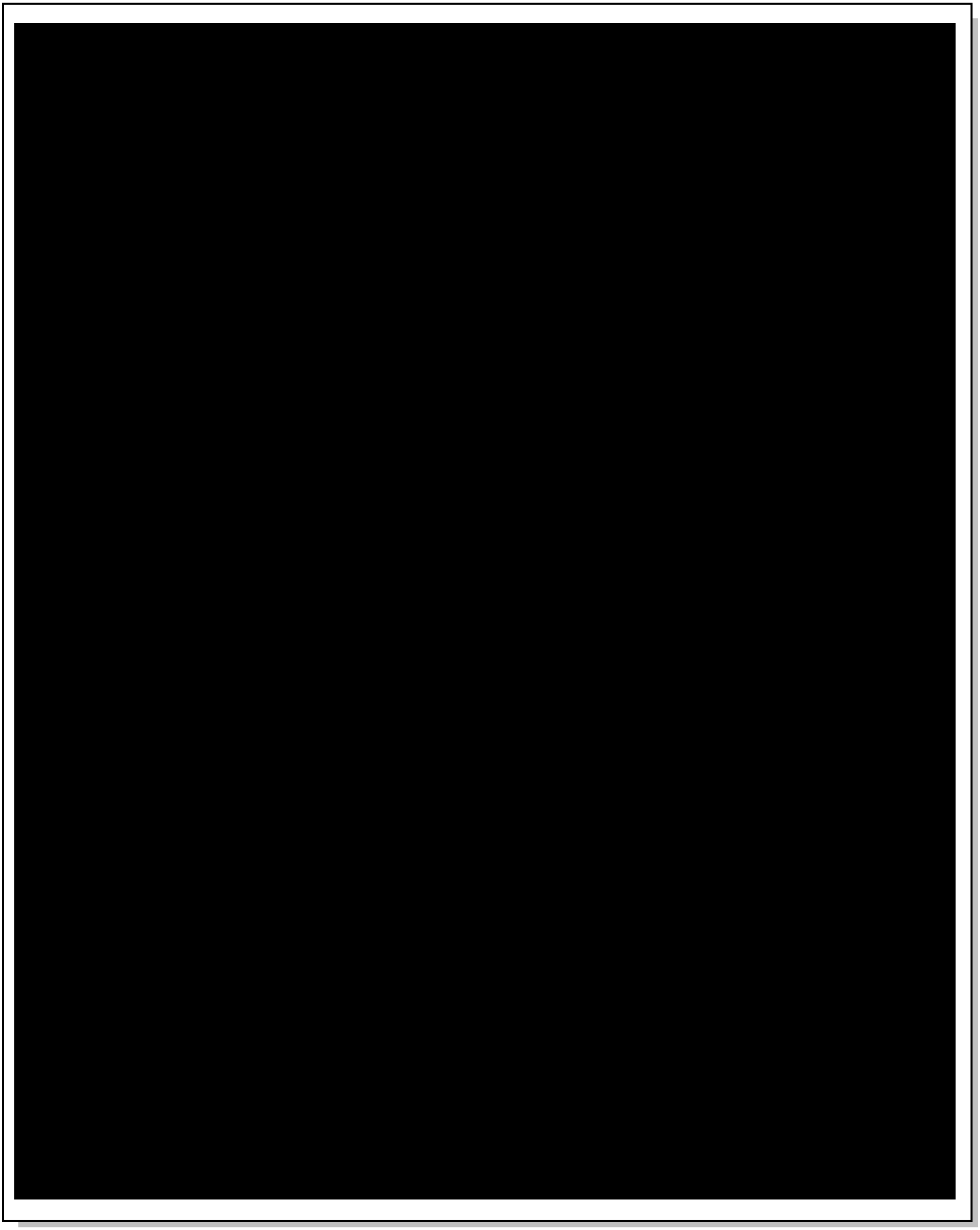


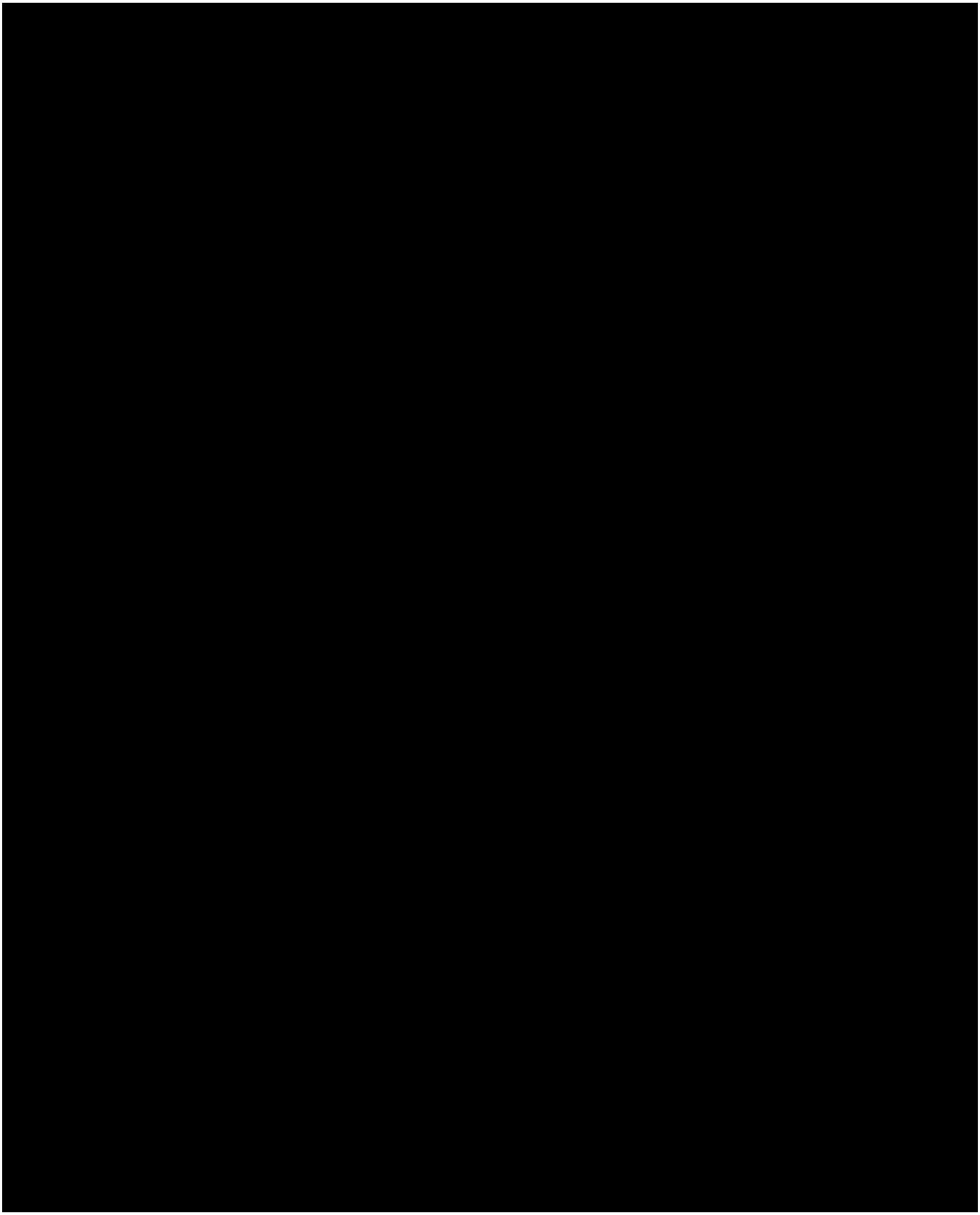


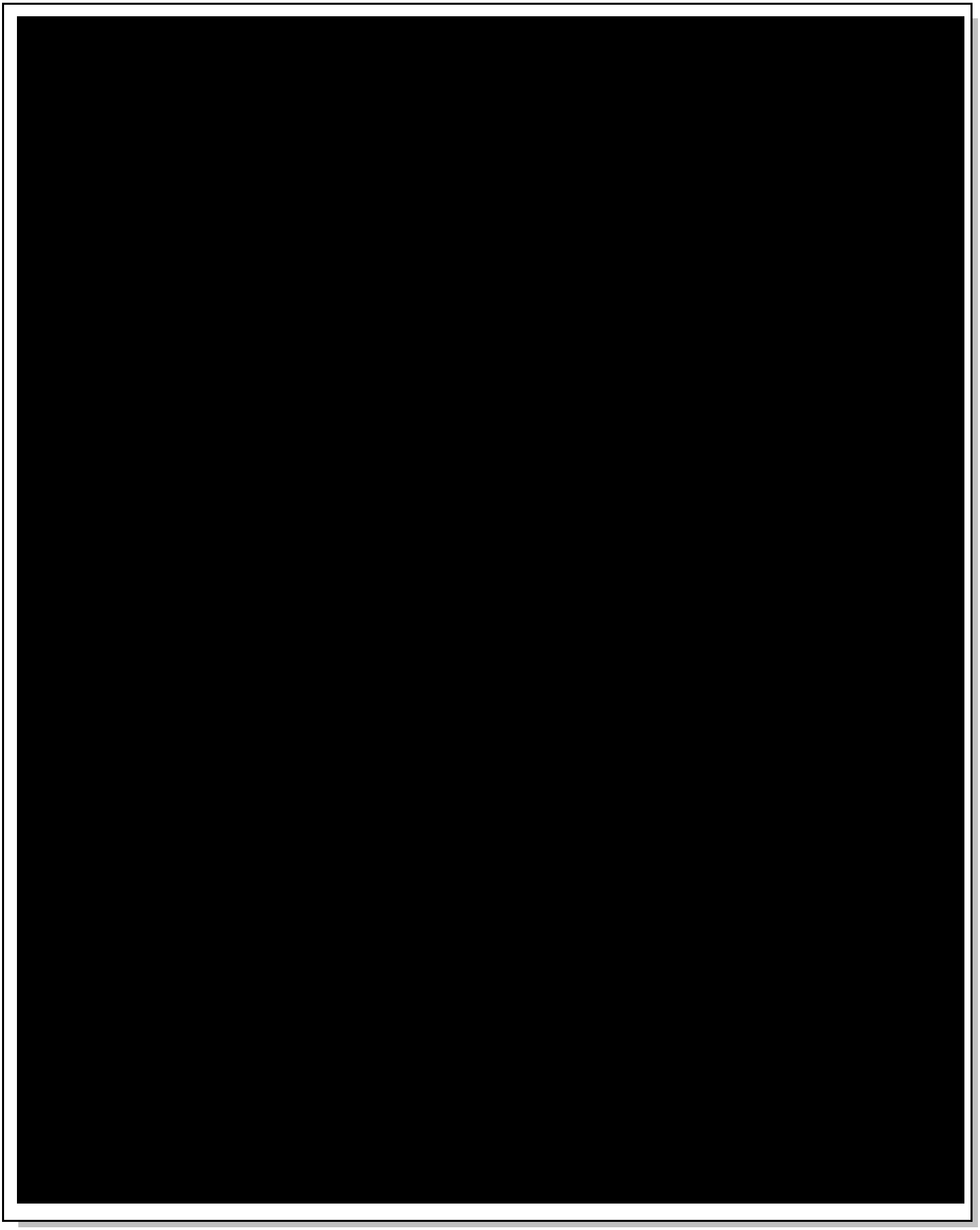


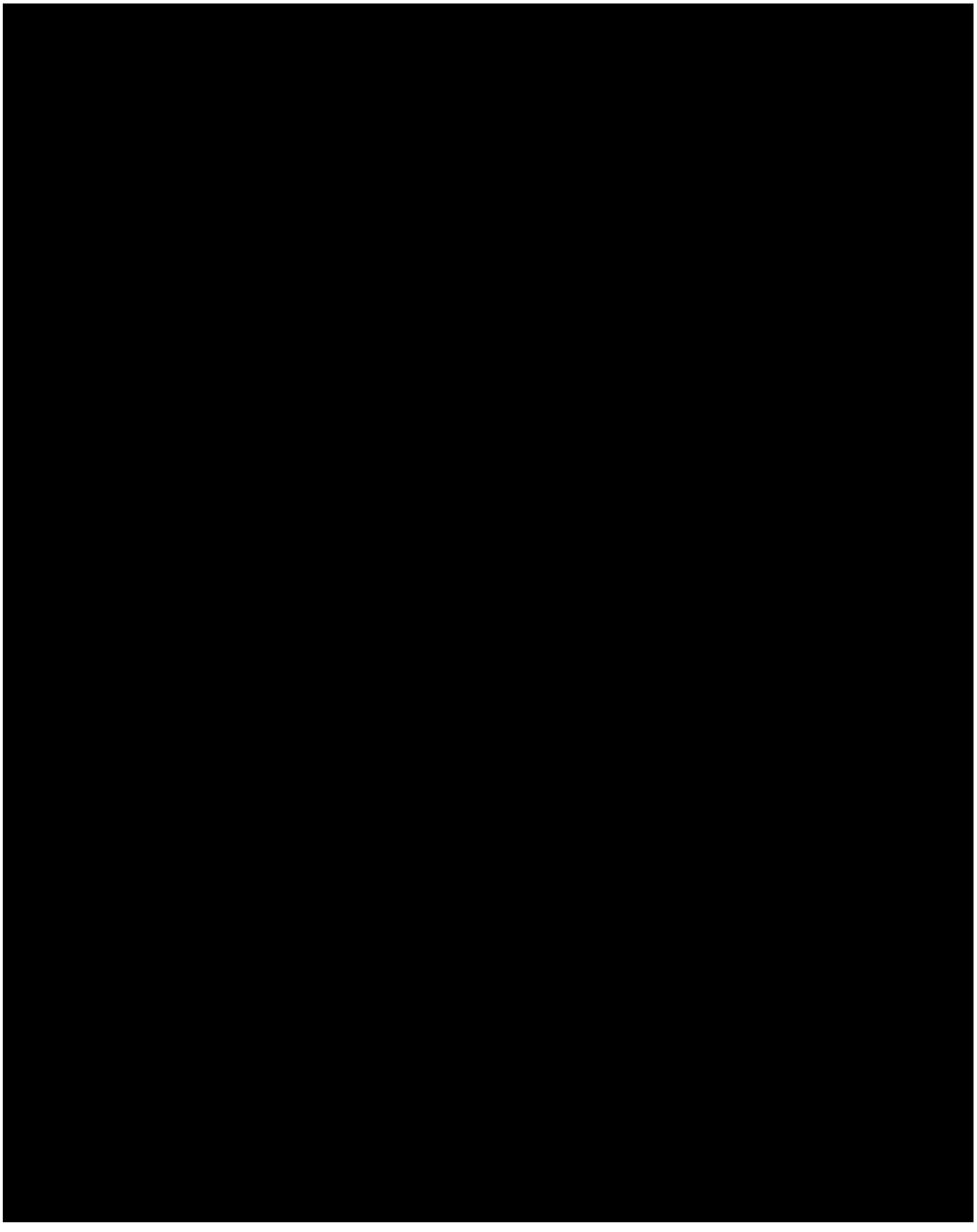


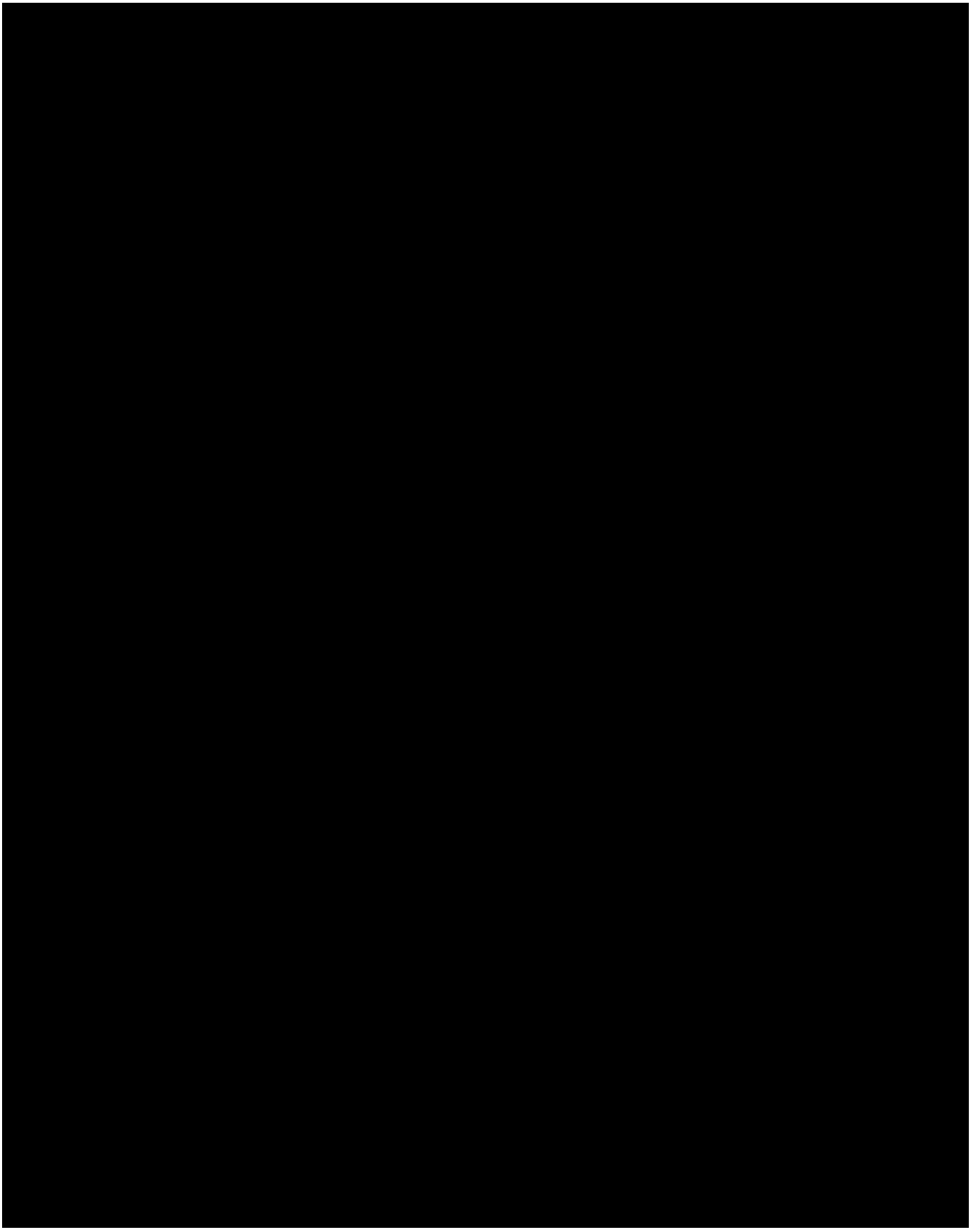


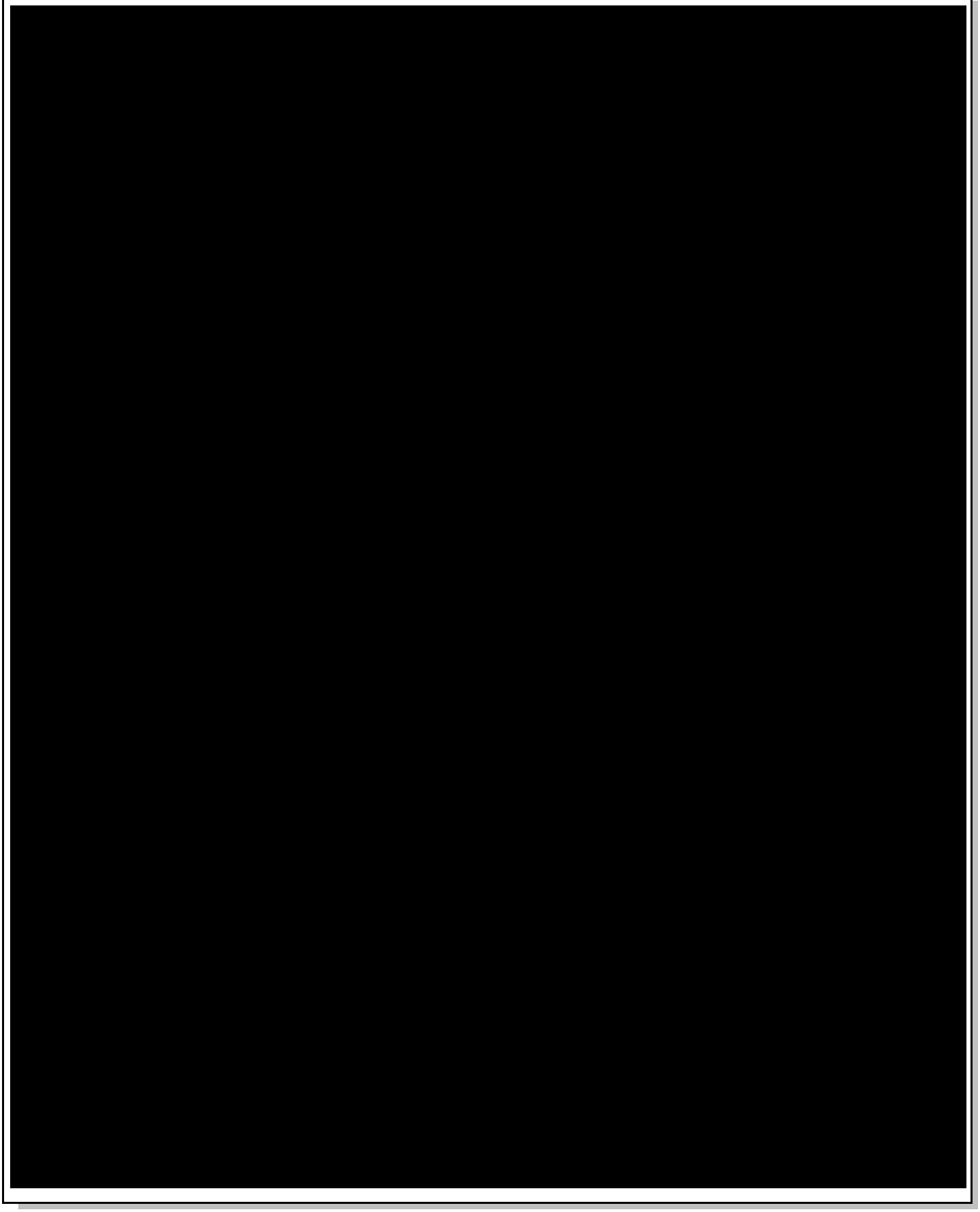


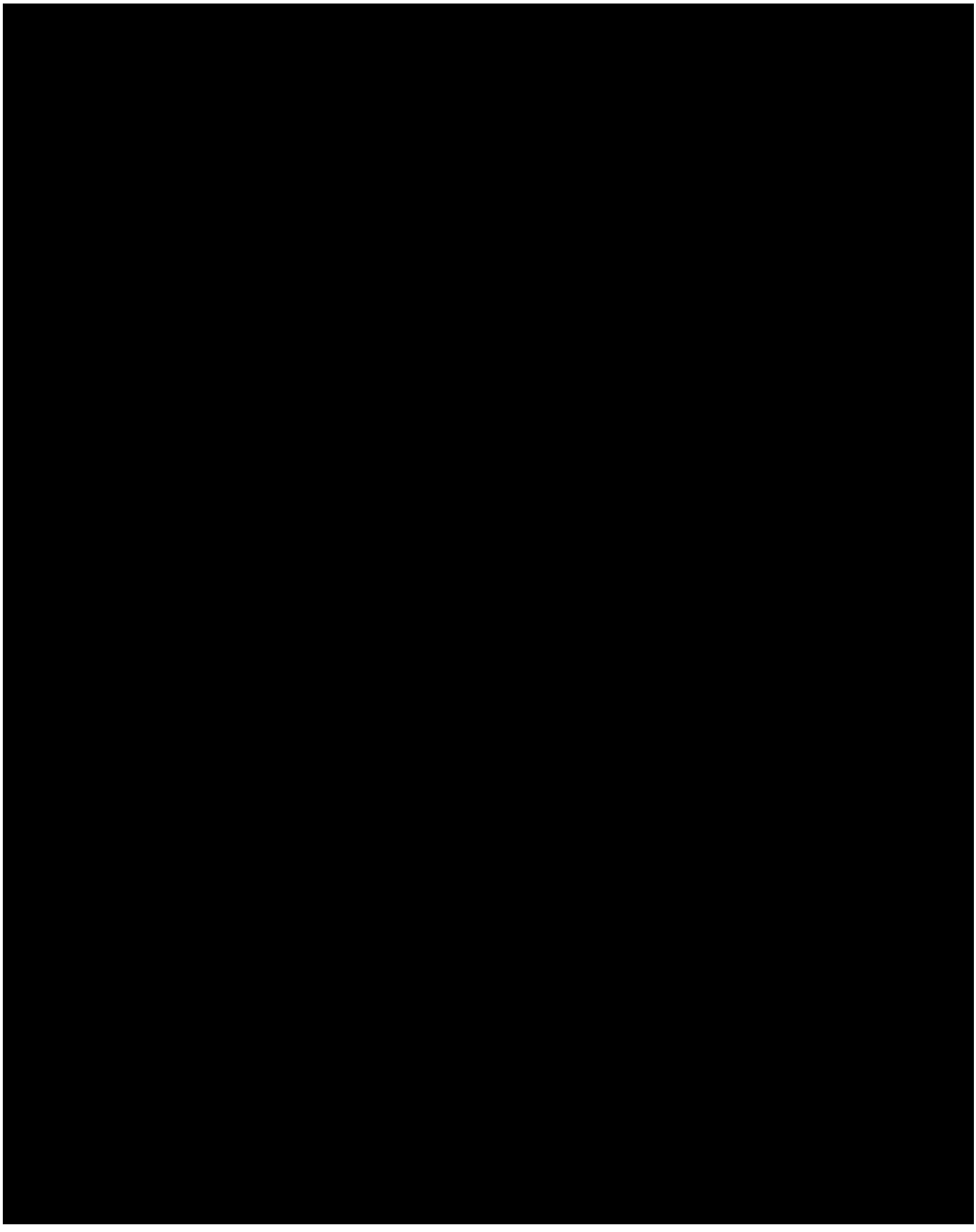


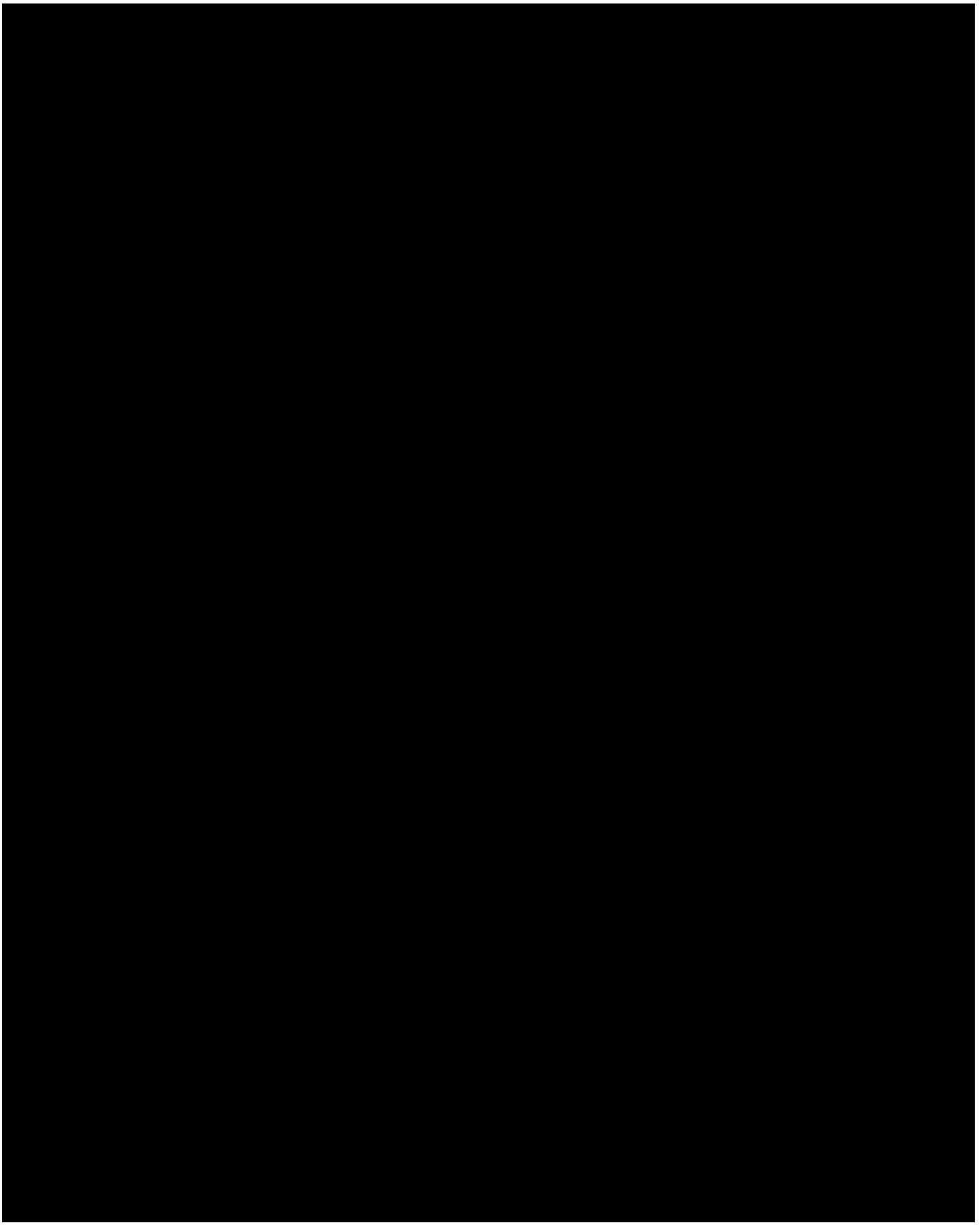


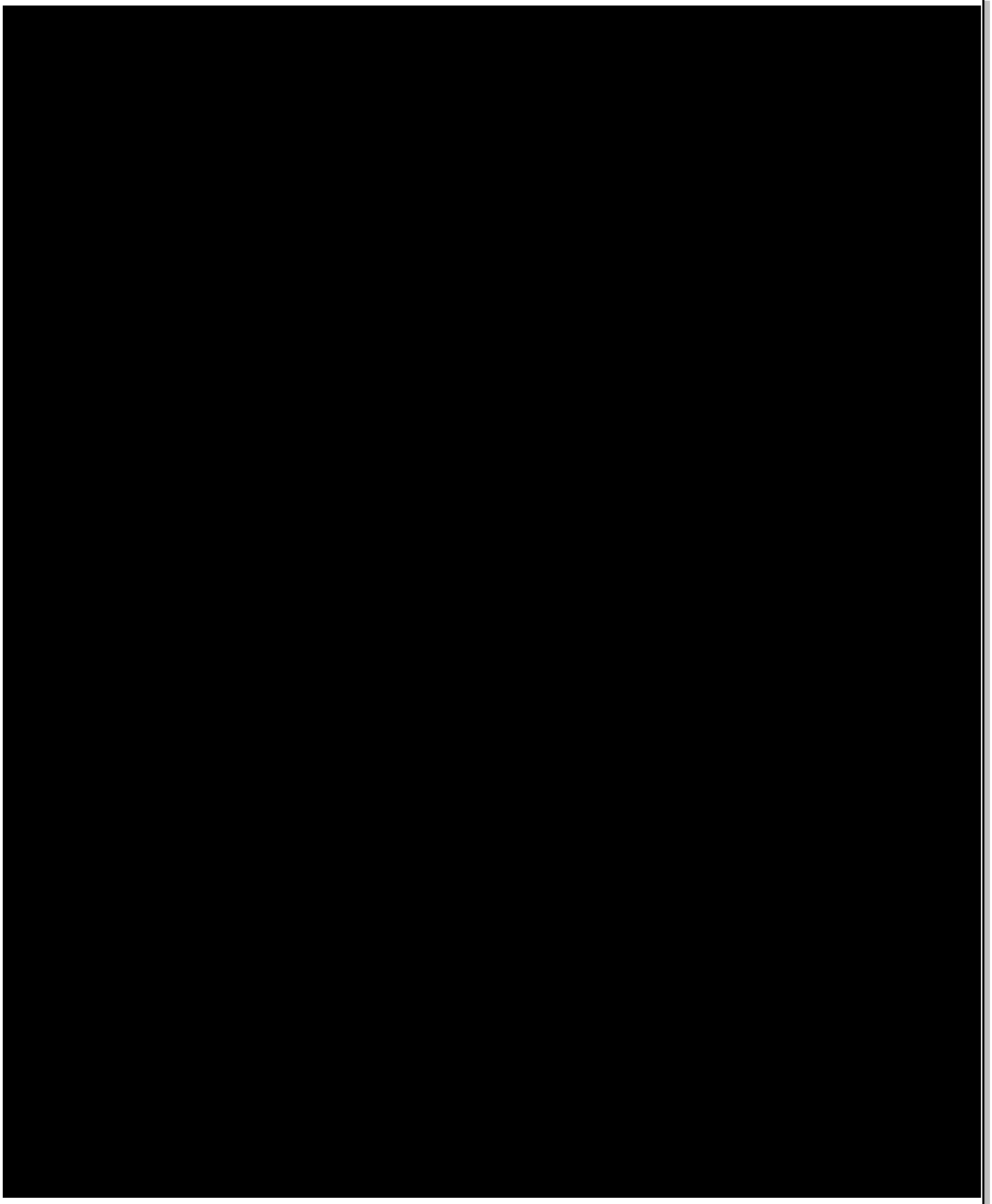


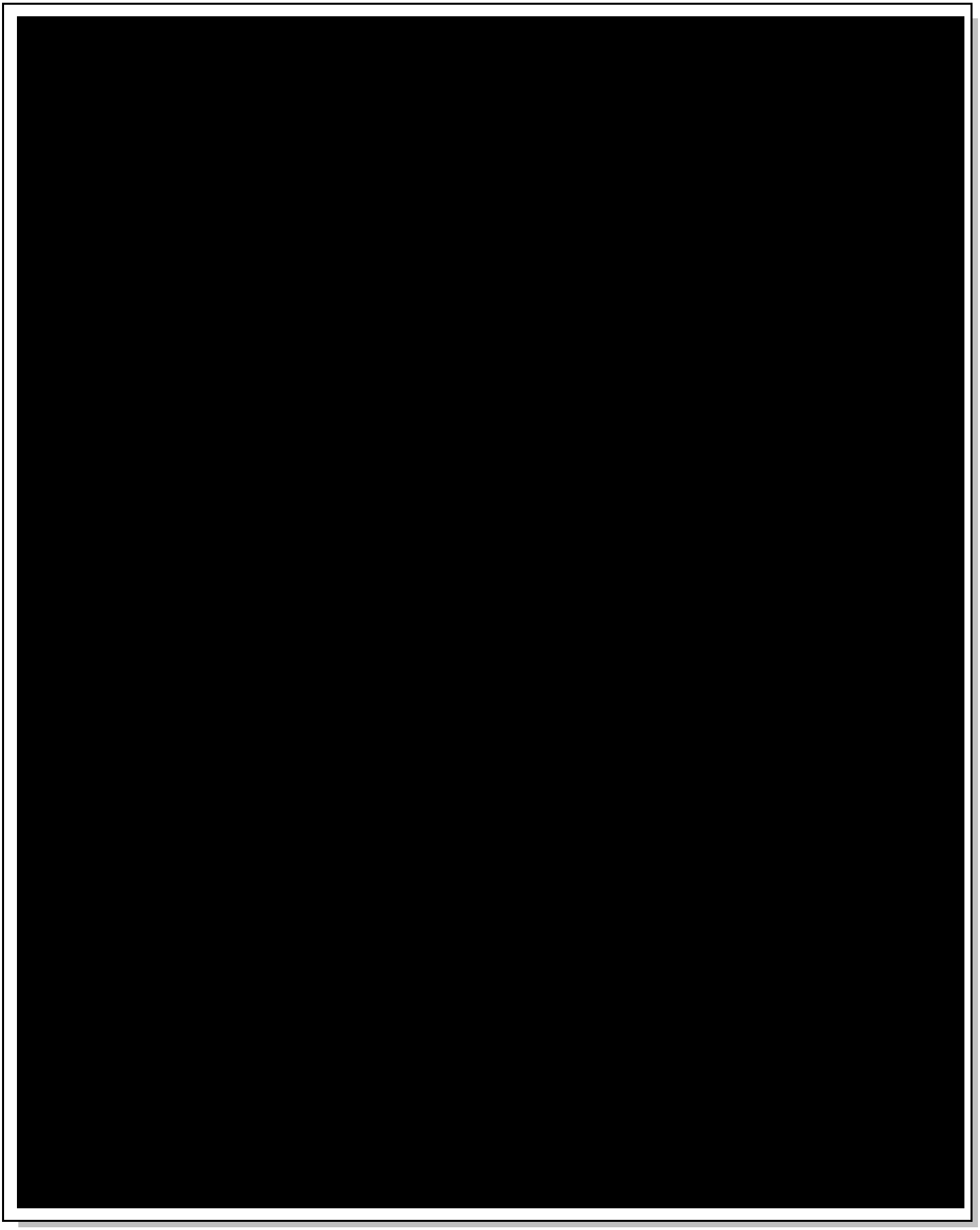


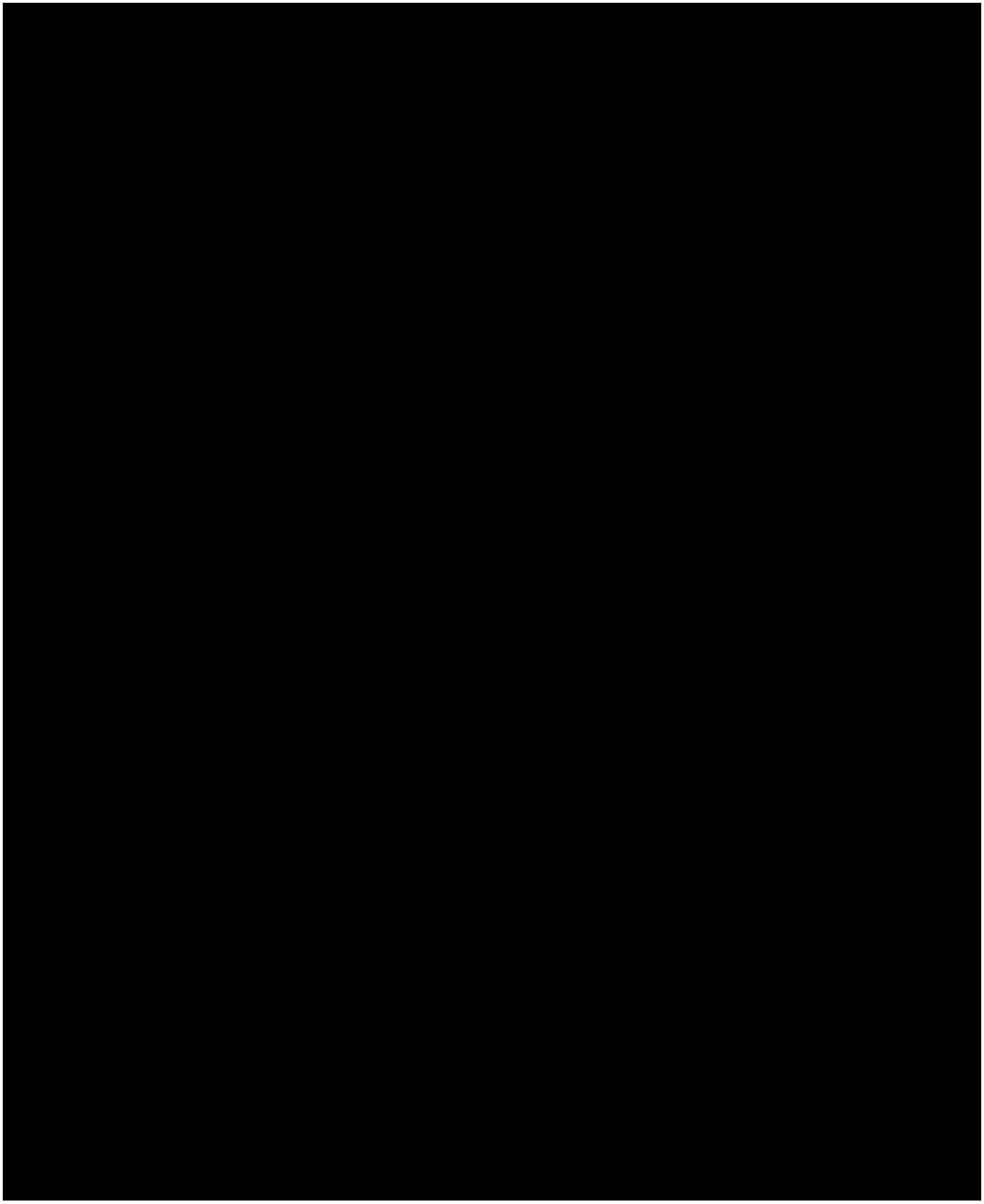


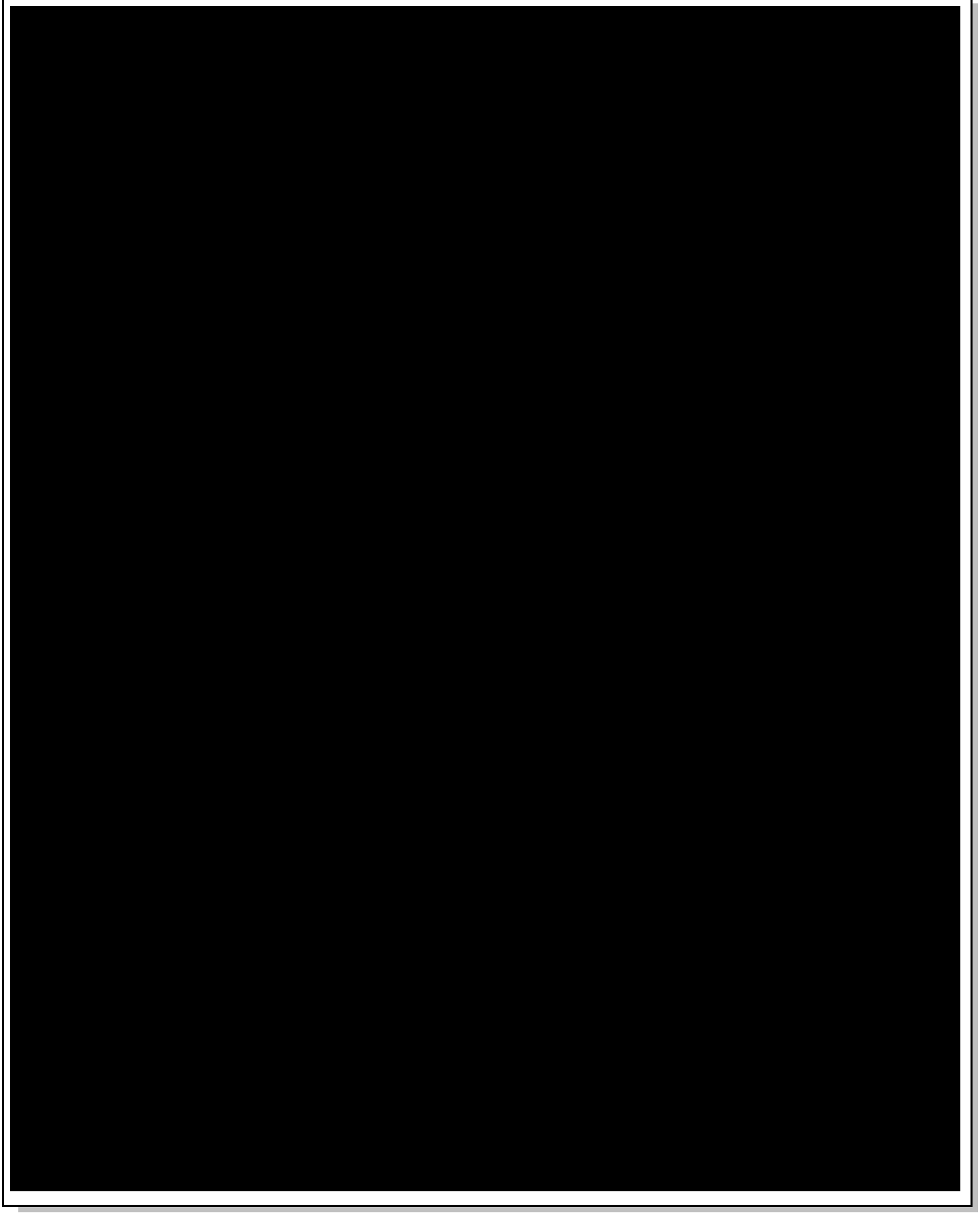


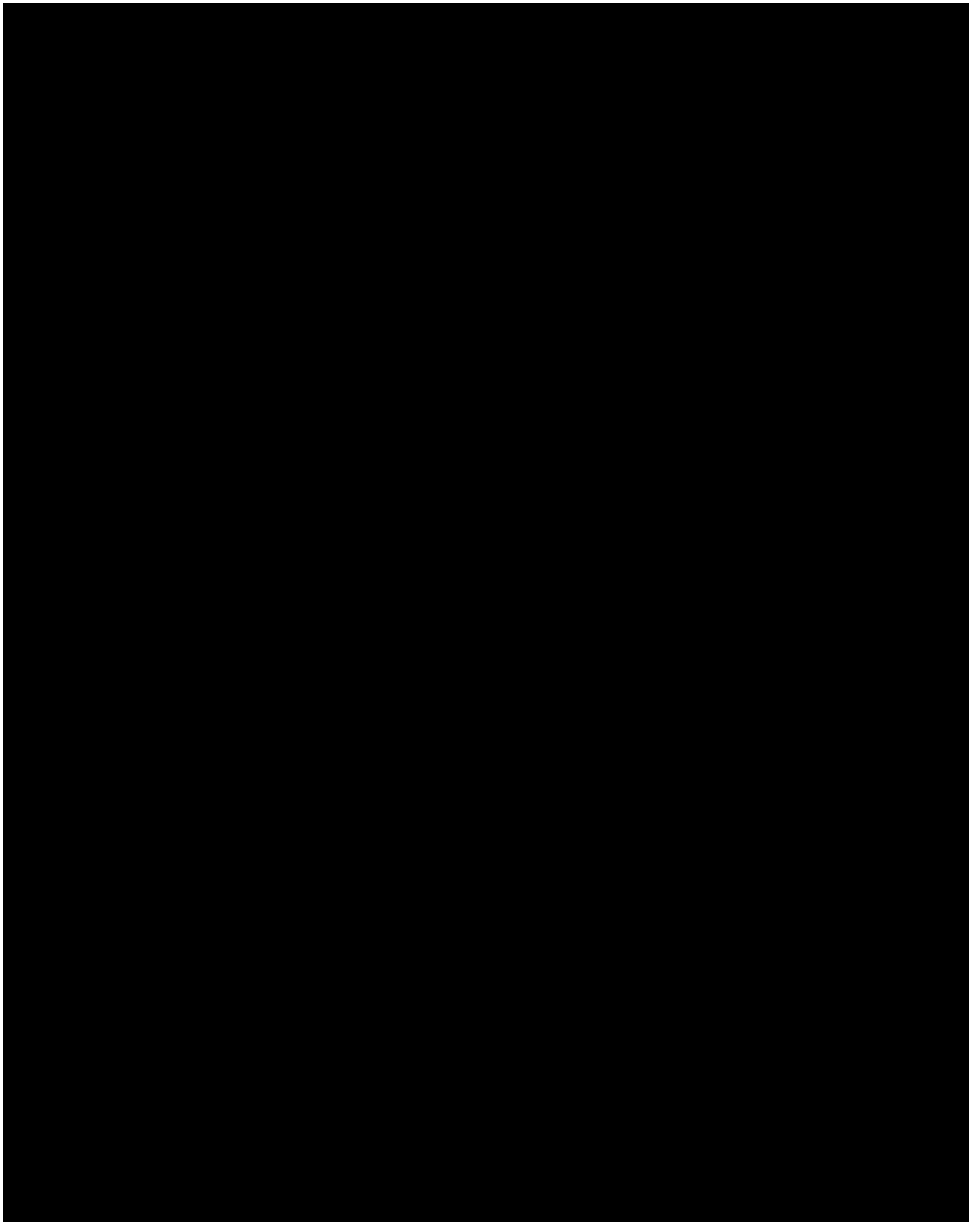


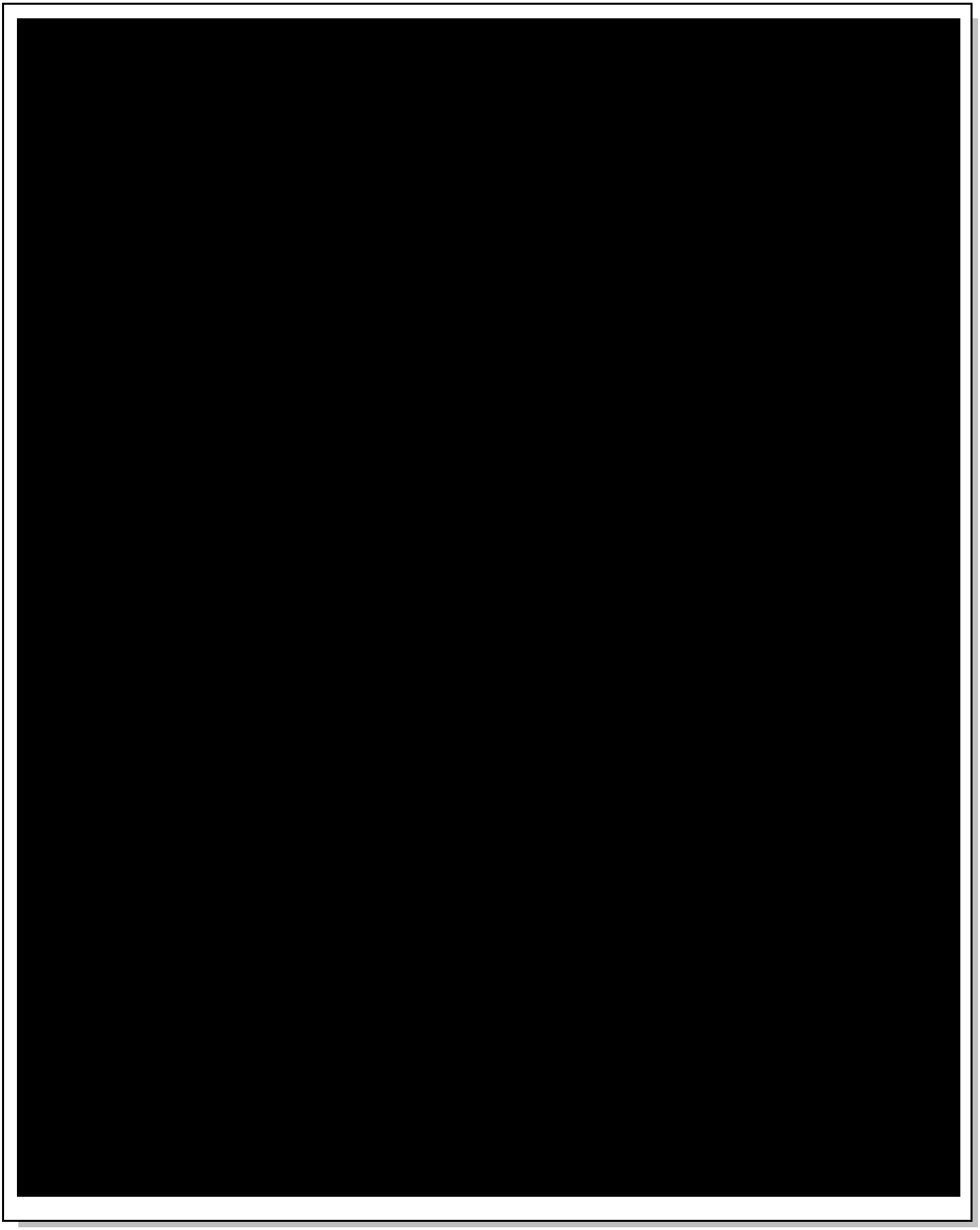


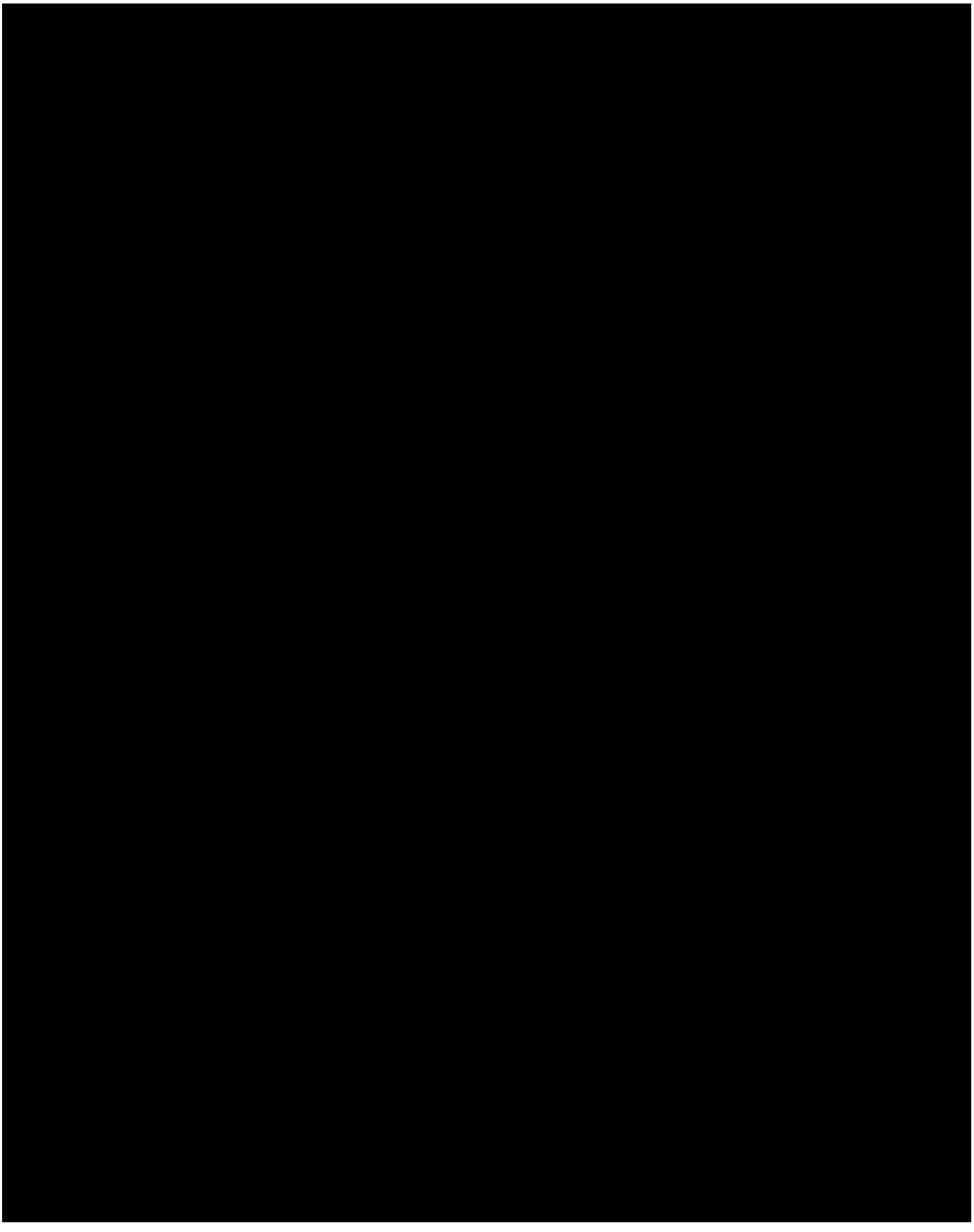


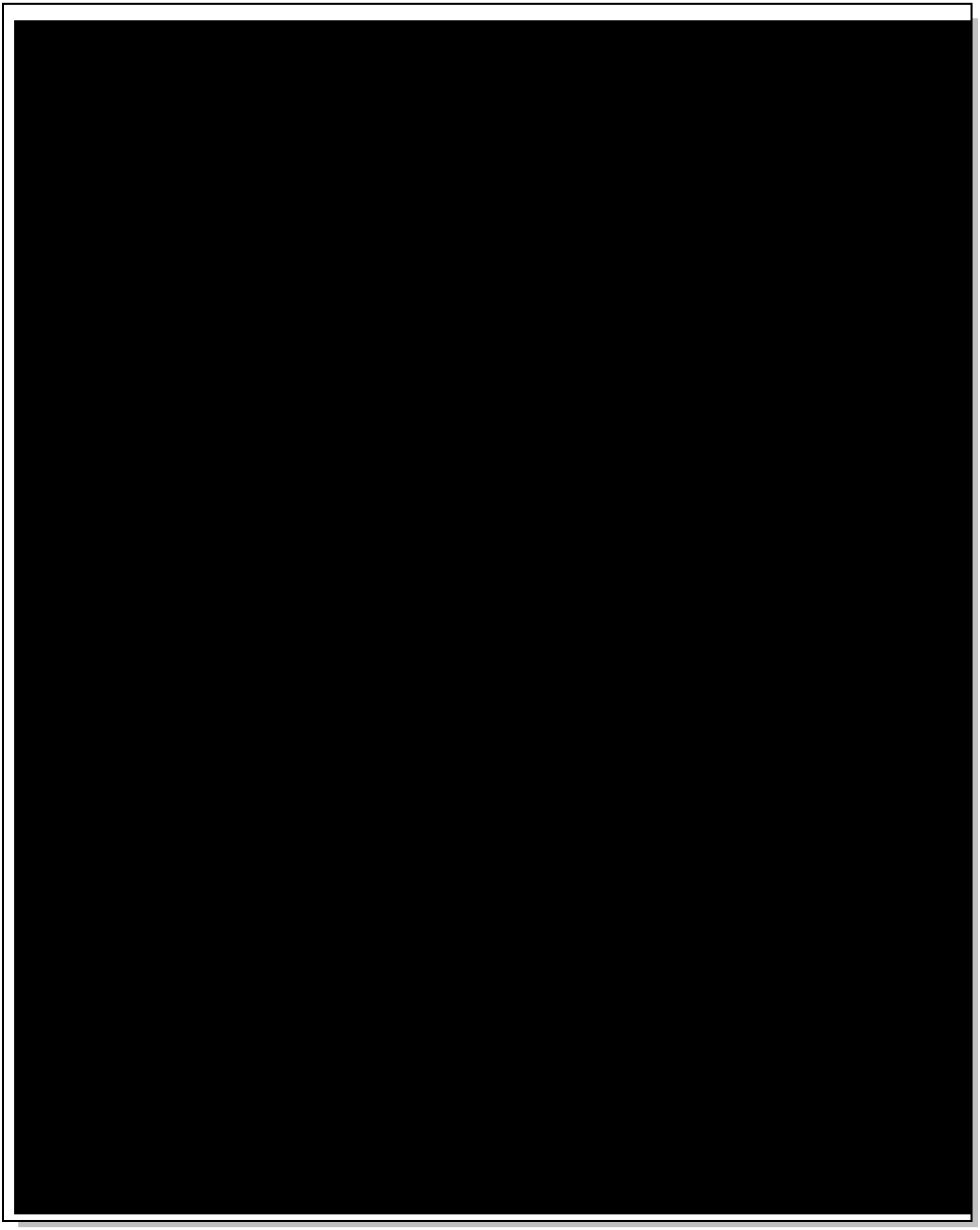


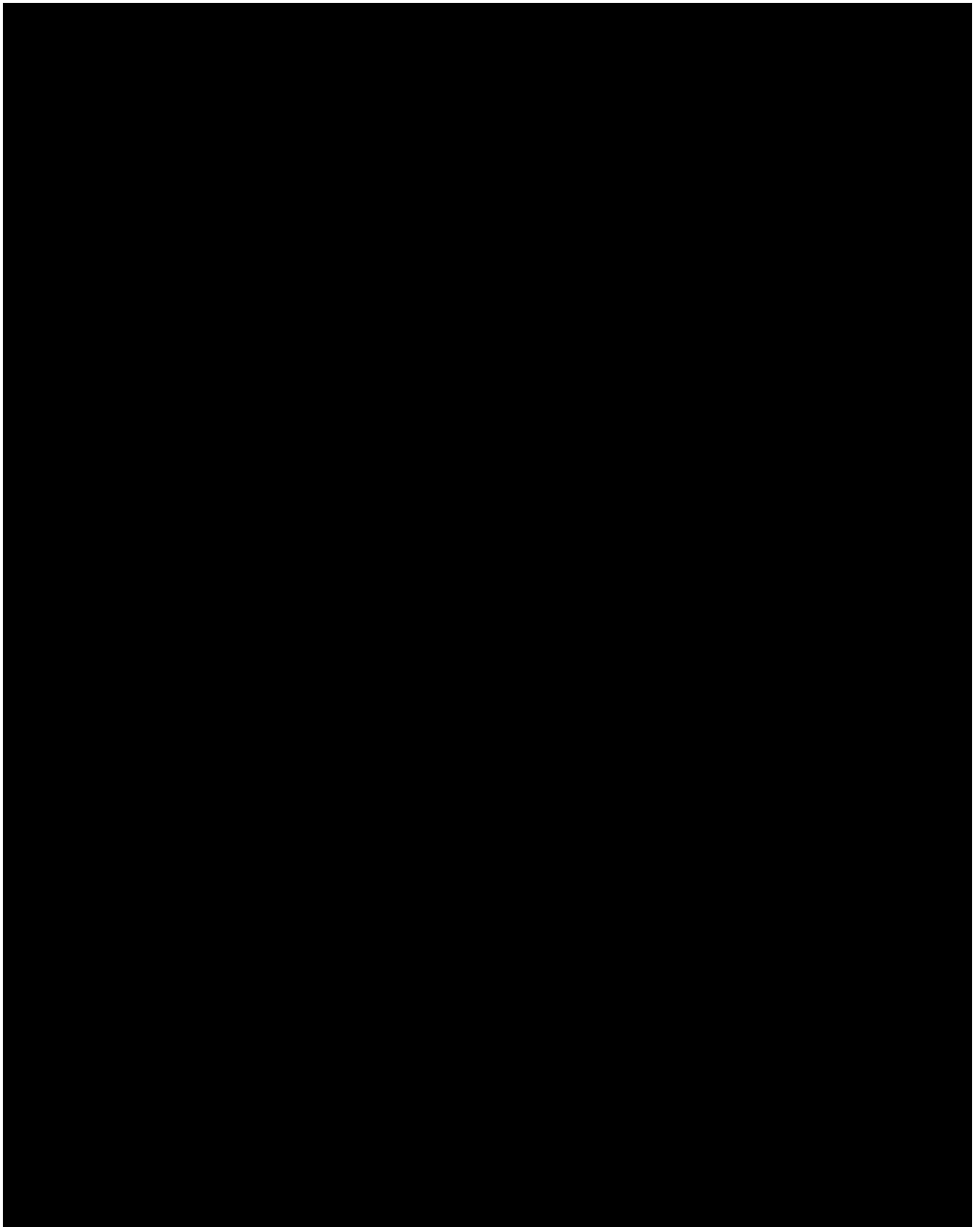


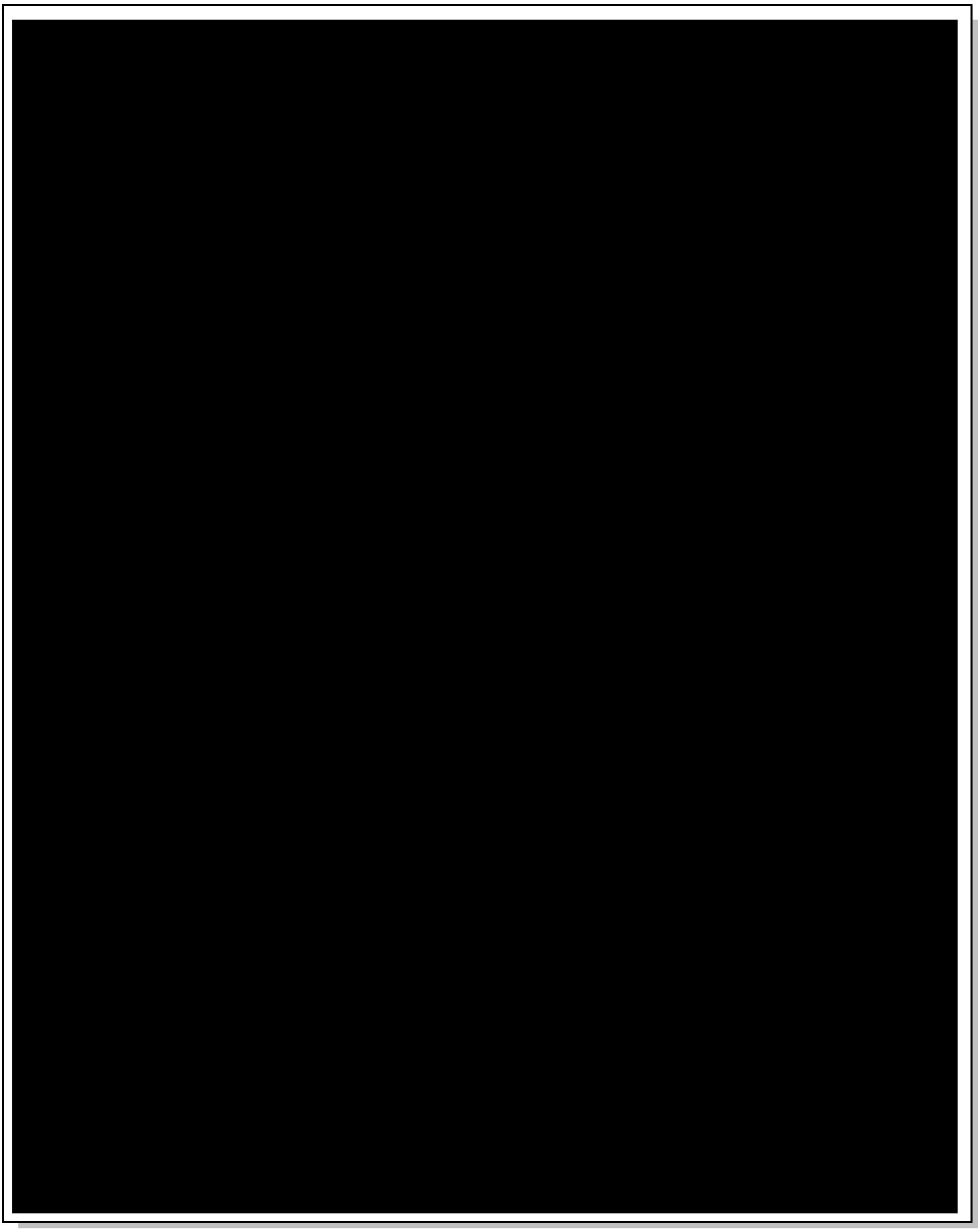


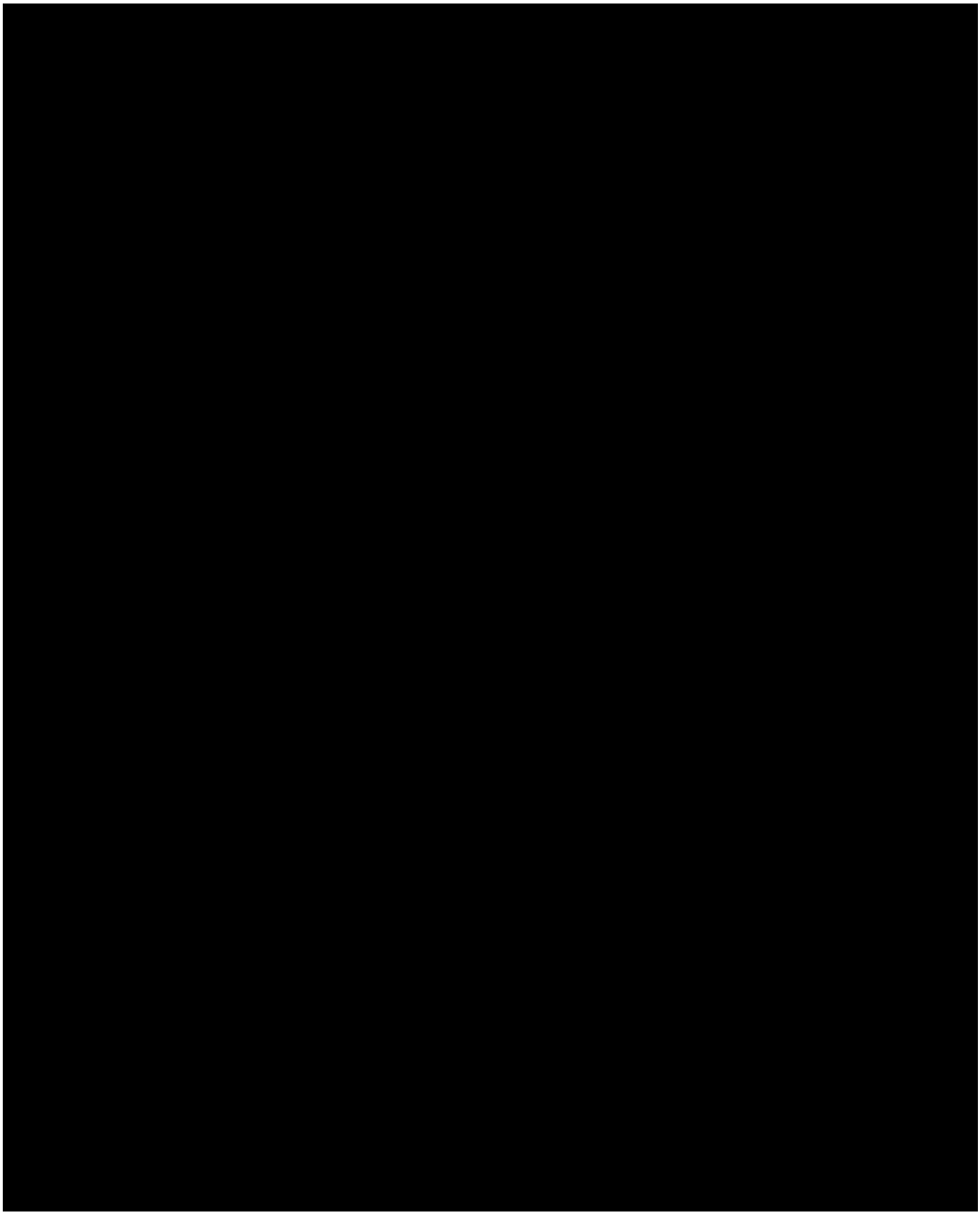


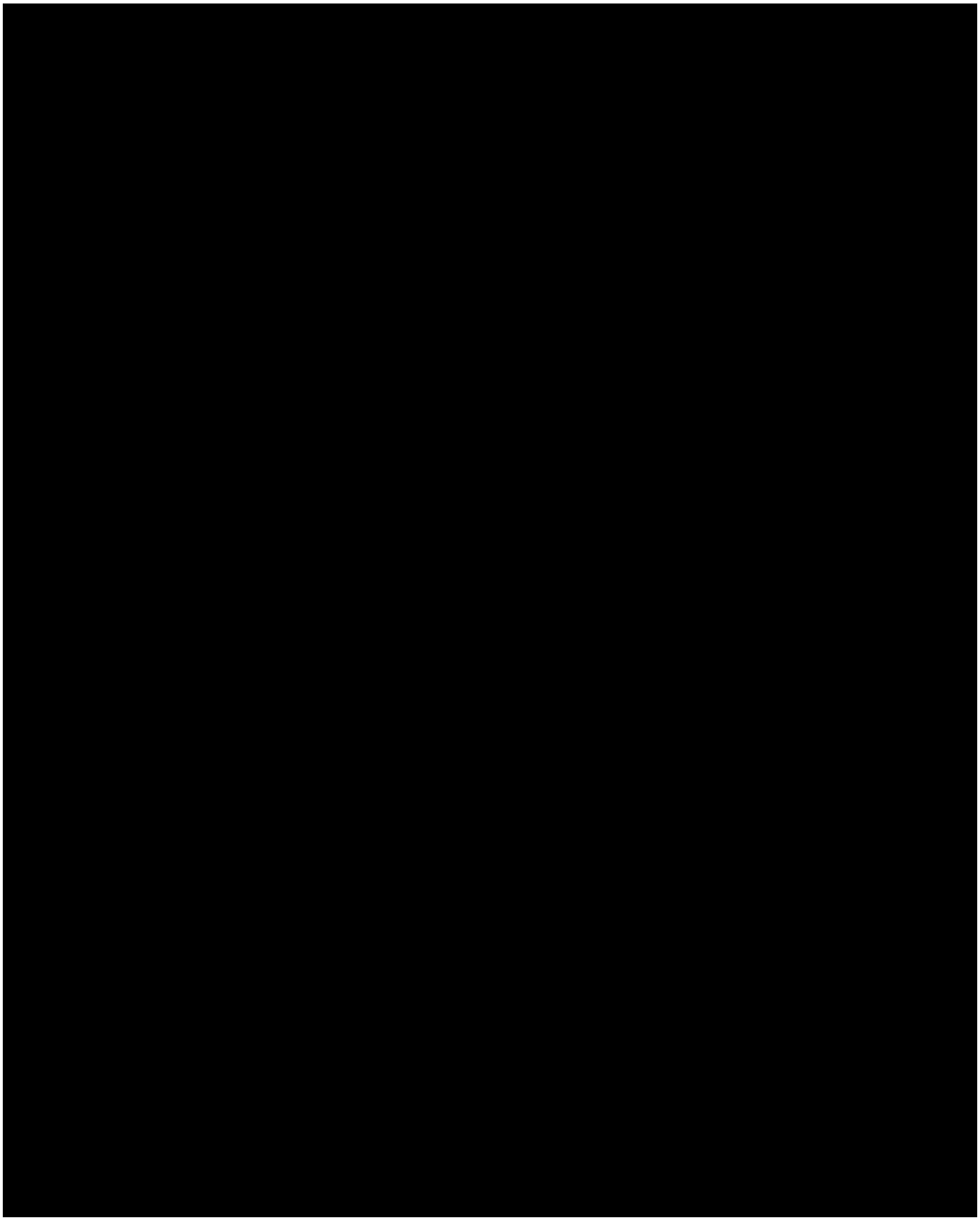


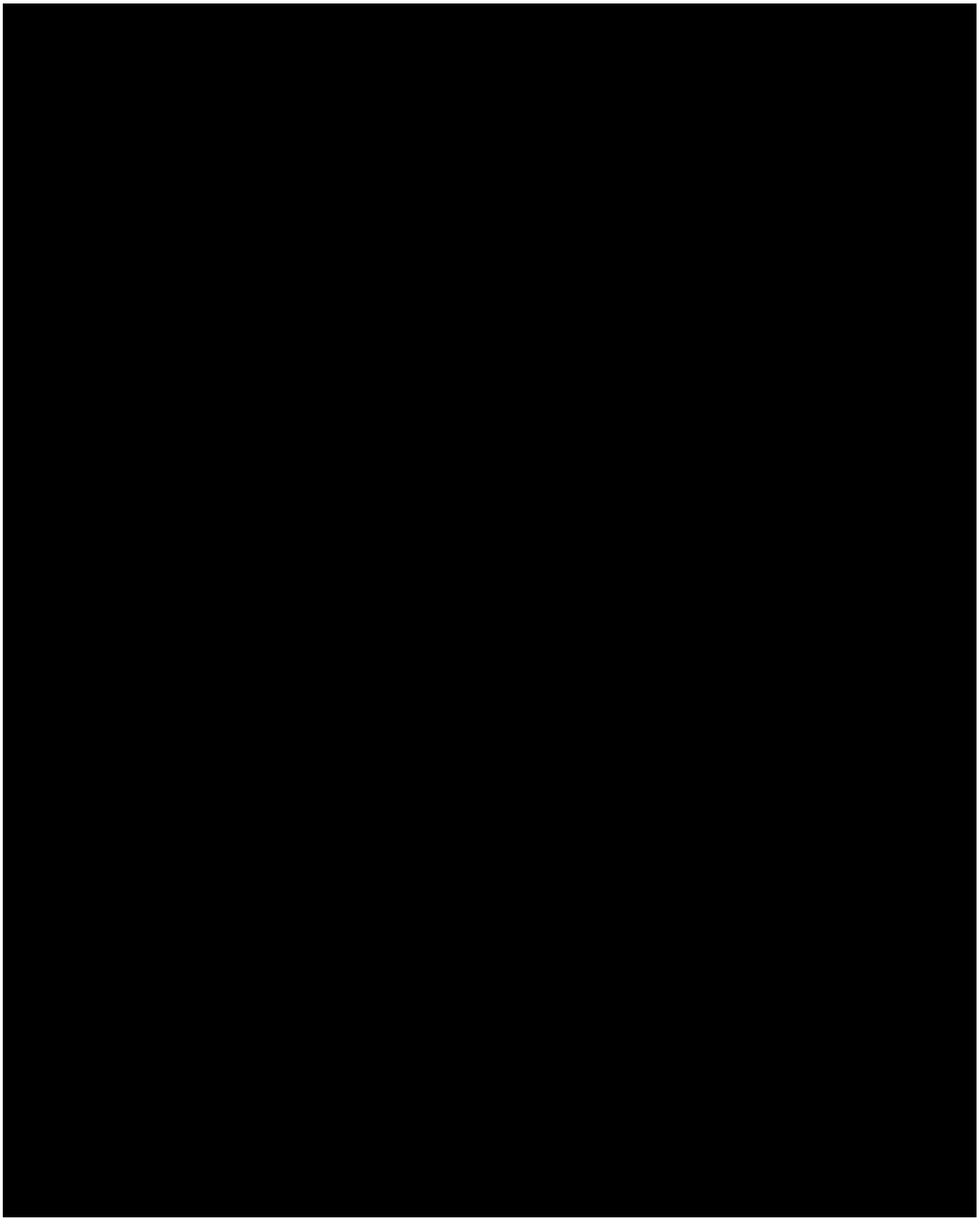


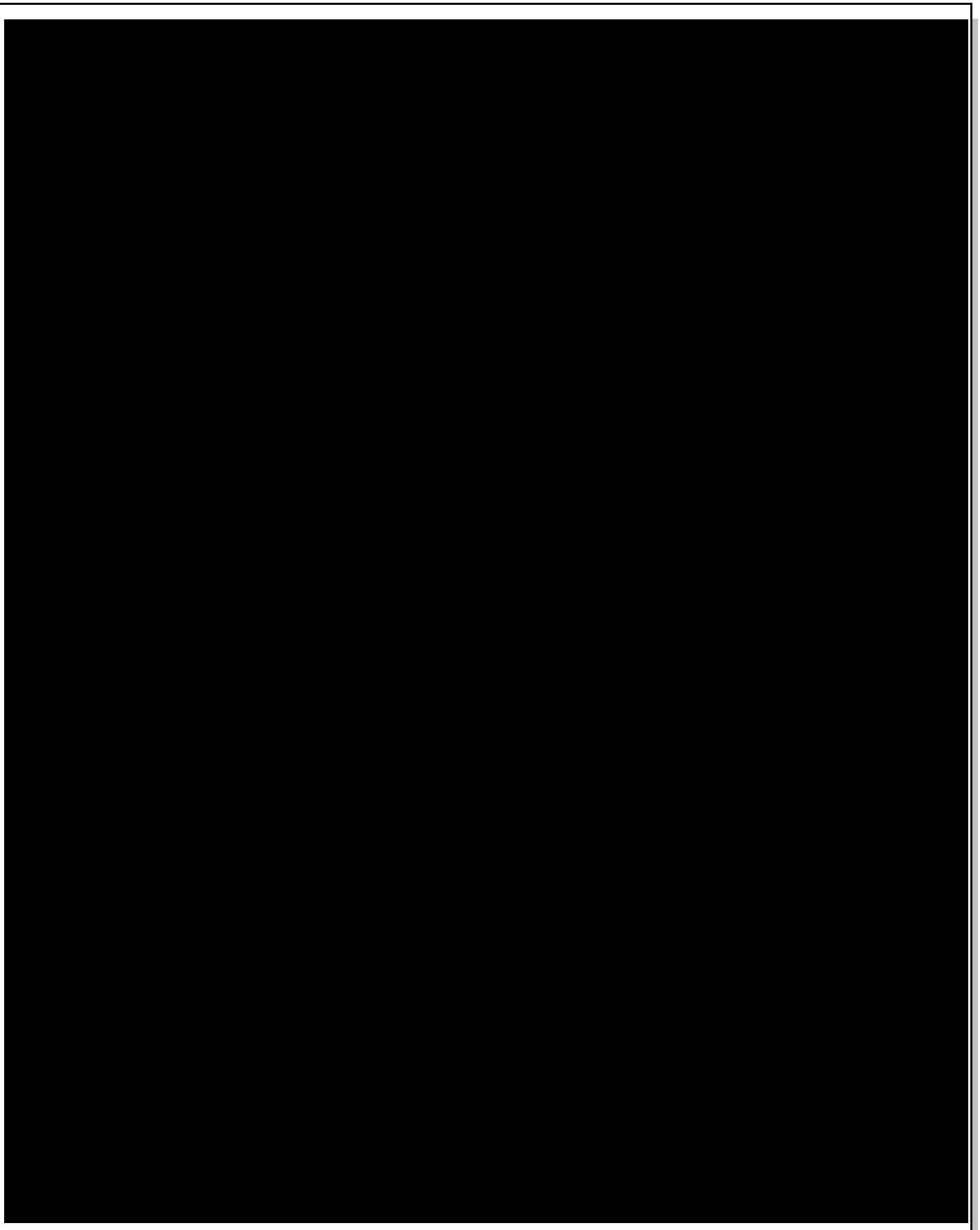












HIGHLY CONFIDENTIAL
CERTIFICATE OF DEPONENT

I, ANTON TITOV, hereby certify that I have read the foregoing pages of my deposition of testimony taken in these proceedings on Tuesday, December 6, 2011, and, with the exception of the changes listed on the next page and/or corrections, if any, find them to be a true and accurate transcription thereof.

Signed: .....

Name: ANTON TITOV

Date: 1/20/2012

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E R R A T A

Deposition of ANTON TITOV

| Page/Line No. | Description | Reason for change |
|---|---|---|
| 225:25 | Remind me. --> There might be. | Correct transcription |
| 234:20 | Presentation --> representation | Correct transcription |
| 234:20 | cost of the --> concept of | Correct transcription |
| 261:2 | As --> That's | Correct transcription |
| 273:20 | Limewire --> Limelight | Correct transcription |
| 279:3 | is --> would | Correct transcription |
| 293:11 | following --> logging | Correct transcription |
| 306:5 | calls --> holds | Correct transcription |
| 306:6 | service at hotfile.com --> to abuse@hotfile.com | Correct trans. |
| 321:6 | would decide it --> with this ID | Correct transcription |
| 333:20 | brought --> blocked | Correct transcription |
| 337:7 | file --> file ID | Correct transcription |

Signed: .....

Name: ANTON TITOV

Date: .....

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E R R A T A

Deposition of ANTON TITOV

| Page/Line No. | Description | Reason for change |
|---|---|---|
| 361:25 | state --> table | Correct transcription |
| 368:7 | users stay on our uploads --> users_cowner_upload | Correct trans |

Signed: .....

Name: ANTON TITOV

Date: 1/20/2012

HIGHLY CONFIDENTIAL
CERTIFICATE OF COURT REPORTER

I, Fiona Farson, with TSG Reporting, hereby certify that the testimony of the witness Anton Titov in the foregoing transcript, taken on Tuesday, December 6, 2011 was reported by me in machine shorthand and was thereafter transcribed by me; and that the foregoing transcript is a true and accurate verbatim record of the said testimony.

I further certify that I am not a relative, employee, counsel or financially involved with any of the parties to the within cause, nor am I an employee or relative of any counsel for the parties, nor am I in any way interested in the outcome of the within cause.

Signed: .....

Fiona Farson

Dated: 12/17/2011

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 11-20427-WILLIAMS/TURNOFF

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DISNEY ENTERPRISES, INC., TWENTIETH CENTURY FOX FILM CORPORATION, UNIVERSAL CITY STUDIOS PRODUCTIONS LLLP, COLUMBIA PICTURES INDUSTRIES, INC., and WARNER BROS. ENTERTAINMENT, INC.,
Plaintiff,

v.

HOTFILE CORP., ANTON TITOV, and DOES 1-10,

Defendants.

HOTFILE CORP.,

Counterclaimant,

v.

WARNER BROS ENTERTAINMENT INC.,
Counterdefendant.

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VOLUME III
H I G H L Y  C O N F I D E N T I A L
(Pursuant to protective order, the following transcript has been designated highly confidential)

30(b)(6) DEPOSITION OF ANTON TITOV
Radisson Blu Hotel
Sofia, Bulgaria
Wednesday, December 7, 2011
AT: 9:09 a.m.

Job # 44429

A P P E A R A N C E S

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ATTORNEY FOR THE DEFENDANTS HOTFILE CORP., AND ANTON TITOV:
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BY: VALENTIN GURVITS
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Also present:

Court reporter:

Fiona Farson
TSG Reporting

Videographer:

Simon Rutson
TSG Reporting

Interpreter:

Assist. Prof. Boris Naimushin, Ph.D.

Elena Alexieva

Q. Okay. Is it one particular person's responsibility?
A. Currently it's only Andre -- Andre Ianakov.
Q. Okay. And has it always been only Andre Ianakov?
I'm sorry, did you say "no"?
A. I didn't. It was Stanislav Manov was helping him, to my best knowledge --
Q. Okay.
A. -- at the time he was working for Hotfile.
Q. So has Mr. Ianakov been -- strike that.
Has reviewing and responding to user communications been part of Mr. Ianakov's responsibilities from the launch of Hotfile through to the present?
MR. THOMPSON: Objection, overbroad.
A. I believe so.
BY MR. FABRIZIO:
Q. Okay. And what are Mr. Ianakov's and, while he was doing it, Mr. Manov's responsibilities with regard to user correspondence?
MR. THOMPSON: Objection, overbroad.
A. Generally to address users' problems and to try to help them.
BY MR. FABRIZIO:
Q. Okay. Did you supervise Mr. Ianakov and/or Mr. Manov, when he was there, with regard to user communications?
MR. THOMPSON: Objection, vague.

A. I won't say it's fair to say that I do supervise them. To the extent that a user may have a technical problem, they may contact me, if they think that it's a problem I can help them with.

BY MR. FABRIZIO:

Q. Okay. Does somebody have a responsibility for supervising Mr. Manov and Ianakov in responding to user communications?

MR. THOMPSON: Same objection.

A. Well, it's not strictly written anywhere or anything else, and my understanding is that, to a certain extent, Rumen Stoyanov is supervising them.

BY MR. FABRIZIO:

Q. Well, maybe I should put it this way; while he was there Mr. Manov and throughout the period, Mr. Ianakov, were they empowered by Hotfile to exercise their discretion in answering user correspondence?

MR. THOMPSON: Objection. Vague and calls for a legal conclusion.

A. I would say to a certain extent.

BY MR. FABRIZIO:

Q. "To a certain extent"? What does that mean?

MR. THOMPSON: Objection, vague.

A. Probably there would be problems that they will address to Rumen or to me, and if they want me to tell them how

so on Hotfile's behalf?
A. I believe so.
Q. So he was acting for Hotfile when he did it?
MR. THOMPSON: Objection, calls for a legal conclusion.
A. I don't know, he was just filling out a form.
BY MR. FABRIZIO:
Q. Okay, I'm going to -- switching gears.
Why does the Hotfile website not have a function to allow users to search for files that are hosted on the Hotfile website?
A. It was the industry's model back in the time.
Q. What industry's model?
A. Hotfile is a storage facility that users can store their own personal files, and that doesn't go well with search function.
Q. Is there any other reason that Hotfile does not have a search function on the website?
MR. THOMPSON: Objection, vague, overbroad.
A. Except the fact that it's easier not to do something again than to do something and it was the case with Rapidshare that we looked at in the beginning.
I think these are the reasons.
BY MR. FABRIZIO:
Q. My question was; is -- is there any other reason?
MR. THOMPSON: Objection, asked and answered.

downloading files from Hotfile, correct?
A. That would be one of the activities, you can download without uploading and you can -- yeah.
Q. Well, Hotfile doesn't charge users for uploading, does it?
MR. THOMPSON: Objection, vague.
A. You can upload files without paying, but if you are a paid user, you have certain privileges also in loading and storing information.
BY MR. FABRIZIO:
Q. And that is, if you're not a premium user, any files you've uploaded will be deleted after a certain period of time if they have not been downloaded, correct?
MR. THOMPSON: Objection, vague as to time.
A. And also the redundancy of the files of the premium users is higher.
BY MR. FABRIZIO:
Q. What does that mean?
A. That means that all the files of premium users, we have two copies on different servers for them.
Q. And for non-premium users, that's not the case?
A. I believe so.
Q. I'm just going to try and clarify, but my question was not artful.
Does Hotfile maintain a backup copy on a separate

BY MR. FABRIZIO:
Q. Okay. And it would not be difficult from a technical matter to have a search function that only would locate files that users have designated for public distribution, correct?
MR. THOMPSON: Objection, vague and overbroad.
A. It's possible, yes.
BY MR. FABRIZIO:
Q. Okay. So I ask again, why does Hotfile not have such a search function on its website?
MR. THOMPSON: Objection, asked and answered.
A. It just doesn't.
BY MR. FABRIZIO:
Q. Well, my question, sir, is; why?
MR. THOMPSON: Objection, asked and answered, now twice.
A. The same reasons I said before.
BY MR. FABRIZIO:
Q. And before you said that Hotfile was effectively for storage, and I believe now we've established that it's for downloading as well, so, with that new context, I'd like to understand as best you can tell us why Hotfile doesn't have a search function on its website?
MR. THOMPSON: Objection to the preamble as argumentative, misstating testimony. The question has been asked and answered three times.

If you have any more -- any more to add, go ahead.

A. Well, you are correct that downloading is part of the process, all the Hotfile idea is for the user to choose who would be downloading his files and not to publish them to the whole word.

MR. FABRIZIO: Okay. We'll leave it there.

I'm going to mark as Titov exhibit 146 a document numbered HF34459, marked as 147 is a document numbered HF34686, and as Titov exhibit 148, a document numbered HF34587.

(Titov exhibits 146, 147 and 148 marked for identification.)

BY MR. FABRIZIO:

Q. Have you had a chance to look at exhibits 146, 147 and 148, Mr. Titov?

A. Yes, I did.

Q. Are these further examples of user communications to Hotfile through the Contact us page?

MR. THOMPSON: Objection, vague.

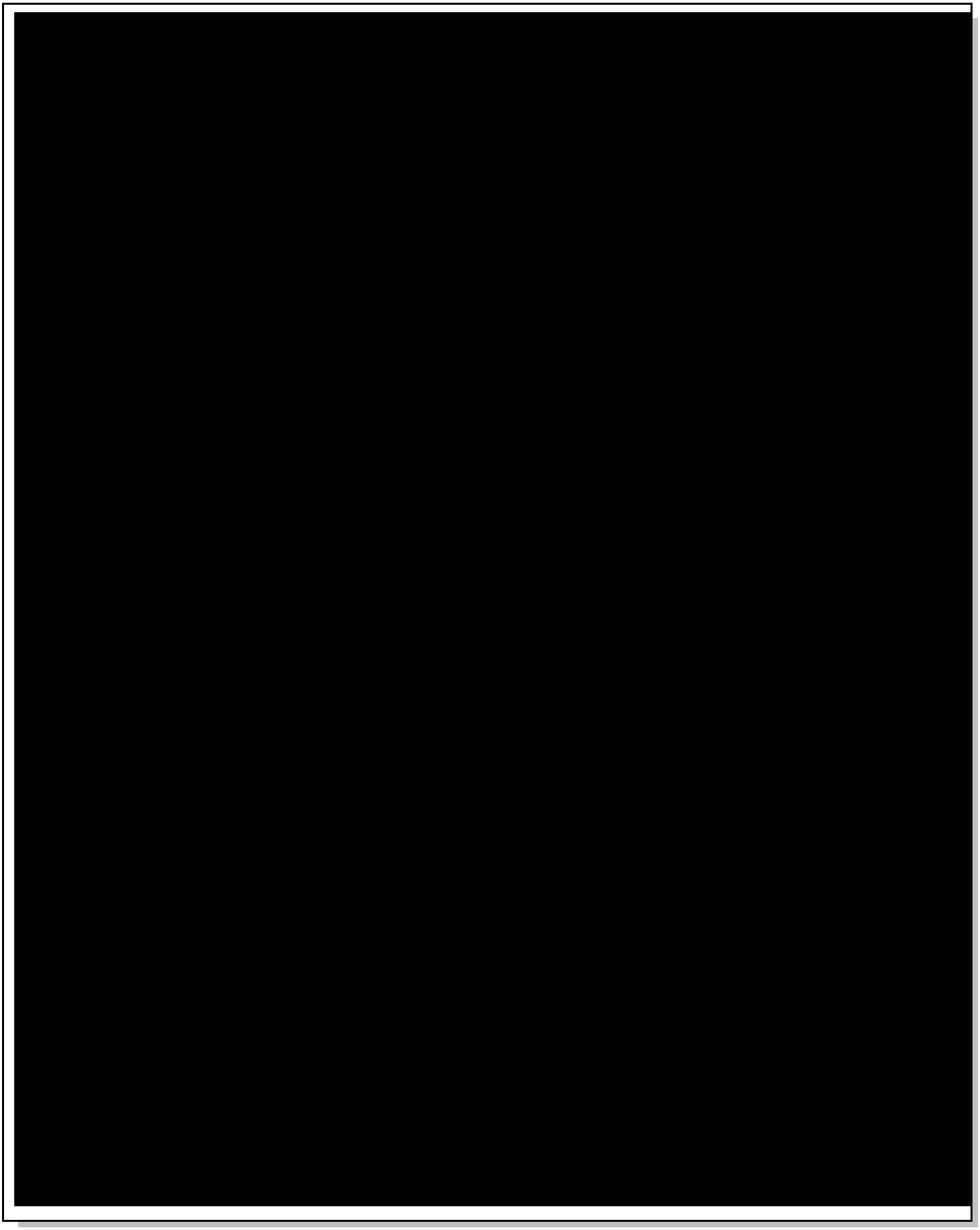
A. I don't have any reason to believe they're not.

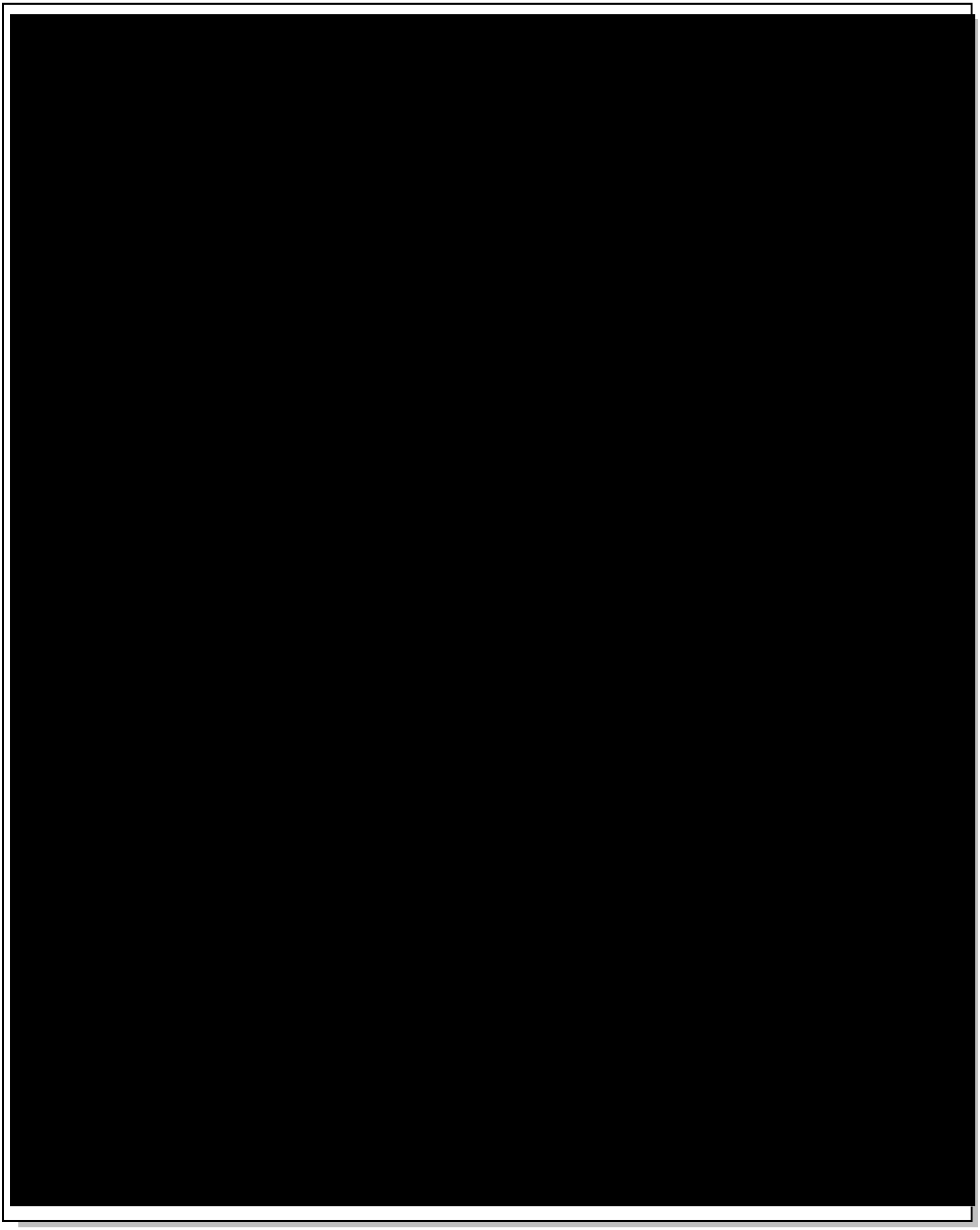
BY MR. FABRIZIO:

Q. Okay. And are they true and correct copies of user communications to Hotfile in the February 2001 [sic] timeframe?

MR. THOMPSON: Objection, compound.

A. 2011?





A. Vobile is a company that will provide technology for fingerprinting, taking fingerprints from videos -- videos, and they -- then they have service for presenting these fingerprints to them, and they will respond if this video matches any video in their database.

BY MR. FABRIZIO:

Q. And when they respond, because a finger -- they have a fingerprint match, do they provide information about the copyright owner and instructions from a copyright owner with regard to a particular file?

MR. THOMPSON: Objection, compound and vague.

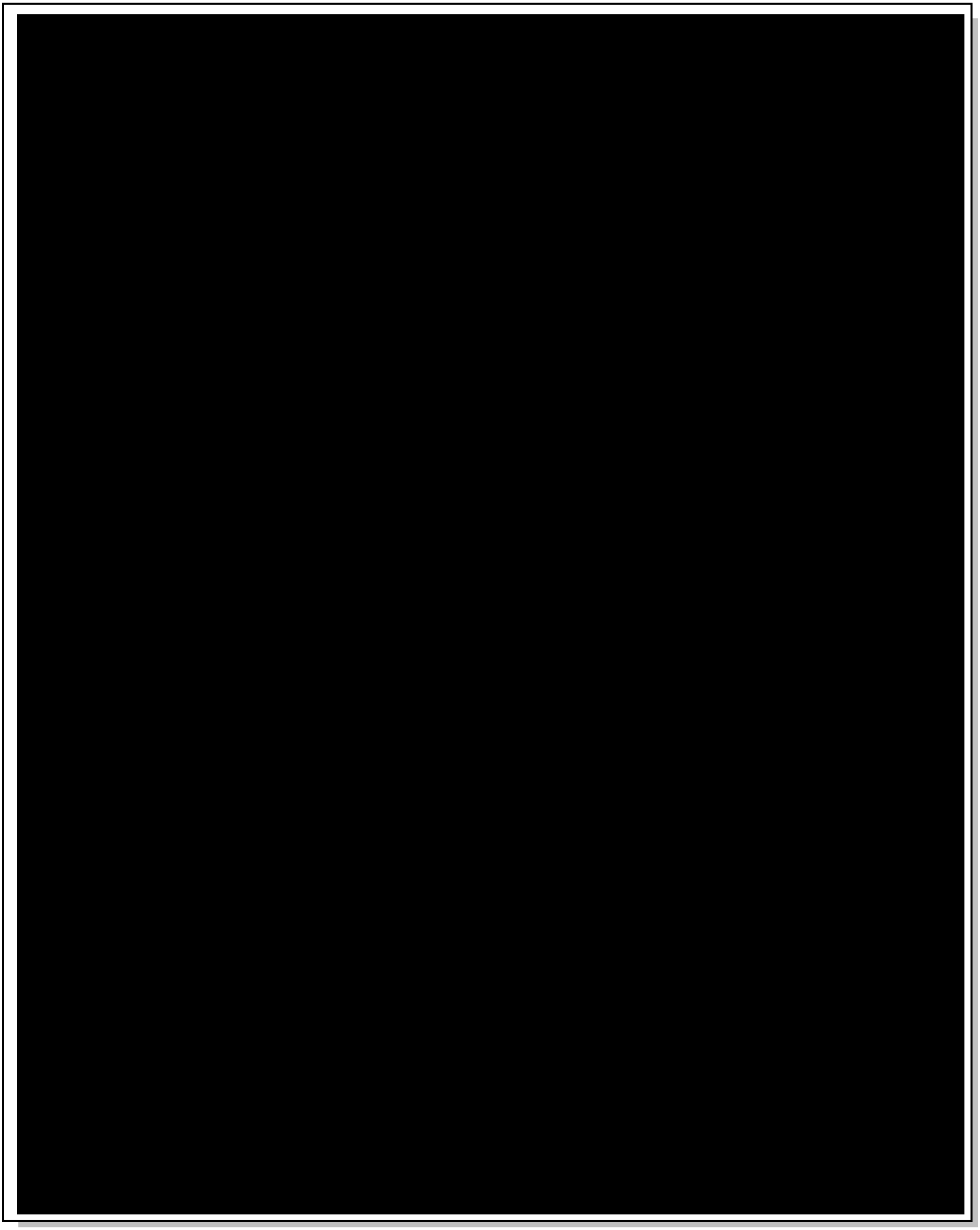
A. I know for sure that they provide the copyright owner, but I'm not sure about the instructions.

BY MR. FABRIZIO:

Q. Okay. Well, let me put it this way, if there's a -- if upon submission of a fingerprint to Vobile there's a fingerprint match, Vobile sends information back to you?

A. It's more like we are supposed to connect and to check if the submission is processed, but basically that's the idea.

Q. Okay. And when Hotfile connects in to check, what information does Vobile make available to Hotfile about the file that it was checking?



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I, ANTON TITOV, hereby certify that I have read the foregoing pages of my deposition of testimony taken in these proceedings on Wednesday, December 7, 2011, and, with the exception of the changes listed on the next page and/or corrections, if any, find them to be a true and accurate transcription thereof.

Signed: _____

Name: ANTON TITOV

Date: 1/20/2012

HIGHLY CONFIDENTIAL

NAME OF CASE: Disney Enterprises Inc. v. Hotfile Corp.

DATE OF DEPOSITION: 12-7-2011

NAME OF WITNESS: ANTON TITOV

Reason Codes:

1. To clarify the record.

2. To conform to the facts.

3. To correct transcription errors.

Page 396 Line 16 Reason 3

From no to to

Page 402 Line 13 Reason 3

From Googles to cookies

Page 402 Line 15 Reason 3

From Googles to cookies

Page 418 Line 5 Reason 3

From user field field to user input field

Page 439 Line 24 Reason 3

From Lucyan to Luchian

Page 458 Line 5 Reason 5

From only the to only if the

Page 483 Line 19 Reason 3

From to upload down the file from to will pull down the file from

_____

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3. To correct transcription errors.

Page 436 Line 18 Reason 3

From Lucyan to Luchian

Page 436 Line 23 Reason 3

From Lucyan to Luchian

Page 439 Line 24 Reason 3

From Lucyan to Luchian

Page 439 Line 2 Reason 3

From Lucyan's to Luchian's

Page _____ Line _____ Reason _____

From _____ to _____

Page _____ Line _____ Reason _____

From _____ to _____

Page _____ Line _____ Reason _____

From _____ to _____

ANTON TITOV

HIGHLY CONFIDENTIAL
CERTIFICATE OF COURT REPORTER

I, Fiona Farson, with TSG Reporting, hereby certify that the testimony of the witness Anton Titov in the foregoing transcript, taken on Wednesday, December 7, 2011 was reported by me in machine shorthand and was thereafter transcribed by me; and that the foregoing transcript is a true and accurate verbatim record of the said testimony.

I further certify that I am not a relative, employee, counsel or financially involved with any of the parties to the within cause, nor am I an employee or relative of any counsel for the parties, nor am I in any way interested in the outcome of the within cause.

Signed: _____

Fiona Farson

Dated: 12-19-2011

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 11-20427-WILLIAMS/TURNOFF

- - - - - - - - - - - - - - - - - - - - - - - - - - - - - -

DISNEY ENTERPRISES, INC., TWENTIETH CENTURY FOX FILM CORPORATION, UNIVERSAL CITY STUDIOS PRODUCTIONS LLLP, COLUMBIA PICTURES INDUSTRIES, INC., and WARNER BROS. ENTERTAINMENT, INC.,

Plaintiff,

v.

HOTFILE CORP., ANTON TITOV, and DOES 1-10,

Defendants.

HOTFILE CORP.,

Counterclaimant,

v.

WARNER BROS ENTERTAINMENT INC.,

Counterdefendant.

- - - - - - - - - - - - - - - - - - - - - - - - - - - - - -

VOLUME IV
H I G H L Y  C O N F I D E N T I A L
(Pursuant to protective order, the following transcript has been designated highly confidential)

30(b)(6) DEPOSITION OF ANTON TITOV
Radisson Blu Hotel
Sofia, Bulgaria
Thursday, December 8, 2011
AT: 9:10 a.m.

Job #44430

A P P E A R A N C E S

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Also present:

Court reporter:

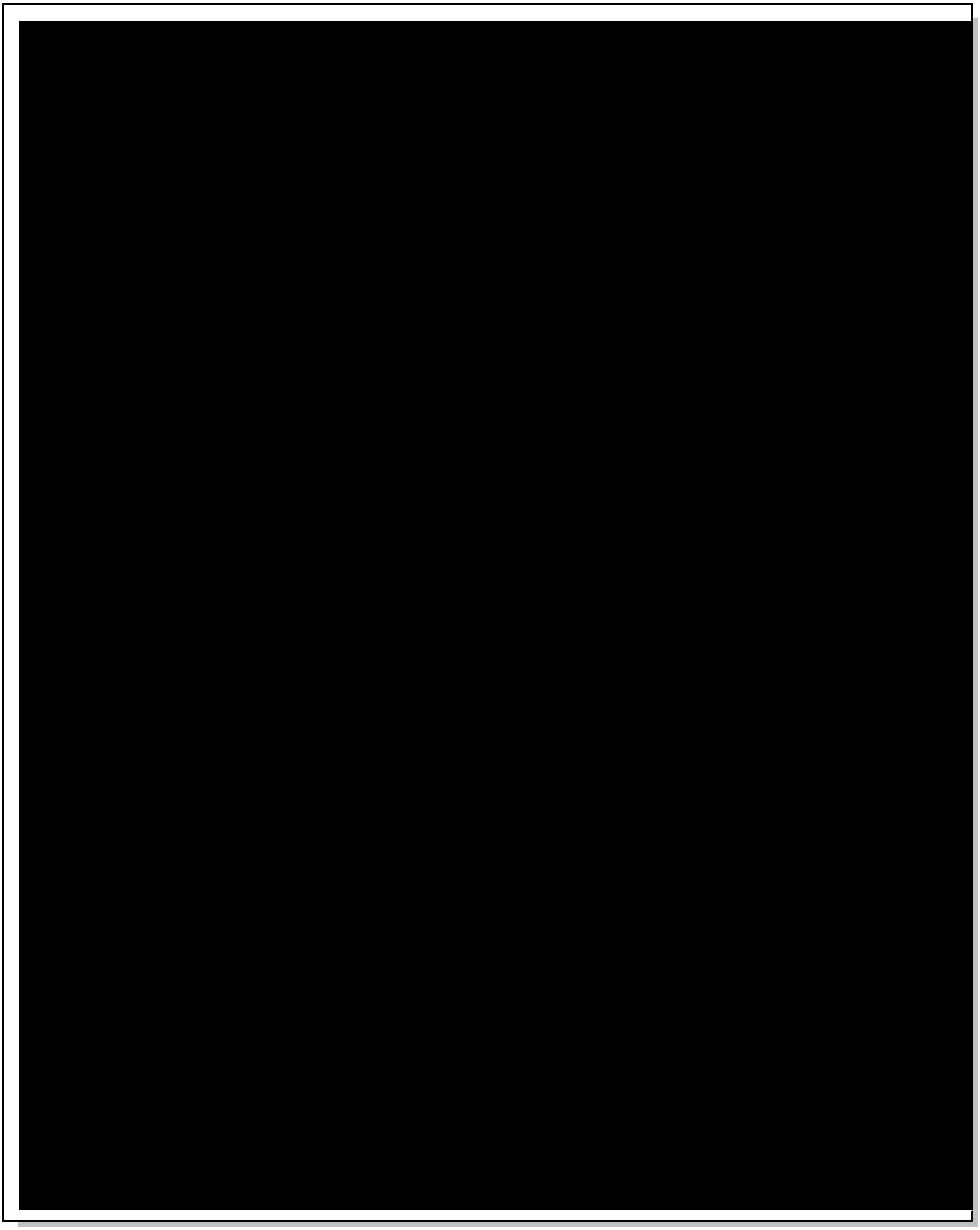
Fiona Farson
TSG Reporting

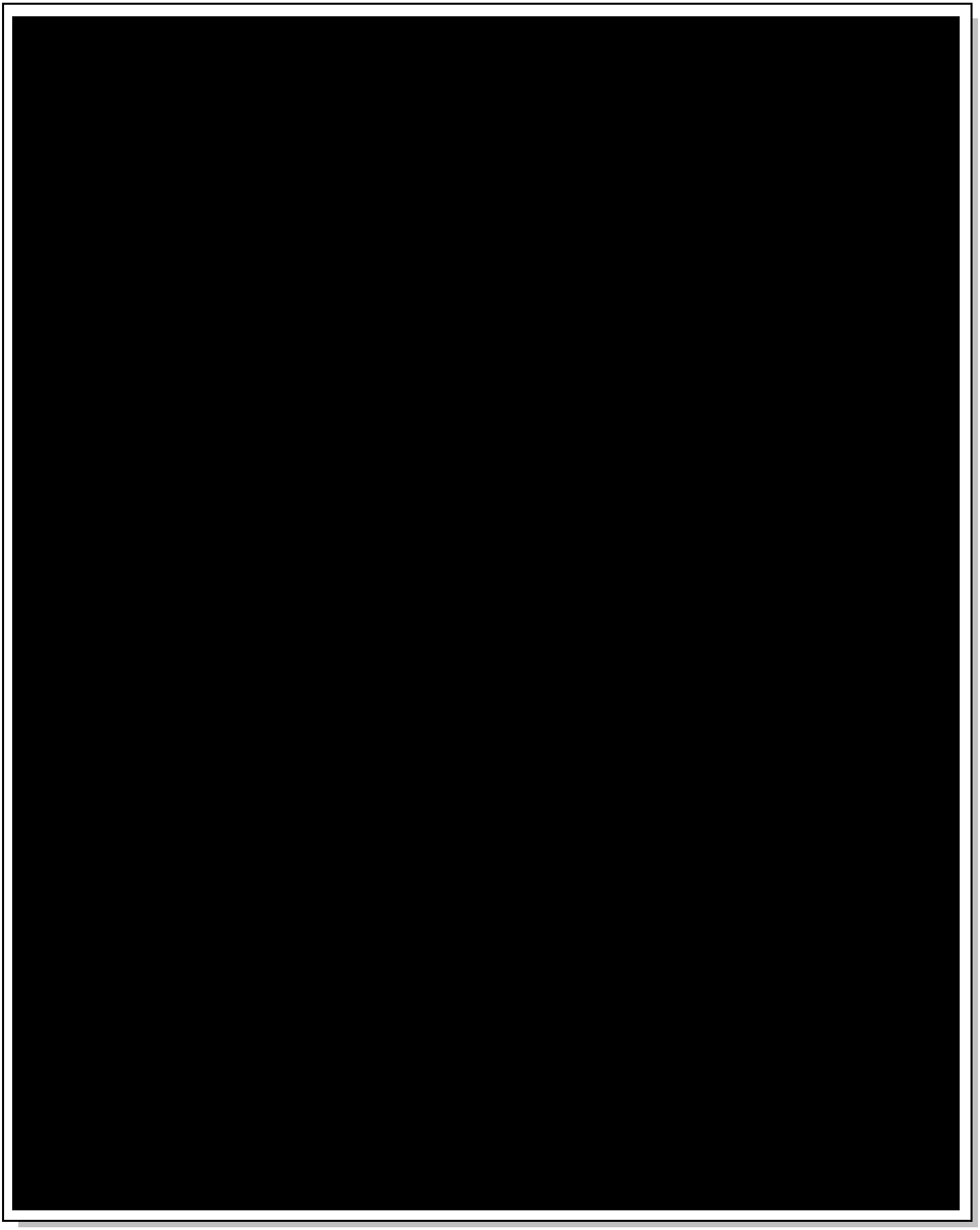
Videographer:

Simon Rutson
TSG Reporting

Interpreter:

Assist. Prof. Boris Naimushin, Ph.D.





the uploader affiliate has sold or the ratio, or some ratio of sales?

MR. THOMPSON: Objection, vague as to "it."

A. I believe it is based on the total sum of sales that the affiliate converted, and I believe that the formula also includes some estimates for Hotfile expenses for bandwidth on this user.

BY MR. FABRIZIO:

Q. "User" meaning the uploader affiliate?

A. Yeah.

Q. Focusing just for a second on the first part of the equation, just to make sure we understand it, you said the total sum of sales that the affiliate converted, so the total number of users who converted to premium -- well, from the downloader page of a file that was uploaded by one of those affiliates, correct?

A. I actually meant that the money value also matters.

(Reporter clarification.)

The money value.

Q. The money value? Oh, what -- what level of premium service that downloader purchases, okay.

A. Correct.

Q. Let me just ask by way of illustration to confirm something.

Assuming the downloader purchased -- two

downloaders -- I'm sorry. Assuming every downloader purchases the same level of premium, so I don't -- so we don't have the -- that variable to confuse things, if one uploader affiliate had one file up and it was downloaded a thousand times and one person converted, and another uploader affiliate only had -- had one file up, but only one person downloaded it, but that person converted, both -- in both cases there was one converted premium user, and there was only one file uploaded, but in one case that file had been downloaded a thousand times in order to get the one conversion and, in the second case, the first download resulted in a conversion -- do you understand the distinction I'm drawing?

A. Yes, I do.

Q. When you're -- when considering the part of the equation that is the total sum of sales that the affiliate converted, are those two uploader affiliates the same, considered to be equivalent?

MR. THOMPSON: Objection, compound, vague and ambiguous.

A. Are you asking if they will yield the same rank or where one is --

BY MR. FABRIZIO:

Q. I'm saying both of them have one converter, and does that mean that the total sum of sales that each of them

converted is one?
A. Again, I think in the -- it's monetary value, so it will be nine.
(Reporter clarification.)
The monetary value, dollars, so I think it will be $9 if they purchased --
Q. Okay. So the total sum -- the total monetary sum of sales that each affiliate converted, okay, I was thinking "sum" as being number of downloads, all right.
So if the up -- if the downloading users both converted to premium at the $9 rate, in both instances the uploading affiliate would -- would have a total number of sales converted of $9, okay?
A. Correct.
Q. And that's not affected by the ratio of the number of downloads it took to get that conversion?
A. As I said, it is a formula, and what -- the monetary value is part of the formula, so, yes, the ratio is an issue.
Q. Let me -- let me try to simplify it; if you look at exhibit 165, at the top on the right-hand side there is the heading "Ranks" --
MR. THOMPSON: Excuse me.
BY MR. FABRIZIO:
Q. -- and towards the bottom of that paragraph there's two

numbered paragraphs, and one says -- and then they are -- they're talking about -- well, it says:

"Your status mainly depends on your conversion ratio which includes:

1. The ratio of the users that downloaded your files and the users that become premium based on your uploaded files."

Do you see that?

A. Yes, I do see that.

Q. What does that mean?

MR. THOMPSON: Objection, vague and ambiguous. The document speaks for itself.

A. As I tried to explain before, the formula actually works like a money equation; you have income and you have expenses, you divide them, and you get a number, and, based on this number, a rank will be assigned.

BY MR. FABRIZIO:

Q. What I'm trying to figure out is how the income and expenses description you're giving me relates to the description in exhibit 165.

A. And given the fact that one of the expenses is bandwidth, so it counts here.

Q. Okay. And on exhibit 165 -- 165, number 2 says:

"The ratio of uploaded files to [the] number of downloaded files," that's the part that accounts for

expenses?
A. Yes.
Q. Okay. And if I understand that, a user that has uploaded one file downloaded 10,000 times is going to have a higher rank than a user that uploaded 10,000 files each downloaded once, correct?
MR. THOMPSON: Objection, vague and ambiguous and incomplete hypothetical.
BY MR. FABRIZIO:
Q. I should actually -- that actually is right because other factors may affect the rank.
It is better for a user's rank to have uploaded one file, downloaded 10,000 times, than to have uploaded 10,000 files, each downloaded once, correct?
MR. THOMPSON: Same objection.
A. Given the fact that if you assume the same file size for it, then you are correct.
BY MR. FABRIZIO:
Q. Okay. And why is that?
A. That is the formula our affiliate program is using.
Q. I understand that. Why does your affiliate program use a formula that rewards users more for uploading a fewer number of files that are downloaded very frequently than for uploading a large number of files that are downloaded only infrequently?

from the downloading patterns of users from countries that are not on the list of 54?

MR. THOMPSON: Same objection.

A. I can't think of anything.

BY MR. FABRIZIO:

Q. Have the list of 54 -- well, have the same 54 countries been on this list since the beginning of Hotfile?

A. No, I don't think so.

Q. So the list has changed over time?

A. Yes, I think so.

Q. How has the list changed?

A. I think that countries has been added -- added.

Q. Which countries have been added?

A. I don't know the full history of the list.

Q. Okay. Can you describe for us how the site operator's affiliate program operates?

MR. THOMPSON: Objection, overbroad, also asked and answered.

A. It is a program where site owners would get commission of the sales, the users referred to by their website.

BY MR. FABRIZIO:

Q. And they get 5 per cent of the sale price for every user they refer that converts to a premium account?

A. I think it could be 5 or more per cent.

Q. Under what circumstances would it be more than 5 per

correct?
MR. THOMPSON: Objection, vague, overbroad.
A. That is probably possible.
BY MR. FABRIZIO:
Q. And is Hotfile purposely avoiding exploring what its users are downloading?
MR. THOMPSON: Objection, vague and ambiguous, overbroad.
A. I don't believe so.
BY MR. FABRIZIO:
Q. Do you believe that Hotfile's revenues would go down if Hotfile were to eliminate all infringement on its system?
MR. THOMPSON: Objection, calls for a legal conclusion, hypothetical, and opinion testimony.
A. I don't know.
BY MR. FABRIZIO:
Q. You don't know? You don't have a belief one way or the other?
MR. THOMPSON: Objection, asked and answered.
A. I don't know.
BY MR. FABRIZIO:
Q. Is there any doubt in your mind that at least some portion of Hotfile's profits are a result of copyright infringement?
MR. THOMPSON: Objection, calls for a legal conclusion and

A. I believe there are two factors involved, one being if the upload is anonymous or not.
Q. One being if the uploader was anonymous?
A. If the file was anonymously uploaded.
Q. Okay.
A. And the second factor would be whether the file was ever downloaded at all.
Q. Okay. So is it the case that if the file was uploaded anonymously and had never been downloaded before, the period of time is 14 days?
A. That is my belief.
Q. And if the file was uploaded by a registered but non-premium user and the file had been downloaded at some point, then the period becomes 90 days?
A. Yes, that is my belief, that it will be 90 days from the last download.
Q. Okay. And is it possible -- is it possible that the period of time could be something between 14 and 90 days, or is it one or the other?
A. It is possible.
Q. And is it based on the same considerations, just different combinations of them?
A. Correct.
Q. Okay. Why does Hotfile delete the files of non-premium users when they haven't been downloaded for a period of

time?

A. I believe that is to free disk space.

Q. But if Hotfile is supposed to be at least in part a storage service, isn't it contrary to the notion of storage that Hotfile deletes files that have been stored on it?

MR. THOMPSON: Objection, argumentative, and assumes facts.

A. I think it was implemented based on the model of other websites.

(Reporter clarification.)

Model of other websites.

BY MR. FABRIZIO:

[redacted]

Q. Has Hotfile ever given consideration to, instead of deleting those files, simply charging those users to store them?

MR. THOMPSON: Objection, overbroad and vague.

A. If user buy a premium account, these files will be in fact stored.

BY MR. FABRIZIO:

Q. Switching topics again -- I'm getting towards the end, so I'm trying to cover some things I missed along the way, that's why there will be a lot of shifting.

CERTIFICATE OF DEPONENT

I, ANTON TITOV, hereby certify that I have read the foregoing pages of my deposition of testimony taken in these proceedings on Thursday, December 8, 2011, and, with the exception of the changes listed on the next page and/or corrections, if any, find them to be a true and accurate transcription thereof.

Signed: .....

Name: ANTON TITOV

Date: 1/20/2012

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DATE OF DEPOSITION: 12-8-2011

NAME OF WITNESS: ANTON TITOV

Reason Codes:

1. To clarify the record.
2. To conform to the facts.
3. To correct transcription errors.

Page 581 Line 8 Reason 3

From make it to the to make it to

Page 581 Line 9 Reason 3

From log, the to log the

Page 582 Line 17 Reason 3

From cannot exist to can notice if

Page 582 Line 20 Reason 1

From accounts hacking, limitation to accounts to prevent hacking is a limitation

Page 582 Line 22 Reason 3

From force on to force hacking on

Page 586 Line 16 Reason 3

From or to of

Page 586 Line 17 Reason 3

From servers of to service

_____

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Page 587 Line 3 Reason 3

From all product to will protect

Page 587 Line 5 Reason 3

From stage to limitation

Page 589 Line 24 Reason 3

From it's correct to it isn't a correct

Page 592 Line 25 Reason 1

From it to we would

Page 597 Line 25 Reason 3

From the shareholders to two shareholders

Page 611 Line 22 Reason 3

From Lucyan to Luchian

Page 612 Line 8 Reason 3

From Lucyan to Luchian

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Reason Codes:

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3. To correct transcription errors.

Page 612 Line 15 Reason 3

From Lucyan to Luchian

Page 612 Line 17 Reason 3

From Lucyan to Luchian

Page 616 Line 8 Reason 3

From FABRIZIO to THOMPSON

Page 616 Line 13 Reason 3

From man to him

Page 620 Line 4 Reason 3

From Lemuria paid to Lemuria ever paid

Page 620 Line 4 Reason 3

From other to any

Page 620 Line 5 Reason 3

From shareholders and if there is still other to other shareholders, no. and the answer is still no, and

_____

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Reason Codes:

1. To clarify the record.
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3. To correct transcription errors.

Page 626 Line 22 Reason 3

From financial election to FinArt transaction

Page 632 Line 25 Reason 3

From a port tool to upload tool

Page 649 Line 25 Reason 3

From paid to the to paid through the

Page 675 Line 13 Reason 3

From responding to the to responding to user

Page 675 Line 14 Reason 3

From query in to inquiries via

Page 675 Line 15 Reason 1

From frequently questions to frequently asked questions

Page 701 Line 11 Reason 3

From ask him the question to ask him a new question

_____

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Reason Codes:

1. To clarify the record.

2. To conform to the facts.

3. To correct transcription errors.

Page 723 Line 16 Reason 3

From hosted to posted

Page 726:25-727:1 Line Reason 3

From our court file to Hotfile

Page 611 Line 22 Reason 3

From Lucyan to Luchian

Page 612 Line 8 Reason 3

From Lucyan to Luchian

Page 612 Line 12 Reason 3

From Lucyan to Luchian

Page 612 Line 15 Reason 3

From Lucyan to Luchian

Page 612 Line 17 Reason 3

From Lucyan to Luchian

ANTON TITOV

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Signed: .....

Fiona Farson

Dated: 12-20-2011